TEXAS REGISTER

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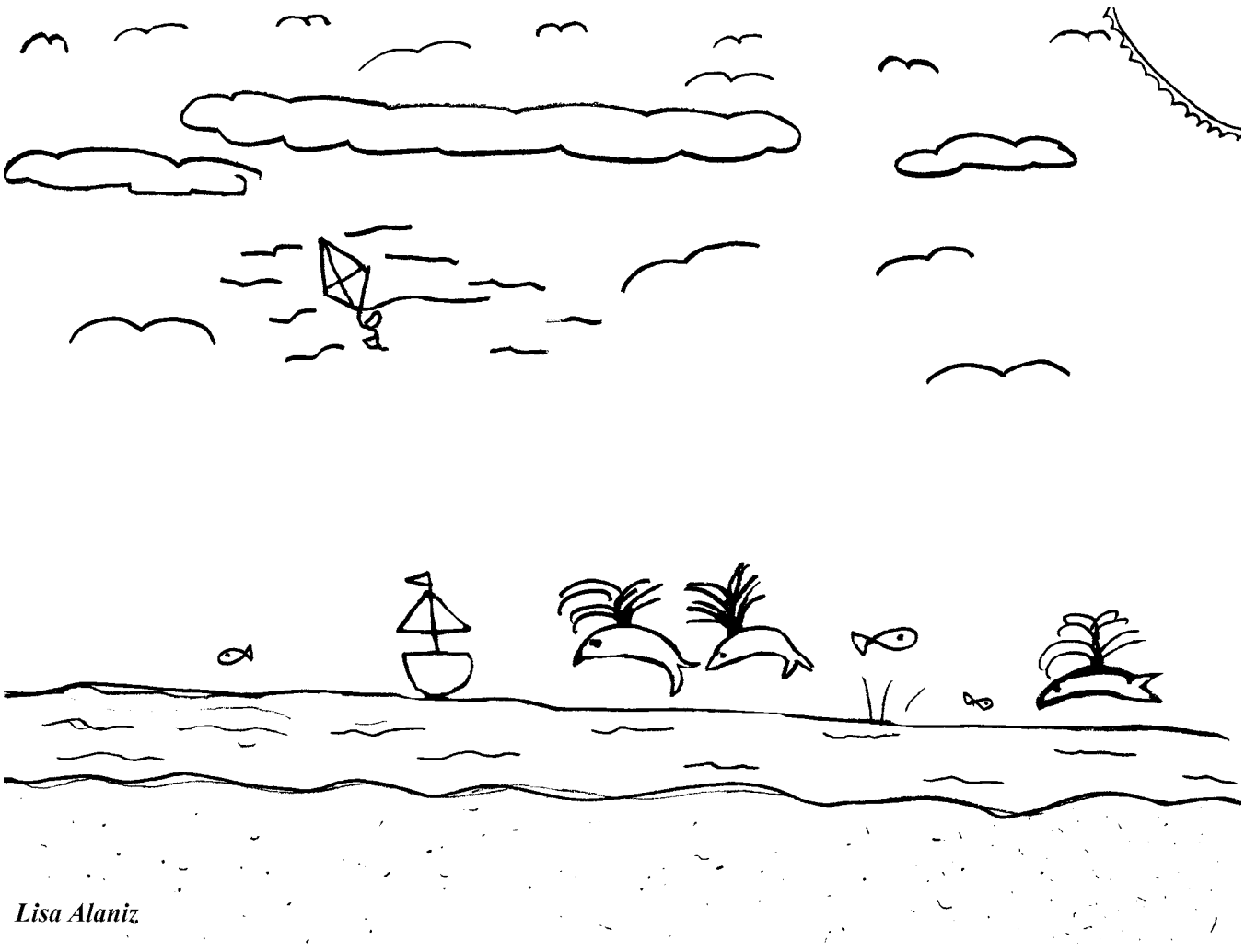

Lisa Alaniz

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

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

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IN THIS ISSUE

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 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

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

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

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

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 24, 2008

Appointed to the Texas Board of Pardons and Paroles, effective July 7, 2008, for a term to expire February 1, 2013, Barbara Lorraine of Angleton (replacing Linda Garcia of Deer Park whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2013, Alicia Grant of Richardson (replacing Tammy Allen of Fort Worth whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2013, Max Finn of Dallas (replacing Paul Stubbs of Austin whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2013, Steven Austin of Amarillo (replacing Juan Villarreal of Harlingen whose term expired).

Appointed to the Texas State Board of Dental Examiners for a term to expire February 1, 2013, Arthur Troilo of Austin (replacing Oscar Garcia of Brownsville whose term expired).

Appointments for June 27, 2008

Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2013, Thomas R. Kelsey of Houston (Mr. Kelsey is being reappointed).

Appointed to the Texas Farm and Ranch Lands Conservation Council for a term to expire February 1, 2013, Mark W. Jones of Brady (filling vacant position).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2014, Stanley D. Rosenberg of San Antonio (Mr. Rosenberg is being reappointed).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2014, Stacy G. London of Houston (replacing Gary D. Akright of Dallas whose term expired).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2014, Paul Plunket of Dallas (replacing Kenneth H. Harris of Austin whose term expired).

Appointments for June 30, 2008

Appointed to the Lower Colorado River Authority Board of Directors for a term to expire February 1, 2013, Kathleen Hartnett White of Rosanky (replacing Bobby Steiner of Bastrop who resigned).

Appointments for July 1, 2008

Designating Allen Cline of Austin as Presiding Officer of the Texas State Board of Acupuncture Examiners for a term at the pleasure of the Governor. Mr. Cline is replacing Dr. Terry Rascoe of Temple as presiding officer.

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2011, Ronnie Fanning of Woodway (replacing Monica Hernandez of Raymondville who resigned).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2013, Alida Hernandez of McAllen (replacing Patricia Lykos of Houston whose term expired).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2013, Dan Power of Denton (replacing Walter Meyer of Galveston whose term expired).

Appointed to the Texas Board of Acupuncture Examiners for a term to expire January 31, 2013, Rachelle Webb of Austin (replacing Hoang Ho of San Antonio whose term expired).

Appointed to the Texas Board of Acupuncture Examiners for a term to expire January 31, 2013, Terry Rascoe of Temple (Dr. Rascoe is being reappointed).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2009, Kimberly Carlisle of Collin (replacing Crystal Perkins of DeSoto who resigned).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2013, Leila Salmons of Houston (replacing Rosario Rodriguez Brusniak of Plano whose term expired).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2013, Tammy Camp of Lubbock (replacing Minnette Son of San Antonio whose term expired).

Appointed to the State Board of Examiners for Speech-Language Pathology and Audiology for a term to expire August 31, 2013, Phillip Wilson of Dallas (replacing Matthew Lyon of El Paso whose term expired).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2009, Fernando Camarillo of Boerne (replacing Rolando Pablos of San Antonio who resigned).

Appointed to the Nueces River Authority Board of Directors for a term to expire February 1, 2011, Roxana Tom of Campbelton (Ms. Tom is being reappointed).

Appointed to the Trinity River Authority for a term to expire March 15, 2009, Barbara Nash of Arlington (replacing Les Brown of Fort Worth whose term expired).

Appointed to the Trinity River Authority for a term to expire March 15, 2013, Jess Laird of Athens (replacing Nancy Perryman of Henderson who resigned).

Appointed to the Soil and Water Conservation Board for a term to expire February 1, 2010, Larry Jacobs of Montgomery (Mr. Jacobs is being reappointed).

Appointed to the Private Sector Prison Industry Oversight Authority for a term to expire at the pleasure of the Governor, Randall Henderson of Austin (replacing Raymond Henderson of Austin whose term expired).

Appointed to the Private Sector Prison Industry Oversight Authority for a term to expire February 1, 2013, Sarah Abraham of Sugar Land (replacing Kathy Flanagan of Houston whose term expired).

Appointed to the Private Sector Prison Industry Oversight Authority for a term to expire February 1, 2013, Rigoberto Villarreal of Mission (replacing Brian Hatley of El Paso whose term expired).

Appointed to the Private Sector Prison Industry Oversight Authority for a term to expire February 1, 2013, Jeffrey LaBroski of Richmond (Mr. LaBroski is being reappointed).

Rick Perry, Governor

TRD-200803448

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THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Request for Opinion

RQ-0721-GA

Requestor:

Mr. Amadeo Saenz, Jr., PE

Executive Director

Texas Department of Transportation

Dewitt C. Greer State Highway Building

125 East 11th Street

Austin, Texas 78701

Re: Whether certain monies in the state highway fund may be transferred to a bank outside the state treasury that is administered by the Regional Transportation Council of the North Central Texas Council of Governments (RQ-0721-GA)

Briefs requested by July 28, 2008

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

TRD-200803425
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 2, 2008

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Opinions

Opinion No. GA-0638

The Honorable Hector M. Lozano

Frio County Attorney

500 East San Antonio Street, Box 1

Pearsall, Texas 78061-3100

Re: Whether, without the approval of the commissioners court, a county clerk may supplement her deputies' salaries with money from the clerk's records management and preservation fund (RQ-0659-GA)

S U M M A R Y

A county clerk may expend money in the county clerk's records management and preservation fund to pay deputies' salaries, but only subject to the following conditions: First, a county clerk may not supplement salaries the county commissioners court has set in accordance with statutory budgeting procedures unless the county had in place, at the time the deputies were performing the work for which the clerk seeks to compensate them, a bonus or supplement plan. In addition, a county clerk may not supplement her deputies' salaries from the clerk's records management and preservation fund without the prior approval of the commissioners court and without considering whether the supplement is proportional to the amount of time each employee spends on specific management and preservation, including automation purposes. The county clerk's records management and preservation fund may be used to pay that portion of the salaries of any and all employees in the clerk's office who perform tasks that further specific records management and preservation purposes.

If the county treasurer receives a request from the county clerk for money from the clerk's records management and preservation fund to supplement salaries of deputies in the clerk's office, the treasurer must ensure that the claim is first approved by the county auditor and then by the commissioners court.

A county clerk may use the $2.50 records management and preservation fee collected under Code of Criminal Procedure article 102.005(f) from defendants convicted of an offense in county court or county court at law for any purpose for which the clerk may use fees collected under Local Government Code sections 118.011(b)(2) and 118.0216. The use of the fee is subject to the conditions set out above.

Between September 1, 2003, and June 17, 2005, the records management and preservation fee collected under Code of Criminal Procedure article 102.005 was to be evenly split between the county's records management and preservation fund established under Local Government Code section 203.003(6) and the district clerk's records management and preservation fund, with $10 going to each fund. The county clerk's records management and preservation fund was not at that time authorized to receive any portion of the fee collected under article 102.005.

A county clerk may not collect a records management and preservation fee under article 102.005(f) from a defendant whose case has been dismissed.

Opinion No. GA-0639

The Honorable Hector M. Lozano

Frio County Attorney

500 East San Antonio Street, Box 1

Pearsall, Texas 78061-3100

Re: Whether the County Assessor-Collector may award additional compensation to her salaried deputies from monies collected under the Certificate of Title Act, section 501.138, Transportation Code (RQ-0660-GA)

S U M M A R Y

A county tax assessor-collector is not authorized to award the fee in section 501.138, Transportation Code, to office employees as compensation in addition to their salaries approved by the commissioners court. A county treasurer presented with a request for such compensation must report the matter to the commissioners court for the court's consideration and direction.

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

TRD-200803424
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 2, 2008

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER B. FILING AND INITIAL PROCESSING OF A COMPLAINT

1 TAC §12.57

The Texas Ethics Commission proposes an amendment to §12.57, relating to the requirements for filing a complaint.

The proposed amendment to §12.57 would require a complainant to provide the mailing address of the person against whom a complaint is filed. A sworn complaint filed with the commission is required to comply with form requirements that are found in statute and in a commission rule. Currently, the rule requires a complaint to include the mailing address of each respondent, if known to the complainant. Occasionally, complaints do not include a valid address and sometimes do not include an address at all. The lack of an address makes it difficult to comply with the statutory requirement to notify a respondent of a complaint.

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

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

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

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

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

The amendment to §12.57 is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment to §12.57 affects Chapter 571, Subchapter E of the Government Code.

§12.57. Contents of a Complaint.

(a) In addition to the contents set out in Government Code §571.122, a complaint must include the following information:

(1) the telephone number of the complainant; [~~and~~]

(2) the mailing address of each respondent; and

(3) [~~(2)~~] if known to the complainant, the [~~mailing address and~~] telephone number of each respondent.

(b) A complaint must include the position and title of a respondent only if the alleged violation is related to the position or title of the respondent.

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 26, 2008.

TRD-200803353
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES
SUBCHAPTER J. REPORTS BY A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

1 TAC §20.577

The Texas Ethics Commission proposes an amendment to §20.577, relating to reporting requirements for a candidate for state chair of a political party.

The amendment to §20.577(c)(2) provides in relevant part that a candidate for state chair must file a report covering "the period that begins on either the day after the committee filed a campaign treasurer appointment with the commission or the first day after

the period covered by the last report required to be filed, as applicable, and ends on the 10th day before the convening." (Emphasis added). Instead of "the day after" the rule should state "the day." Also, instead of "committee" the rule should state the "candidate." The proposed amendment to §20.577(c)(2) would amend the existing rule to correct the typographical errors.

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

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

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

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

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

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

The proposed amendment affects Chapter 257 of the Election Code.

§20.577. Reporting Schedule for a Candidate for State Chair.

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

(c) A candidate for state chair of a political party shall also file the following reports.

(1) A candidate for state chair of a political party shall file a report not earlier than the 39th day before the convening of the state convention and not later than the 30th day before the convening of the state convention. The report shall cover the period that begins on either the day the candidate filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 40th day before the convening.

(2) A candidate for state chair of a political party shall file a report not earlier than the ninth day before the convening of the state convention and not later than the eighth day before the convening of the state convention. The report must cover the period that begins on either the day the candidate [~~after the committee~~] filed a campaign treasurer appointment with the commission or the first day after the period covered by the last report required to be filed, as applicable, and ends on the 10th day before the convening.

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

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

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803354
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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CHAPTER 34. REGULATION OF LOBBYISTS

The Texas Ethics Commission proposes amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22, relating to the reporting requirement by a lobbyist or an entity and the permissibility of contingent fees.

The lobby law requires a person to register as a lobbyist if the person exceeds either a compensation threshold ($1,000 in a calendar quarter) or an expenditure threshold ($500 in a calendar quarter). Section 34.5 creates exceptions from that requirement for purposes of the compensation threshold. The proposed amendment to §34.5 would provide that the exception in §34.5(11) would not apply if a person is compensated on a contingent fee basis for communicating with a state agency concerning purchasing decisions of a state agency.

The proposed amendment to §34.45 would provide that an entity that avoids the requirement to register as a lobbyist by having a lobbyist report on its behalf is subject to §305.024 of the Government Code.

The proposed amendment to §34.65 would require a registered lobbyist reporting compensation on behalf of an entity that is avoiding registration to report the compensation by the date on which the entity, if registered, would have been required to report the compensation.

The proposed amendment to §34.85 would set a criteria that must be satisfied before a registered lobbyist may report an expenditure on behalf of an entity in order for the entity to avoid the requirement to register as a lobbyist.

The new §34.22 would provide that contingent fees are permissible for efforts to influence state agency purchasing decisions of a product and would provide what the term "product" consists of.

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

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

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

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

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

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §34.5

The amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 affect Chapter 305 of the Government Code.

§34.5. Certain Compensation Excluded.

Compensation received for the following activities is not included for purposes of calculating the registration threshold under Government Code §305.003(a)(2), and this chapter and is not required to be reported on a lobby activity report filed under Government Code, Chapter 305, and this chapter:

(1) - (10) (No change.)

(11) communicating to a member of the executive branch concerning state agency purchasing decisions of a product, a service, or a service provider, [~~of a state agency,~~] or negotiations regarding such decisions if the compensation for the communication is not totally or partially contingent on the outcome of any administrative action.

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 26, 2008.

TRD-200803355
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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1 TAC §34.22

The amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 affect Chapter 305 of the Government Code.

§34.22. Contingent Fees for Influencing Purchasing Decisions.

(a) Government Code §305.022, does not prohibit contingent fees to an employee of a vendor of a product for efforts to influence state agency purchasing decisions of a product.

(b) For purposes of this section and Government Code §305.022 , the term "product" consists of goods acquired for direct consumption or use by the agency in the day-to-day support of the agency's administrative operations, such as office supplies and equipment, and does not include "services" or the "selection of a service provider."

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 26, 2008.

TRD-200803356
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.45

The amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 affect Chapter 305 of the Government Code.

§34.45. Entity Registration.

(a) (No change.)

(b) An entity that avoids registration under subsection (a) of this section becomes subject to Government Code, §305.024 on the earlier of the date the entity makes the expenditure that would have required the entity to register as a lobbyist or the date the entity receives, or is entitled to receive compensation or reimbursement that would have required the entity to register as a lobbyist.

(c) [~~(b)~~] Registration by an entity does not relieve any individual of the requirement to register if that individual meets one of the registration thresholds in Government Code, §305.003.

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 26, 2008.

TRD-200803357
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.65

The proposed amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 affect Chapter 305 of the Government Code.

§34.65. Compensation Reported by Lobby Firm Employee.

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

(c) The individual registrant shall report the compensation by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a registration or amended registration, as applicable, that he has reported compensation and/or reimbursement paid to an entity for lobby activity by one or more persons other than the registrant.

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 26, 2008.

TRD-200803358
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER D. LOBBY ACTIVITY REPORTS

1 TAC §34.85

The proposed amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 are proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendments to §§34.5, 34.45, 34.65, and 34.85, and new §34.22 affect Chapter 305 of the Government Code.

§34.85. Individual Reporting Expenditure by Entity.

(a) An individual registrant may report an expenditure made by a lobby entity if the entity requests that the individual do so in order for the entity to avoid registration; and [~~.~~]

(1) the entity makes the expenditure in order for the individual to act on the entity's behalf to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action; or

(2) the entity compensates or reimburses the individual to act on behalf of the entity or on behalf of the entity's clients to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) The individual registrant shall report the expenditure by the date on which the entity, if registered, would have been required to report it. The individual registrant shall indicate on a lobby activity report that he or she has reported expenditures made by an entity and indicate the specific amount reported on behalf of the entity.

(c) For purposes of Government Code, §305.0021(b), an expenditure made by an entity under subsection (a) of this section, is not a joint expenditure for purposes of Government Code, §305.0021(b) if the entity makes the entirety of the expenditure at issue.

(d) [~~(b)~~] In this provision "lobby entity" means a corporation, association, firm, partnership, committee, club, organization, or other group of persons voluntarily acting in concert that meets one of the registration thresholds in Government Code, §305.003.

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 26, 2008.

TRD-200803359
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 78. ATHLETE AGENTS

The Office of the Secretary of State proposes amendments to 1 TAC §§78.1, 78.11, 78.13, 78.21, 78.31, 78.50, 78.51, 78.53, 78.60 and new §78.32 and §78.33, relating to athlete agents. The amendments and new rules are proposed in order to correct erroneous citations to rules and statutes relating to athlete agents, to specify the location of forms on the Office of the Secretary of State's web site; to clarify the procedures for renewal of registrations; and to conform the rules to existing practices and procedures related to athlete agents.

Mike Powell, Attorney, Business and Public Filings Division, has determined that for the first five years the proposal is in effect there will be no fiscal impact to the state or local government as a result of the adoption of the amendments and new sections.

Mr. Powell has also determined that for each year of the first five years the proposal is in effect the public benefit is to provide an accurate, more detailed, and clearer understanding of the policies and procedures for filing athlete registrations with the Office of the Secretary of State. There will be no additional cost to small business or individuals as a result of the adoption of the amendments and new sections.

Mike Powell has been designated to receive comments. Written comments should be addressed to Mr. Powell at Office of the Secretary of State, Business and Public Filings Division, P.O. Box 13297, Austin, Texas 78711-3697; or by e-mail to mpowell@sos.state.tx.us. To be considered, comments must be delivered to the Office of the Secretary of State no later than 12 noon, on August 11, 2008.

SUBCHAPTER A. REGISTRATION

1 TAC §§78.1, 78.11, 78.13, 78.21

The amendments are proposed under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the proposal.

§78.1. Registration of Athlete Agents.

(a) Chapter 2051 of the Texas Occupations Code provides for the registration of athlete agents with the secretary of state.

(b) [~~(a)~~] The application for registration by an athlete agent will be accepted for filing only upon submission of a completed registration form and payment of the applicable filing fee stated in §78.21 of this title (relating to Filing Fees).

(c) [~~(b)~~] Except as provided in subsection (d) [~~Subsection (c)~~] of this section, an application for an athlete agent shall be made on forms prescribed by the secretary of state. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550 [~~12887~~], Austin, Texas 78711-3550. The form may also be found on the Secretary of State's website [~~at www.sos.state.tx.us~~]. See Form 2501 at http://www.sos.state.tx.us/statdoc/statforms.shtml.

(d) [~~(c)~~] A person who holds a certificate of registration or license as an athlete agent in another state may submit a copy of the other state application and certificate or license instead of submitting the application required by this section if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the application is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by Chapter 2051 of [~~0f~~] the Texas Occupations Code; and

(3) was signed by the applicant under penalty of perjury.

(e) [~~(d)~~] The registration under Chapter 2051 of the Texas Occupations Code [~~the Act~~] is valid for one year from the date of issuance of the certificate of registration. [~~When application for registration is made and the registration process has not been completed, the secretary of state may issue a provisional registration certificate valid for not more than 90 days.~~]

(f) [~~(e)~~] An agent that is a corporation, an association, a partnership, a limited liability company, or other entity, and not an individual or sole proprietorship, shall file a statement setting forth the names and addresses of all individuals who will recruit or solicit an athlete to enter into an agent contract, a professional sports services contract, or a financial services contract with the agent. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. The form may also be found on the Secretary of State's website. See Form 2504 at http://www.sos.state.tx.us/statdoc/statforms.shtml. [~~The statement shall be filed on a form prescribed by the secretary of state and available from the Statutory Documents Section referenced previously.~~]

(g) When the application for registration is submitted but determined by the secretary of state to be incomplete or not accompanied by any necessary supplemental application, affidavit or surety bond, the secretary of state may issue a provisional registration certificate valid for not more than 90 days. The secretary of state will not issue a provisional certificate if the filing fee for the application for registration has not been paid. If the deficiencies in the registration are cured within the time specified by the secretary of state, the secretary will issue a certificate of registration that relates back to the first date of receipt of the application for registration.

§78.11. Renewal for Registration of Athlete Agent.

(a) Except as provided in subsection [~~Subsection~~] (b) of this section, an application for renewal to be an athlete agent shall be made on the same form and in the same manner as the original application for registration [~~forms prescribed by the secretary of state~~]. [~~A copy of the prescribed form or the requirements of the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 12887, Austin, Texas 78711. The form may also be found on the Secretary of State's website at www.sos.state.tx.us.~~]

(b) A person who has submitted an application for renewal of registration or license as an athlete agent in another state may submit a copy of the application and certificate of registration or license from the other state instead of submitting the application required by this section. The secretary of state shall accept the application for renewal from the other state as an application for renewal under this section if the application to the other state:

(1) was submitted to the other state not earlier than the 180th day before the date the renewal application is submitted in this state and the applicant certifies that the information contained in the application is current;

(2) contains information substantially similar to or more comprehensive than the information required by Chapter 2051 of the Texas Occupations Code; and

(3) was signed by the applicant under penalty of perjury.

(c) A renewal application for an athlete agent shall be submitted to the secretary of state on or before the expiration of the registration term but no earlier than 90 days before expiration.

(d) Renewal under Chapter 2051 of the Texas Occupations Code extends the registration for an additional one year term. [~~the Act is valid for one year from the date of issuance. When application for renewal is made and the renewal process has not been completed, the secretary of state may issue a provisional renewal certificate valid for not more than 90 days.~~]

(e) An agent that is a corporation, an association, a partnership, a limited liability company, or other entity, and not an individual or sole proprietorship, shall file a statement with the renewal application setting forth the names and addresses of all individuals who will recruit or solicit an athlete to enter into an agent contract, a professional sports services contract, or a financial services contract with the agent on the same form and in the same manner as the statement filed with the original registration. [~~The statement shall be filed on a form prescribed by the secretary of state and available from the Statutory Documents Section referenced previously.~~]

(f) When the application for renewal is submitted but determined by the secretary to be incomplete or not accompanied by any necessary supplemental application, affidavit or surety bond, the secretary of state may issue a provisional renewal certificate valid for not more than 90 days. The secretary of state will not issue a provisional certificate if the required filing fee has not been paid. If the deficiencies in the renewal registration are cured within the time specified by the secretary of state, the secretary will issue a certificate of registration.

§78.13. Updates.

An athlete agent entity that has filed a statement under §78.1(f) [~~§78.1(d)~~] or §78.11(e) [~~§78.11(d)~~] of this title (relating to Registration of Athlete Agents; Renewal for Registration of Athlete Agent) shall file an updated statement reporting [~~that reports~~] any additions to, deletions of or change in the name or address of the individuals who

recruit or solicit athletes on behalf of the entity. The statement shall be filed no later than the 30th day after the date the change occurs. The updates shall be made on the same form and in the same manner as the original statement. [It shall be on a form prescribed by the secretary of state and available from the Statutory Documents Section.]

§78.21. Filing Fees.

(a) The filing fee for filing an application for registration as [registering] an athlete agent is $1,000.

(b) The filing fee for filing an application for renewal of registration as an athlete agent [renewing a registration] is $1,000.

(c) The fee for filing [each individual that is listed in] the statement [statements] described in §78.1(f) [§78.1(d)] and §78.11(e) [§78.11(d)] of this title (relating to Registration of Athlete Agents; Renewal for Registration of Athlete Agent) is $100 for each individual listed in the statement.

(d) The fee for [each individual listed in] the statement update described in §78.13 of this title (relating to Updates) is $100 for each individual [,] who was not reported in the entity's most recent [prior] statement[, is $100]. If no new individuals are named, there is no filing fee for the statement.

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 25, 2008.

TRD-200803338
Lorna Wassdorf
Director of Business and Public Filings Division
Office of the Secretary of State
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-9856

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SUBCHAPTER B. SURETY BONDS AND AFFIDAVITS

1 TAC §§78.31 - 78.33

The amendments and new rules are proposed under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the proposal.

§78.31. Affidavit of Athlete Agent.

If an application for registration or renewal does not include [Any athlete agent who does not post] a $100,000 surety bond because the agent does not enter into financial services contracts with athletes, the athlete agent must execute [with their initial application or renewal must execute] an affidavit affirming that the agent has not entered into a financial services contract and has not provided financial services to an athlete. The affidavit shall be filed with the Office of the Secretary of State with the submission of the application for registration or the application for renewal of registration. [If the initial application or renewal was filed prior to April 7, 1989, the athlete agent shall execute and file an affidavit with the secretary of state within 10 days from receiving notice of the required affidavit.] A copy of the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550 [12887], Austin, Texas 78711-3550. The form may also be found on the Secretary of State's website. See Form 2502 or 2502A, as applicable, at http://www.sos.state.tx.us/statdoc/statforms.shtml.

§78.32. Surety Bond for Financial Services Contract.

If an agent will enter into a financial services contract with an athlete, the application for registration or any renewal must be accompanied by a properly issued and executed athlete agent surety bond in the amount of $100,000 on the form prescribed by the secretary of state. The form or specifications pertaining to the prescribed form may be obtained by writing to the Statutory Documents Section, Office of the Secretary of State, P.O. Box 13550, Austin, Texas 78711-3550. The form may also be found on the Secretary of State's website. See Form 2503 at http://www.sos.state.tx.us/statdoc/statforms.shtml.

§78.33. Failure to Provide Bond or Affidavit.

Failure to provide the surety bond or the affidavit in lieu of the security bond will result in rejection of the application or renewal of application for registration.

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

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Lorna Wassdorf
Director of Business and Public Filings Division
Office of the Secretary of State
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For further information, please call: (512) 463-9856

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SUBCHAPTER C. CONTRACTS

1 TAC §78.50, §78.51

The amendments are proposed under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the proposal.

§78.50. Initial Filing Date.

Each registered athlete agent shall file with the secretary of state a copy of each agent contract and/or financial services contract entered into with an athlete by the athlete agent no later than the fifth day after the date the contract is signed by the athlete. Failure to timely file a contract is a violation of Chapter 2051 of the Texas Occupations Code and may subject the agent to administrative penalties or other disciplinary actions as permitted under Chapter 2051 of the Texas Occupations Code.

§78.51. Contract Form.

(a) The secretary of state has the authority to approve the form of all agent and financial services contracts. All contracts must comply with §2051.203 and §2051.204 of the Texas Occupations Code (Code). All such contracts shall:

(1) include the amount and method of computing the fees the agent may charge to and collect from the athlete and a description of the various services to be rendered in return for each fee;

(2) specify any other consideration the athlete agent received or will receive from any other source for entering into the contract; or for providing the services;

(3) identify the name of any person not listed in the application for registration or renewal of registration who will be compensated because the athlete signed the contract;

(4) describe any expenses of the athlete agent that the athlete agrees to reimburse;

(5) [~~(4)~~] contain the disclosure statements specified in §2051.204 of the Code [~~the Athlete Agents Act, §5(b)(1), (2), (3), (4) and (5)~~];

(6) [~~(5)~~] indicate the date that the athlete signs the contract;

(7) [~~(6)~~] identify the institution of higher education where the athlete attended and participated in intercollegiate sports contests; and

(8) [~~(7)~~] specify the time-period covered by the contract.

(b) The secretary of state will accept agent contracts on forms required by or approved by professional players' associations provided that the contract includes, as part of the body of the contract or in an addendum to the contract, the information related to fees and services required by §2051.203 of the Code and the disclosure statements required by §2051.204 of the Code. The disclosure language required by §2051.204 of the Code must be reproduced in the contract without change.

(c) [~~(b)~~] If a contract fails to contain the information stated in §2051.203 or §2051.204 of the Code or this section [~~this rule or if the contract is not filed within the time specified in §78.50 of this title (relating to the Initial Filing Date)~~], an athlete agent may be subject to administrative penalties and other disciplinary actions permitted by Chapter 2051 of the Code [~~action by the secretary of state~~].

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

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Lorna Wassdorf
Director of Business and Public Filings Division
Office of the Secretary of State
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-9856

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SUBCHAPTER D. ADMINISTRATIVE PENALTIES

1 TAC §78.53, §78.60

The amendments are proposed under the authority of §2051.051 of the Texas Occupations Code which provides that the secretary may adopt rules necessary to administer the chapter.

Chapter 2051 of the Texas Occupations Code is affected by the proposal.

§78.53. Late Contract Filings.

(a) An athlete agent or financial services contract is deemed filed when it is properly addressed and placed in the United States Post Office or in the hands of a common or contract carrier or successfully transmitted by fax or by e-mail. The post office cancellation mark, [~~or~~] the receipt mark of a common or contract carrier, a fax transmission report, or confirmation of receipt of e-mail is prima facie evidence of the date the contract was deposited with the post office or carrier or transmitted by fax or e-mail.

(b) Contracts not filed within the time period established by §78.50 of this title (relating to Initial Filing Date) are late.

(c) Contracts not received by the Office of the Secretary of State within ten days of the date the athlete signs the contract are subject to an administrative penalty. Said penalty will be assessed on the following basis:

(1) a fine of $100, plus;

(2) $20/day for each day that the contract is late.

(d) Assessment of the fine described in subsection (c) of this section does not preclude the secretary of state from taking other disciplinary action authorized by Chapter 2051 of the Texas Occupations Code [~~the Act~~].

§78.60. Administrative Penalties.

(a) If the secretary of state determines that a violation of Chapter 2051 of the Texas Occupations Code [~~the Athlete Agents Act~~] has occurred and an administrative penalty is to be assessed, the following factors shall be considered by the secretary in calculating the amount of the penalty:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited act;

(2) the economic harm to the public's interest or confidences caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation;

(6) whether the violation was intentional or unintentional; and

(7) any other matter that justice may require.

(b) The secretary of state may assess a penalty of not more than $25,000 for each violation.

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 25, 2008.

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Lorna Wassdorf
Director of Business and Public Filings Division
Office of the Secretary of State
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For further information, please call: (512) 463-9856

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CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.38

The Office of the Secretary of State proposes new §81.38, concerning Administration of Voter Registration Associated with Address Confidentiality Program, which is necessary to implement the voting procedures necessary to allow certified participants in the new address confidentiality program described in Chapter 56, Subchapter C, Texas Code of Criminal Procedure (§§56.81

- 56.93 (Vernon Supp. 2008)) to vote by mail in Texas elections without disclosing their actual residence address.

Ann McGeehan, Director of Elections, has determined that for each year of the first five-year period following the adoption of this rule there will be no fiscal implications for state or local government as a result of the proposed rule.

Ms. McGeehan has also determined that for each year of the first five-year period following the adoption of this rule the public benefit will be the uniform and secure preservation of voting rights of participants in the Address Confidentiality Program administered by the Texas Attorney General.

Ms. McGeehan has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rule. Consequently, an Economic Impact Statement and a Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon Supp. 2008), are not required.

In addition, Ms. McGeehan has determined that for each year of the first five-year period following the adoption of the proposed rule there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2008).

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via email to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule 81.38" in the subject line. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Secretary of State, at (512) 463-5650.

Statutory Authority: The new rule is proposed under Texas Election Code Annotated §13.002(e) (Vernon Supp. 2008), which authorizes the Secretary of State to adopt administrative rules as needed to administer the voting procedures for participants in the address confidentiality program described in Chapter 56, Subchapter C, Texas Code of Criminal Procedure (§§56.81 - 56.93 (Vernon Supp. 2008)).

Cross Reference to Statute: The statutory provisions affected by the proposed new rule are Texas Code of Criminal Procedure §§56.81 et seq. (Vernon Supp. 2008); Texas Election Code §§13.002, 18.005, 18.0051, 82.007, and 84.0021 (Vernon Supp. 2008).

§81.38. Administration of Voter Registration Associated with Address Confidentiality Program.

(a) Definitions. For purposes of this section, the following words and phrases have the following meanings:

(1) Protected applicant--A certified participant or an eligible spouse or dependent of a certified participant in an address confidentiality program administered by the Office of the Attorney General as authorized by Chapter 56, Subchapter C, Texas Code of Criminal Procedure.

(2) Eligible household member--A person who is living in the same household or dwelling of a certified participant in an address confidentiality program administered by the Office of the Attorney General as authorized by Chapter 56, Texas Code of Criminal Procedure, and who is otherwise eligible to vote using a confidential ballot application, without regard to whether they are related to the certified participant.

(3) Early Voting Clerk--The election officer for a county, and any other local political subdivision, who bears responsibility for the administration of early voting, as specified in Chapter 83, Texas Election Code.

(4) Confidential application for ballot by mail--An application for a confidential ballot by mail completed and signed by a protected applicant. The confidential application for ballot by mail also acts as a temporary voter registration application while the applicant is in the address confidentiality program.

(5) Confidential roster of protected applicants--A list of voters who have voted by means of a confidential ballot by mail.

(6) Substitute post office box address--A post office box address supplied to a certified participant in an address confidentiality program administered by the Office of the Attorney General.

(7) True residence address--The address of the permanent fixed place of habitation of a certified participant in an address confidentiality program administered by the Office of the Attorney General.

(8) Confidential ballot--A ballot marked and voted by a protected applicant or any eligible household member of an applicant.

(b) Process for Completing the Confidential Application for Ballot by Mail. As required by §13.002(e) of the Texas Election Code, a protected applicant is not eligible to vote early by mail unless:

(1) the person submits by personal delivery a Confidential application for ballot by mail to the early voting clerk.

(2) To complete the application process and qualify to receive confidential ballots by mail, a protected applicant must point to a specific location on an official map of the political subdivision if able to do so, or may orally describe the location in sufficient detail to permit identification of the political subdivisions in which the protected applicant resides. The protected applicant must then swear or affirm to the early voting clerk that the protected applicant's place of residence as defined in §1.015 of the Texas Election Code is located within that specifically identified location.

(3) Upon the protected applicant's indication or description of the geographic location of the voter's residence, the early voting clerk must record the jurisdictional codes for every political subdivision in which the protected applicant resides on the protected applicant's confidential application for ballot by mail.

(4) Components of a confidential application for ballot by mail.

(A) A confidential ballot application must include:

(i) the protected applicant's full name and former name, if any;

(ii) the month, day, and year of the applicant's birth;

(iii) a statement that the protected applicant is a United States citizen;

(iv) a statement that the protected applicant is a resident of the county;

(v) a statement that the protected applicant has not been determined by a final judgment of a court exercising probate jurisdiction to be mentally incapacitated or partially incapacitated without the right to vote;

(vi) a statement that the protected applicant has not been finally convicted of a felony, or if convicted, that the protected applicant is eligible to register to vote as authorized by §13.001, Texas Election Code;

(vii) a protected applicant's substitute post office box address (which for uniformity's sake may be pre-printed on an application form);

(viii) the protected applicant's Texas driver's license number, personal identification number, or last four digits of the protected applicant's social security number, or a statement that the protected applicant has not been issued either number; and

(ix) an affidavit of confidentiality stating, "I swear or affirm that I am a certified participant or eligible household member of a certified participant in an address confidentiality program administered by the Texas Attorney General as described in Chapter 56, Texas Code of Criminal Procedure. I understand that by completing this application, it is my responsibility to cancel my voter registration in any county in which I may have been registered to vote, if my voter registration was not previously canceled. It is also my responsibility to cancel any confidential application for ballot by mail that was filed in a county of previous residence. I understand that I am requesting a ballot by mail for every election conducted by the early voting clerk within the boundaries of the territories in which I reside until my address confidential certificate expires (three (3) years after the application is submitted) or your office receives notice that I am no longer in the program or my ballot by mail has been returned as undeliverable, whichever occurs first."

(B) The early voting clerk may not transcribe, copy, or otherwise record a confidential application for a ballot by mail. The application is not a public record, and must be stored in a secure manner that does not compromise the privacy of the information therein.

(C) Upon notification in writing from the Texas Attorney General that a particular protected applicant has not been re-certified for participation in the address confidentiality program or upon return of a protected applicant's ballot by mail as undeliverable, the early voting clerk may not mail additional mail ballots to the protected applicant until receipt of a new application filed by the applicant in person. Any confidential applications shall be preserved for the 22-month period following the expiration or cancellation of the confidential application in the same manner as precinct election records pursuant to §66.058, Texas Election Code. After the preservation period expires, the early voting clerk will destroy the application and any written reference to the jurisdictional codes assigned to the applicant.

(c) Confidential Status of Protected Applicant's Identity. In compliance with §56.88, Texas Code of Criminal Procedure, the true residence address of a protected applicant shall not be solicited and is not required as part of the application process. No record may be made of any accidental revelation of the true residence address (whether implied by the protected applicant's oral description of his or her residence within the county, revealed by the applicant's silent indication of residence location on a county map or as the result of some other disclosure furnished on a confidential application), and the applicant's true residence address is confidential and does not constitute public information for purposes of Chapter 552, Texas Government Code, or §1.012, Texas Election Code.

(d) Restriction on Voting by Personal Appearance. The confidential application for ballot by mail shall constitute the protected applicant's application to register to vote for so long as the protected applicant remains in the program, or until such time as the protected applicant's application for ballot by mail remains valid. A protected applicant shall not be permitted to vote by personal appearance either during early voting or on Election Day in any election for so long as the applicant's application for ballot by mail remains valid.

(e) Local Election Ballots. The county early voting clerk is responsible for providing ballots to the protected applicant for any elections conducted by the county. In order to receive a ballot for an election conducted by a local political subdivision other than a county, the protected applicant must appear in person at the office of the local political subdivision's early voting clerk and submit a confidential application for ballot by mail.

(f) Voting Procedure for Protected Applicant.

(1) On the later of either 45 days before any election conducted in the protected applicant's territory or as soon as ballots are available and ready to be mailed to any by mail, overseas citizen, or military voters, the early voting clerk shall mail a ballot for that election to the protected applicant at the substitute post office box address provided.

(2) The ballot, carrier envelope, and other by mail voting materials supplied to a protected applicant shall be the same as provided to voters who vote by mail due to absence from the county during early voting, except that the county early voting clerk shall number the carrier envelope with the number representing the protected applicant's place on the confidential roster of protected applicants.

(3) The early voting clerk shall also mark and initial the carrier envelope to indicate that the ballot is voted under this administrative rule.

(4) The protected applicant must mark and seal the ballot in the same manner as any voter voting by mail. The protected applicant completes the carrier envelope in the regular manner.

(g) Confidential Roster of Protected Applicants. Upon acceptance of a confidential application for ballot by mail, the early voting clerk shall list the applicant's name on the early voting roster of protected applicants, the date the ballot was mailed out, and the date the voted ballot was received by the early voting clerk. A protected applicant to whom a ballot is provided is not included on the regular early voting roster.

(h) Confidential Roster Not Subject to Disclosure. In compliance with §56.88, Texas Code of Criminal Procedure, the names of protected applicants listed on the confidential roster of protected applicants are not available for public inspection or copying, and are categorized as confidential records that are not subject to public disclosure in reply to requests under the Texas Public Information Act.

(i) Processing Confidential Ballots Voted by Protected Applicants. Upon receipt of a carrier envelope containing a ballot from a protected applicant, the early voting clerk shall make a note on the confidential roster of protected applicants showing the date of receipt. The results shall be processed in accordance with the procedures applicable to processing early voting ballots voted by mail, except that the comparison of the signatures on the confidential ballot application and the carrier envelope shall be conducted by the early voting clerk. The early voting clerk shall record on the confidential roster all ballots accepted for counting after the signature review is completed. If the signature on the carrier envelope and signature on the confidential application are determined not to have been made by the same person, the clerk shall treat the ballot as not timely returned in accordance with §86.011, Texas Election Code and indicate this reason on the confidential roster. The carrier envelopes from voters in the Address Confidentiality Program shall be delivered to the early voting ballot board in an envelope designated as "Envelopes for Confidential Ballots" together with the Early Voting Roster of Protected Voters. The confidential applications for ballot by mail are not delivered to the board but are kept by

the county early voting clerk. The early voting ballot board shall verify the carrier envelopes received with the early voting roster of Protected Applicants to ensure that the number of carrier envelopes do not exceed the number of names on the roster. If there is no date of receipt indicated on the roster, there will not be a carrier envelope for that person.

(j) Early Voting Ballot Board Review. Notwithstanding the absence of comparing signatures, the early voting ballot board shall treat as valid all carrier envelopes marked as containing confidential ballots voted pursuant to this section that were received in the envelope for confidential ballots. The carrier envelopes shall be opened and set aside, and the security envelopes containing the voted confidential ballots shall be set aside with all other accepted ballots by mail. The ballots shall be counted with the other accepted ballots by mail. The number of ballots voted and counted under this section would have already been recorded on the Confidential Roster of Protected Applicants pursuant to subsection (i) of this section.

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

Filed with the Office of the Secretary of State on June 30, 2008.

TRD-200803403
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5640

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1 TAC §81.39

The Office of the Secretary of State proposes new §81.39, concerning Procedures for Pilot Program for Emailing Ballots to FPCA Voters, which is necessary to implement a pilot program which was enacted by the 80th Legislature to allow military voters who are overseas and who applied by FPCA to receive their November 2008 general election for state and county officers ballots via email if their regular ballot and balloting materials have not been received in sufficient time to cast their ballots by mail.

Ann McGeehan, Director of Elections, has determined that for the implementation of this program, which occurs in conjunction with the November 4, 2008 general election for state and county officers, there will be no fiscal implications for state or local government as a result of the proposed rule.

Ms. McGeehan has also determined that for the duration of this pilot program the public benefit will be the increased efficiency of providing balloting materials to FPCA voters casting their votes while stationed overseas.

Ms. McGeehan has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed rule. Consequently, an Economic Impact Statement and a Regulatory Flexibility Analysis, pursuant to Texas Government Code, §2006.002 (Vernon Supp. 2008), are not required.

In addition, Ms. McGeehan has determined that for the duration of this pilot program following the adoption of the proposed rule there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, Texas Government Code, §2001.022 (Vernon Supp. 2008).

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060. Comments may also be sent via email to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule 81.39" in the subject line. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to the Elections Division, Office of the Secretary of State, at (512) 463-5650.

Statutory Authority: The new rule is proposed under Texas Election Code Annotated, §101.0071(j) (Vernon Supp. 2008), which authorizes the Secretary of State to adopt administrative rules as needed to administer the pilot program which allows for certain FPCA voters to receive their ballots for the November 2008 general election for state and county officers via email. The pilot program is described in §101.0071 of the Texas Election Code.

Cross Reference to Statute: The statutory provisions affected by the proposed new rule are Texas Election Code Annotated, §101.0071 (Vernon Supp. 2008); and Texas Government Code Annotated, Chapter 255 (Vernon Supp 2008).

§81.39. Procedures for Pilot Program for Emailing Ballots to FPCA Voters.

(a) Participation in pilot program.

(1) A county is a "participating county" if they return the Request to Participate form, supplied by the Office of the Secretary of State, by the deadline of September 5, 2008.

(2) Upon receiving a participating county's Request to Participate form, the Office of the Secretary of State will respond to the early voting clerk via email to notify them that their participation is approved.

(b) Voters are eligible to receive ballots via email if the following conditions in paragraphs (1) - (8) of this subsection are met:

(1) Balloting materials have been provided to a voter in accordance with §101.0071(a) of the Texas Election Code;

(2) The voter is a member of the armed forces and is an FPCA registrant who is eligible for early voting by mail;

(3) The voter provides a current address that is located outside of the United States and is voting from outside of the United States;

(4) The voter provides an email address that contains the voter's name, to the extent that the name provided on the FPCA and in the email address are substantially the same;

(5) The email address provided also ends with the suffix ".mil;"

(6) The voter requests balloting materials to be sent to them via email because they did not receive the balloting materials provided by mail;

(7) The voter requests that their ballot is emailed to them on or after Monday, September 22, 2008; and

(8) The voter requests that their ballot is emailed to them no later than Tuesday, October 28, 2008.

(c) Requesting ballot; providing balloting materials to voters.

(1) Voters who meet the eligibility requirements in subsection (b) of this section may request that their balloting materials be sent

to them via email by sending an email from his or her .mil account to the early voting clerk.

(2) If the voter emails the early voting clerk to request balloting materials by mail, the early voting clerk shall update the voter's FPCA with their email address, if this information is not on the voter's current FPCA.

(3) Email addresses are not subject to public disclosure under Chapter 552, Texas Government Code. Early voting clerks shall ensure that the voter's email address is excluded from public disclosure.

(4) If balloting materials are sent to one eligible voter under these rules, then balloting materials must be sent to each eligible voter under these rules.

(5) The following materials must be sent to each eligible voter:

(A) the appropriate ballot;

(B) ballot instructions;

(C) signature sheet;

(D) information about how to print a ballot secrecy envelope from the Federal Voting Assistance Program (FVAP) website;

(E) information about how to print a carrier envelope from the FVAP website; and

(F) list of certified write-in candidates, if applicable.

(d) Permissible method of returning ballot sent to voter via email.

(1) Voters who receive balloting materials from the early voting clerk via email must return their marked ballots by regular mail.

(2) Marked ballots may not be returned via email. Any ballot returned via email may not be counted.

(e) Processing and qualifying ballots.

(1) Upon receipt of a voted emailed ballot, the early voting clerk shall place the carrier envelope containing the marked ballot, and the signature sheet, into a jacket envelope, which also contains the voter's FPCA.

(2) The early voting clerk shall note on the early voting by mail roster any ballots emailed to overseas military voters under this program.

(3) All jacket envelopes containing marked ballots voted under this program must be delivered to the early voting ballot board when they convene for the second time, to count provisional and overseas ballots.

(4) The board should make sure that each jacket envelope contains:

(A) the voter's FPCA;

(B) the envelope in which the voter returned their ballot;

(C) the signature sheet; and

(D) the carrier envelope containing the marked ballot.

(5) The board must compare the voter's signature as it appears on the signature sheet with the voter's signature as it appears on the FPCA. If the board determines that the signatures could have been written by the same person, the ballot should be accepted.

(6) If the voter returned both the original mail ballot ("mail ballot") and the ballot which was emailed to them ("emailed ballot"), then only the emailed ballot may be accepted.

(7) If the voter only returned the mail ballot, then that ballot may be accepted if the early voting clerk received an email from the voter stating that their regular mail ballot arrived.

(f) Counting ballots. The qualified, accepted ballot is handled in the following manner:

(1) Open the carrier envelope and remove the ballot envelope.

(2) Place the unopened ballot envelope in a ballot box.

(3) Enter the voter's name on the poll list for early voters.

(4) Place the FPCA, the carrier envelope, the signature sheet, and any accompanying papers back in the jacket envelope.

(g) Rejected ballots.

(1) If an FPCA, signature sheet and carrier envelope do not meet all the requirements outlined above, the ballot must be rejected and may not be counted.

(2) The rejected ballot should be processed by:

(A) Writing the word "Rejected" on the carrier envelope;

(B) Writing the word "Rejected" on the corresponding jacket envelope;

(C) Placing the unopened carrier envelope containing the rejected ballot in the large envelope or container marked "Rejected Early Ballots";

(D) Having the presiding judge sign and seal the "Rejected Early Ballot" envelope;

(3) The presiding judge must also write the date and nature of the election on the envelope.

(4) A record must be kept of the number of rejected ballots placed in the "Rejected Early Ballot" envelope.

(5) A notation must be made on the carrier envelope of any ballot which was rejected after the carrier envelope was opened, stating the reason the carrier envelope was opened and rejected; and

(6) The FPCA, signature sheet, and any accompanying papers and affidavits must be placed in the jacket envelope.

(7) The presiding judge of the board must deliver notice of the reason for the rejection to the voter's listed residence address within ten days of the election.

(h) Expiration of this section. This section expires February 16, 2009.

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 30, 2008.

TRD-200803404
Ann McGeehan
Director of Elections
Office of the Secretary of State
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-5640

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 372. TEXAS WORKS

The Health and Human Services Commission (HHSC) proposes amendments to §372.2, concerning the meaning of words and terms used in the chapter; §372.404, concerning income HHSC counts when determining eligibility for Temporary Assistance for Needy Families (TANF); §372.753, concerning the difference in determining eligibility for the TANF State Program (TANF-SP) as compared to the TANF Program; and §372.754, concerning the difference in determining the amount of benefits in TANF-SP as compared to the TANF Program, in Chapter 372, Texas Works.

Background and Justification

The purpose of the amendments is to implement Rider 21 of the 2008-09 General Appropriations Act (Article II, Health and Human Services Commission, Rider 21, H.B. 1, 80th Legislature, Regular Session, 2007), which authorizes HHSC and the Office of the Attorney General to increase up to $75 the monthly child support disregard "pass-through" payments to TANF families, effective October 1, 2008. Rider 21 was passed in response to the Deficit Reduction Act of 2005, which authorizes the federal government to waive its share of child support collections (up to $100 per month for one child and $200 per month for two or more children), if the State, when determining eligibility and benefits, passes through and disregards some or all of the monthly child support payments a TANF family may receive.

The amendments are also proposed to correct agency names and rule cross-references made obsolete during the consolidation of health and human services agencies in 2004.

Section-by-Section Summary

The amendment to §372.2 revises the definition of "DHS" to mean HHSC, because HHSC is now the agency that administers the TANF and Food Stamp programs in Texas. The amendment also adds a definition for the acronym "HHSC" and renumbers the subsequent paragraphs in the section.

The amendment to §372.404 changes the maximum amount of regular child support payments that HHSC excludes as income when determining TANF eligibility from $50 to $75, and corrects agency names and rule cross-references.

The amendment to §372.753 changes the maximum amount of monthly child support payments received by a participant that HHSC disregards as unearned income when determining TANF-SP eligibility from $50 to $75, and corrects agency names.

The amendment to §372.754 changes the maximum amount of monthly child support payments received by a participant that HHSC disregards as unearned income when determining a household's benefits for TANF-SP from $50 to $75, and corrects agency names.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that several changes authorized by Rider 21 and changes to the availability of federal TANF match under the federal Deficit Reduction Act of 2005 work together for a net reduction of costs of $904 in federal TANF each year. During the first five-year period the proposed amendments are in effect, there will be a reduction of cost in federal TANF of $904 in Fiscal Year (FY) 2009, $904 in FY 2010, $904 in FY 2011, $904 in FY 2012, and $904 in FY 2013. Other fiscal impacts were considered by the legislature in the appropriation process. There is no foreseeable fiscal implication for local governments.

Small Business and Micro-business Impact Analysis

Mr. Suehs has determined that there will be no effect on small businesses or micro-businesses to comply with the proposal, because the proposal affects eligibility of individuals for the TANF and TANF-SP programs and does not affect businesses. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

Public Benefit and Costs

Anne Heiligenstein, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the proposed amendments are in effect, the anticipated public benefit as a result of enforcing the proposed amendments is that TANF families receiving more than $50 in child support will receive up to an additional $25 in benefits.

Regulatory Analysis

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

Takings Impact Assessment

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

Public Comment

Written comments on the proposal may be submitted to Julie Regan, Health and Human Services Commission, Office of Family Services, MC-2039, 909 West 45th Street, Austin, Texas 78751, or by e-mail to julie.regan@hhsc.state.tx.us, within 30 days after publication of this proposal in the *Texas Register*.

SUBCHAPTER A. OVERVIEW AND PURPOSE

1 TAC §372.2

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 32, which authorizes HHSC to administer financial assistance programs.

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

§372.2. What do certain words and terms in this chapter mean?

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

(1) Authorized representative--In the Temporary Assistance for Needy Families (TANF) Program, a person whom the certified group authorizes to apply for or manage the TANF benefits on behalf of the certified group but who is not included in the certified group. In the Food Stamp Program, a person whom the household authorizes to apply for or manage the food stamp benefits on behalf of the household. References in this chapter to a certified group, client, or household include an authorized representative, unless the context indicates otherwise.

(2) Budgetary needs amount--In the TANF program, a set dollar amount that represents the monthly amount needed by the certified group to pay for food, clothing, housing, utilities, and incidental expenses (which include day-to-day transportation, telephone, laundry, unreimbursed medical expenses, recreation, and household supplies).

(3) Caretaker--In the TANF Program, a person who cares for a dependent child, whom HHSC [~~DHS~~] includes in the certified group, and who ordinarily receives and manages the TANF benefits for the certified group.

(4) Certified group--The person or group of relatives whose needs HHSC [~~DHS~~] includes together in a TANF case.

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

(6) Child--A person who is under 18 years of age. In the TANF Program, a child also includes a person who is under 19 years of age so long as the person is a full-time student in a secondary school (or participant in an equivalent vocational or technical training program) and the person is reasonably expected to complete the school (or the training) before the person's 19th birthday.

(7) Client--In the TANF Program, the member of the certified group who receives benefits for the certified group. In the Food Stamp Program, the member of the household who receives benefits for the household.

(8) Dependent child--In the TANF Program, a child as described in the Texas Human Resources Code, §31.002(b). The term also means a child who has been deprived of parental support because of the death, absence, or incapacity of a parent who does not have enough income or resources for a reasonable subsistence compatible with health and safety, and who is living with a caretaker.

(9) DHS--Formerly, this referred to the [~~The~~] Texas Department of Human Services. It now refers to the Texas Health and Human Services Commission (HHSC) (which is the state agency that administers the TANF and Food Stamp programs in Texas).

(10) Federal Poverty Guidelines--The household income guidelines issued periodically and published in the Federal Register by the U.S. Department of Health and Human Services that determine income eligibility for the Food Stamp Program and certain other public assistance programs.

(11) HHSC--The Texas Health and Human Services Commission.

(12) [~~(11)~~] Household--The person or persons whose needs HHSC [~~DHS~~] includes in a Food Stamp Program case for benefits. In the TANF Program, the family members who live together.

(13) [~~(12)~~] Parent--A mother or father, as established through biological relationship or legal process.

(14) [~~(13)~~] Payee--In the TANF Program, a person who receives and manages the TANF benefits for a certified group and who otherwise qualifies as a caretaker, except HHSC [~~DHS~~] does not include the person in the certified group. HHSC [~~DHS~~] designates a payee when no one in the household qualifies or wants to be caretaker.

(15) [~~(14)~~] PRA--Personal Responsibility Agreement. In the TANF Program, a written agreement that defines the responsibilities of participants and of the state.

(16) [~~(15)~~] Protective payee--In the TANF Program, a person whom HHSC [~~DHS~~] selects to receive and manage benefits for the certified group instead of the caretaker. HHSC [~~DHS~~] may designate a protective payee whenever HHSC [~~DHS~~] determines that the caretaker has failed to comply with one or more program requirements.

(17) [~~(16)~~] Recognizable needs amount--In the TANF program, a set dollar amount that is 25% of the budgetary needs amount for the certified group.

(18) [~~(17)~~] Sibling--A brother, sister, half brother, or half sister, as established by biological relationship or legal process. A sibling does not include a stepbrother or stepsister.

(19) [~~(18)~~] SNAP--Simplified Nutritional Assistance Program.

(20) [~~(19)~~] SSI--Supplemental Security Income.

(21) [~~(20)~~] TANF--Temporary Assistance for Needy Families.

(22) [~~(21)~~] TANF Non-Cash Program--A program that is a component of the TANF Program that provides TANF-funded services relating to such matters as education, employment, and the prevention and treatment of substance abuse, but that does not provide benefits (for example, cash assistance).

(23) [~~(22)~~] TANF Program--A program that provides temporary benefits (cash assistance) and work opportunities to families with needy dependent children. References in this chapter to the TANF Program also include the TANF State Program (TANF-SP), unless the context clearly indicates otherwise.

(24) [~~(23)~~] TANF-SP--Means TANF State Program, the state-created and state-funded program that is the same as the TANF Program except it is limited to certain Texas counties and two-parent households. References in this chapter to TANF include TANF-SP, unless the context clearly indicates otherwise.

(25) [~~(24)~~] U.S.--The United States of America.

(26) [~~(25)~~] U.S.C.--United States Code.

(27) [~~(26)~~] Work subsidy--Refers to a component of the TANF Program in which HHSC [~~DHS~~] does not directly pay benefits to the household but instead diverts to a participating employer a subsidy equal to the household's TANF benefits (and any food stamp benefits), and the employer pays the program participant a wage that equals or exceeds this subsidy. HHSC [~~DHS~~] is authorized to administer the work subsidy program in coordination with the Texas Workforce Commission. At any given time, the work subsidy program may not operate or may not be available in certain areas of the state.

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

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803344

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 424-6900

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SUBCHAPTER B. ELIGIBILITY
DIVISION 7. INCOME

1 TAC §372.404

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 32, which authorizes HHSC to administer financial assistance programs.

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

§372.404. What income does HHSC [~~DHS~~] count when determining TANF eligibility?

In the TANF program, HHSC [~~DHS~~] counts all income of the persons described in §372.403 [~~§3.403~~] of this chapter (relating to Whose income does DHS count in the TANF Program?), except HHSC [~~DHS~~] excludes the following:

(1) any income that federal law excludes;

(2) the earned income of a child who is:

(A) a full-time student, as defined by the school (regardless of how many hours the child works); or

(B) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions that are from private, nonprofit organizations and are based on need;

(4) up to $75 [~~$50~~] per month in regular child support payments per household (except HHSC [~~DHS~~] counts all child support payments to a household that HHSC [~~DHS~~] determines has violated an agreement to assign child support to the state);

(5) income that is legally diverted before actual receipt, such as payments a parent makes for alimony, child support, and to dependents outside the home;

(6) proceeds from claims on insurance policies to compensate for a loss or that are used to pay medical expenses;

(7) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(8) payments from federal programs for on-the-job training that are made to a child who is under the parental control of another household member, including such payments made under any of the laws described in paragraph (7) of this section, or under such law as the Workforce Investment Act of 1998;

(9) the value of any benefits received under a government nutrition assistance program that is based on need, including benefits under the Food Stamp Program, the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(10) foster care payments;

(11) payments made under a government housing assistance program that is based on need;

(12) energy assistance payments;

(13) job training payments:

(A) that are earmarked as reimbursement for training-related expenses; and

(B) that do not duplicate payment for an item that is covered by budgetary needs;

(14) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions. HHSC [~~DHS~~] does not exclude amounts from lump sums used for another purpose;

(15) reimbursements for monies spent on items not covered by budgetary needs;

(16) amounts deducted from royalties for production expenses and severance taxes;

(17) all income of Supplemental Security Income recipients;

(18) third-party funds received and used for a third-party beneficiary who is not a household member;

(19) vendor payments made from funds not legally obligated to the household;

(20) veterans benefits for special needs that are not items covered by budgetary needs;

(21) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(22) for households with farms generating income of at least $1,000 annually that also receive nonfarm self-employment income, the amount of any nonfarm self-employment income that offsets a tax deduction taken that year for a farm loss;

(23) any income described in §372.357(b) [~~§3.357(b)~~] of this chapter (relating to What resources does DHS count in the Food Stamp Program?);

(24) any income described in §372.356(4), (13), (17), and (18) [~~§3.356(4), (13), (17), and (18)~~] of this chapter (relating to What resources does DHS count in the TANF Program?);

(25) the earned income of a person who marries a caretaker or payee, for the first six months from the date of the marriage, if:

(A) the caretaker or payee is receiving TANF benefits on the date of the marriage; and

(B) the combined income of the person and the caretaker or payee that is countable under this section does not exceed 200% of the Federal Poverty Guideline, as calculated based on the total number of the following persons:

(i) the caretaker or payee;

(ii) the person who marries the caretaker or payee; and

(iii) each child living in the household who is related to the caretaker, payee, or person within the degree described in §372.102(b)(2) [~~§3.102(b)(2)~~] of this chapter (relating to Who is a caretaker under the TANF program?).

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

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803343
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 424-6900

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SUBCHAPTER C. ASSOCIATED PROGRAMS DIVISION 4. TANF STATE PROGRAM

1 TAC §372.753, §372.754

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, Chapter 32, which authorizes HHSC to administer financial assistance programs.

The amendments affect Texas Government Code, Chapter 531 and Texas Human Resources Code, Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§372.753. Is there any difference in determining eligibility for TANF-SP as compared to the TANF Program?

HHSC [~~DHS~~] determines eligibility for TANF-SP in exactly the same way as the TANF Program, except HHSC [~~DHS~~] counts the amount of any monthly child support payments above $75 [~~$50~~] that are received by a participant as unearned income in determining the household's income eligibility under Subchapter B, Division 7, of this chapter (relating to Income).

§372.754. Is there any difference in determining the amount of benefits for TANF-SP as compared to the TANF Program?

HHSC [~~DHS~~] determines the amount of benefits for TANF-SP participants in exactly the same way as the TANF Program, except HHSC [~~DHS~~] counts the amount of any monthly child support payments above $75 [~~$50~~] that are received by a participant as unearned income in determining the household's amount of benefits under Subchapter F, Division 1, of this chapter (relating to Benefits in General).

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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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 424-6900

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §§1.1, 1.5, 1.12

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §1.1 Private Donors, §1.5 Contract Monitoring, and §1.12 Administrative Hearings. Section 1.1 concerning Private Donors is proposed for repeal because the subject matter is more appropriately covered in various provisions of the Government Code, Penal Code and the Department's ethics policy. Section 1.5, concerning Contract Monitoring Policy is proposed for repeal because the subject matter is more appropriate as a Department policy. Section 1.12 concerning Administrative Hearings is proposed for repeal because it has been superseded by Chapter 60, Subchapter C of this title, concerning Administrative Penalties.

Mr. Michael Gerber, Executive Director, has determined that for each year of the first five years that the repeals are in effect there is no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Gerber has also determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of repealing these rules will be the elimination of duplicate and unnecessary regulations. There will be no adverse economic effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are affected by the repeals as proposed.

Written comments may be submitted to Texas Department of Housing and Community Affairs, Attn: Kevin Hamby, General Counsel, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail to the following address: kevin.hamby@tdhca.state.tx.us. All comments must be received within thirty days of the date of the publication of this notice.

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

No other statutes, articles, or codes are affected by this proposed repeal.

§1.1. Private Donors.

§1.5. Contract Monitoring Policy.

§1.12. Administrative Hearings.

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

Filed with the Office of the Secretary of State on June 30, 2008.

TRD-200803400
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 475-3916

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CHAPTER 5. COMMUNITY SERVICES PROGRAMS

SUBCHAPTER B. EMERGENCY NUTRITION AND TEMPORARY EMERGENCY RELIEF PROGRAM

10 TAC §§5.101 - 5.114, 5.116 - 5.121

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of Chapter 5, Subchapter B, §§5.101- 5.114 and §§5.116 - 5.121, concerning Emergency Nutrition and Temporary Emergency Relief Program because the authority for the program was repealed by the 80th Legislature.

Mr. Michael Gerber, Executive Director, has determined that for each year of the first five years that the repeals are in effect there is no foreseeable implications relating to costs or revenues of the state or local governments.

Mr. Gerber has also determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of repealing these rules will be the elimination of regulations that are no longer in effect. There will be no adverse economic effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are affected by the repeals as proposed.

Written comments may be submitted to Texas Department of Housing and Community Affairs, Attn: Kevin Hamby, General Counsel, P.O. Box 13941, Austin, Texas 78711-3941 or by e-mail to the following address: kevin.hamby@tdhca.state.tx.us. All comments must be received within thirty days of the date of the publication of this notice.

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

No other statutes, articles, or codes are affected by this proposed repeal.

§5.101. Program Overview.

§5.102. Demonstration of Need.

§5.103. Contractor Eligibility.

§5.104. Scope of Services.

§5.105. Application Requirements.

§5.106. Plan of Service.

§5.107. Budget.

§5.108. Public Notice and Comment.

§5.109. Contractor Requirements for Establishing Client Eligibility.

§5.110. Contract Changes.

§5.111. Contractor Reporting Requirements.

§5.112. Payment.

§5.113. Records.

§5.114. Audit.

§5.116. Contract Termination and Expiration.

§5.117. Oil Overcharge Funding Program Overview.

§5.118. Oil Overcharge Funding Scope of Services.

§5.119. Oil Overcharge Funding Budget.

§5.120. Overcharge Contractor Requirements for Establishing Client Eligibility.

§5.121. Oil Overcharge Funding Payment and Reports.

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

Filed with the Office of the Secretary of State on June 30, 2008.

TRD-200803401
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 475-3916

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER B. LICENSE AND PERMIT SURCHARGES

The Texas Alcoholic Beverage Commission (commission) proposes to amend §33.23, relating to the surcharges assessed for permits and licenses issued by the commission. The commission also proposes two new sections. Proposed new §33.25

relates to the implementation of two-year licenses and permits issued by the commission. Proposed new §33.26 relates to the fee for a manufacturer's agent's warehousing permit.

The proposed amendments to §33.23 add surcharges for the following new permit types: direct shipper's permit, manufacturer's agent's warehousing permit, out-of-state wine only package store permit and promotional permit. The commission is required by §5.50 of the Texas Alcoholic Beverage Code (code) to assess a surcharge on each application for an original or renewal permit issued by the commission in addition to a fee set by the code or by rule.

The proposed new §33.25 reflects the timeline for the commission's implementation of two-year licenses and permits. The commission is required by §11.09 and §61.03 of the code to issue a permit or license that will expire on the second anniversary of the date on which it is issued. The code sections do, however, provide that the commission may issue a license or permit for less than two years to maintain a reasonable annual distribution of review work and fees. The commission has proposed a schedule that will provide for a graduated implementation of two-year licenses to allow the commission to maintain a reasonable distribution of work and fees over the implementation period. The initial implementation will begin on October 1, 2008, and end on September 1, 2009.

The proposed new §33.26 establishes a fee of $750.00 for a manufacturer's agent's warehousing permit issued under Chapter 55 of the code. No fee for the permit is established under the chapter. Section 5.50 provides the commission with authority to set a fee by rule if no statutory fee is established.

Charlie Kerr, Chief Financial Officer, has determined that for each fiscal year of the first five years the amended and new sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed.

Specifically, for each of the first five years proposed amended §33.23 is in effect, the commission will collect approximately $116,824.00 in surcharges for the new permits issued. These additional revenues will offset the increased costs associated with regulation of the new permittees by the commission.

For each of the first five years that proposed new §33.26 is in effect, the commission will collect approximately $1,500.00 in fees for the new permits issued. These additional revenues will offset the increased costs associated with regulation of the new permittees by the commission.

For the first year (FY 2009) the proposed new §33.25 is in effect, the state will collect approximately $61,176,953.00 in fees and surcharges. This is an increase over fees and surcharges collected in FY 2007 of $14,440,122.00 as a result of the doubling of fees and surcharges for two-year permits and licenses under subsections (c) and (d) of the new rule. In the second year (FY 2010) after the proposed rule is in effect, the state will collect approximately $57,679,812.00 in fees and surcharges. This is an increase over fees and surcharges collected in FY 2007 of $10,942,981.00 as a result of the doubling of the fees and surcharges for two-year permits and licenses under subsection (e) of the new rule. In the third year (FY 2011) the proposed new rule is in effect, when all permits and licenses will be issued for a two-year period, the state will collect approximately $44,129,228, in fees and surcharges. This is a decrease of approximately $2,607,603.00 from the fees and surcharges collected in FY 2007. In the fourth (FY 2012) and fifth (FY 2013) years that the proposed new rule is in effect, it is expected that the estimates for the second and third years will repeat and remain fairly constant after all permits and licenses are issued for a two-year term.

Local governments are authorized by §11.38 and §61.36 to collect one-half of the state fee for each license or permit issued within the jurisdictional limits of the city or county. The implementation of the two-year term for a license or permit will have an impact on local government similar to that on state government, however, the commission is unable to collect information sufficient to accurately estimate the impact on local government.

Mr. Kerr has determined that for the first five years that proposed amended §33.23 is in effect, there will be a fiscal impact on small or micro-businesses. Each small or micro-business applying for a permit will be required to pay the assessed surcharge. Small or micro-businesses applying for a direct shipper's or promotional permit will be required to pay $160.00 per year for the first one-year permit and $320.00 for each two-year permit issued thereafter. Small and micro-businesses applying for a manufacturer's agent's warehousing permit will be required to pay $277.00 for the first one-year permit and $554.00 for each two-year permit issued thereafter. A small or micro-business applying for an out-of-state wine only package store permit will be required to pay $277.00 for the first one-year permit and $554.00 for each two-year permit issued thereafter. The fiscal impact on individuals who are required to pay a surcharge under the rule will be the same as that of small and micro-businesses.

Mr. Kerr has determined that for the first five years that proposed new §33.26 is in effect, there will be no fiscal impact on small or micro-businesses. Individuals and entities applying for the manufacturer's agent's warehousing permit will be required to pay the $750.00 fee. It is expected that the number of permits issued will be nominal.

Mr. Kerr has also determined that for the first five years that proposed new §33.25 is in effect, there will be a fiscal impact on small or micro-businesses. Although the fees have not been increased, under the new section a small or micro-business will be required to pay double the amount of fees and surcharges at the time of application for a two-year permit or license. This impact will, however, be offset in the second year of the permit or license because there will be no time or cost of preparing and submitting a renewal application and no fee or surcharge will be due.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years that amended §33.23 and proposed new §33.26 are in effect, it is anticipated that the public will benefit because the persons and entities regulated will bear the cost, including indirect administrative costs, of regulation by the commission.

Ms. Cook has also determined that for each of the first five years that proposed new §33.25 is in effect, it is anticipated that the public will benefit. After the two-year permit and licensing process is fully implemented, it is anticipated that permits and licenses will be reviewed and processed more efficiently, and the cost and expense to persons applying for a license or permit will be reduced.

Comments on the proposed amendments and new rules may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of

the proposed amended rule and proposed new rules in the *Texas Register*.

16 TAC §33.23

The proposed amendments to §33.23 are authorized by §5.50 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule. The proposed new §33.25 is authorized by §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code, which provide the commission with authority to issue a license or permit for a two-year term. The proposed new §33.26 is authorized by Chapter 55 and §5.50 of the code; Chapter 55 creates the permit type and §5.50 provides the commission with authority to adopt a fee if one is not established by statute.

Cross Reference: §§5.31, 5.50, 11.09, 61.03 and Chapter 55 of the Alcoholic Beverage Code are affected by the proposed amendments to an existing rule and the proposed new rules.

§33.23. Alcoholic Beverage License and Permit Surcharges.

(a) An annual [~~A~~] surcharge of all original or renewal permit or license fees set by the Texas Alcoholic Beverage Code shall be levied against license and permit holders as follows:
Figure: 16 TAC §33.23(a)

(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.

(2) An organization which meets the requirements for exemption from a private club registration permit under the Texas Alcoholic Beverage Code §32.11, is also exempt from the surcharge.

(b) The surcharges shall be due and payable at the same time and in the same place and manner as the original or renewal permit, certificate, or license fee to which the surcharges apply.

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

[~~(d) The amount of surcharge due shall be determined by the issue date of the permit or license and the surcharge in effect under this rule on the issue date of that license or permit.~~]

[~~(e) This section shall take effect October 1, 2005.~~]

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

Filed with the Office of the Secretary of State on June 27, 2008.

TRD-200803379
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 206-3204

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16 TAC §33.25, §33.26

The proposed amendments to §33.23 are authorized by §5.50 of the Texas Alcoholic Beverage Code, which provides the Texas Alcoholic Beverage Commission with authority to establish and assess surcharges by rule. The proposed new §33.25 is authorized by §§5.50, 11.09 and 61.03 of the Texas Alcoholic Beverage Code, which provide the commission with authority to issue a license or permit for a two-year term. The proposed new §33.26 is authorized by Chapter 55 and §5.50 of the code; Chapter 55 creates the permit type and §5.50 provides the commission with authority to adopt a fee if one is not established by statute.

Cross Reference: §§5.31, 5.50, 11.09, 61.03 and Chapter 55 of the Alcoholic Beverage Code are affected by the proposed amendments to an existing rule and the proposed new rules.

§33.25. Alcoholic Beverage License and Permit Fees and Surcharges.

(a) This 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 Surcharge).

(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)

(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.

§33.26. Manufacturer's Agent's Warehousing Permit Fee.
The annual fee for a manufacturer's agent's warehousing permit under Chapter 55 of the Alcoholic Beverage Code shall be $750.

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 27, 2008.

TRD-200803380
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER CC. COMMISSIONER'S RULES CONCERNING SCHOOL FACILITIES

19 TAC §61.1036

The Texas Education Agency proposes an amendment to §61.1036, concerning school facilities standards. Section 61.1036 establishes standards for new construction or major space renovations on or after January 1, 2004. The proposed amendment would add to the existing facilities standards inspection requirements for portable, modular school buildings, in accordance with House Bill (HB) 1886, 80th Texas Legislature, 2007. The proposed amendment would also incorporate other revisions, such as adding several definitions and modifying certain existing definitions.

Through 19 TAC §61.1036, adopted to be effective June 9, 2003, the commissioner exercised rulemaking authority to specify in rule standards for the construction and adequacy of school facilities. The current provisions include requirements for the certification of the design and construction of school buildings, space and square footage requirements for these buildings, construction quality standards for these buildings, and definitions of applicable terms.

HB 1886, 80th Texas Legislature, 2007, amended the Texas Education Code (TEC), §46.008, relating to school facilities standards, to include requirements that portable, modular buildings for use as school facilities be inspected for compliance with mandatory building codes or approved designs, plans, and specifications. The proposed amendment to 19 TAC §61.1036 would incorporate these statutory changes, as well as other updates and revisions, as follows.

Subsection (a) would be revised to include definitions for architect, engineer, and portable, modular building. The paragraphs in the subsection would be renumbered accordingly.

Subsection (f) would be revised to modify the requirements for a qualified building code consultant in paragraphs (1)(A) and (2)(A) and the definition of qualified code inspector in paragraphs (1)(D) and (2)(D). New paragraph (3) would be added to address special provisions for portable, modular buildings. Subsection (f) would also be revised to update the name of a state agency in paragraph (4)(B) and a statutory reference in paragraph (4)(D). Technical corrections would be made throughout the section to correct references, word usage, and punctuation.

Shirley Beaulieu, Associate Commissioner for Finance/Chief Financial Officer, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment.

Ms. Beaulieu 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 amendment will be that Texas schoolchildren will attend school in structurally sound educational facilities. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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 begins July 11, 2008, and ends August 11, 2008. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-0028.

The amendment is proposed under the TEC, §46.002, which authorizes the commissioner to establish rules as necessary to administer the Instructional Facilities Allotment. The TEC, §46.008, as amended by HB 1886, 80th Texas Legislature, 2007, requires that portable, modular buildings for use as school facilities be inspected to ensure compliance with mandatory building codes or approved designs, plans, and specifications.

The proposed amendment implements the TEC, §46.002 and §46.008.

§61.1036. School Facilities Standards for Construction on or after January 1, 2004.

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

(1) Architect--An individual registered as an architect under the Texas Occupations Code, Chapter 1051, and responsible for compliance with the architectural design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1051.

(2) [~~(1)~~] Educational program--A written document, developed and provided by the district, that includes the following information:

(A) a summary of the school district's educational philosophy, mission, and goals; and

(B) a description of the general nature of the district's instructional program in accordance with §74.1 of this title (relating to Essential Knowledge and Skills). The written educational program should describe:

(i) the learning activities to be housed, by instructional space;

(ii) how the subject matter will be taught (methods of instructional delivery);

(iii) the materials and equipment to be used and stored;

(iv) utilities and infrastructure needs; and

(v) the characteristics of furniture needed to support instruction.

(3) [~~(2)~~] Educational specifications--A written document for a proposed new school facility or major space renovation that includes a description of the proposed project, expressing the range of issues and alternatives. School districts that do not have personnel on staff with experience in developing educational specifications shall use [~~utilize~~] the services of a design professional or consultant experienced in school planning and design to assist in the development of the educational specifications. The school district shall allow for input from teachers, other school campus staff, and district program staff in developing the educational specifications. The following information should be included in the educational specifications:

(A) the instructional programs, grade configuration, and type of facility;

(B) the spatial relationships--the desired relationships for the functions housed at the facility:

(i) should be developed by the school district to support the district's instructional program;

(ii) should identify functions that should be:

(I) adjacent to, immediately accessible;

(II) nearby, easily accessible; and

(III) removed from or away from; and

(iii) should relate to classroom/instructional functions, instructional support functions, building circulation, site activities/functions, and site circulation; [~~.~~]

(C) number of students;

(D) a list of any specialized classrooms or major support areas, noninstructional support areas, outdoor learning areas, outdoor science discovery centers, living science centers, or external activity spaces;

(E) a schedule of the estimated number and approximate size of all instructional and instructional support spaces included in the facility;

(F) estimated budget for the facility project;

(G) school administrative organization;

(H) provisions for outdoor instruction;

(I) hours of operation that include the instructional day, extracurricular activities, and any public access or use;

(J) the safety of students and staff in instructional programs, such as science and vocational instruction; and

(K) the overall security of the facility.

(4) Engineer--An individual registered as an engineer under the Texas Occupations Code, Chapter 1001, and responsible for compliance with the engineering design requirements and all other applicable requirements of the Texas Occupations Code, Chapter 1001.

(5) [~~(3)~~] Grade levels:

(A) elementary school level--a school facility that includes some or all grades from prekindergarten through Grade 5 or Grade 6;

(B) middle school level--a school facility that includes some or all grades from Grade 6 through Grade 8 or Grade 9, or a school facility that includes only Grade 6;

(C) high school level--a school facility that includes some or all grades from Grade 9 or Grade 10 through Grade 12, or a school facility that includes only Grade 9; and

(D) secondary school level--a school facility that includes some or all grades from Grade 6 through Grade 12.

(6) [~~(4)~~] Hazardous chemical--As defined by the Texas Health and Safety Code, Chapter 502, Hazard Communication Act.

(7) [~~(5)~~] Instructional space--General classrooms, specialized classrooms, outdoor learning areas, and major support areas.

(8) [~~(6)~~] Library--Library will include the following minimum requirements:

(A) reading/instructional area;

(B) reference/independent study area;

(C) stack area;

(D) circulation desk/area;

(E) computer/online [~~computer/on-line~~] reference areas; and

(F) necessary ancillary areas, such as offices, workrooms, head-end room, and storage rooms.

(9) [~~(7)~~] Long-range school facility plan--School districts are encouraged to formulate a long-range facilities plan prior to making major capital investments. When formulating a plan, a school district's process should allow for input from teachers, students, parents, taxpayers, and other interested parties that reside within the school district. Major considerations should include:

(A) a description of the current and future instructional program and instructional delivery issues;

(B) the age, condition, and educational appropriateness of all buildings on the campus (in district), considering condition of all components and systems as well as design flexibility, including an estimate of cost to replace or refurbish and appropriate recommendations;

(C) verification of the suitability of school site(s) for the intended use, considering size, shape, useable land, suitability for the planned improvements, and adequate vehicular and pedestrian access, queuing, parking, playgrounds and fields, etc.; and

(D) a timeline [~~time-line~~] and a series of recommendations to modify or supplement existing facilities to support the district's instructional program.

(10) [~~(8)~~] Major space renovations--Renovations to all or part of the facility's instructional space where the scope of the work in the affected part of the facility involves substantial renovations to the extent that most existing interior walls and fixtures are demolished and then subsequently rebuilt in a different configuration and/or function. Other renovations associated with repair or replacement of architectural interior or exterior finishes; fixtures; equipment; and electrical, plumbing, and mechanical systems are not subject to the requirements of subsections (d) and (e) of this section, but shall comply with applicable building codes as required by subsection (f) of this section.

(11) Portable, modular building--An industrialized building as defined by the Texas Occupations Code, §1202.003, or any other manufactured or site-built building that is capable of being relocated and is used as a school facility.

(12) [~~(9)~~] Square feet per student--The net square footage of a room divided by the maximum number of students to be housed in that room during any single class period.

(13) [~~(10)~~] Square feet per room measurements--The net square footage of a room includes exposed storage space, such as cabinets or shelving, but does not include hallway space, classroom door alcoves, or storage space, such as closets or preparation offices. The net square footage of a room shall be measured from the inside surfaces of the room's walls.

(14) [~~(11)~~] Abbreviations:

(A) ANSI--American National Standards Institute;

(B) ICC--International Code Council; and

(C) NFPA--National Fire Protection Association.

(b) (No change.)

(c) Certification of design and construction.

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

(3) To ensure that facilities have been designed and constructed according to the provisions of this section, each of the involved parties shall execute responsibilities as follows.

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

(F) The certifications specified in subparagraphs (A) - (E) of this paragraph shall be gathered on the "Certification of Project Compliance" form developed by the Texas Education Agency (TEA). The school district will retain this form in its [~~their~~] files indefinitely until review and/or submittal is required by representatives of the TEA.

(d) Space, minimum square foot, and design requirements.

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

(5) Instructional area size and design requirements.

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

(C) Specialized classrooms.

(i) - (ii) (No change.)

(iii) The following provisions shall apply to combination science laboratories/classrooms [~~laboratory/classrooms~~], where each student has a lab station and where typically there is a clearly defined laboratory area and a clearly defined lecture area.

(I) Combination science laboratories/classrooms [~~laboratory/classrooms~~] shall have a minimum of 900 square feet per room at the elementary school level. The minimum room size is adequate for 22 students; 41 square feet per student shall be added to the minimum square footage for each student in excess of 22.

(II) Combination science laboratories/classrooms [~~laboratory/classrooms~~] shall have a minimum of 1,200 square feet per room at the middle school level. The minimum room size is adequate for 24 students; 50 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(III) Combination science laboratories/classrooms [~~laboratory/classrooms~~] shall have a minimum of 1,400 square feet per room at the high school level. The minimum room size is adequate for 24 students; 58 square feet per student shall be added to the minimum square footage for each student in excess of 24.

(IV) School districts with small class sizes may have combination science laboratories/classrooms [~~laboratory/classrooms~~] that provide a minimum of 41 square feet per student but not less than 700 square feet total at the elementary school level, a minimum of 50 square feet per student but not less than 950 square feet total at the middle school level, and a minimum of 58 square feet per student but not less than 1,100 square feet total at the high school level.

(iv) (No change.)

(v) If hazardous or vaporous chemicals are to be used in the science laboratories or science laboratories/classrooms [~~laboratory/classrooms~~], a separate chemical storage room shall be provided. The chemical storage room shall be separate from, and shall not be combined as part of, a preparation room or an equipment storage room; however, the chemical storage room may be located so that access is through a preparation room or equipment storage room. The chemical storage room shall be secure to prevent access to chemicals by students. One chemical storage room may be shared among multiple laboratories or laboratories/classrooms [~~laboratory/classrooms~~].

(vi) - (ix) (No change.)

(D) Major support areas.

(i) (No change.)

(ii) A school district shall consider the School Library Standards and Guidelines as adopted under Texas Education Code, §33.021, when developing, implementing, or expanding library services. Libraries for campuses with a planned student capacity of 100 or less shall be a minimum of 1,400 square feet. Libraries for campuses with a planned student capacity of 101 to 500 shall be a minimum of 1,400 square feet plus an additional 4.0 square feet for each student in excess of 100. Libraries for campuses with a planned student capacity of 501 to 2,000 shall be a minimum of 3,000 square feet plus an additional 3.0 square feet for each student in excess of 500. Libraries for campuses with a planned student capacity of 2,001 or more shall be a minimum of 7,500 square feet plus an additional 2.0 square feet for each student in excess of 2,000. A school district that plans to locate more than 12 student computers in the library shall add 25 square feet of space for each additional computer anticipated. The space allotments within the library shall be based on a formula of 30% for the reading/instructional area and reference/independent study area; 45% for the stack area, circulation desk/area, and computer/online [~~computer/on-line~~] reference areas; and 25% for the necessary ancillary areas. Windows shall be placed so that adequate wall and floor space remains to accommodate the shelving necessary for the library collection size established by the School Library Standards and Guidelines.

(6) - (7) (No change.)

(e) (No change.)

(f) Construction quality.

(1) Districts with existing building codes.

(A) A school district located in an area that has adopted local construction codes shall comply with those codes (including building, fire, plumbing, mechanical, fuel gas, energy conservation, and electrical codes). The school district is not required to seek additional plan review of school facilities projects other than what is required by the local building authority. If the local building authority does not require a plan review, then a qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the

commencement of construction and must be conducted by a qualified [certified] building code consultant or a third party architect or engineer. A qualified [certified] building code consultant is a person who maintains, as a minimum, a current certification from the ICC [is certified by either the ICC; International Conference of Building Officials (ICBO); Southern Building Code Congress International, Inc. (SBCCI); or Building Officials and Code Administrators International (BOCAI)]. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment and with the approval of the local building authority, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

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

(D) If the local building authority does not conduct reviews and inspections during the course of construction of the facility, then a qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector [is certified by either the ICC, ICBO, SBCCI, Inc., or BOCAI].

(2) Districts without existing building codes.

(A) A school district located in an area that has not adopted local building codes shall adopt and use the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes from the latest edition of the family of International Codes as published by the ICC; and the National Electric Code as published by the NFPA. As an alternative, a school district may adopt the building code and related fire, plumbing, mechanical, fuel gas, and energy conservation codes as adopted by a nearby municipality or county. A qualified, independent third party, not employed by the design architect or engineer, shall review the plans and specifications for compliance with the requirements of the adopted building code. The plan review shall examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. The review shall be conducted prior to the commencement of construction and must be conducted by a qualified [certified] building code consultant or a third party architect or engineer. A qualified [certified] building code consultant is a person who maintains, as a minimum, a current certification from the ICC [is certified by either the ICC, ICBO, SBCCI, or BOCAI]. Associated fees shall be the responsibility of the school district. The reviewer shall prepare a summary list of any conditions not in conformance with the provisions of the adopted building code and is required to send a copy to the school district, design architect, or engineer. The design architect or engineer shall revise the plans and specifications as necessary and certify code compliance to the district. The reviewer, in his or her reasonable judgment, may allow a limited number of variances from the codes if such variances do not negatively affect the quality or safety of the facility. Any disputes shall be a matter for contract resolution.

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

(D) A qualified, independent third party, not employed by the design architect or engineer or contractor, should perform a reasonable number of reviews and inspections during the course of construction of the facility for compliance with the requirements of the adopted building code. The reviews and inspections should examine compliance conditions for emergency egress, fire protection, structural integrity, life safety, plumbing, energy conservation, and mechanical and electrical design. A qualified code inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector [is certified by either the ICC, ICBO, SBCCI or BOCAI].

(3) Special provisions for portable, modular buildings. Any portable, modular building capable of being relocated that is purchased or leased for use as a school facility by a school district, whether that building is manufactured off-site or constructed on-site, must comply with all provisions of this section. Effective September 1, 2007, the following additional provisions shall apply to any portable, modular building that is purchased or leased for use as a school facility by a school district.

(A) A school district located in an area that has adopted local construction codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by the local building authority for compliance with the mandatory building codes or approved designs, plans, and specifications. The school district is not required to seek additional inspection of the portable, modular building other than what is required by the local building authority. If the local building authority does not perform inspections, then a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, shall inspect the facility, including the construction of the foundation system and the erection and installation of the facility on the foundation, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by the local building authority or an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(B) A school district located in an area that has not adopted local building codes shall have the portable, modular building, including the construction of the foundation system and the erection and installation of the building on the foundation, inspected by a qualified, independent third party, not employed by the design architect, engineer, contractor, or manufacturer, for compliance with the mandatory building codes or approved designs, plans, and specifications. The inspections shall be performed within 30 days of the completion of the construction, erection, and installation of the facility on the site, and the school district shall not occupy or use the facility until the independent third party makes a final determination that the facility is in compliance with all provisions of this section. For a manufactured portable, modular building that is an industrialized building as defined

by the Texas Occupations Code, §1202.003, the factory inspection performed under the oversight of the Texas Department of Licensing and Regulation shall suffice to determine compliance of the building envelope with the mandatory building codes or approved designs, plans, and specifications in lieu of an inspection by an independent third party for a portable, modular building constructed on or after January 1, 1986; however, an inspection of the construction of the foundation system and the erection and installation of the portable, modular building on the foundation shall still be performed.

(C) A qualified, independent third party inspector is a person who maintains, as a minimum, a current certification from the ICC as a combination commercial inspector and commercial energy inspector.

(D) A school district that has purchased or leased a portable, modular building for use as a school facility on or after September 1, 2007, and before the effective date of this section, shall have the inspections required by this subsection performed within 60 days of the effective date of this section; any items of noncompliance identified during the inspections shall be brought into compliance by the school district within 90 days of the date of the inspections.

(4) [~~(3)~~] Other provisions.

(A) For school facilities projects subject to these standards, an adequate technology, electrical, and communications infrastructure shall be provided. To ensure the adequacy of the infrastructure, the school district and the architect or engineer shall seek the input of the school district staff, including, but not limited to, the technology director, the library director, the program directors, the maintenance director, and the campus staff, in the planning and design of the infrastructure.

(B) As part of their school facilities projects, school districts should consider the use of designs, methods, and materials that will reduce the potential for indoor air quality problems. School districts should consult with a qualified indoor air quality specialist during the design process to ensure that the potential for indoor air quality problems after construction and occupancy of a facility is minimized. School districts should use [~~utilize~~] the voluntary indoor air quality guidelines adopted by the Texas Department of State Health Services under the Texas Health and Safety Code, Chapter 385. School districts should also use [~~utilize~~] the "Indoor Air Quality Tools for Schools" program administered by the U.S. Environmental Protection Agency.

(C) As part of their school facilities projects, school districts should consider the use of sustainable school designs. A sustainable design is a design that minimizes a facility's impact on the environment through energy and resource efficiency.

(D) School district facilities shall comply with the "Texas Accessibility Standards" as promulgated under the Texas Government Code, Chapter 469 [~~Texas Civil Statutes, Article 9102~~], Elimination of Architectural Barriers [~~Act~~], as prepared and administered by the Texas Department of Licensing and Regulation.

(E) School district facilities shall comply with the provisions of the Americans with Disabilities Act of 1990 (Title I and Title II).

(F) School district facilities shall comply with all other local, state, and federal requirements as applicable.

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 24, 2008.

TRD-200803305
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.27

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.27, regarding Certification and Licensure by Reciprocity. The proposed amendments eliminate the prohibition on Texas residents seeking licensure or certification by reciprocity and clarify language relating to the state in which the applicant is already licensed.

Devon V. Bijansky, Assistant General Counsel, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amendments. There is no anticipated impact on local or state employment as a result of implementing the amendments. There is no anticipated impact on small businesses or micro-businesses as a result of implementing the proposed amendments. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Bijansky has also determined that the anticipated public benefit as a result of these amendments is that Texas residents who hold appraiser licenses or certifications issued in other states (who, therefore, have already proven their qualifications to the other state) will be able to seek Texas licensure or certification without the necessity of documenting their qualifications again. Section 153.27 will also be consistent with Texas Occupations Code §1103.209, which permits residents and non-residents alike to seek licensure and certification by reciprocity.

Comments on the proposal may be submitted to Devon V. Bijansky, Assistant General Counsel, Texas Real Estate Commission/Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Occupations Code §1103.151, which authorizes the Texas Appraiser Licensing and Certification Board to adopt rules relating to certificates and licenses.

The statute affected by this proposal is Texas Occupations Code, Chapter 1103. No other statute, code, or article is affected by the proposed amendments.

§153.27. Certification and Licensure by Reciprocity.

(a) (No change.)

(b) A non-Texas resident [~~person~~] applying for a license or certification under this subsection must submit an irrevocable consent to service of process in this state on a form prescribed by the board.

(c) (No change.)

(d) The board shall seek verification from an applicant's original issuing [~~home~~] state that the applicant's license or certification is valid and in good standing. A reciprocal license or certificate may not be issued without the verification required by this subsection.

(e) (No change.)

(f) A reciprocal license or certification expires on the same date that the license or certification held by the applicant in the applicant's original issuing [~~home~~] state expires but in no instance more than two years from the date of issuance of the reciprocal license or certification.

(g) (No change.)

~~[(h) A person whose legal residency is in the State of Texas may not be licensed or certified through reciprocity.]~~

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 27, 2008.

TRD-200803382
Devon V. Bijansky
Assistant General Counsel
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 465-3900

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.16

The Texas Funeral Service Commission (commission) proposes an amendment to Title 22, §203.16, regarding requirements relating to embalming.

The amendment is proposed in order to revise the minimum standards of performance for the embalming of a dead human body.

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

Mr. Robbins further has determined that for each of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

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

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.16. Requirements Relating to Embalming.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) (No change.)

(2) In order to prevent those involved in the embalming procedure from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize all personal protective equipment (PPE) such as is required by either OSHA or its corresponding state agency during the embalming procedure. While the use of disposable items is suggested, those items capable of being sterilized or properly sanitized are permitted [~~such protective devices as gloves capable of being sterilized, aprons or operating gowns during the embalming procedure. Disposable garments and/or gloves shall be permitted~~].

(3) Clothing and/or personal effects of the decedent shall either be thoroughly disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material [~~directly exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected with a solution having phenol coefficient of not less than one before delivery to any person or before any further utilization~~].

(4) (No change.)

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent [~~shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned, either before or immediately after arterial injection~~].

(6) Body orifices ([~~open lesions and surgical incisions,~~] nostrils, mouth, anus, [~~and~~] vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance

that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall [~~may~~] be used for each 50 pounds of body weight. Computation of solution strength is as follows: C x V = C' x V' C = strength of concentrated fluid V = volume of ounces of concentrated fluid C' = strength of dilute fluid V' = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable [~~at least 18 inches (mercury) vacuum~~].

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected [~~for each adult body~~].

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment [~~using a hypodermic needle with disinfectant fluid for maximum disinfecting results~~].

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if [~~in~~] any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form [~~a standard embalming powder~~] and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) - (17) (No change.)

(b) (No change.)

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form published following this subsection. This form is also on file in the commission's offices and may be accessed from the commission's website at www.tfsc.state.tx.us. Staff will make a copy of this form available upon request. Funeral establishments may use other forms, so long as the forms contain all the information on the published form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The embalmer is encouraged to employ electronic resources to the extent possible for completing the case report. The completed form shall be retained for two years following the procedure date and made available to the commission, upon request.
Figure: 22 TAC §203.16(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.

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803346
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 936-2466

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.10, regarding the supervision of non-licensed employees.

The proposed amendment would allow a licensed veterinarian to use an electronic signature on rabies certificates. In addition, it would allow a licensed veterinarian to delegate the use of an electronic signature pad to a non-licensed employee under the licensed veterinarian's direct supervision.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow licensed veterinarians to use electronic signature pads with the anticipated benefits of technological advances.

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

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.10. Supervision of Non-Licensed Employees.

(a) General Supervision. A veterinarian required to generally supervise a non-licensee must be readily available to communicate with the person under supervision.

(b) Direct Supervision. A veterinarian required to directly supervise a non-licensee must be physically present on the same premises as the non-licensee under supervision.

(c) Immediate Supervision. A veterinarian required to immediately supervise a non-licensee must be within audible and visual range of both the animal patient and the person under supervision.

(d) Delegation Relating to Official Health/Test Documents

(1) A licensee must personally sign any official health documents issued by the licensee provided, however, that rabies certificates may be authenticated by either:

(A) the licensee's personal signature; or

(B) the use of a signature stamp or electronic signature in accordance with the requirements of §573.51 of this title (relating to Rabies Control).

(2) The issuance of any pre-signed or pre-stamped official health documents by a licensee is prohibited.

(3) Unless otherwise prohibited by law, and except as provided in paragraph (4) of this subsection, a licensee may permit a non-licensed employee under the licensee's direct supervision to collect samples from animals for official tests.

(4) A person approved by the Texas Animal Health Commission (TAHC) and under the general supervision of a TAHC approved veterinarian may perform testing for Brucellosis at a livestock market or collect blood samples on animals to be consigned directly from the ranch to slaughter and submit them to the state/federal laboratory for brucellosis testing.

(5) A veterinarian shall only allow the use of the veterinarian's signature stamp or electronic signature pad by a non-licensed employee under direct supervision of the veterinarian.

(e) Responsibility for Acts of Non-Licensed Employees. A licensee may determine a non-licensed employee's qualifications necessary to perform routine patient care and treatment. The licensee is directly responsible for all actions of non-licensed employees acting under the licensee's directions or authorization. A licensee failing to properly supervise a non-licensed employee or improperly delegating care and/or treatment responsibilities may be subject to disciplinary action by the Board.

(f) Prohibited Services. An unlicensed individual shall not perform the following heath care services:

(1) surgery;

(2) invasive dental procedures;

(3) diagnosis and prognosis of animal diseases and/or conditions; or

(4) prescribing drugs and appliances.

(g) Level of Supervision of Non-Licensed Employees.

(1) A licensee shall determine when general, direct or immediate supervision of a non-licensee's actions is appropriate, except where such actions of the non-licensee may otherwise be prohibited by law. A licensee should consider both the level of training and experience when determining level of supervision and duties of non-licensed employees.

(2) When feasible, a licensee should delegate greater responsibility to a registered veterinary technician (RVT) than to a non-RVT. An RVT is a person who performs the duties specified by the American Veterinary Medical Association's Committee on Veterinary Technician Education and Activities and is qualified and registered by the Texas Veterinary Medical Association. Under the direct or immediate supervision of a licensee, an RVT may:

(A) suture existing surgical skin incisions; and

(B) induce anesthesia.

(3) The procedures authorized to be performed by an RVT in paragraph (2) of this subsection may be performed by a non-registered veterinary technician only under the immediate supervision of a veterinarian.

(4) Euthanasia may be performed by a veterinary technician only under the immediate supervision of a veterinarian.

(h) Emergency Care. In an emergency situation where prompt treatment is essential for the prevention of death or alleviation of extreme suffering, a licensee may, after determining the nature of the emergency and the condition of the animal, issue treatment directions to a non-licensee by means of telephone, electronic mail or messaging, radio, or facsimile communication. The Board may take action against a veterinarian if, in the Board's sole discretion, the veterinarian uses this authorization to circumvent this rule. The veterinarian assumes full responsibility for such treatment. However, nothing in this rule requires a licensee to accept an animal treated under this rule as a patient under these circumstances.

(i) Care of Hospitalized Animals. A non-licensee may, in the absence of direct supervision, follow the oral or written treatment orders of a veterinarian who is caring for a hospitalized animal; provided however, that the veterinarian has examined the animal(s) and that a valid veterinarian/client/patient relationship exists.

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 24, 2008.

TRD-200803296
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.52

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.52, regarding patient record keeping.

The proposed amendment would clarify the rule regarding patient record keeping and add these requirements to the patient record: phone number of client, diagnostic images, differential diagnosis and/or treatment, if applicable. The proposed amendment would also clarify the requirements for amendments to the records and the process for maintenance of patient records.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure better record keeping for the animals under veterinarian care in Texas.

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

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.52. Patient Record Keeping.

(a) Individual records will be maintained at the veterinarian's place of business, that are complete, contemporaneous and legible and include, but are not limited to:

(1) name, [~~and~~] address, and phone number of the [~~of~~] client;

(2) identification of patient, including name, species, breed, age, sex and description [~~identity~~];

(3) patient history;

(4) dates of visits;

(5) any immunization records;

(6) weight if required for diagnosis or treatment. Weight may be estimated if actual weight is difficult to obtain;

(7) temperature if required for diagnosis or treatment except when treating a herd, flock, [~~or a~~] species, or an individual animal that is difficult to obtain a temperature;

(8) any laboratory analysis;

(9) any diagnostic images [~~radiographs~~];

(10) differential diagnosis and/or treatment, if applicable;

(11) [~~(10)~~] names, dosages, concentration, and routes of administration of each drug prescribed, administered and/or dispensed;

(12) [~~(11)~~] other details necessary to substantiate the examination, diagnosis, and treatment provided, and/or surgical procedure performed;

(13) [~~(12)~~] any signed acknowledgment required by §§573.12, 573.14, 573.15, and 573.16. Each entry in the patient record shall identify the veterinarian who performed or supervised the procedure recorded;[~~.~~]

(14) Any amendment, supplementation, change, or correction in a patient record not made contemporaneously with the act or observation shall be noted by indicating the time and date of the amendment, supplementation, change, or correction, and clearly indicating that there has been an amendment, supplementation, change, or correction.

(b) Maintenance of Patient Records.

(1) [~~(b)~~] Except as provided in §573.51(c) of this Title (Relating to Rabies Control), patient records shall be current and maintained on the business premises for a minimum of five years from the anniversary date of the date of last treatment by the veterinarian. [~~period of three years. Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.~~]

(2) A veterinarian may destroy medical records that relate to any civil, criminal or administrative proceeding only if the veterinarian knows the proceeding has been finally resolved.

(3) Veterinarians shall retain patient records for such longer length of time than that imposed herein when mandated by other federal or state statute or regulation.

(4) Patient records are the responsibility and property of the veterinarian or veterinarians who own the veterinary practice, provided however, the client is entitled to a copy of the patient records pertaining to the client's animals.

(5) Veterinarians may transfer ownership of records to another licensed veterinarian or group of veterinarians only if the veterinarian provides notice consistent with §573.54 of this title (relating to Transfer and Disposal of Patient Records) and the veterinarian who assumes ownership of the records shall maintain the records consistent with this chapter.

[~~(c) Upon the request of the client or his/her authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days of the request, unless a longer period is reasonably required to duplicate the records. The veterinarian may charge a reasonable fee for this service, including actual costs for mailing, shipping or delivery. A veterinarian may not refuse a request for copies because payment in full for veterinary care has not been received from the client.~~]

(c) [~~(d)~~] When appropriate, licensees may substitute the words "herd", "flock" or other collective term in place of the word "patient" in subsections (a) and (b) of this section. Records to be maintained on these animals may be kept in a daily log, or the billing records, provided that the treatment information that is entered is adequate to substantiate the identification of these animals and the medical care provided. In no case does this eliminate the requirement to maintain drug records as specified by state and federal law and Board rules.

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

Filed with the Office of the Secretary of State on June 24, 2008.

TRD-200803297

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.53

The Texas Board of Veterinary Medical Examiners proposes new §573.53, regarding the release and charges associated with patient records.

The proposed new rule is in essence a portion of §573.52 that was moved to better organize Chapter 573. This rule still requires a veterinarian to furnish patient records, including radiographs, upon the request of the client within 15 business days. The rule specifically states the allowable charges for patient records and defines patient records. The rule still forbids the withholding of patient records for past due accounts. The rule does add client's authorized agents/representatives or designated recipient as those allowed to receive patient records.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow pet owners to have their records released to their authorized representatives.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not change the status quo in patient record keeping.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.53. Patient Records Release and Charges.

(a) Release of Records Pursuant to Request. Upon the request of the client or their authorized representative, the veterinarian shall furnish a copy of the patient records, including a copy of any radiographs requested, within 15 business days for the request, unless a longer period is reasonably required to duplicate the records.

(b) Contents of Records. For purposes of this section, "patient records" shall include those records as defined in §573.52(a) of this title (relating to Patient Record Keeping).

(c) Allowable Charges. The veterinarian may charge a reasonable fee for this service. A reasonable fee, shall include only the cost of:

(1) copying, including the labor and cost of supplies for copying;

(2) postage, when the individual has requested the copy or summary be mailed; and

(3) preparing a summary of the records when appropriate.

(d) Improper Withholding for Past Due Accounts. Patient records requested pursuant to a proper request for release may not be withheld from the client, the client's authorized agent, or the client's designated recipient for such records based on a past due account for care or treatment previously rendered to the patient.

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 24, 2008.

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Loris Jones
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Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.54

The Texas Board of Veterinary Medical Examiners proposes new §573.54, regarding the transfer and disposal of patient records.

The proposed new rule sets forth the required notification and method of notification when a licensed veterinarian discontinues the provision of veterinary services without the continuation of their practice. The proposed new rule also sets forth the process for notification of clients with regards to records when a licensed veterinarian voluntarily surrenders their license or the Board revokes their license. The rule also requires a custodian of records in instances where a licensed veterinarian voluntarily surrenders their license or the Board revokes their license.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will ensure the public's right to access their own pet's records in the case that a licensed veterinarian ceases to practice veterinary medicine.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because there is minimal cost associated with compliance of this rule.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones,

Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.54. Transfer And Disposal Of Patient Records.

(a) Required Notification of Discontinuance of Practice. When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she is responsible for ensuring that clients receive reasonable notification and are given the opportunity to obtain copies of their records or arrange for the transfer of their patient records to another veterinarian

(b) Method of Notification.

(1) When a veterinarian discontinues the provision of veterinary services without the continuation of their practice, he or she shall provide notice to clients of when the veterinarian intends to terminate the practice or relocate, and will no longer be available to clients, and offer clients the opportunity to obtain a copy of their patient records.

(2) Notification shall be accomplished by:

(A) placing written notice in the veterinarian's office; and

(B) sending letters to clients seen in the last three years notifying them of discontinuance of practice.

(c) Voluntary Surrender or Revocation of Veterinarian's License.

(1) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must notify their clients, consistent with subsection (b) of this section, within 30 days of the effective date of the voluntary surrender or revocation.

(2) Veterinarians who have voluntarily surrendered their licenses in lieu of disciplinary action or have had their licenses revoked by the Board must obtain a custodian for their records to be approved by the Board within 30 days of the effective date of the voluntary surrender or revocation.

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 24, 2008.

TRD-200803299
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.64, regarding continuing education requirements.

The proposed amendment would clarify the rule regarding the carryover of excess hours to the next year. In addition, the rule clarifies that hardship extensions generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to ensure clarification of the continuing education requirements for licensed veterinarians of the State of Texas.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not change the current agency policy regarding continuing education requirements but simply clarifies the rule.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.64. Continuing Education Requirements.

(a) Requirements

(1) Seventeen (17) hours of acceptable continuing education shall be required annually for renewal of all types of Texas licenses except as provided in subsection (e) of this section. Licensees who successfully complete the Texas State Board Licensing Examination shall be allowed to substitute the examination for the continuing education requirements of the calendar year in which they were examined.

(2) A licensee shall earn [~~obtain~~] the required 17 hours of acceptable continuing education during the calendar year immediately preceding the licensee's application for license renewal. Should a licensee earn [~~obtain~~] acceptable continuing education hours during the year in excess of the required 17 hours, the licensee may carry over and apply the excess hours to the requirement for the next year. Licensees may carry over excess hours to the following year only. A maximum of 17 hours may be carried over each year.

(3) Hardship extensions may be granted by appeal to the Executive Director of the Board. The executive director shall only consider requests for a hardship extension from licensees who were prevented from completing the required continuing education hours due

to circumstances beyond the licensee's control. A hardship extension generally will not be allowed due to financial hardship or lack of time due to a busy professional or personal schedule. Requests for a hardship extension must be received in the Board offices by no later than December 15. Should such extension be granted, thirty-four (34) hours of continuing education shall be obtained in the two-year period of time that includes the year of insufficiency and the year of extension. Licensees receiving a hardship extension shall maintain records of the thirty-four (34) hours of continuing education obtained and shall file copies of these records with the Board by attaching the records to the license renewal application submitted following the extension year, or by sending them to the Board separately if the licensee submits his or her application electronically (on-line).

(b) Proof of Continuing Education. The licensee shall sign a statement on the licensee's annual license renewal form attesting to the fact that the required continuing education hours have been obtained. If the licensee renews his license electronically (on-line), the licensee shall input an affirmation that the required continuing education hours have been obtained. The licensee shall maintain records which support the signed statement or affirmation. These documents must be maintained for the last three (3) complete renewal cycles and shall be available at the practice location for inspection to Board investigators upon request. Proof of attendance at live, on-site courses may require sign-in procedures, course checklists, certificates of course completion and other measures as directed by the Board. For proof of on-line interactive courses, the licensee must provide a certificate from the provider showing the nature of the course, date taken, and the hours given. For proof of self-study, the licensee must provide a signed statement showing details, including dates, of the articles or courses read, videos observed, or audios listened to, and hours claimed.

(c) Acceptable Continuing Education.

(1) Continuing Education hours shall be acceptable if they relate to clinical matters and/or practice management.

(2) Acceptable continuing education hours shall be earned by:

(A) attending meetings sponsored or co-sponsored by the American Veterinary Medical Association (AVMA), AVMA's affiliated state veterinary medical associations and/or their continuing education organizations, AVMA recognized specialty groups, regional veterinary medical associations, local veterinary medical associations, and veterinary medical colleges;

(B) taking correspondence courses;

(C) participating in verifiable, on-line and video programs or other telecommunication discussions that provide for interactive participation by the licensee;

(D) self study, which includes reading articles in professional journals or periodicals, listening to audio tapes or CD's, or viewing video tapes or similar devices that transmit a video image; or

(E) any other methods approved by the Executive Director and a veterinarian Board member appointed by the Board President, or approved by the Registry of Approved Continuing Education (RACE) of the American Association of Veterinary State Boards.

(3) The Board shall accept continuing education hours obtained as a requirement of disciplinary action.

(d) Distribution of Continuing Education Hours

(1) Of the required seventeen (17) hours of continuing education, no more than five (5) hours may be derived from either:

(A) correspondence courses; or

(B) practice management courses.

(2) Hours claimed for self study shall not exceed three (3) hours.

(3) Hours claimed for interactive, participatory programs shall not exceed 10 hours.

(4) Notwithstanding the allowable hours provided in paragraphs (1) - (3) of this subsection, at least seven (7) hours must be obtained from personal attendance at live courses, seminars and meetings providing continuing education.

(e) Exemption from Continuing Education Requirements. A licensee is not required to obtain or report continuing education hours, provided that the licensee submits to the Board sufficient proof that during the preceding year the licensee was:

(1) in retired status;

(2) a veterinary intern or resident; or

(3) out-of-country on charitable, military, or special government assignments for at least nine (9) months in a year; or

(4) on inactive status. Licensees on inactive status may voluntarily acquire continuing education for purposes of reinstating his/her license to regular status.

(f) Make up Hours. The Board may require a licensee who does not complete the 17 hours of continuing education to make up the missed hours in later years. Hours required to be made up in a later year are in addition to the 17 hours required to be completed in that year.

(g) Disciplinary Action for Non-compliance. Failure to complete the required hours without obtaining a hardship extension from the executive director, failure to maintain required records, falsifying records, or intentionally misrepresenting programs for continuing education credit shall be grounds for disciplinary action by the Board.

(h) Participating in a Continuing Education Program as a Disciplinary Action.

(1) The Board may require a licensee who violates the Veterinary Licensing Act or the Board's Rules to participate in a program to acquire continuing education.

(2) Continuing education hours required under this subsection shall be in addition to the 17 hours required of all licensees, and shall be

(A) based on the seriousness of the violation; and

(B) relevant to the violation committed by the license holder.

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 24, 2008.

TRD-200803300
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.66

The Texas Board of Veterinary Medical Examiners proposes an amendment to §573.66, regarding monitoring licensees compliance with Board rules and the Texas Veterinary Licensing Act ("the Act").

The proposed amendment would remove the requirement of notarization of statements made by the licensee regarding the licensee's compliance with Board rules and the Act. The proposed amendment would standardize the time allowed for response to a compliance inspection, whether on-site or by mail to 30 days. In addition, the proposed amendment would clarify the language of the rule describing the process of opening an investigation.

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

Mr. Helmcamp has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to reduce the requirements necessary to respond to compliance inspections and standardize the time period for response to the Board.

Mr. Helmcamp has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule has minimal costs associated with the rule changes.

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

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Ste. 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7556, or by e-mail vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§573.66. Monitoring Licensee Compliance.

(a) The Board shall conduct a compliance monitoring program to ensure that licensees comply with the requirements of Chapter 801, Texas Occupations Code (the Veterinary Licensing Act) and the Board's rules.

(b) The Board's compliance monitoring program shall include on-site inspections of veterinary practices and inspections by mail.

(1) On-site inspections shall include, but are not limited, to the following items:

(A) display of license and current renewal certificate;

(B) properly posted consumer information;

(C) documentation of continuing education hours;

(D) sanitation;

(E) patient record keeping;

(F) controlled substance record keeping; and

(G) possession of appropriate controlled substance registrations and certificates.

(2) Inspections by mail shall request a veterinarian to provide the following non-exclusive items:

(A) proof of continuing education hours;

(B) copies of controlled substance registrations and certificates;

(C) copies of four medical records concerning the diagnosis and treatment of a patient;

(D) copy of the last page of the veterinarian's controlled substance log book for each controlled substance possessed by the veterinarian; and

(E) a [~~notarized~~] statement verifying that the licensee is in compliance with Board rules concerning consumer information, maintenance of sanitary premises, display of license and degrees, and notification of licensee addresses.

(c) After an [~~on-site~~] inspection, licensees will normally be given 30 [~~45~~] days to correct deficiencies and provide written documentation of the corrections. [~~Licensees will normally be given 30 days to respond to an inspection by mail.~~] If no timely response is received within that time period, the inspection process will become an investigation and the Board will follow the formal investigative procedure.

(d) After an initial inspection, if the licensee does not make [~~makes~~] required corrections to noted deficiencies, investigators may recommend to the director of enforcement to open an investigation [~~close a compliance inspection deficiency to "no violation"~~] within the spirit and intent of the program. When [~~, except when~~] a deficiency involves flagrant disregard of the law, including illegal practices; improper use of prescription drugs; failure to account for drugs dispensed or administered; failure to comply with controlled substance registration requirements, continuing education requirements, and sanitation; and drug diversion and/or abuse[~~. Where such violations are noted~~], the compliance inspection shall be terminated and the investigator will open an investigation and the violations will be referred to the director of enforcement [~~for review~~] as a complaint.

(e) When in a subsequent inspection a licensee is found to have failed to correct those deficiencies noted in the prior inspection, the investigator will advise the director of enforcement and the licensee that the licensee has continued to violate the Veterinary Licensing Act and/or Board rules.

(f) The Board may, on an unannounced basis, inspect licensees who have been ordered to perform certain acts as a result of a previous inspection to verify that the licensees performed the required acts. If the licensee is found to have refused or failed to comply with the Board order, the investigator will prepare a report documenting the failure to comply and the report will be submitted to the Board for appropriate disciplinary action.

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 24, 2008.

TRD-200803301

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 305-7563

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL
SUBCHAPTER F. LICENSE REGULATIONS

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §289.256 and new §289.256, concerning medical and veterinary use of radioactive material.

BACKGROUND AND PURPOSE

The repeal and new §289.256 are necessary to comply with compatibility requirements of the United States Nuclear Regulatory Commission (NRC). The repeal and new rule are the result of the NRC's adoption of training and education requirements for users of radioactive material for medical purposes. These include physicians, medical physicists, nuclear pharmacists, and radiation safety officers. Texas is an agreement state, which means the state has an agreement with the NRC under which the NRC has relinquished control over the majority of radioactive material uses in Texas. However, Texas must maintain certain rules compatible with the NRC.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 289.256 has been reviewed and the department has determined that reasons for adopting the section continues to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The majority of the additional language in the new §289.256 is new training, education and use requirements for users of radioactive material for medical purposes. These users include physicians, medical physicists, nuclear pharmacists, and radiation safety officers. The other changes include the following; additional language is added to §289.256(q) concerning licensing information to allow for emerging technologies in medical uses of radioactive material, additional language is added to §289.256(u) to clarify suppliers of sealed sources and devices used in medicine, and additional language is added in §289.256(dd) to provide licensing and operating requirements for mobile nuclear medicine services. Due to the additions and realignment of §289.256, renumbering occurred.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to the state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

REGULATORY FLEXIBILITY ANALYSIS

The new proposed rule does not require the development of new regulatory or training programs for licensees. Licensees are not required to provide the training specified in the rule. Individuals choosing these professions would seek such training in preparation for their careers. Because these requirements are items of compatibility with the NRC, alternatives are limited. The training requirements are items of compatibility with the NRC and under the agreement, Texas must adopt equivalent rules that are the same as, but not more or less restrictive than the federal rule.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to ensure adequate training and experience criteria for individuals responsible for medical and veterinary uses of radioactive materials.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Mail Code 1987, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, P.O. Box 149347, Austin, Texas 78714-9347, (512) 834-6770, extension 2239, or by email to Cindy.Cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web-

site (www.dshs.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6770, extension 2239, or Cindy.Cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

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

25 TAC §289.256

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

STATUTORY AUTHORITY

The proposed repeal is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The proposed repeal affects the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.256. Medical and Veterinary Use of Radioactive Material.

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 30, 2008.

TRD-200803396
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 458-7111 x6972

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25 TAC §289.256

STATUTORY AUTHORITY

The proposed new section is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. The review of the rule implements Government Code, §2001.039.

The proposed new section affects the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.256. Medical and Veterinary Use of Radioactive Material.

(a) Purpose. This section establishes requirements for the medical and veterinary use of radioactive material and for the issuance of specific licenses authorizing the medical and veterinary use of radioactive material. Unless otherwise exempted, no person shall receive, possess, use, transfer, own, or acquire radioactive material for medical or veterinary use except as authorized in a license issued in accordance with this section. A person who receives, possesses, uses, transfers, owns, or acquires radioactive material prior to receiving a license is subject to the requirements of this chapter.

(b) Scope.

(1) In addition to the requirements of this section, all licensees, unless otherwise specified, are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of this title (relating to Standards for Protection Against Radiation from Radioactive Materials), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

(2) Veterinarians who receive, possess, use, transfer, own, or acquire radioactive material in the practice of veterinary medicine shall comply with the requirements of this section except for subsections (d), (dd) and (uuu) of this section.

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

(1) Address of use--The building or buildings that are identified on the license and where radioactive material may be prepared, received, used, or stored.

(2) Area of use--A portion of an address of use that has been set aside for the purpose of preparing, receiving, using, or storing radioactive material.

(3) Authorized medical physicist--An individual who meets the following:

(A) the requirements in subsections (j) and (m) of this section; or

(B) is identified as an authorized medical physicist or teletherapy physicist on one of the following:

(i) a specific medical use license issued by the agency, the United States Nuclear Regulatory Commission (NRC), an agreement state, or licensing state;

(ii) a medical use permit issued by an NRC master material licensee;

(iii) a permit issued by an NRC, agreement state, or licensing state broad scope medical use licensee; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee; and

(C) holds a current Texas license under the Medical Physics Practice Act, Texas Occupations Code, Chapter 602, in therapeutic radiological physics for uses in subsections (rr) and (ddd) of this section.

(4) Authorized nuclear pharmacist--A pharmacist who meets the following:

(A) the requirements in subsections (k) and (m) of this section; or

(B) is identified as an authorized nuclear pharmacist on one of the following;

(i) a specific license issued by the agency, the NRC, an agreement state, or licensing state that authorizes medical use or the practice of nuclear pharmacy;

(ii) a permit issued by an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

(iii) a permit issued by the agency, the NRC, an agreement state, or licensing state licensee with broad scope authorization that authorizes medical use or the practice of nuclear pharmacy; or

(iv) a permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy;

(C) is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

(D) is designated as an authorized nuclear pharmacist in accordance with §289.252(r) of this title; and

(E) holds a current Texas license under the Texas Pharmacy Act, Occupations Code, Chapters 551 - 566, 568, and 569, as amended, and who is certified as an authorized nuclear pharmacist by the Texas State Board of Pharmacy.

(5) Authorized user--An authorized user is defined as follows:

(A) for human use, a physician licensed by the Texas Medical Board; or a dentist licensed by the Texas State Board of Dental Examiners; or a podiatrist licensed by the Texas State Board of Podiatric Medicine who:

(i) meets the requirements in subsections (m), (gg)(1), (jj)(1), (nn)(1), (oo)(1), (pp)(1), (zz)(1), (ccc)(1) or (ttt)(1) of this section; or

(ii) is identified as an authorized user on any of the following:

(I) an agency, NRC, agreement state, or licensing state license that authorizes the medical use of radioactive material;

(II) a permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

(III) a permit issued by a specific licensee with broad scope authorization issued by the agency, the NRC, an agreement state, or licensing state authorizing the medical use of radioactive material; or

(IV) a permit issued by an NRC master material licensee with broad scope authorization that is authorized to permit the medical use of radioactive material.

(B) for veterinary use, an individual who is, a veterinarian licensed by the Texas State Board of Veterinary Medical Examiners; and

(i) is certified by the American College of Veterinary Radiology for the use of radioactive materials in veterinary medicine; or

(ii) has received training in accordance with subsections (gg), (jj), (oo), (pp) and (ttt) of this section as applicable; or

(iii) is identified as an authorized user on any of the following:

(I) an agency, NRC, agreement state, or licensing state license that authorizes the veterinary use of radioactive material;

(II) a permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

(III) a permit issued by a specific licensee with broad scope authorization issued by the agency, the NRC, an agreement state, or licensing state authorizing the medical or veterinary use of radioactive material; or

(IV) a permit issued by an NRC master material licensee with broad scope authorization that authorizes the medical use of radioactive material.

(6) Brachytherapy--A method of radiation therapy in which plated, embedded, activated, or sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, intraluminal, or interstitial application.

(7) Brachytherapy sealed source--A sealed source or a manufacturer-assembled source train, or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

(8) High dose-rate remote afterloader--A device that remotely delivers a dose rate in excess of 1200 rads (12 gray (Gy)) per hour at the point or surface where the dose is prescribed.

(9) Institutional Review Board (IRB)--Any board, committee, or other group formally designated by an institution and approved by the United States Food and Drug Administration (FDA) to review, approve the initiation of, and conduct periodic review of biomedical research involving human subjects.

(10) Low dose-rate remote afterloader--A device that remotely delivers a dose rate of less than or equal to 200 rads (2 Gy) per hour at the point or surface where the dose is prescribed.

(11) Management--The chief executive officer or other individual delegated the authority to manage, direct, or administer the licensee's activities.

(12) Manual brachytherapy--A type of brachytherapy in which the sealed sources, for example, seeds and ribbons, are manually inserted either into the body cavities that are in close proximity to a treatment site or directly in the tissue volume.

(13) Medical event--An event that meets the criteria in subsection (uuu)(1) of this section.

(14) Medical institution--An organization in which several medical disciplines are practiced.

(15) Medical use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to patients or human research subjects under the supervision of an authorized user.

(16) Medium dose-rate afterloader--A device that remotely delivers a dose rate greater than 200 rads (2 Gy) and less than or equal to 1200 rads (12 Gy) per hour at the point or surface where the dose is prescribed.

(17) Mobile nuclear medicine service--A licensed service authorized to transport radioactive material to, and medical use of the material at, the client's address. Services transporting calibration sources only are not considered mobile nuclear medicine licensees.

(18) Output--The exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit, a brachytherapy source, a remote afterloader unit, or a gamma stereotactic radiosurgery unit, for a specified set of exposure conditions.

(19) Patient--A human or animal under medical care and treatment.

(20) Preceptor--An individual who provides, directs, or verifies the training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

(21) Permanent facility--A building or buildings that are identified on the license within the state of Texas and where radioactive material may be prepared, received, used, or stored. This may also include an area or areas where administrative activities related to the license are performed.

(22) Prescribed dosage--The specified activity or range of activity of a radiopharmaceutical as documented in a written directive or in accordance with the directions of the authorized user for procedures in subsections (ff) and (hh) of this section.

(23) Prescribed dose--Prescribed dose means one of the following:

(A) for gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(B) for teletherapy, the total dose and dose per fraction as documented in the written directive;

(C) for brachytherapy, either the total sealed source strength and exposure time, or the total dose, as documented in the written directive; or

(D) for remote afterloaders, the total dose and dose per fraction as documented in the written directive.

(24) Pulsed dose-rate remote afterloader--A special type of remote afterloading device that uses a single sealed source capable of delivering dose rates greater than 1200 rads (12 Gy) per hour, but is approximately one-tenth of the activity of typical high dose-rate remote afterloader sealed sources and is used to simulate the radiobiology of a low dose rate remote afterloader treatment by inserting the sealed source for a given fraction of each hour.

(25) Radiation safety officer (RSO)--For purposes of this section, an individual who:

(A) meets the requirements in subsections (h) and (m) of this section; or

(B) is identified as an RSO on one of the following:

(i) a specific license issued by the agency, NRC, agreement state, or licensing state license that authorizes the medical or veterinary use of radioactive material; or

(ii) a permit issued by an NRC master material licensee that authorizes the medical or veterinary use of radioactive material.

(26) Sealed source and device registry--The national registry that contains all the registration certificates, generated by both the NRC and the agreement states, that summarize the radiation safety information for sealed sources and devices and describe the licensing and use conditions approved for the product.

(27) Stereotactic radiosurgery--The use of external radiation in conjunction with a guidance device to very precisely deliver a dose to a tissue volume by the use of three-dimensional coordinates.

(28) Technologist--Technologist is defined as either of the following:

(A) in nuclear medicine, a person (nuclear medicine technologist) skilled in the performance of nuclear medicine procedures under the supervision of a physician; or

(B) in therapy, as described in subsections (rr) and (ddd) of this section, a person (radiation therapy technologist or radiation therapist) who delivers treatments of radiation therapy under the supervision of and as prescribed by an authorized user who meets the requirements of (zz) or (ttt).

(29) Teletherapy--Therapeutic irradiation in which the sealed source is at a distance from the patient or human or animal research subject.

(30) Therapeutic dosage--The specified activity or range of activity of radioactive material that is intended to deliver a radiation dose to a patient or human or animal research subject for palliative or curative treatment.

(31) Therapeutic dose--A radiation dose delivered from a sealed source containing radioactive material to a patient or human or animal research subject for palliative or curative treatment.

(32) Treatment site--The anatomical description of the tissue intended to receive a radiation dose, as described in a written directive.

(33) Type of use--Use of radioactive material as specified under the following subsections:

(A) uptake, and dilution and excretion studies in subsection (ff) of this section;

(B) imaging and localization studies in subsection (hh) of this section;

(C) therapy with unsealed radioactive material in subsection (kk) of this section;

(D) manual brachytherapy with sealed sources in subsection (rr) of this section;

(E) sealed sources for diagnosis in subsection (bbb) of this section; and

(F) sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit in subsection (ddd) of this section.

(34) Unit dosage--A dosage prepared for medical use for administration as a single dosage to a patient or human or animal research subject without any further modification of the dosage after it is initially prepared.

(35) Veterinary use--The intentional internal or external administration of radioactive material, or the radiation from radioactive material, to patients under the supervision of an authorized user.

(36) Written directive--An authorized user's written order for the administration of radioactive material or radiation from radioactive material to a specific patient or human research subject, as specified in subsection (t) of this section.

(d) Provisions for research involving human subjects.

(1) A licensee may conduct research involving human subjects only if it uses the radioactive materials specified on its license for the uses authorized on the license.

(2) The licensee may conduct research specified in paragraph (1) of this subsection provided that:

(A) the research is conducted, funded, supported, or regulated by a federal agency that has implemented the Federal Policy for the Protection of Human Subjects as required by Title 10, Code of Federal Regulations (CFR), §35.6 (Federal Policy); or

(B) the licensee has applied for and received approval of a specific amendment to its license before conducting the research.

(3) Prior to conducting research as specified in paragraph (1) of this subsection, the licensee shall obtain the following:

(A) "informed consent," as defined and described in the Federal Policy, from the human research subjects; and

(B) review and approval of the research from an IRB as required by Title 45, CFR, Part 46, and Title 21, CFR, Part 56, and in accordance with the Federal Policy.

(4) Nothing in this subsection relieves licensees from complying with the other requirements of this chapter.

(e) Implementation.

(1) If a license condition exempted a licensee from a provision of this section or §289.252 of this title on the effective date of this rule, then the license condition continues to exempt the licensee from the requirements in the corresponding provision until there is a license amendment or license renewal that modifies or removes the license condition.

(2) When a requirement in this section differs from the requirement in an existing license condition, the requirement in this section shall govern.

(3) Licensees shall continue to comply with any license condition that requires implementation of procedures required by subsections (ggg) and (mmm) - (ooo) of this section until there is a license amendment or renewal that modifies the license condition.

(f) Specific requirements for the issuance of licenses. In addition to the requirements in §289.252(e) of this title and subsections (n) - (q) of this section, as applicable, a license will be issued if the agency determines that:

(1) the applicant satisfies any applicable special requirement in this section;

(2) qualifications of the designated radiation safety officer (RSO) as specified in subsection (h) of this section are adequate for the purpose requested in the application; and

(3) the following information submitted by the applicant is approved:

(A) an operating, safety, and emergency procedures manual to include specific information on the following:

(i) radiation safety precautions and instructions;

(ii) methodology for measurement of dosages or doses to be administered to patients or human or animal research subjects;

(iii) calibration, maintenance, and repair of instruments and equipment necessary for radiation safety; and

(iv) waste disposal procedures; and

(B) any additional information required by this chapter that is requested by the agency to assist in its review of the application; and

(C) qualifications of the following:

(i) RSO in accordance with subsection (h) of this section;

(ii) authorized user(s) in accordance with subsection (c)(5) of this section as applicable to the use(s) being requested;

(iii) authorized medical physicist in accordance with subsection (c)(3) of this section;

(iv) authorized nuclear pharmacist in accordance with subsection (c)(4) of this section, if applicable; and

(v) radiation safety committee (RSC), in accordance with subsection (i) of this section, if applicable; and

(4) the applicant's permanent facility is located in Texas; and

(5) the owner of the property is aware that radioactive material is stored and/or used on the property, if the proposed storage facility is not owned by the applicant. The applicant shall provide a written statement from the owner or the owner's agent indicating such.

(g) Radiation safety officer.

(1) Every licensee shall establish in writing the authority, duties, and responsibilities of the RSO and ensure that the RSO is provided sufficient authority, organizational freedom, time, resources, and management prerogative to perform the following duties:

(A) establish and oversee operating, safety, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them at least annually to ensure that the procedures are current and conform with this chapter;

(B) ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(C) ensure that individual monitoring devices are used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made in accordance with §289.203 of this title;

(D) investigate and cause a report to be submitted to the agency for each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause(s), and to take steps to prevent a recurrence;

(E) investigate and cause a report to be submitted to the agency for each known or suspected case of release of radioactive material to the environment in excess of limits established by this chapter;

(F) have a thorough knowledge of management policies and administrative procedures of the licensee;

(G) identify radiation safety problems;

(H) assume control and initiate, recommend, or provide corrective actions, including shutdown of operations when necessary, in emergency situations or unsafe conditions;

(I) verify implementation of corrective actions;

(J) ensure that records are maintained as required by this chapter;

(K) ensure the proper storing, labeling, transport, use, and disposal of sources of radiation, storage, and/or transport containers;

(L) ensure that inventories are performed in accordance with the activities for which the license application is submitted;

(M) ensure that personnel are complying with this chapter, the conditions of the license, and the operating, safety, and emergency procedures of the licensee; and

(N) serve as the primary contact with the agency.

(2) The RSO shall ensure that the duties listed in paragraph (1)(A) - (N) of this subsection are performed.

(3) The RSO shall be on site periodically commensurate with the scope of licensed activities to satisfy the requirements of paragraphs (1) and (2) of this subsection.

(4) The RSO, or staff designated by the RSO, shall be capable of physically arriving at the licensee's authorized use site(s) within a reasonable time of being notified of an emergency situation or unsafe condition.

(5) For up to 60 days each calendar year, a licensee may permit an authorized user or an individual qualified to be an RSO to function as a temporary RSO and to perform the duties of an RSO in accordance with paragraph (1) of this subsection, provided the licensee takes the actions required in paragraph (1) of this subsection, and the RSO meets the qualifications in subsection (h) of this section. Records of qualifications and dates of service shall be maintained in accordance with subsection (www) of this section for inspection by the agency.

(h) Training for radiation safety officer. Except as provided in subsection (l) of this section, the licensee shall require the individual fulfilling the responsibilities of an RSO in accordance with subsection (g) of this section for licenses for medical or veterinary use of radioactive material to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, or an agreement state and who meets the requirements in paragraphs (4) and (5) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation).

(A) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

(ii) have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

(iii) pass an examination, administered by diplomates of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology and radiation dosimetry; or

(B) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(i) hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(ii) have two years of full-time practical training and/or supervised experience in medical physics as follows:

(I) under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, the NRC, an agreement state; or a licensing state; or

(II) in clinical nuclear medicine facilities providing diagnostic and/or therapeutic services under the direction of physicians who meet the requirements for authorized users in subsection (jj) or (nn) of this section; and

(iii) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

(2) meets the requirements of paragraphs (5) and (6) of this subsection and has completed a structured educational program consisting of the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) radiation biology; and

(v) radiation dosimetry; and

(B) one year of full-time radiation safety experience under the supervision of the individual identified as the RSO on an agency, NRC, agreement state, or licensing state license or on a permit issued by an NRC master material licensee that authorizes similar type(s) of use(s) of radioactive material involving the following:

(i) shipping, receiving, and performing related radiation surveys;

(ii) using and performing checks for proper operation of dose calibrators, survey meters, and instruments used to measure radionuclides;

(iii) securing and controlling radioactive material;

(iv) using administrative controls to avoid mistakes in the administration of radioactive material;

(v) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;

(vi) using emergency procedures to control radioactive material; and

(vii) disposing of radioactive material; or

(3) is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state in accordance with subsection (j)(1) of this section and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as RSO and who meets the requirements in paragraphs (5) and (6) of this subsection; or

(4) is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has RSO responsibilities; and

(5) has obtained written attestation, signed by a preceptor RSO, that the individual has satisfactorily completed the requirements

in paragraph (6) of this subsection and in paragraph (1)(A)(i) and (ii) or (1)(B)(i) and (ii), or (2) or (3) of this subsection, and has achieved a level of radiation safety knowledge sufficient to function independently as an RSO for a medical use licensee; and

(6) has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which a licensee seeks approval. This training requirement may be satisfied by completing training that is supervised by a RSO, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type(s) of use for which the licensee is seeking approval.

(i) Radiation safety committee. Licensees with broad scope authorization and licensees who are authorized for two or more different types of uses of radioactive material in accordance with subsections (kk), (rr), and (ddd) of this section, or two or more types of units under subsection (ddd) of this section shall establish an RSC to oversee all uses of radioactive material permitted by the license.

(1) The RSC for licenses for medical use with broad scope authorization shall be composed of the following individuals as approved by the agency:

(A) authorized users from each type of use of radioactive material authorized on the license;

(B) the RSO;

(C) a representative of nursing service;

(D) a representative of management who is neither an authorized user nor the RSO; and

(E) may include other members as the licensee deems appropriate.

(2) The RSC for licenses for medical and veterinary use authorized for two or more different types of uses of radioactive material in accordance with subsections (kk), (rr), and (ddd) of this section, or two or more types of units in accordance with subsection (ddd) of this section shall be composed of the following individuals as approved by the agency:

(A) an authorized user of each type of use permitted by the license;

(B) the RSO;

(C) a representative of nursing service, if applicable;

(D) a representative of management who is neither an authorized user nor the RSO; and

(E) may include other members as the licensee deems appropriate.

(3) Duties and responsibilities of the RSC.

(A) For licensees without broad scope authorization, the duties and responsibilities of the RSC include, but are not limited to, the following:

(i) meeting as often as necessary to conduct business but no less than three times a year;

(ii) reviewing summaries of the following information presented by the RSO:

(I) over-exposures;

(II) significant incidents, including spills, contamination, or medical events; and

(III) items of non-compliance following an inspection;

(iii) reviewing the program for maintaining doses ALARA, and providing any necessary recommendations to ensure doses are ALARA; and

(iv) reviewing the audit of the radiation safety program and acting upon the findings.

(B) For licensees with broad scope authorization, the duties and responsibilities of the RSC include, but are not limited to, the items in subparagraph (A) of this paragraph and the following:

(i) reviewing the overall compliance status for authorized users;

(ii) sharing responsibility with the RSO to conduct periodic audits of the radiation safety program;

(iii) developing criteria to evaluate training and experience of new authorized user applicants;

(iv) evaluating and approving authorized user applicants who request authorization to use radioactive material at the facility; and

(v) reviewing and approving permitted program and procedural changes prior to implementation.

(j) Training for an authorized medical physicist. Except as provided in subsection (l) of this section, the licensee shall require the authorized medical physicist to be an individual who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or a licensing state and who meets the requirements in paragraphs (3) and (4) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to meet the following:

(A) hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(B) complete two years of full-time practical training and/or supervised experience in medical physics as follows:

(i) under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, NRC, agreement state, or licensing state; or

(ii) in clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in subsection (zz) or (ttt) of this section; and

(C) pass an examination administered by diplomates of the specialty board that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

(2) holds a post graduate degree and experience to include:

(A) a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and

(B) completion of one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type(s) of use for which the individual is seeking authorization. This training and work experience shall be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and shall include:

(i) performing sealed source leak tests and inventories;

(ii) performing decay corrections;

(iii) performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(iv) conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units as applicable; and

(3) has obtained written attestation that the individual has satisfactorily completed the requirements in paragraphs (4) and (1)(A) and (1)(B) or (2)(A) and (2)(B) and (4) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation shall be signed by a preceptor authorized medical physicist who meets the requirements in this subsection for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

(4) has training for the type(s) of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist authorized for the type(s) of use for which the individual is seeking authorization.

(k) Training for an authorized nuclear pharmacist. Except as provided in subsection (l) of this section, the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

(1) is certified by a specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of paragraph (2)(C) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification process recognized, a specialty board shall require all candidates for certification to:

(A) have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(B) hold a current, active license to practice pharmacy in the state of Texas;

(C) provide evidence of having acquired at least 4000 hours of training/experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2000 hours of the required training and experience; and

(D) pass an examination in nuclear pharmacy administered by diplomates of the specialty board, that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

(2) has completed a 700 hour structured educational program including both:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology; and

(B) supervised practical experience in a nuclear pharmacy involving the following:

(i) shipping, receiving, and performing related radiation surveys;

(ii) using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

(iii) calculating, assaying, and safely preparing dosages for patients or human research subjects;

(iv) using administrative controls to avoid medical events in the administration of radioactive material; and

(v) using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

(C) has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraph (1)(A), (B) and (C) or (2) of this section and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

(l) Training for experienced RSO, teletherapy or medical physicist, authorized medical physicist, authorized user, nuclear pharmacist, and authorized nuclear pharmacist.

(1) An individual identified as an RSO, a teletherapy or medical physicist, or a nuclear pharmacist on one of the following before the effective date of this rule need not comply with the training requirements of subsection (h), (j), or (k) of this section, respectively:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(2) An individual identified as an RSO, an authorized medical physicist, or an authorized nuclear pharmacist on one of the following prior to the effective date of this rule need not comply with the training requirements of subsection (h), (j), or (k) of this section, respectively:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(3) An individual identified as a physician, dentist, podiatrist or veterinarian authorized for the medical or veterinary use of radioactive material and who performs only those medical or veterinary uses for which they were authorized on one of the following before the effective date of this rule need not comply with the training requirements of subsections (ff) - (ttt) of this section:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(4) An individual identified as a physician, dentist, podiatrist or veterinarian authorized for the medical or veterinary use of radioactive material and who performs only those medical or veterinary uses for which they were authorized on one of the following prior to the effective date of this rule need not comply with the training requirements of subsections (ff) - (ttt) of this section:

(A) an agency, NRC, agreement state, or licensing state license;

(B) a permit issued by an agency, NRC, agreement state, or licensing state licensee with broad scope authorization;

(C) an NRC master material license permit; or

(D) an NRC master material license permit with broad scope authorization.

(m) Recentness of training. The training and experience specified in subsections (j), (k), (l), (h), (ff) - (kk), (rr), (tt), (zz), (aaa), (bbb), and (ddd) of this section for medical and veterinary use shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and experience since the required training and experience was completed.

(n) Licenses for medical and veterinarian uses of radioactive material without broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical and veterinarian use of radioactive material as described in the applicable subsections (ff), (hh), (kk), (rr), (bbb) and (ddd) of this section will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the physician(s) or veterinarian(s) designated on the application as the authorized user(s) is qualified in accordance with subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc) and (ttt) of this section, as applicable;

(2) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses; and

(4) that an RSC has been established in accordance with subsection (i)(2) of this section, if applicable.

(o) License for medical and veterinary uses of radioactive material with broad scope authorization. In addition to the requirements of subsection (f) of this section, a license for medical use of radioactive material with broad scope authorization will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the review of authorized user qualifications by the RSC is in accordance with subsections (gg), (jj), (nn) - (qq), (zz), (aaa), (ccc) and (ttt) of this section, as applicable;

(2) that the application is for a license authorizing unspecified forms and/or multiple types of radioactive material for medical research, diagnosis, and therapy;

(3) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(4) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(5) that staff has substantial experience in the use of a variety of radioactive material for a variety of human and animal uses;

(6) that the full-time RSO meets the requirements of subsection (h)(2) of this section; and

(7) that an RSC has been established in accordance with subsection (i)(1) of this section.

(p) License for the use of remote control brachytherapy units, teletherapy units, or gamma stereotactic radiosurgery units. In addition to the requirements of subsection (f) of this section, a license for the use of remote control brachytherapy (RCB) units, teletherapy units, or gamma stereotactic radiosurgery units will be issued if the agency approves the following documentation submitted by the applicant:

(1) that the physician(s) designated on the application as the authorized user(s) is qualified in accordance with subsection (ttt) of this section;

(2) that the radiation detection and measuring instrumentation is appropriate for performing surveys and procedures for the uses involved;

(3) that the radiation safety operating procedures are adequate for the handling and disposal of the radioactive material involved in the uses;

(4) of the radioactive isotopes to be possessed;

(5) of the sealed source manufacturer(s) name(s) and the model number(s) of the sealed source(s) to be installed;

(6) of the maximum number of sealed sources of each isotope to be possessed, including the activity of each sealed source;

(7) of the manufacturer and model name and/or number of the following units, as applicable:

(A) RCB unit;

(B) teletherapy unit; or

(C) gamma stereotactic radiosurgery unit;

(8) that the authorized medical physicist designated on the application is qualified in accordance with subsection (j) of this section;

(9) of the successful completion of unit-specific, manufacturer-provided training that includes standard clinical and emergency procedures for remote control brachytherapy and gamma stereotactic radiosurgery units for the following personnel:

(A) authorized medical physicist of this section;

(B) technologists; and

(C) authorized user;

(10) of the safety procedures and instructions as required by subsection (ggg) of this section;

(11) of the spot check procedures as required by subsections (lll) - (nnn) of this section, as applicable; and

(12) that an RSC has been established in accordance with subsection (i)(1) or (2) of this section if applicable.

(q) License for other medical or veterinary uses of radioactive material or a radiation source approved for medical or veterinary use that is not specifically addressed in this section. A licensee may use radioactive material or a radiation source approved for medical use which is not specifically addressed in this section if the requirements of subsection (f) of this section have been met, the applicant or licensee has received written approval from the agency in a license or license amendment and the licensee uses the material in accordance with the regulations and specific conditions the agency considers necessary for the medical use of the material.

(r) Amendment of licenses at request of licensee.

(1) Requests for amendment of a license or deletion of an authorized use site shall be filed in accordance with §289.252(aa) of this title.

(2) A licensee without broad-scope authorization shall apply for and shall receive a license amendment prior to the following:

(A) receiving or using radioactive material for a type of use that is authorized in accordance with under this section, but is not authorized on their current license issued in accordance with this section;

(B) permitting anyone to work as an authorized user, authorized nuclear pharmacist or authorized medical physicist under the license;

(C) changing RSOs, except as provided in subsection (g)(5) of this section;

(D) receiving radioactive material in excess of the amount or in a different form, or receiving a different radionuclide than is authorized on the license;

(E) adding or changing the areas in which radioactive material is used or stored and are identified in the application or on the license;

(F) changing the address(es) of use identified in the application or on the license; and

(G) changing operating, safety, and emergency procedures.

(3) A licensee with broad-scope authorization shall apply for and shall receive a license amendment prior to taking actions specified in paragraph (2)(A), (C), (D), (F) and (G) of this subsection.

(s) Supervision. A licensee may permit the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user, unless prohibited by license condition.

(1) A licensee who permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user shall do the following:

(A) instruct the supervised individual in the licensee's written operating, safety, and emergency procedures, written directive procedures, requirements of this chapter, and license conditions with respect to the use of radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user for medical uses of radioactive material, written operating, safety, and emergency procedures established by the licensee, written directive procedures, requirements of this chapter, and license conditions with respect to the medical use of radioactive material.

(2) A licensee who permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or authorized user, shall do the following:

(A) instruct the supervised individual in the preparation of radioactive material for medical use, as appropriate to that individual's involvement with radioactive material; and

(B) require the supervised individual to follow the instructions of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of radioactive material for medical use, the written operating, safety, and emergency procedures established by the licensee, the requirements of this chapter, and license conditions.

(3) A licensee who permits supervised activities in accordance with paragraphs (1) and (2) of this subsection is responsible for the acts and omissions of the supervised individual.

(4) Only an authorized user may authorize the medical use of radioactive material.

(t) Written directives.

(1) A written directive shall be dated and signed by an authorized user prior to administration of sodium iodide I-131 greater than 30 microcuries (μCi) (1.11 megabequerels (MBq)), any therapeutic dosage of unsealed radioactive material, or any therapeutic dose of radiation from radioactive material.

(A) A written revision to an existing written directive may be made provided that the revision is dated and signed by an authorized user prior to the administration of the dosage of unsealed radioactive material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(B) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive or to revise a written directive would jeopardize the patient's health, an oral directive or an oral revision to an existing written directive is acceptable. The information contained in the oral directive or oral revision shall be documented in writing as soon as possible in the patient's record. A written directive or revised written directive shall be prepared and signed by the authorized user within 48 hours of the oral directive or oral revision.

(2) The written directive shall contain the patient or human research subject's name and the following information for each application.

(A) For any administration of quantities greater than 30 μCi (1.11 MBq) of sodium iodide I-131, the dosage.

(B) For an administration of a therapeutic dosage of a radiopharmaceutical other than sodium iodide I-131:

(i) the radiopharmaceutical;

(ii) the dosage; and

(iii) route of administration.

(C) For gamma stereotactic radiosurgery:

(i) the total dose;

(ii) the treatment site; and

(iii) the values for the target coordinate settings per treatment for each anatomically distinct treatment site.

(D) For teletherapy:

(i) the total dose;

(ii) dose per fraction;

(iii) number of fractions; and

(iv) treatment site.

(E) For high-dose rate remote afterloading brachytherapy:

(i) the radionuclide;

(ii) treatment site;

(iii) dose per fraction;

(iv) number of fractions; and

(v) total dose.

(F) For all other brachytherapy, including low, medium, and pulsed rate afterloaders:

(i) prior to implantation:

(I) treatment site;

(II) the radionuclide; and

(III) dose;

(ii) after implantation but prior to completion of the procedure:

(I) the radionuclide;

(II) treatment site;

(III) number of sealed sources;

(IV) total sealed source strength; and

(V) exposure time or, the total dose.

(3) The licensee shall retain the written directive in accordance with subsection (www) of this section for inspection by the agency.

(4) Procedures for administrations requiring a written directive.

(A) For any administration requiring a written directive, the licensee shall develop, implement, and maintain written procedures to ensure that:

(i) the patient's or human research subject's identity is verified before each administration; and

(ii) each administration is in accordance with the written directive.

(B) The procedures required by subparagraph (A) of this paragraph shall, at a minimum, address the following items that are applicable for the licensee's use of radioactive material:

(i) verifying the identity of the patient or human research subject;

(ii) verifying that the administration is in accordance with the treatment plan, if applicable, and the written directive;

(iii) checking both manual and computer-generated dose calculations; and

(iv) verifying that any computer-generated dose calculations are correctly transferred into the consoles of therapeutic medical units authorized by subsection (dd) of this section.

(C) A licensee shall maintain a copy of the procedures required by subparagraph (A) of this paragraph in accordance with subsection (www) of this section.

(u) Suppliers for sealed sources or devices for medical use. A licensee may only use the following for medical use:

(1) sealed sources or devices manufactured, labeled, packaged, and distributed in accordance with a license issued by the agency, NRC, an agreement state, or licensing state;

(2) sealed sources or devices non-commercially transferred from an NRC or agreement state medical use licensee; or

(3) teletherapy sources manufactured and distributed in accordance with a license issued by the agency, NRC, an agreement state, or licensing state.

(v) Possession, use, and calibration of dose calibrators to measure the activity of unsealed radioactive material.

(1) For direct measurements performed in accordance with subsection (x) of this section, the licensee shall possess and use instrumentation to measure the activity of unsealed radioactive material before it is administered to each patient or human research subject.

(2) The licensee shall calibrate the instrumentation specified in paragraph (1) of this subsection in accordance with nationally recognized standards or the manufacturer's instructions.

(3) The calibration required by paragraph (2) of this subsection shall include tests for constancy, accuracy, linearity, and geometry dependence, as appropriate to demonstrate proper operation of the instrument. The tests for constancy, accuracy, linearity, and geometry dependence shall be conducted at the following intervals:

(A) constancy at least once each day prior to assay of patient dosages;

(B) linearity at installation, repair, relocation, and at least quarterly thereafter;

(C) geometry dependence at installation; and

(D) accuracy at installation and at least annually thereafter.

(4) The licensee shall maintain a record of each instrument calibration in accordance with subsection (www) of this section. The record shall include the following:

(A) model and serial number of the instrument and calibration sources;

(B) date of the calibration;

(C) results of the calibration; and

(D) name of the individual who performed the calibration.

(w) Calibration of survey instruments. A licensee shall calibrate the survey instruments used to show compliance with this subsection and with §289.202 of this title before first use, annually, and following a repair that affects the calibration. A licensee shall:

(1) calibrate all scales with readings up to 10 millisieverts (mSv) (1000 millirem (mrem)) per hour with a radiation source;

(2) calibrate two separated readings on each scale or decade that will be used to show compliance;

(3) conspicuously note on the instrument the date of calibration;

(4) not use survey instruments if the difference between the indicated exposure rate and the calculated exposure rate is more than 20%; and

(5) maintain a record of each survey instrument calibration in accordance with subsection (www) of this section.

(x) Determination of dosages of radioactive material for medical use.

(1) Before medical use, the licensee shall perform the following:

(A) record the activity of each dosage; and

(B) determine the activity of each dosage using a dose calibrator, by direct measurement of radioactivity, or a decay correction, based on the activity or activity concentration determined by the following:

(i) a manufacturer or preparer licensed in accordance with §289.252(r) of this title, or under an equivalent NRC, agreement state, or licensing state license; or

(ii) an NRC or agreement state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by the U.S. Food and Drug Administration (FDA).

(2) For other than unit dosages, this determination shall be made by:

(A) direct measurement of radioactivity; or

(B) combination of direct measurement of radioactivity and mathematical calculations.

(3) Unless otherwise directed by the authorized user, a licensee shall not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20%.

(4) A licensee restricted to only unit doses prepared in accordance with §289.252(r) of this title need not comply with the requirements in paragraph (1)(B) of this subsection, unless the administration time of the unit dose deviates from the nuclear pharmacy's pre-calibrated time by 15 minutes or more.

(5) A licensee shall maintain a record of the dosage determination required by this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall contain the following:

(A) radionuclide, generic name, trade name, or abbreviation of the radiopharmaceutical;

(B) patient's or human research subject's name or identification number if one has been assigned;

(C) prescribed dosage;

(D) determined dosage or a notation that the total activity is less than 30 µCi (1.1 MBq);

(E) the date and time of the dosage determination; and

(F) the name of the individual who determined the dosage.

(y) Authorization for calibration and reference sources. Any licensee authorized by subsection (n), (o), (p) or (q) of this section for medical use of radioactive material may receive, possess, and use the following radioactive material for check, calibration, and reference use:

(1) sealed sources manufactured and distributed by a person licensed in accordance with §289.252 of this title that do not exceed 30 millicuries (mCi) (1.11 gigabecquerel (GBq)) each;

(2) sealed sources redistributed by a licensee authorized to redistribute the sealed sources manufactured and distributed by a person licensed in accordance with §289.252 of this title that do not exceed 30 mCi (1.11GBq) each, provided the redistributed sealed sources are in the original packaging and shielding and are accompanied by the manufacturer's approved instructions;

(3) any radioactive material with a half-life not longer than 120 days in individual amounts not to exceed 15 mCi (0.56 GBq);

(4) any radioactive material with a half-life longer than 120 days in individual amounts not to exceed the smaller of 200 µCi (7.4 MBq) or 1000 times the quantities in §289.202(qqq)(3) of this title; and

(5) technetium-99m in amounts as needed.

(z) Requirements for possession of sealed sources and brachytherapy sealed sources. A licensee in possession of any sealed source or brachytherapy source shall:

(1) follow the radiation safety and handling instructions supplied by the manufacturer and the leakage test requirements in accordance with §289.201(g) of this title and reporting requirements in §289.202(bbb) of this title; and

(2) conduct a physical inventory at intervals not to exceed six months to account for all sealed sources in its possession. Records of the inventory shall be made and maintained for inspection by the agency in accordance with subsection (www) of this section and shall include the following:

(A) model number of each source and serial number if one has been assigned;

(B) identity of each source and its nominal activity;

(C) location of each source;

(D) date of the inventory; and

(E) identification of the individual who performed the inventory.

(aa) Labeling of vials and syringes. Each syringe and vial that contains a radiopharmaceutical shall be labeled to identify the radioactive drug. Each syringe shield and vial shield shall also be labeled unless the label on the syringe or vial is visible when shielded.

(bb) Surveys for ambient radiation exposure rate.

(1) In addition to the requirements of §289.202(p) of this title and except as provided in paragraph (2) of this subsection, a licensee shall survey with a radiation detection survey instrument at the

end of each day of use all areas where radioactive material requiring a written directive was prepared for use or administered.

(2) A licensee does not need to perform the surveys required by paragraph (1) of this subsection in an area(s) where patients or human research subjects are confined when they cannot be released in accordance with subsection (cc) of this section or an animal that is confined. Once the patient or human or animal research subject is released from confinement, the licensee shall survey with a radiation survey instrument, the area in which the patient or human or animal research subject was confined.

(3) A record of each survey shall be retained in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name, model, and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(cc) Release of individuals containing radioactive drugs or implants containing radioactive material.

(1) The licensee may authorize the release from its control any individual who has been administered radioactive drugs or implants containing radioactive material if the total effective dose equivalent (TEDE) to any other individual from exposure to the released individual is not likely to exceed 0.5 rem (5 mSv). Patients treated with temporary eye plaques may be released from the hospital provided that the procedures ensure that the exposure rate from the patient is less than 5 mr per hour at a distance of 1 meter from the eye plaque location;

(2) The licensee shall provide the released individual, or the individual's parent or guardian, with written instructions on actions recommended to maintain doses to other individuals ALARA if the TEDE to any other individual is likely to exceed 0.1 rem (1 mSv). If the TEDE to a nursing infant or child could exceed 0.1 rem (1 mSv), assuming there was no interruption of breast-feeding, the instructions shall also include the following:

(A) guidance on the interruption or discontinuation of breast-feeding; and

(B) information on the potential consequences, if any, of failure to follow the guidance.

(3) The licensee shall maintain for inspection by the agency, a record in accordance with subsection (www) of this section of each patient released in accordance with paragraph (1) of this subsection. The record shall include the following:

(A) the basis for authorizing the release of an individual; and

(B) the instructions provided to a breast-feeding woman. if the radiation dose to the infant or child from continued breast-feeding could result in a TEDE exceeding 0.5 rem (5 mSv).

(dd) Mobile nuclear medicine service. A license for a mobile nuclear medicine service for medical or veterinary use of radioactive material will be issued if the agency approves the documentation submitted by the applicant in accordance with the requirements of subsections (f) and (n) of this section. The clients of the mobile nuclear medicine service shall be licensed if the client receives or possesses radioactive material to be used by the mobile nuclear medicine service.

(1) A licensee providing mobile nuclear medicine service shall:

(A) obtain a letter signed by the management of each client for which services are rendered that permits the use of radioactive material at the client's address and clearly delineates the authority and responsibility of the licensee and the client;

(B) check instruments used to measure the activity of unsealed radioactive material for proper function before medical or veterinary use at each client's address or on each day of use, whichever is more frequent. At a minimum, the check for proper function required by this subparagraph shall include a constancy check;

(C) have at least one fixed facility where records may be maintained and radioactive material may be delivered by manufacturers or distributors each day prior to the mobile nuclear medicine licensee dispatching its vans to client sites;

(D) agree to have an authorized physician user directly supervise each technologist at a reasonable frequency;

(E) check survey instruments for proper operation with a dedicated check source before use at each client's address; and

(F) before leaving a client's address, survey all areas of use to ensure compliance with the requirements of §289.202 of this title.

(2) A mobile nuclear medicine service shall not have radioactive material delivered from the manufacturer or the distributor to the client unless the client has a license allowing possession of the radioactive material. Radioactive material delivered to the client shall be received and handled in conformance with the client's license.

(3) A licensee providing mobile nuclear medicine services shall maintain records, for inspection by the agency, in accordance with subsection (www) of this section including the letter required in paragraph (1)(A) of this subsection and the record of each survey required in paragraph (1)(F) of this subsection.

(ee) Decay-in-storage.

(1) The licensee may hold radioactive material with a physical half-life of less than 65 days for decay-in-storage and dispose of it without regard to its radioactivity if the licensee does the following:

(A) monitors radioactive material at the surface before disposal and determines that its radioactivity cannot be distinguished from the background radiation level with an appropriate radiation detection survey meter set on its most sensitive scale and with no interposed shielding; and

(B) removes or obliterates all radiation labels, except for radiation labels on materials that are within containers and that will be handled as biomedical waste after it has been released from the licensee.

(2) The licensee shall retain a record of each disposal as required by paragraph (1) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the disposal;

(B) manufacturer's name, model number and serial number of the survey instrument used;

(C) background radiation level;

(D) radiation level measured at the surface of each waste container; and

(E) name of the individual who performed the survey.

(ff) Use of unsealed radioactive material for uptake, dilution, and excretion studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for uptake, dilution, or excretion studies that meets the following:

(1) is obtained from a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) is prepared by one of the following:

(A) an authorized nuclear pharmacist;

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(3)(B)(vii) of this section, or prior to the effective date of this rule, meets the requirements of subsection (l)(3) and (4) of this section for imaging and localization studies and unsealed radioactive material requiring a written directive;

(C) an individual under the supervision, as specified in subsection (s) of this section, of an authorized nuclear pharmacist or an authorized user in subparagraphs (A) and (B) of this paragraph; or

(3) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(4) is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(gg) Training for uptake, dilution, and excretion studies. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (ff) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements in paragraph (4) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies that includes the topics listed in paragraph (3) of this subsection; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(2) is an authorized user in accordance with subsection (jj) or (nn) of this section; or

(3) has completed 60 hours of training and experience, including a minimum of eight hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience shall include the following.

(A) Classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection, subsection (jj), or (nn) of this section involving the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects; and

(4) has obtained written attestation, signed by a preceptor authorized user who meets the requirements of this subsection, subsection (jj), or (nn) of this section that the individual has satisfactorily completed the requirements of paragraph (1)(A) or (3) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (ff) of this section.

(hh) Use of unsealed radioactive material for imaging and localization studies that do not require a written directive. Except for quantities that require a written directive in accordance with subsection (t) of this section, a licensee may use any unsealed radioactive material prepared for medical or veterinary use for imaging and localization studies that meets the following:

(1) is obtained from a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements; or

(2) is prepared by one of the following:

(A) an authorized nuclear pharmacist; or

(B) a physician who is an authorized user and who meets the requirements specified in subsections (jj) or (nn) and (jj)(3)(vii) of this section, or prior to the effective date of this rule, meets the requirements of subsection (l)(3) and (4) of this section for imaging and localization studies not requiring a written directive; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of an authorized nuclear pharmacist or an authorized user in subparagraphs (A) and (B) of this paragraph; or

(D) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with a Radioactive Drug Research Committee-approved protocol or an IND protocol accepted by the FDA; or

(E) is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an IND protocol accepted by the FDA.

(3) Any licensee who processes and prepares radiopharmaceuticals for human use shall do so according to instructions that are furnished by the manufacturer on the label attached to or in the FDA-accepted instructions in the leaflet or brochure that accompanies the generator or reagent kit or the rules of the practice of pharmacy, as promulgated by the Texas State Board of Pharmacy.

(ii) Permissible molybdenum-99 concentration.

(1) The licensee may not administer to humans a radiopharmaceutical containing more than 0.15 μCi of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m).

(2) The licensee who uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration of the first eluate after receipt of a generator to demonstrate compliance with paragraph (1) of this subsection.

(3) If the licensee is required to measure the molybdenum-99 concentration, the licensee shall retain a record of each measurement in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following for each measured elution of technetium-99m:

(A) ratio of the measures expressed as microcuries of molybdenum-99 per millicurie of technetium-99m (kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m);

(B) time and date of the measurement; and

(C) name of the individual who made the measurement.

(jj) Training for imaging and localization studies.

(1) Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (hh) of this section to be a physician who:

(A) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of subparagraph (D) of this paragraph. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(i) complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies that includes the topics listed in subparagraph (C) of this paragraph; and

(ii) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

(B) is an authorized user in accordance with subsection (nn) of this section; and meets the requirements of subparagraph (C)(ii)(VII) of this paragraph; or

(C) has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience shall include the following.

(i) Classroom and laboratory training in the following areas:

(I) radiation physics and instrumentation;

(II) radiation protection;

(III) mathematics pertaining to the use and measurement of radioactivity;

(IV) chemistry of radioactive material for medical use; and

(V) radiation biology.

(ii) Work experience under the supervision of an authorized user who meets the requirements in this subsection, or subclause (VII) of this clause, and subsection (nn) of this section, involving the following:

(I) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(II) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(III) calculating, measuring, and safely preparing patient or human research subject dosages;

(IV) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(V) using procedures to contain spilled radioactive material safely and using proper decontamination procedures;

(VI) administering dosages of radioactive drugs to patients or human research subjects; and

(VII) eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclide purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(D) has obtained written attestation, signed by a preceptor authorized user who meets the requirements of this subsection or subparagraph (C)(ii)(VII) of this paragraph and subsection (nn) of this section that the individual has satisfactorily completed the requirements of subparagraph (A)(i) or (C) of this paragraph and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsections (ff) and (hh) of this section.

(2) In addition to the training and experience requirements of paragraph (1) of this subsection, for the use of positron emission tomography (PET) radionuclides, the licensee shall require that the authorized user has:

(A) completed 24 hours of work experience specific to the use of PET radionuclides consistent with paragraph (1)(C)(ii)(I) - (VI) of this subsection; and

(B) a written attestation statement specific to the use of PET radionuclides for diagnostic imaging.

(kk) Use of unsealed radioactive material that requires a written directive. A licensee may use any unsealed radioactive material prepared for medical use that requires a written directive in accordance with subsection (t) of this section that meets the following:

(1) is obtained from a manufacturer or preparer licensed in accordance with §289.252 of this title or equivalent NRC, agreement state, or licensing state requirements;

(2) is prepared by one of the following:

(A) an authorized nuclear pharmacist;

(B) a physician who is an authorized user and who meets the requirements specified in subsection (jj) or (nn) of this section; or

(C) an individual under the supervision, as specified in subsection (s) of this section, of an authorized nuclear pharmacist or an authorized user in subparagraphs (A) and (B) of this paragraph;

(3) is obtained from and prepared by an NRC, agreement state, or licensing state licensee for use in research in accordance with an IND protocol accepted by the FDA; or

(4) is prepared by the licensee for use in research in accordance with an IND protocol accepted by the FDA.

(ll) Safety instruction to personnel.

(1) The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects who cannot be released in accordance with subsection (cc) of this section. The instruction shall be appropriate to the personnel's assigned duties and include the following:

(A) patient or human or animal research subject control; and

(B) visitor control to include the following:

(i) routine visitation to hospitalized individuals or animals in accordance with §289.202(n) of this title;

(ii) contamination control;

(iii) waste control; and

(iv) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of individuals receiving instruction. The record shall include the following:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(mm) Safety precautions. For each human patient or human research subject who cannot be released in accordance with subsection (cc) of this section, the licensee shall do the following:

(1) provide a private room with a private sanitary facility; or

(2) provide a room with a private sanitary facility with another individual who also has received therapy with an unsealed radioactive material and who also cannot be released in accordance with subsection (cc) of this section;

(3) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door and in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(4) either monitor material and items removed from the patient's or the research subject's room to determine that their radioactivity cannot be distinguished from the natural background radiation level with a radiation detection survey instrument set on its most sensitive scale and with no interposed shielding, or handle such material and items as radioactive waste; and

(5) notify the RSO, or his or her designee, and the authorized user immediately if the patient or research subject has a medical emergency or dies.

(nn) Training for use of unsealed radioactive material that requires a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of unsealed radioactive material for the uses authorized in subsection (kk) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements in paragraph (2)(B)(vi) and (C) this subsection. (Specialty boards whose certification processes have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's webpage, www.dshs.state.tx.us/radiation). To be recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs shall include 700 hours of training and experience as described in paragraph (2)(A) - (B)(v) of this subsection. Eligible training programs shall be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

(2) has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection. A supervising authorized user, who meets the requirements of this paragraph shall also have experience in administering dosages in the same dosage category or categories (for example, in accordance with clause (vi) of this subparagraph) as the individual requesting authorized user status. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

(I) oral administration of less than or equal to 33 mCi (1.22 GBq) of sodium iodide I-131, for which a written directive is required;

(II) oral administration of greater than 33 mCi (1.22 GBq) of sodium iodide I-131 (experience with at least three cases in this subclause also satisfies the requirement of subclause (I) of this clause;

(III) parenteral administration of any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 kiloelecton volts (keV) for which a written directive is required; and/or

(IV) parenteral administration of any other radionuclide for which a written directive is required; and

(C) written attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) and (2)(B)(vi) or (2) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this subsection. The preceptor authorized user who meets the requirements in paragraph (2) of this subsection shall have experience in administering dosages in the same dosage category or categories (for example, in accordance with paragraph (2)(B)(vi) of this subsection) as the individual requesting authorized user status.

(oo) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements of paragraphs (3) and (4) of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); or

(2) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(I) or (II) of this section, or subsection (pp) of this section; or

(3) has successfully completed 80 hours of classroom and laboratory training and work experience applicable to the medical use of sodium iodide I131 for procedures requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection, subsection (nn) or subsection (pp) of this section. A supervising authorized user who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects that includes at least three cases involving the oral administration of less than or equal to 33mCi (1.22 GBq) of sodium iodide I-131; and

(4) has obtained written attestation that the individual has satisfactorily completed the requirements of paragraph (3) of this section, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this subsection, subsection (nn) or subsection (pp) of this section. A preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(I) or (II) of this section.

(pp) Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq). Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 mCi (1.22 GBq) to be a physician who:

(1) is certified by a medical specialty board whose certification process includes all of the requirements in paragraph (3) of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements of paragraph (4) of this subsection). (The names of board certifications which have been recognized by the agency, the NRC,

agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation);

(2) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(II) of this section; or

(3) has training and experience including, having successfully completed 80 hours of classroom and laboratory training applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use;

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of subsection (nn) or (pp) of this section. A supervising authorized user who meets the requirements of subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages of radioactive drugs to patients or human research subjects that includes at least three cases involving the oral administration of greater than 33mCi (1.22 GBq) of sodium iodide I-131; and

(4) has obtained written attestation that the individual has satisfactorily completed the requirements of paragraph (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in accordance with subsection (kk) of this section. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this subsection or subsection (nn) of this section. The preceptor authorized user, who meets the requirements in subsection (nn)(2) of this section, shall also have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(II) of this section.

(qq) Training for the parenteral administration of unsealed radioactive material requiring a written directive. Except as provided in subsection (l) of this section, the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician who:

(1) is an authorized user in accordance with subsection (nn) of this section for uses listed in subsection (nn)(2)(B)(vi)(III) or (IV) of this section; or

(2) is an authorized user under subsection (zz) or (ttt) of this section and who meets the requirements of paragraph (4) of this subsection; or

(3) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state in accordance with subsection (zz) or (ttt) of this section, and who meets the requirements of paragraph (4) of this subsection. (The names of board certifications which have been recognized by the agency, the NRC, agreement state or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); and

(4) has successfully completed training and experience including 80 hours of classroom and laboratory training applicable to parenteral administrations requiring a written directive, of any beta emitting radionuclide or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. The training and experience shall include the following.

(A) Classroom and laboratory training shall include the following:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity;

(iv) chemistry of radioactive material for medical use; and

(v) radiation biology.

(B) Work experience, under the supervision of an authorized user who meets the requirements of this subsection or subsection (nn) of this section in the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV, and/or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements of subsection (nn) of this section, shall have experience in administering dosages as specified in subsections (nn)(2)(B)(vi)(III) and/or (IV) of this section. The work experience shall involve the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;

(iii) calculating, measuring, and safely preparing patient or human research subject dosages;

(iv) using administrative controls to prevent a medical event involving the use of unsealed radioactive material;

(v) using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and

(vi) administering dosages to patients or human research subjects that include at least three cases involving the parenteral administration, for which a written directive is required, of any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV and/or at least three cases involving the parenteral ad-

ministration of any other radionuclide, for which a written directive is required; and

(5) has obtained written attestation that the individual has satisfactorily completed the requirements of paragraph (2) or (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed radioactive materials requiring a written directive. The written attestation shall be signed by a preceptor authorized user who meets the requirements of this subsection or subsection (nn) of this section. A preceptor authorized user, who meets the requirements of subsection (nn) of this section shall have experience in administering dosages as specified in subsection (nn)(2)(B)(vi)(III) and/or (IV) of this section.

(rr) Use of sealed sources for manual brachytherapy. The licensee shall use only brachytherapy sealed sources for therapeutic medical uses as follows:

(1) as approved in the Sealed Source and Device Registry; or

(2) in research in accordance with an active Investigational Device Exemption application accepted by the FDA and as approved by the agency.

(ss) Surveys after sealed source implants and removal.

(1) Immediately after implanting sealed sources in a patient or a human or animal research subject, the licensee shall perform a survey to locate and account for all sealed sources that have not been implanted.

(2) Immediately after removing the last temporary implant sealed source from a patient or a human or animal research subject, the licensee shall perform a survey of the patient or the human or animal research subject with a radiation detection survey instrument to confirm that all sealed sources have been removed.

(3) A record of each survey shall be retained, for inspection by the agency, in accordance with subsection (www) of this section. The record shall include the following:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name and model and serial number of the instrument used to make the survey; and

(D) name of the individual who performed the survey.

(tt) Brachytherapy sealed sources accountability.

(1) The licensee shall maintain accountability at all times for all brachytherapy sealed sources in storage or use.

(2) Promptly after removing sealed sources from a patient or a human or animal research subject, the licensee shall return brachytherapy sealed sources to a secure storage area.

(3) The licensee shall maintain a record of the brachytherapy sealed source accountability in accordance with subsection (www) of this section for inspection by the agency.

(A) When removing temporary implants from storage, the licensee shall record the number and activity of sources, time and date the sources were removed, the name of the individual who removed the sources, and the location of use. When temporary implants are returned to storage, record the number and activity of sources, the time and date, and the name of the individual who returned them.

(B) When removing permanent implants from storage, the licensee shall record the number and activity of sources, date, the name of the individual who removed the sources, and the number and activity of sources permanently implanted in the patient or human research subject. Record the number and activity of sources not implanted and returned to storage, the date, and the name of the individual who returned them to storage.

(uu) Safety instruction to personnel. The licensee shall provide radiation safety instruction, initially and at least annually, to personnel caring for patients or human or animal research subjects who are receiving brachytherapy and who cannot be released in accordance with subsection (cc) of this section or animals that are confined.

(1) The instruction shall be appropriate to the personnel's assigned duties and include the following:

(A) size and appearance of brachytherapy sources;

(B) safe handling and shielding instructions;

(C) patient or human research subject control;

(D) visitor control to include visitation to hospitalized individuals in accordance with §289.202(n) of this title; and

(E) notification of the RSO, or his or her designee, and an authorized user if the patient or the human or animal research subject has a medical emergency or dies.

(2) A licensee shall maintain a record, for inspection by the agency, in accordance with subsection (www) of this section, of individuals receiving instruction. The record shall include the following:

(A) list of the topics covered;

(B) date of the instruction or training;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(vv) Safety precautions for the use of brachytherapy.

(1) For each patient or human research subject who is receiving brachytherapy and cannot be released in accordance with subsection (cc) of this section the licensee shall:

(A) provide a private room with a private sanitary facility;

(B) post the patient's or the research subject's room with a "Radioactive Materials" sign and note on the door or in the patient's or research subject's chart where and how long visitors may stay in the patient's or the research subject's room; and

(C) have available near each treatment room applicable emergency response equipment to respond to a sealed source that is inadvertently dislodged from the patient or inadvertently lodged within the patient following removal of the sealed source applicators.

(2) The RSO, or his or her designee, and the authorized user shall be notified if the patient or research subject has a medical emergency and, immediately, if the patient dies.

(ww) Calibration measurements of brachytherapy sealed sources.

(1) Prior to the first medical use of a brachytherapy sealed source on or after October 1, 2000, the licensee shall do the following:

(A) determine the sealed source output or activity using a dosimetry system that meets the requirements of subsection (iii)(1) of this section;

(B) determine sealed source positioning accuracy within applicators; and

(C) use published protocols accepted by nationally recognized bodies to meet the requirements of subparagraphs (A) and (B) of this paragraph.

(2) Instead of the licensee making its own measurements as required in paragraph (1) of this subsection, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with paragraph (1) of this subsection.

(3) The licensee shall mathematically correct the outputs or activities determined in paragraph (1) of this subsection for physical decay at intervals consistent with 1.0% physical decay.

(4) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name and model and serial number for the sealed source and instruments used to calibrate the sealed source;

(C) sealed source output or activity;

(D) sealed source positioning accuracy within applicators; and

(E) name of the individual, the source manufacturer, or the calibration laboratory that performed the calibration.

(xx) Decay of strontium-90 sources for ophthalmic treatments.

(1) Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay shall be based on the activity determined in accordance with subsection (ww) of this section.

(2) A licensee shall maintain a record of the strontium-90 source in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date and initial activity of the source as determined in subsection (ww) of this section; and

(B) for each decay calculation, the date and the source activity as determined in subsection (ww) of this section.

(yy) Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays; and

(4) the accuracy of the software used to determine radioactive sealed source positions from radiographic images.

(zz) Training for use of manual brachytherapy sealed sources. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized in subsection (rr) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC or an agreement state and who meets the requirements of paragraph (2)(D) of this section. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources including the following:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology.

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of this subsection at a medical institution, involving the following:

(i) ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

(ii) checking survey meters for proper operation;

(iii) preparing, implanting, and removing brachytherapy sources;

(iv) maintaining running inventories of material on hand;

(v) using administrative controls to prevent a medical event involving the use of radioactive material; and

(vi) using emergency procedures to control radioactive material; and

(C) has completed three years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements of this subsection as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (2)(B) of this subsection; and

(D) has obtained written attestation, signed by a preceptor authorized user who meets the requirements of this subsection that the individual has satisfactorily completed the requirements of paragraph (1)(A) or (2)(A) - (C) of this subsection and has achieved a level of competency sufficient to function independently as an authorized

user of manual brachytherapy for the medical uses authorized in accordance with subsection (rr) of this section.

(aaa) Training for ophthalmic use of strontium-90. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

(1) is an authorized user under subsection (zz) of this section; or

(2) has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training shall include the following.

(A) Classroom training shall include the following:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology.

(B) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training shall involve:

(i) examination of each individual to be treated;

(ii) calculation of the dose to be administered;

(iii) administration of the dose; and

(iv) follow-up and review of each individual's case history; and

(C) has obtained written attestation, signed by a preceptor authorized user who meets the requirements of this subsection or subsection (zz) of this section that the individual has satisfactorily completed the requirements of paragraphs (1) and (2) of this subsection and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

(bbb) Use of sealed sources for diagnosis. The licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.

(ccc) Training for use of sealed sources for diagnosis. Except as provided in subsection (l) of this section, the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized in accordance with subsection (bbb) of this section to be a physician, dentist, or podiatrist who:

(1) is certified by a specialty board whose certification process includes the requirements of paragraphs (2) and (3) of this subsection and whose certification has been recognized by the agency, the NRC, an agreement state, or licensing state. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation); or

(2) has completed eight hours of classroom and laboratory training in basic radioisotope handling techniques specifically applicable to the use of the device. The training shall include:

(A) radiation physics and instrumentation;

(B) radiation protection;

(C) mathematics pertaining to the use and measurement of radioactivity; and

(D) radiation biology; and

(3) has completed training in the use of the device for the uses requested.

(ddd) Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit. The licensee shall use sealed sources in photon-emitting remote afterloader units, teletherapy units, or gamma stereotactic units for therapeutic medical uses as follows:

(1) as approved in the Sealed Source and Device Registry; or

(2) in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of subsection (u) of this section are met.

(eee) Surveys of patients and human research subjects treated with a remote afterloader unit.

(1) Before releasing a patient or a human research subject from licensee control, the licensee shall perform a survey of the patient or the human research subject and the remote afterloader unit with a portable radiation detection survey instrument to confirm that the sealed source(s) has been removed from the patient or human research subject and returned to the safe shielded position.

(2) The licensee shall maintain a record of the surveys in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the survey;

(B) results of the survey;

(C) manufacturer's name, model, and serial number of the survey instrument used; and

(D) name of the individual who made the survey.

(fff) Installation, maintenance, adjustment, and repair.

(1) Only a person specifically licensed by the agency, the NRC, an agreement state, or licensing state shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the sealed source(s) shielding, the sealed source(s) driving unit, or other electronic or mechanical component that could expose the sealed source(s), reduce the shielding around the sealed source(s), or compromise the radiation safety of the unit or the sealed source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the agency, the NRC, an agreement state, or licensing state shall install, replace, relocate, or remove a sealed source or sealed source contained in other remote afterloader units, teletherapy units, or gamma stereotactic units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the agency, the NRC, an agreement state, a licensing state, or an authorized medical physicist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) The licensee shall maintain a record of the installation, maintenance, adjustment and repair done on remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with subsection (www) of this section for inspection by the agency. For each installation, maintenance, adjustment and repair, the record shall include the date, description of the service, and name(s) of the individual(s) who performed the work.

(ggg) Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. A licensee shall do the following:

(1) secure the unit, the console, the console keys, and the treatment room when not in use or unattended;

(2) permit only individuals approved by the authorized user, RSO, or authorized medical physicist to be present in the treatment room during treatment with the sealed source(s);

(3) prevent dual operation of more than one radiation producing device in a treatment room if applicable;

(4) develop, implement, and maintain written procedures for responding to an abnormal situation when the operator is unable to place the sealed source(s) in the shielded position, or remove the patient or human research subject from the radiation field with controls from outside the treatment room. The procedures shall include the following and shall be physically located at the unit console:

(A) instructions for responding to equipment failures and the names of the individuals responsible for implementing corrective actions;

(B) the process for restricting access to and posting of the treatment area to minimize the risk of inadvertent exposure; and

(C) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally;

(5) post instructions at the unit console to inform the operator of the following:

(A) the location of the procedures required by paragraph (4) of this subsection; and

(B) the names and telephone numbers of the authorized users, the authorized medical physicist, and the RSO to be contacted if the unit or console operates abnormally;

(6) provide instruction initially and at least annually, to all individuals who operate the unit, as appropriate to the individual's assigned duties, to include:

(A) procedures identified in paragraph (4) of this subsection; and

(B) operating procedures for the unit;

(7) ensure that operators, authorized medical physicists, and authorized users participate in drills of the emergency procedures, initially and at least annually; and

(8) maintain records of individuals receiving instruction and participating in drills required by paragraphs (6) and (7) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) a list of the topics covered;

(B) date of the instruction or drill;

(C) name(s) of the attendee(s); and

(D) name(s) of the individual(s) who provided the instruction.

(hhh) Safety precautions for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. The licensee shall do the following:

(1) control access to the treatment room by a door at each entrance;

(2) equip each entrance to the treatment room with an electrical interlock system that will do the following:

(A) prevent the operator from initiating the treatment cycle unless each treatment room entrance door is closed;

(B) cause the sealed source(s) to be shielded promptly when an entrance door is opened; and

(C) prevent the sealed source(s) from being exposed following an interlock interruption until all treatment room entrance doors are closed and the sealed source(s) "on-off" control is reset at the console;

(3) require any individual entering the treatment room to assure, through the use of appropriate radiation monitors, that radiation levels have returned to ambient levels;

(4) except for low-dose remote afterloader units, construct or equip each treatment room with viewing and intercom systems to permit continuous observation of the patient or the human research subject from the treatment console during irradiation;

(5) for licensed activities where sealed sources are placed within the patient's or human research subject's body, only conduct treatments that allow for expeditious removal of a decoupled or jammed sealed source;

(6) in addition to the requirements specified in paragraphs (1) - (5) of this subsection, require the following:

(A) for low dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units:

(i) an authorized medical physicist, and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist, and either an authorized user or an individual, under the supervision of an authorized user, who has been trained to remove the sealed source applicator(s) in the event of an emergency involving the unit, be immediately available during continuation of all patient treatments involving the unit;

(B) for high dose-rate remote afterloader units:

(i) an authorized user and an authorized medical physicist be physically present during the initiation of all patient treatments involving the unit; and

(ii) an authorized medical physicist, and either an authorized user or a physician, under the supervision of an authorized user, who has been trained in the operation and emergency response for the unit, be physically present during continuation of all patient treatments involving the unit;

(C) for gamma stereotactic radiosurgery units, require that an authorized user and an authorized medical physicist be physically present throughout all patient treatments involving gamma stereotactic radiosurgery units; and

(D) notify the RSO, or his or her designee, and an authorized user as soon as possible, if the patient or human research subject has a medical emergency or dies; and

(7) have applicable emergency response equipment available near each treatment room to respond to a sealed source that remains in the unshielded position or lodges within the patient following completion of the treatment.

(iii) Dosimetry equipment.

(1) Except for low dose-rate remote afterloader sealed sources where the sealed source output or activity is determined by the manufacturer, the licensee shall have a calibrated dosimetry system available for use. To satisfy this requirement, one of the following two conditions shall be met.

(A) The system shall have been calibrated using a system or sealed source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration shall have been performed within the previous two years and after any servicing that may have affected system calibration.

(B) The system shall have been calibrated within the previous four years. Eighteen to 30 months after that calibration, the system shall have been intercompared with another dosimetry system that was calibrated within the past 24 months by NIST or by a calibration laboratory accredited by the AAPM. The results of the intercomparison shall have indicated that the calibration factor of the licensee's system had not changed by more than 2.0%. The licensee may not use the intercomparison result to change the calibration factor. When intercomparing dosimetry systems to be used for calibrating sealed sources for therapeutic unit, the licensee shall use a comparable unit with beam attenuators or collimators, as applicable, and sealed sources of the same radionuclide as the sealed source used at the licensee's facility.

(2) The licensee shall have available for use a dosimetry system for spot check output measurements, if such measurements are required by this section. To satisfy this requirement, the system may be compared with a system that has been calibrated in accordance with paragraph (1) of this subsection. This comparison shall have been performed within the previous year and after each servicing that may have affected system calibration. The spot check system may be the same system used to meet the requirements of paragraph (1) of this subsection.

(3) The licensee shall retain a record of each calibration, intercomparison, and comparison of dosimetry equipment in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's model and serial numbers of the instruments that were calibrated, intercompared, or compared;

(C) the correction factor that was determined from the calibration or comparison or the apparent correction factor that was determined from an intercomparison; and

(D) the names of the individuals who performed the calibration, intercomparison, or comparison.

(jjj) Full calibration measurements on teletherapy units.

(1) A licensee authorized to use a teletherapy unit for medical use shall perform full calibration measurements on each teletherapy unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under any of the following conditions:

(i) whenever spot check measurements indicate that the output differs by more than 5.0% from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed source or following reinstallation of the teletherapy unit in a new location;

(iii) following any repair of the teletherapy unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year.

(2) Full calibration measurements shall include determination of the following:

(A) the output within plus or minus 3.0% for the range of field sizes and for the distance or range of distances used for medical use;

(B) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(C) uniformity of the radiation field and its dependence on the orientation of the useful beam;

(D) timer accuracy and linearity over the range of use;

(E) "on-off" error; and

(F) the accuracy of all distance measuring and localization devices in medical use.

(3) The licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) The licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals not to exceed one month for cobalt-60, six months for cesium-137, or at intervals consistent with 1.0% decay for all other nuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection shall be performed by an authorized medical physicist.

(7) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name, model number and serial number of the teletherapy unit's sealed source and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations; and

(D) signature of the authorized medical physicist who performed the full calibration.

(kkk) Full calibration measurements on remote afterloader units.

(1) A licensee authorized to use a remote afterloader for medical use shall perform full calibration measurements on each unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under any of the following conditions:

(i) following replacement of the sealed source;

(ii) following reinstallation of the unit in a new location outside the facility;

(iii) following any repair of the unit that includes removal of the sealed source or major repair of the components associated with the sealed source exposure assembly;

(C) at intervals not to exceed three months for high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader units with sealed sources whose half-life exceeds 75 days; and

(D) at intervals not to exceed one year for low dose-rate afterloader units.

(2) Full calibration measurements shall include, as applicable, determination of the following:

(A) the output within plus or minus 5.0%;

(B) sealed source positioning accuracy to within plus or minus 1 millimeter (mm);

(C) sealed source retraction with backup battery upon power failure;

(D) length of the sealed source transfer tubes;

(E) timer accuracy and linearity over the typical range of use;

(F) length of the applicators; and

(G) function of the sealed source transfer tubes, applicators, and transfer tube-applicator interfaces.

(3) A licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output.

(4) A licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) In addition to the requirements for full calibrations for low dose-rate remote afterloader units in paragraph (2) of this subsection, a licensee shall perform an autoradiograph of the sealed source(s) to verify inventory and sealed source(s) arrangement at intervals not to exceed three months.

(6) For low dose-rate remote afterloader units, a licensee may use measurements provided by the sealed source manufacturer that are made in accordance with paragraphs (1) - (5) of this subsection.

(7) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection for physical decay at intervals consistent with 1.0% physical decay.

(8) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (7) of this subsection shall be performed by an authorized medical physicist.

(9) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name, model number and serial number of the remote afterloader unit's sealed source, and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibrations;

(D) signature of the authorized medical physicist of this section; and

(E) results of the autoradiograph required for low dose-rate remote afterloader unit.

(lll) Full calibration measurements on gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform full calibration measurements on each gamma stereotactic radiosurgery unit as follows:

(A) before the first medical use of the unit;

(B) before medical use under the following conditions:

(i) whenever spot check measurements indicate that the output differs by more than 5.0% from the output obtained at the last full calibration corrected mathematically for radioactive decay;

(ii) following replacement of the sealed sources or following reinstallation of the gamma stereotactic radiosurgery unit in a new location; and

(iii) following any repair of the gamma stereotactic radiosurgery unit that includes removal of the sealed sources or major repair of the components associated with the sealed source exposure assembly; and

(C) at intervals not to exceed one year, with the exception that relative helmet factors need only be determined before the first medical use of a helmet and following any damage to a helmet.

(2) Full calibration measurements shall include determination of the following:

(A) the output within plus or minus 3.0%;

(B) relative helmet factors;

(C) isocenter coincidence;

(D) timer accuracy and linearity over the range of use;

(E) "on-off" error;

(F) trunnion centricity;

(G) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off";

(H) helmet microswitches;

(I) emergency timing circuits; and

(J) stereotactic frames and localizing devices (trunnions).

(3) The licensee shall use the dosimetry system described in subsection (iii)(1) of this section to measure the output for one set of exposure conditions. The remaining radiation measurements required in paragraph (2)(A) of this subsection may be made using a dosimetry system that indicates relative dose rates.

(4) The licensee shall make full calibration measurements required by paragraph (1) of this subsection in accordance with published protocols accepted by nationally recognized bodies.

(5) The licensee shall mathematically correct the outputs determined in paragraph (2)(A) of this subsection at intervals not to exceed one month for cobalt-60 and at intervals consistent with 1.0% physical decay for all other radionuclides.

(6) Full calibration measurements required by paragraph (1) of this subsection and physical decay corrections required by paragraph (5) of this subsection shall be performed by an authorized medical physicist.

(7) The licensee shall retain a record of each calibration in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the calibration;

(B) manufacturer's name, model number, and serial number for the unit and the unit's sealed source and the instruments used to calibrate the unit;

(C) results and an assessment of the full calibration; and

(D) signature of the authorized medical physicist who performed the full calibration.

(mmm) Periodic spot checks for teletherapy units.

(1) A licensee authorized to use teletherapy units for medical use shall perform output spot checks on each teletherapy unit once in each calendar month that include determination of the following:

(A) timer constancy and linearity over the range of use;

(B) "on-off" error;

(C) the coincidence of the radiation field and the field indicated by the light beam localizing device;

(D) the accuracy of all distance measuring and localization devices used for medical use;

(E) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section; and

(F) the difference between the measurement made in subparagraph (E) of this paragraph and the anticipated output, expressed as a percentage of the anticipated output, the value obtained at last full calibration corrected mathematically for physical decay.

(2) The licensee shall perform measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That authorized medical physicist need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee authorized to use a teletherapy unit for medical use shall perform safety spot checks of each teletherapy facility once in each calendar month and after each sealed source installation to assure proper operation of the following:

(A) electrical interlocks at each teletherapy room entrance;

(B) electrical or mechanical stops installed for the purpose of limiting use of the primary beam of radiation (restriction of sealed source housing angulation or elevation, carriage or stand travel and operation of the beam "on-off" mechanism);

(C) sealed source exposure indicator lights on the teletherapy unit, on the control console, and in the facility;

(D) viewing and intercom systems;

(E) treatment room doors from inside and outside the treatment room; and

(F) electrically assisted treatment room doors with the teletherapy unit electrical power turned "off".

(4) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(5) If the results of the checks required in paragraph (3) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee shall retain a record of each spot check required by paragraphs (1) and (3) of this subsection, in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the spot-check;

(B) manufacturer's name and model and serial number for the teletherapy unit, and sealed source and instrument used to measure the output of the teletherapy unit;

(C) assessment of timer linearity and constancy;

(D) calculated "on-off" error;

(E) determination of the coincidence of the radiation field and the field indicated by the light beam localizing device;

(F) the determined accuracy of each distance measuring and localization device;

(G) the difference between the anticipated output and the measured output;

(H) notations indicating the operability of each entrance door electrical interlock, each electrical or mechanical stop, each sealed source exposure indicator light, and the viewing and intercom system and doors;

(I) name of the individual who performed the periodic spot-check; and

(J) the signature of the authorized medical physicist who reviewed the record of the spot check.

(nnn) Periodic spot checks for remote afterloader units.

(1) A licensee authorized to use a remote afterloader unit for medical use shall perform spot checks of each remote afterloader facility and on each unit as follows:

(A) before the first use each day of use of a high dose-rate, medium dose-rate, or pulsed dose-rate remote afterloader unit;

(B) before each patient treatment with a low dose-rate remote afterloader unit; and

(C) after each sealed source installation.

(2) The licensee shall perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist. That individual need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1) of this subsection, spot checks shall, at a minimum, assure proper operation of the following:

(A) electrical interlocks at each remote afterloader unit room entrance;

(B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(C) viewing and intercom systems in each high dose-rate, medium dose-rate, and pulsed dose-rate remote afterloader facility;

(D) emergency response equipment;

(E) radiation monitors used to indicate the sealed source position;

(F) timer accuracy;

(G) clock (date and time) in the unit's computer; and

(H) decayed sealed source(s) activity in the unit's computer.

(5) If the results of the checks required in paragraph (4) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(6) The licensee shall maintain a record, in accordance with subsection (www) of this section for inspection by the agency, of each check required by paragraph (4) of this subsection. The record shall include the following, as applicable:

(A) date of the spot-check;

(B) manufacturer's name and model and serial number for the remote afterloader unit and sealed source;

(C) an assessment of timer accuracy;

(D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom systems, clock, and decayed sealed source activity in the unit's computer;

(E) name of the individual who performed the periodic spot-check; and

(F) the signature of an authorized medical physicist who reviewed the record of the spot-check.

(ooo) Periodic spot checks for gamma stereotactic radiosurgery units.

(1) A licensee authorized to use a gamma stereotactic radiosurgery unit for medical use shall perform spot checks of each gamma stereotactic radiosurgery facility and on each unit as follows:

(A) monthly;

(B) before the first use of the unit on each day of use; and

(C) after each source installation.

(2) The licensee shall perform the measurements required by paragraph (1) of this subsection in accordance with written procedures established by an authorized medical physicist with a specialty in therapeutic radiological physics. That individual need not actually perform the spot check measurements. The licensee shall maintain a copy of the written procedures in accordance with subsection (www) of this section for inspection by the agency.

(3) The licensee shall have an authorized medical physicist review the results of each spot check and submit a written report to the licensee within 15 days of the spot check.

(4) To satisfy the requirements of paragraph (1)(A) of this subsection, spot checks shall, at a minimum, achieve the following by:

(A) assurance of proper operation of these items:

(i) treatment table retraction mechanism, using backup battery power or hydraulic backups with the unit "off;"

(ii) helmet microswitches;

(iii) emergency timing circuits; and

(iv) stereotactic frames and localizing devices (trunnions); and

(B) determination of the following:

(i) the output for one typical set of operating conditions measured with the dosimetry system described in subsection (iii)(2) of this section;

(ii) the difference between the measurement made in clause (i) of this subparagraph and the anticipated output, expressed as a percentage of the anticipated output, (i.e., the value obtained at last full calibration corrected mathematically for physical decay);

(iii) sealed source output against computer calculation;

(iv) timer accuracy and linearity over the range of use;

(v) "on-off" error; and

(vi) trunnion centricity.

(5) To satisfy the requirements of paragraph (1)(B) and (C) of this subsection, spot checks shall assure proper operation of the following:

(A) electrical interlocks at each gamma stereotactic radiosurgery room entrance;

(B) sealed source exposure indicator lights on the gamma stereotactic radiosurgery unit, on the control console, and in the facility;

(C) viewing and intercom systems;

(D) timer termination;

(E) radiation monitors used to indicate room exposures; and

(F) emergency "off" buttons.

(6) The licensee shall arrange for prompt repair of any system identified in paragraph (4) of this subsection that is not operating properly.

(7) If the results of the checks required in paragraph (5) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(8) The licensee shall retain a record of each check required by paragraphs (4) and (5) of this subsection in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of the spot check;

(B) manufacturer's name, and model and serial number for the gamma stereotactic radiosurgery unit and the instrument used to measure the output of the unit;

(C) an assessment of timer linearity and accuracy;

(D) the calculated "on-off" error;

(E) a determination of trunnion centricity;

(F) the difference between the anticipated output and the measured output;

(G) an assessment of sealed source output against computer calculations;

(H) notations indicating the operability of radiation monitors, helmet microswitches, emergency timing circuits, emergency "off" buttons, electrical interlocks, sealed source exposure indicator lights, viewing and intercom systems, timer termination, treatment table retraction mechanism, and stereotactic frames and localizing devices (trunnions);

(I) the name of the individual who performed the periodic spot check; and

(J) the signature of an authorized medical physicist who reviewed the record of the spot check.

(ppp) Additional technical requirements for mobile remote afterloader units.

(1) A licensee providing mobile remote afterloader service shall do the following:

(A) check survey instruments before medical use at each address of use or on each day of use, whichever is more frequent; and

(B) account for all sealed sources before departure from a client's address of use.

(2) In addition to the periodic spot checks required by subsection (nnn) of this section, a licensee authorized to use remote afterloaders for medical use shall perform checks on each remote afterloader unit before use at each address of use. At a minimum, checks shall be made to verify the operation of the following:

(A) electrical interlocks on treatment area access points;

(B) sealed source exposure indicator lights on the remote afterloader unit, on the control console, and in the facility;

(C) viewing and intercom systems;

(D) applicators, sealed source transfer tubes, and transfer tube-applicator interfaces;

(E) radiation monitors used to indicate room exposures;

(F) sealed source positioning (accuracy); and

(G) radiation monitors used to indicate whether the sealed source has returned to a safe shielded position.

(3) In addition to the requirements for checks in paragraph (2) of this subsection, the licensee shall ensure overall proper operation of the remote afterloader unit by conducting a simulated cycle of treatment before use at each address of use.

(4) If the results of the checks required in paragraph (2) of this subsection indicate the malfunction of any system, the licensee shall lock the control console in the "off" position and not use the unit except as may be necessary to repair, replace, or check the malfunctioning system.

(5) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of each check required by subparagraph (B) of this paragraph. The record shall include the following:

(A) date of the check;

(B) manufacturer's name, model number and serial number of the remote afterloader unit;

(C) notations accounting for all sealed sources before the licensee departs from a facility;

(D) notations indicating the operability of each entrance door electrical interlock, radiation monitors, sealed source exposure indicator lights, viewing and intercom system, applicators and sealed source transfer tubes, and sealed source positioning accuracy; and

(E) the signature of the individual who performed the check.

(qqq) Radiation surveys.

(1) In addition to the survey requirements of §289.202(p) of this title, a person licensed to use sealed sources in this section shall make surveys to ensure that the maximum radiation levels and average radiation levels, from the surface of the main sealed source safe with the sealed source(s) in the shielded position, do not exceed the levels stated in the Sealed Source and Device Registry.

(2) The licensee shall make the survey required by paragraph (1) of this subsection at installation of a new sealed source and following repairs to the sealed source(s) shielding, the sealed source(s) driving unit, or other electronic or mechanical component that could expose the sealed source, reduce the shielding around the sealed source(s), or compromise the radiation safety of the unit or the sealed source(s).

(3) The licensee shall maintain a record for inspection by the agency, in accordance with subsection (www) of this section, of the radiation surveys required by paragraph (1) of this subsection. The record shall include:

(A) date of the measurements;

(B) manufacturer's name, model number and serial number of the treatment unit, sealed source, and instrument used to measure radiation levels;

(C) each dose rate measured around the sealed source while the unit is in the "off" position and the average of all measurements; and

(D) the signature of the individual who performed the test.

(rrr) Five-year inspection for teletherapy and gamma stereotactic radiosurgery units.

(1) The licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during sealed source replacement or at intervals not to exceed five years, whichever comes first, to assure proper functioning of the sealed source exposure mechanism.

(2) This inspection and servicing may only be performed by persons specifically licensed to do so by the agency, the NRC, an agreement state, or licensing state.

(3) The licensee shall maintain a record of the inspection and servicing in accordance with subsection (www) of this section for inspection by the agency. The record shall include the following:

(A) date of inspection;

(B) manufacturer's name and model and serial number of both the treatment unit and the sealed source;

(C) a list of components inspected and serviced, and the type of service; and

(D) the radioactive material license number and the signature of the individual performing the inspection.

(sss) Therapy-related computer systems. The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance testing shall include, as applicable, verification of the following:

(1) the sealed source-specific input parameters required by the dose calculation algorithm;

(2) the accuracy of dose, dwell time, and treatment time calculations at representative points;

(3) the accuracy of isodose plots and graphic displays;

(4) the accuracy of the software used to determine sealed source positions from radiographic images; and

(5) the accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

(ttt) Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units. Except as provided in subsection (l) of this section, the licensee shall require an authorized user of a sealed source for a use authorized in subsection (ddd) of this section to be a physician who:

(1) is certified by a medical specialty board whose certification process has been recognized by the agency, the NRC, an agreement state, or licensing state and who meets the requirements of paragraphs (2)(D) and (3) of this subsection. (The names of board certifications that have been recognized by the agency, the NRC, an agreement state, or licensing state will be posted on the agency's web page, www.dshs.state.tx.us/radiation). To have its certification recognized, a specialty board shall require all candidates for certification to:

(A) successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(B) pass an examination, administered by diplomates of the specialty board, that assesses knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders and external beam therapy; or

(2) has completed a structured educational program in basic radionuclide handling techniques applicable to the use of a sealed source in a therapeutic medical unit including:

(A) 200 hours of classroom and laboratory training in the following areas:

(i) radiation physics and instrumentation;

(ii) radiation protection;

(iii) mathematics pertaining to the use and measurement of radioactivity; and

(iv) radiation biology; and

(B) 500 hours of work experience, under the supervision of an authorized user who meets the requirements of this subsection at a medical institution involving the following:

(i) reviewing full calibration measurements and periodic spot checks;

(ii) preparing treatment plans and calculating treatment times;

(iii) using administrative controls to prevent a medical event involving the use of radioactive material;

(iv) implementing emergency procedures to be followed in the event of the abnormal operation of a medical unit or console;

(v) checking and using survey meters; and

(vi) selecting the proper dose and how it is to be administered; and

(C) has completed three years of supervised clinical experience in radiation therapy, under an authorized user who meets the requirements of this subsection as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by subparagraph (B) of this paragraph: and

(D) has obtained written attestation that the individual has satisfactorily completed the requirements of paragraphs (1)(A) or (2), and (3) of this subsection, and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation shall be signed by a preceptor authorized user who meets the requirements in this subsection; and

(3) has received training in device operation, safety procedures, and clinical use for the type(s) of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type(s) of use for which the individual is seeking authorization.

(uuu) Report and notification of a medical event.

(1) The licensee shall report any event, except for events that result from intervention by a patient or human research subject, in which the administration of radioactive material, or radiation from radioactive material, results in the following:

(A) a dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 Sievert (Sv)) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin and either:

(i) the total dose delivered differs from the prescribed dose by 20% or more;

(ii) the total dosage delivered differs from the prescribed dosage by 20% or more or falls outside the prescribed dosage range; or

(iii) the fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50% or more;

(B) a dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from any of the following:

(i) an administration of a wrong radioactive drug containing radioactive material;

(ii) an administration of a radioactive drug containing radioactive material by the wrong route of administration;

(iii) an administration of a dose or dosage to the wrong individual or human research subject;

(iv) an administration of a dose or dosage delivered by the wrong mode of treatment; or

(v) a leaking sealed source; or

(C) a dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rem (0.5 Sv) to an organ or tissue and 50% or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).

(2) The licensee shall report any event resulting from intervention of a patient or human research subject in which the administration of radioactive material, or radiation from radioactive material, results or will result in an unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the agency by telephone no later than the next calendar day after discovery of the medical event.

(4) The licensee shall submit a written report to the agency within 15 calendar days after discovery of the medical event. The written report shall include the following, excluding the individual's name or any other information that could lead to identification of the individual:

(A) the licensee's name and radioactive material license number;

(B) the name of the prescribing physician;

(C) a brief description of the medical event;

(D) why the event occurred;

(E) the effect, if any, on the individual(s) who received the administration;

(F) actions, if any, that have been taken, or are planned, to prevent recurrence; and

(G) certification that the licensee notified the individual (or the individual's responsible relative or guardian), and if not, why not.

(5) The licensee shall notify the referring physician and also notify the individual who is the subject of the medical event no later than 24 hours after its discovery, unless the referring physician personally informs the licensee either that he or she will inform the individual or that, based on medical judgment, telling the individual would be harmful. The licensee is not required to notify the individual without first consulting the referring physician. If the referring physician or the affected individual cannot be reached within 24 hours, the licensee shall notify the individual as soon as possible thereafter. The licensee shall not delay any appropriate medical care for the individual, including any necessary remedial care as a result of the medical event, because of any delay in notification. To meet the requirements of this subsection, the notification of the individual who is the subject of the medical event may be made instead to that individual's responsible relative or guardian. If a verbal notification is made, the licensee shall inform the individual or appropriate responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide the written description if requested.

(6) Aside from the notification requirement, nothing in this section affects any rights or duties of licensees and physicians in relation to each other, to individuals affected by the medical event, or to that individual's responsible relatives or guardians.

(7) The licensee shall annotate a copy of the report provided to the agency with the following information:

(A) the name of the individual who is the subject of the event; and

(B) a unique identification number of the individual who is the subject of the event.

(8) The licensee shall provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 calendar days after the discovery of the event.

(9) The licensee shall retain a copy of the annotated report of the medical event in accordance with subsection (www) of this section for inspection by the agency.

(vvv) Report and notification of a dose to an embryo/fetus or nursing child.

(1) The licensee shall report any dose to an embryo/fetus that is greater than 5 rem (50 mSv) dose equivalent that is a result of an administration of radioactive material or radiation from radioactive material to a pregnant individual, unless the dose to the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) The licensee shall report any dose to a nursing child that is a result of an administration of radioactive material to a breast feeding individual that:

(A) is greater than 5 rem (50 mSv) TEDE; or

(B) has resulted in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

(3) The licensee shall notify the agency by telephone no later than the next calendar day after discovery of a dose to the embryo/fetus or nursing child that requires a report in accordance with paragraph (1) or (2) of this subsection.

(4) The licensee shall submit a written report to the agency no later than 15 calendar days after discovery of a dose to the embryo/fetus or nursing child that requires a report in accordance with paragraph (1) or (2) of this subsection. The written report shall include the following, excluding the individual's or child's name or any other information that could lead to identification of the individual or child:

(A) the licensee's name and radioactive material license number;

(B) the name of the prescribing physician;

(C) a brief description of the event;

(D) why the event occurred;

(E) the effect, if any, on the embryo/fetus or the nursing child;

(F) actions, if any, that have been taken, or are planned, to prevent recurrence; and

(G) certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

(5) The licensee shall notify the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting in accordance with paragraph (1) or (2) of this subsection, unless the referring physician personally informs the licensee either that he or she will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this subsection, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother, when appropriate. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(6) The licensee shall annotate a copy of the report provided to the agency with the following information:

(A) the name of the individual or the nursing child who is the subject of the event; and

(B) a unique identification number of the pregnant individual or the nursing child who is the subject of the event.

(7) The licensee shall provide a copy of the annotated report as described in paragraph (6) of this subsection to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

(8) The licensee shall retain a copy of the annotated report as described in paragraph (6) of this subsection of a dose to an embryo/fetus or a nursing child in accordance with subsection (www) of this section for inspection by the agency.

(www) Records/documents for agency inspection. Each licensee shall maintain copies of the following records/documents at each authorized use site and make them available to the agency for inspection, upon reasonable notice.
Figure: 25 TAC §289.256(www)

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 30, 2008.

TRD-200803397
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 458-7111 x6972

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER O. COMMERCIAL NONGAME PERMITS

31 TAC §§65.325, 65.327, 65.331

The Texas Parks and Wildlife Department proposes amendments to §§65.325, 65.327, and 65.331, concerning Commercial Nongame Permits.

In April of 2007, the Texas Parks and Wildlife Commission adopted a comprehensive revision of the department's rules governing the possession and sale of nongame wildlife, including the creation of a "prohibited list" of nongame species that cannot be possessed or used for commercial purposes. The rules took effect October 21, 2007.

The primary goal of the rules was to protect wild populations of nongame species on the prohibited list from commercial collection; however, the rules do allow a person to possess not more than six specimens of any species on the prohibited list, provided the specimens are not used for a commercial purpose.

The rules also acknowledged that the creation of the prohibited list would have the consequence of making it unlawful to possess certain species of nongame wildlife that had been lawfully possessed prior to the effective date of the rules. Therefore, the rules required those persons in recreational possession (personal use, as opposed to commercial use) of more than six specimens of species on the prohibited list to report those collections to the department by November 1, 2008. The department's intent in establishing this "grandfather" provision was to provide a window of time for the development of additional rules to address the possession, captive breeding and sale of species on the prohibited list.

The department does not wish to criminalize the possession of specimens on the prohibited list by persons who lawfully possessed those specimens prior to the effective date of the rules, provided the specimens are not used in a commercial activity. The department also does not see any reason to prohibit the commercial use of captive-bred specimens of species on the prohibited list, provided the breeding stock was lawfully acquired (i.e., acquired from a lawful out-of-state source). The proposed amendments to §§65.325, 65.327, and 65.331 are intended, collectively, to accomplish that goal.

The proposed amendment to §65.325, concerning Applicability, would eliminate subsection (c)(1), which established a deadline for commercial dealers to divest themselves of species on the prohibited list. The deadline has passed, making the provision superfluous.

The proposed amendment to §65.325 also alters the provisions of subsection (c)(2)(A) to extend the 'grandfather' provision for specimens held in recreational collections in numbers exceeding the possession limit established in §65.331(e) (the "prohibited list"). The proposed amendment is necessary to provide for continued lawful possession of nongame species that were lawfully possessed prior to October 21, 2007, while affording additional time for the persons possessing the specimens to contact the department and report the collections. Since the current rules became effective on October 21, 2007, there have been only a handful of persons who have complied with the reporting requirements for recreational collections affected by the subchapter. The department has no method to reliably estimate how many persons in the state may be in recreational possession of more than six specimens of any given species on the prohibited list. Anecdotal information and communications with per-

sons knowledgeable with the pet trade suggest that there may be as many as 1,000 people with recreational collections consisting to some degree of species on the prohibited list. The department therefore has determined that it is necessary to extend the 'grandfather' clause in order to conduct more extensive outreach and awareness activities. Accordingly, the department proposes to extend the 'grandfather' clause for an additional two years.

The proposed amendment to §65.325 also clarifies that the exception of rabbits from the applicability of the subchapter affects only the genus *Sylvilagus*, which consists of species commonly referred to as cottontails. The department is concerned that confusion could occur, because the black-tailed jackrabbit (which is subject to the rules), despite its common name is a member of the genus *Lepus*, and thus is a hare, not a rabbit.

The proposed amendment to §65.327, concerning Permit Required, would alter subsection (b)(1) to clarify that the provisions of the rule apply to the export of nongame wildlife as well as to the import of nongame wildlife, and that the rules apply to the import or export of nongame wildlife for any purpose, including sale or resale. The proposed amendment also would clarify that rules authorize activity only with respect to lawfully obtained nongame wildlife. Current subsection (b)(1)(D)(iii) requires persons to report and keep records of each instance in which nongame wildlife is shipped out of state, which by definition constitutes export, although that term is not used. However, there are provisions in subparagraph (D) that obviously are applicable to importation but not exportation. By creating a separate subparagraph (E) to isolate the current provisions that apply specifically to export, the department intends to make the rules easier to navigate and understand. Similarly, current subsection (b)(1)(D) authorizes permit holders to import nongame wildlife into Texas "for sale or resale." The department does not intend for this provision to be interpreted as restricting the applicability of the rules to "sale" and "resale" of nongame wildlife, but intends for the rules to apply to any instance in which nongame wildlife is imported to or exported from the state.

The proposed amendment to §65.327 also would add new subsection (b)(1)(F) to explicitly authorize the holder of a nongame dealer permit to breed and sell all species of nongame wildlife, provided the brood stock is lawfully acquired and the person is in compliance with the documentation requirements of the subchapter.

The proposed amendment to §65.327 also would alter subsection (b)(2)(B) to allow the holder of a nongame dealer permit to purchase and sell all species of nongame wildlife, provided the person complies with the documentation requirements of the subchapter as they relate to species on the prohibited list.

The proposed amendment to §65.331, concerning Commercial Activity, would alter subsection (e) to allow for the commercial use of species listed in subsection (e), provided the specimens are lawfully obtained and the person is in compliance with all applicable reporting and recordkeeping requirements of the subchapter. The proposed amendment also would remove the cornsnake (*Pantherophis guttata*), the house mouse, and the rough-footed mud turtle from the list of species that are prohibited from use in commercial activity. The cornsnake is not native to Texas. The house mouse is not wildlife and should not have been included on the list. The rough-footed mud turtle should not have been on the list because it is protected from take under the provisions of Chapter 65, Subchapter G, which regulates endangered and threatened species.

Matt Wagner, Wildlife Diversity Program Director, has determined that for each of the first five years that the amendments as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcement or administration of the amended rules.

Mr. Wagner also has determined that for each year of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the amended rules will be rules that offer the opportunity for persons to engage in the breeding and sale of all species of nongame wildlife while continuing to afford protection to wild populations.

There will be no adverse economic effect on persons required to comply with the amendments as proposed.

The department has determined that small or micro-businesses may be affected by the proposed amendments; however, the amendments as proposed will not result in direct adverse economic impacts on small businesses or micro-businesses, but may have a beneficial effect by allowing for the importation, propagation, and sale of species that are currently unlawful to possess for commercial purposes. The department cannot determine the number of entities affected by the amended rules that may qualify as small or micro-businesses; however, the proposed amendments would not add new reporting or recordkeeping requirements; require any new professional expertise, capital costs, or costs for modification of existing processes or procedures; lead to loss of sales or profits; change market competition; or increase taxes or fees.

The purpose of the proposed amendments is to create an opportunity for persons to engage in the breeding and sale of all species of nongame wildlife without weakening protections for wild populations and to maintain accurate lists of indigenous wildlife in rules governing indigenous wildlife.

Since the department has determined that the amendments as proposed will not result in direct adverse economic impact on small businesses and micro-businesses, the department therefore has not considered alternatives to reduce the direct adverse economic impact of the proposed amendments on small businesses and micro-businesses.

In view of the information currently available to the department, no reasonable alternative to the proposed amendments could be identified that achieve the objective of the proposed amendments and be as effective and less burdensome to small businesses or micro-businesses.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the amended rules will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Texas Government Code, Chapter 2007, as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to Nancy Gallacher, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4978 (e-mail: nancy.gallacher@tpwd.state.tx.us).

The amendments are proposed under the authority of Texas Parks and Wildlife Code, §67.004, which authorizes the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish or wildlife that the department considers

necessary to manage the species; and §67.0041, which authorizes the department to issue permits for the taking, possession, propagation, transportation, sale, importation, or exportation of a nongame species of fish or wildlife if necessary to properly manage that species.

The proposed amendments affect Texas Parks and Wildlife Code, Chapter 67.

§65.325. Applicability.

(a) (No change.)

(b) Exceptions. This subchapter does not apply to the following nongame wildlife:

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

(4) rabbits (genus *Sylvilagus)*;

(5) - (7) (No change.)

(c) Transitional Provisions for Possession of Certain Nongame Wildlife.

[~~(1) The holder of a permit issued under this subchapter who is in lawful possession of nongame wildlife prior to the effective date of this section who would be in violation of this subchapter after the effective date of this section by continuing to possess the nongame wildlife for commercial activity must sell, donate, or otherwise dispose of the nongame wildlife by May 1, 2008.~~]

[~~(2)~~] A person in lawful possession of nongame wildlife listed in §65.331(e) of this title (relating to Commercial Activity) prior to October 21, 2007 [~~the effective date of this section who would be in violation after the effective date of this section and~~] who possesses the nongame wildlife for personal, noncommercial use may continue to possess the nongame wildlife and any increase, provided:

(1) [~~(A)~~] the person contacts the department by no later than November 1, 2010 [~~2008~~] and reports the person's name and address, and the species and number of the nongame wildlife in possession; and

(2) [~~(B)~~] the person does not engage in any commercial activity involving the nongame wildlife possessed under this section.

§65.327. Permit Required.

(a) (No change.)

(b) Permit Privileges and Restrictions.

(1) The holder of a valid nongame dealer permit may:

(A) (No change.)

(B) sell lawfully obtained nongame wildlife to anyone;

(C) (No change.)

(D) [~~may~~] import nongame wildlife into Texas for any purpose, including sale or resale, or [~~including~~] for purposes of export, provided the person:

(i) - (ii) (No change.)

(iii) completes and mails to the department a department-supplied Notice of Import/Export within 24 hours of each instance of [~~shipping such wildlife out-of-state or~~] receiving such nongame wildlife from out-of-state; and

(iv) maintains all documentation required by this paragraph for a period of two years following the importation of the nongame wildlife. The documentation required by this paragraph includes the dealer's copy of each Notice of Import/Export. All documentation shall be provided at the request of any department employee acting within the scope of official duties;[~~.~~]

(E) export lawfully obtained nongame wildlife from Texas for any reason, including sale or resale, provided the person:

(i) completes and mails to the department a department-supplied Notice of Import/Export within 24 hours of each instance of shipping such wildlife out-of-state; and

(ii) maintains the dealer's copy of each Notice of Import/Export for a period of two years following each instance of exportation of nongame wildlife. The documentation required by this paragraph shall be provided at the request of any department employee acting within the scope of official duties; and

(F) engage in captive breeding of all species of nongame wildlife.

(2) The holder of a valid nongame permit:

(A) (No change.)

(B) may purchase or acquire nongame wildlife [~~listed in §65.331(d) of this title~~] from the holder of a valid nongame dealer permit or lawful out-of-state source; but

(C) (No change.)

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

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

§65.331. Commercial Activity.

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

(e) No person shall engage in commercial activity involving any nongame species not listed in subsection (d) of this section, except as provided in §65.327[~~(e)~~] of this title (relating to Permit Required) and subsection (b) of this section. This prohibition on commercial activity includes, but is not limited to, the following species:
Figure: 31 TAC §65.331(e)

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

Filed with the Office of the Secretary of State on June 30, 2008.

TRD-200803399
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §§71.3, 71.19, 71.29, 71.31

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §§71.3, 71.19, 71.29, and 71.31 concerning Creditable Service.

A recent experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the board at its May 13, 2008, meeting. These sections are amended to update the rules for the various changes to actuarial tables and reduction factors relating to the experience study and these assumptions.

Section 71.3, concerning Service Credit for Members of the Elective Class, has changed for consistency and to reflect that the word that was capitalized is a defined term.

Section 71.19, concerning Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS), has changed in order to satisfy Internal Revenue Service requirements that a retirement is bona fide and results in a termination of employment.

Sections 71.29 and 71.31, concerning Purchase of Additional Service Credit and Credit Purchase Option For Certain Waiting Period Service, have changed to reflect new waiting period service credit tables and additional service credit tables based on the recent actuarial experience study and the assumptions adopted.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also 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 would be maintaining accuracy in the calculations of the cost of purchasing service credit, up-to-date information in the calculations of the cost of reduced annuities, and conformance of the rules to the board's approved procedures for retirement and applicable federal law and regulations. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is August 11, 2008, at 10:00 a.m.

The amendments are proposed under the Texas Government Code, §§815.102, 815.105, 833.105, 834.103, 835.002, 840.002, 840.005, and 844.1021 which provide authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities and to adopt mortality, service and other tables necessary for the system.

No other statutes are affected by the proposed amendments.

§71.3. Service Credit for Members of the Elective Class.

(a) Each elective state official who becomes a member of the System [~~system~~] shall be eligible to establish one month of service for each month or fraction thereof in which he holds office. No more than 24 months service shall be credited for a two-year term and no more than 48 months service shall be credited for a four-year term.

(b) A member of the elected class who on or after September 1, 1989, purchases and receives credit in the elected class for calendar year service and who during that same calendar year holds a position as an appointive officer or employee shall also receive credit in the employee class of membership.

§71.19. Transfer of Service between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS).

(a) Purpose. These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the TRS and the ERS, and to provide a systematic method of funding the actuarial value of the annuity resulting from transferred service.

(b) Forms.

(1) Applications for transfer will be made using forms prescribed by the ERS.

(2) The ERS will cooperate with the TRS in an effort to make such application forms for the ERS comparable to those used by the TRS.

(c) Notice.

(1) A person who elects to transfer service credit pursuant to these rules must file the appropriate form to make such transfer not more than 90 days prior to the person's retirement effective date, but not later than said effective date.

(2) The ERS will notify the TRS of the pending transfer not later than 30 days following said effective date.

(d) Manner of transfer.

(1) Service credit and assets will be transferred through electronic and hard copy documentation pursuant to these rules, and the ERS will maintain records of such transfers permanently.

(2) Any transfer of service credit to the ERS must reflect years of credit, average salary, periods of service, method of calculation, and the manner used to calculate the time period involved, including any military credit purchased.

(3) Any transfer of service credit to the ERS must include specific data regarding the pre-tax and after-tax contributions by the person, penalty interest, earned interest, and any other dollar amount which will be part of the transfer.

(4) Assets to fund the portion of the annuity attributable to service with the TRS will be transferred to the ERS pursuant to agreement with the TRS.

(5) Service transferred from the TRS will be established in an employee class account for the benefit of the member.

(e) Transfer of funds. The ERS and the TRS agree on the following method of transferring funds. Each system shall certify on a monthly basis the total dollar amount of annuities paid by the system which are attributable to service transferred pursuant to the Government Code, Chapter 805. The amount certified shall exclude any portion of annuities paid consisting of post-retirement increases. Each system shall remit to the other system the amount certified within 30 days of receipt of such certification. It is recognized that adjustments will be made from month-to-month as a result of such things as administrative errors, the death of the annuitant or a beneficiary, return-to-work, and recovery from disability by an annuitant. The systems will jointly agree on the administrative and accounting procedures to be established in order to ensure the transfer of funds pursuant to this section.

(f) Purchase of refunded service.

(1) A member of the TRS who canceled membership in the ERS by taking a refund of his individual account may repurchase his service credit for the purpose of making a transfer at any time prior to retirement. Such persons do not have to become a contributing member of the ERS in order to purchase such canceled service credit.

(2) A person who cancels membership in the ERS by taking a refund of his individual account must meet the general requirements for reinstatement or purchase of service credit in the ERS.

(g) Military credit. Any transferred military service which would result in a member receiving service credit in excess of that permitted under the ERS rules will not be accepted.

(h) Termination of membership. The transfer of ERS credit to the TRS will terminate membership in the ERS, and will cancel all rights to benefits from the ERS based on that service.

(i) Service in the month following retirement. A retirement shall be canceled and membership reinstated [~~reinstate~~] if a member, who transferred service and retired pursuant to this chapter, holds a position during the month following retirement with the retirement system on which benefits are based. A retirement shall be canceled and membership reinstated if a retiring member has a commitment from his present employer to be rehired. At the time of retirement, a retiring member must disclose to the retirement system any commitment from his present employer to be rehired.

§71.29. Purchase of Additional Service Credit.

(a) An eligible member may establish equivalent membership service credit authorized by §813.513, Texas Government Code, as provided in this section. The provisions of §71.14 of this title do not apply to credit established under this section.

(b) A member is eligible to establish credit under this section in the membership class in which the member holds a position if the member:

(1) has 120 months of service credit for one or more periods of time during which the member held a position in a membership class and the required contributions were made;

(2) is actively contributing to the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(c) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the actuaries and adopted by the board shall be used by the system to determine the actuarial present value. The additional service credit tables are adopted by reference and made a part of this rule for all purposes. For additional service credit purchased on or after January 1, 2009, the additional service credit tables shall be those tables adopted by the board based on assumptions adopted by the board on May 13, 2008. For additional service credit purchased prior to January 1, 2009, the previously adopted tables that were in effect at the time the additional service credit was purchased shall apply. Copies of these tables are available from the System's executive director, Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207. [~~Such tables are incorporated herein by reference and shall be available from the System's executive director, Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.~~] The actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(d) Credit shall be established in increments of 12 months of credit, except that a member who may become eligible to retire by establishing fewer than 12 months of credit may establish the minimum number of months of credit necessary for the member to become eligible to retire.

(e) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that the member had on the date of the deposit required by subsection (c) of this section. This subsection does not apply to service credit transferred as authorized by Chapter 805, Texas Government Code.

(f) Credit established under this section may not be used to compute the amount of a disability retirement annuity, or to determine average monthly compensation for the purpose of computing a service retirement annuity.

(g) A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit as provided in this section.

(h) The provisions of §813.503, Texas Government Code, do not apply to credit established under this section.

§71.31. Credit Purchase Option For Certain Waiting Period Service.

(a) An eligible member may establish service credit for service performed during the waiting period as authorized by §813.514, Texas Government Code, and as provided in this section. The provisions of §71.14 of this chapter do not apply to service credit established under this section.

(b) A member is eligible to establish service credit under this section if the member:

(1) holds a position in the employee class;

(2) has completed the waiting period;

(3) has made a retirement contribution in accordance with §813.201; and

(4) makes application for the establishment of service credit and payment of the required contributions in accordance with procedures developed by ERS.

(c) An eligible member shall deposit with the System [~~system~~] in a lump sum a contribution in the amount determined by the System [~~system~~] to be the actuarial present value of the benefit attributable to the service credit established under this section. The tables recommended by the System's [~~system's~~] actuary and adopted by the board shall be used to determine the actuarial present value.[~~:~~] The waiting period service credit tables are adopted by reference and made a part of this rule for all purposes. For waiting period service credit purchased on or after January 1, 2009, the waiting period service credit tables shall be those tables adopted by the board based on assumptions adopted by the board on May 13, 2008. For waiting period service credit purchased prior to January 1, 2009, the previously adopted tables that were in effect at the time the waiting period service was purchased shall apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207.
[~~Figure: 34 TAC §71.31(c)~~]

(d) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing service credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the system's actuary and adopted by the board.

(e) Waiting period service credit shall be established in increments of one month.

(f) This section does not apply to service credit transferred as authorized by Texas Government Code, Chapter 805.

(g) A member who withdraws contributions and cancels service credit established under this section may not reestablish such credit under §813.102, Texas Government Code, but may again establish credit only as provided by this section.

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

Filed with the Office of the Secretary of State on June 26, 2008.

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Paula A. Jones
General Counsel
Employees Retirement System of Texas
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 867-7288

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CHAPTER 73. BENEFITS

34 TAC §§73.7, 73.11, 73.21, 73.26, 73.29

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §§73.7, 73.11, 73.21, 73.26, and 73.29 concerning Benefits.

A recent experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the board at its May 13, 2008, meeting. These sections are amended to update the rules for the various changes to actuarial tables and reduction factors relating to the experience study.

Section 73.7, concerning Service in the Month Following Retirement, has changed in order to satisfy Internal Revenue Service requirements that a retirement is bona fide and results in a termination of employment.

Section 73.11, concerning Supplemental Retirement Program, has changed to reflect new age reduction factors based on the recent actuarial experience study and the assumptions adopted.

Section 73.21, concerning Reduction Factor for Age and Retirement Option, has changed to reflect new factors based on the recent actuarial experience study and assumptions adopted.

Sections 73.26 and 73.29, concerning Beneficiary Lineage for Guaranteed Periodic Payments and Spousal Consent Requirements, have changed for consistency and to reflect that the word that was capitalized is a defined term.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also 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 would be maintaining accuracy in the calculations using updated reduction factors, up-to-date information in the calculations of reduced annuities, and to make the rule conform to the board's approved procedures for retirement and applicable federal law and regulations. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is August 11, 2008, at 10:00 a.m.

The amendments are proposed under the Texas Government Code, §§815.102, 815.105, 833.105, 834.103, 835.002, 840.002, 840.005, and 844.1021 which provide authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities and to adopt mortality, service and other tables necessary for the system.

No other statutes are affected by the proposed amendments.

§73.7. Service in the Month Following Retirement.

(a) In order to satisfy Internal Revenue Service requirements that a retirement is bona fide and results in a termination of employment, a retirement shall be canceled and membership reinstated: [~~A retirement shall be cancelled and membership reinstated if the member holds a position in the class from which he retired during the calendar month following retirement.~~]

(1) If the member holds a position in the class from which he retired during the calendar month following retirement; or

(2) If a retiring member has a commitment from his present employer to be rehired. At the time of retirement, a retiring member must disclose to the retirement system any commitment from his present employer to be rehired.

(b) If the person attempting to retire establishes that the only service credited in the month after the proposed date of retirement was as the result of an oversight on the member's part or on the part of the employee's department, the member may petition the executive director for relief. The executive director may, for good cause, permit the retirement to be effective on the last day of the last month in which credit was established. The applicant must refund any annuity paid for a month prior to the new effective date of retirement.

§73.11. Supplemental Retirement Program.

(a) For the purpose of this section:

(1) "supplemental program" is the program of retirement benefits for commissioned peace officers and custodial officers established by the Texas Government Code, §814.107;

(2) "regular program" is the retirement program available to members of the employee class generally.

(b) Age reduction factors for retirement from the supplemental program prior to age 50 are adopted by reference and are made a part of this rule for all purposes. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at

18th & Brazos Streets; P.O. Box 13207; Austin, Texas 78711-3207. For retirements occurring on or after January 1, 2009, the reduction factors for retirement from the supplemental program prior to age 50 shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For retirements effective prior to January 1, 2009, the previously adopted factors that were in effect at the time of retirement shall apply.

(c) Option factors for annuities, based on a retirement involving the supplemental program, are those applicable to the age of the retiree and nominee at the time payments under each program are to begin.

(d) No payment shall be required to establish service credit in the supplemental program unless payment would be required to establish that credit in the regular program.

(e) Military service credit shall be creditable in the supplemental program only if, within 90 days of termination of covered employment, the member went into the military without intervening employment and the member resumed covered employment within 90 days of termination of military service.

(f) An occupational disability retirement annuity is subject to increase pursuant to the supplemental program as a result of the individual's submission of evidence satisfactory to the retirement system that the person's condition makes the person incapable of gainful occupation and is considered a total disability under the federal social security law.

(g) An annuity increase under Subsection (f) is not payable before the first month following the month in which the satisfactory evidence under Subsection (f) is received by the retirement system.

(h) An adjustment under the provisions of subsection (f) of this section shall include any reduction option factor applicable to a survivor benefit.

§73.21. Reduction Factor for Age and Retirement Option.

(a) Actuarial assumptions, mortality tables, and reduction factors used for calculation of benefits are those adopted by the board and apply to forms and effective dates of annuities specified by the board. Such assumptions, tables, and factors are incorporated in this rule by reference and are a part of this rule for all purposes. Copies of the tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(b) The 2008 [~~1999~~] reduction factors for optional forms of retirement annuities apply to retirements effective on or after January 1, 2009. [~~September 30, 1999, and are those factors adopted by the board December 8, 1999, based on assumptions adopted by the board December 9, 1998.~~] For retirements effective on or after January 1, 2009, the reduction factors shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. The factors apply to annuities first payable January 1, 2009, [~~2000,~~] and thereafter. For retirements effective prior to January 1, 2009, the previously adopted factors that were in effect at the time of retirement shall apply.

(c) The actuaries have developed reduction factors for early retirement or death in accordance with the mortality tables adopted by the board. Such tables are incorporated in this rule by reference and are a part of this rule for all purposes. For early retirements or deaths occurring on or after January 1, 2009, the reduction factors for early retirement or death shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For deaths and retirements effective prior to January 1, 2009, the previously adopted factors that were in effect at the time of such death or retirement shall apply.

(d) For retirements occurring on or after January 1, 2009, the reduction [~~Reduction~~] factors for the partial lump sum option [~~apply to retirements effective on or after January 1, 2000, and~~] are those factors adopted by the board [~~December 8, 1999,~~] based on assumptions adopted by the board on May 13, 2008. [~~December 9, 1998.~~] For retirements effective prior to January 1, 2009, the previously adopted factors for the partial lump sum option that were in effect at the time of retirement shall apply.

(e) Reduction factors for a standard nonoccupational disability retirement annuity apply to a disability retirement application received by the System on or after January 1, 2009. [~~September 1, 2005, and are those factors adopted by the board on August 24, 2005, based on assumptions adopted by the board on December 10, 2003.~~] For a retirement application received by the System on or after January 1, 2009, the reduction factors shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For a disability retirement application received prior to January 1, 2009, the previously adopted factors that were in effect at the time such application was received shall apply.

[~~Figure: 34 TAC § 73.21(e)~~]

§73.26. Beneficiary Lineage for Guaranteed Periodic Payments.

(a) A member or retiree who selects an optional retirement annuity payable for a guaranteed period may, before or after retirement, designate one or more persons as primary beneficiaries to receive any remaining guaranteed periodic annuity payments if the member or retiree dies after retirement but before all guaranteed payments have been made. The member or retiree may also designate one or more alternate beneficiaries.

(b) A member who selects a death benefit plan for the payment of a death benefit plan annuity for a guaranteed period may designate one or more primary beneficiaries to receive the death benefit annuity upon the death of the member. The member may also designate one or more alternate beneficiaries.

(c) If any designated primary beneficiary is living at the time of the death of the retiree or of the member referred to in subsections (a) and (b) of this section, the primary beneficiary or beneficiaries will be entitled to receive the guaranteed periodic annuity payments or the death benefit plan annuity payments for the remainder of the guaranteed period.

(d) If no designated primary beneficiary is living at the time of the death of the retiree or of the member referred to in subsections (a) and (b) of this section, the designated alternate beneficiary or beneficiaries will be entitled to receive the guaranteed periodic annuity payments or the death benefit plan annuity payments, as applicable, in place of the designated primary beneficiaries. However, if a designated primary beneficiary is living at the time of the death of the retiree or member, then an alternate beneficiary shall have no further right, title, or interest in any annuity payments.

(e) If multiple primary beneficiaries are designated, upon the death of any one primary beneficiary, the remaining primary beneficiaries will share proportionately, based on the designated percentages, that portion of any remaining guaranteed annuity or death benefit plan annuity payments that was to have been paid to the beneficiary who died.

(f) If a designated primary beneficiary or alternate beneficiary becomes entitled to guaranteed annuity or death benefit plan payments as described in this section, but dies before all of the guaranteed periodic payments have been paid, and there are no other designated beneficiaries then living, any remaining guaranteed periodic payments shall be made to the estate of the beneficiary and not to the estate of the deceased retiree or member. At the sole election of the System [~~system~~],

the System [~~system~~] may pay the estate of a deceased beneficiary a lump sum amount that is the actuarial present value of the remaining guaranteed annuity payments.

(g) The simultaneous death provisions of Texas Government Code §814.006, and Texas Government Code §814.007, concerning a beneficiary who causes the death of a member or annuitant, apply to this section.

§73.29. Spousal Consent Requirements.

(a) The selection by a member of a service retirement annuity other than a joint and survivor annuity that pays benefits to the spouse of the member on the death of the member, is not effective unless the member's spouse consents to the selection or it is established to the satisfaction of the System [~~system~~] that:

(1) there is no spouse; or

(2) the spouse cannot be located.

(b) Should the spouse of the member be judicially declared incompetent, the consent required by this section shall be given by the spouse's legal guardian. The consent of a spouse who is incapable of giving his or her consent as required by this section may be given by a legal representative of the spouse only if the executive director or a person designated by the executive director determines:

(1) that the spouse is incapable of giving his or her consent; and

(2) the person or persons qualify as the legal representative of the spouse.

(c) The consent required by this section must be in writing on a form prescribed by the Employees Retirement System of Texas and acknowledged before a notary public.

(d) The provisions of this section apply only to service retirement annuities.

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 26, 2008.

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Paula A. Jones
General Counsel
Employees Retirement System of Texas
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For further information, please call: (512) 867-7288

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CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §§77.1, 77.11, 77.21

The Employees Retirement System of Texas (ERS) proposes amendments to 34 Texas Administrative Code (TAC) §§77.1, 77.11, and 77.21, concerning Judicial Retirement.

A recent experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the board at its May 13, 2008, meeting. These sections are amended to update the rules for the various changes to actuarial tables and reduction factors relating to the experience study.

Sections 77.1, 77.11, and 77.21, concerning Reduction Factors for Death before Age 65, Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II), and Purchase of Additional Service Credit, have changed to reflect new factors and tables based on the recent actuarial experience study and assumptions adopted.

Ms. Paula A. Jones, General Counsel, Employees Retirement System of Texas, has determined that for the first five year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules, and, to her knowledge, small businesses should not be affected.

Ms. Jones also 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 would be maintaining accuracy in the calculations of the cost of purchasing service credit, up-to-date information in the calculations of reduced annuities, and conformance of the rules to the board's approved procedures for retirement and applicable federal law and regulations. There are no known anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rule amendments may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or you may email Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is August 11, 2008, at 10:00 a.m.

The amendments are proposed under the Texas Government Code, §§815.102, 815.105, 833.105, 834.103, 835.002, 840.002, 840.005, and 844.1021 which provide authorization for the ERS Board of Trustees to adopt rules necessary to carry out its statutory duties and responsibilities and to adopt mortality, service and other tables necessary for the system.

No other statutes are affected by the proposed amendments.

§77.1. Reduction Factors for Death before Age 65.

If a member of the Judicial Retirement System of Texas Plan One who is eligible to select a death benefit plan dies prior to age 65, the annuity will be reduced by the factors developed by the actuaries. Those factors are adopted by reference and are made a part of this section for all purposes. Copies of the factors may be obtained from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets; P.O. Box 13207, Austin, Texas 78711-3207. For deaths occurring on or after January 1, 2009, the reduction factors shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For deaths prior to January 1, 2009, the previously adopted factors that were in effect at the time of death shall apply.

§77.11. Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II).

(a) Tables for calculation of optional factors.

(1) The [~~1981~~] reduction factors for optional forms of retirement annuities are independent of the gender of the member and of the nominee. For retirements effective on or after January 1, 2009, the reduction factors shall be those adopted by the board based on assumptions adopted by the board on May 13, 2008. For retirements effective prior to January 1, 2009, the previously adopted factors that were in effect at the time of retirement shall apply. [~~sex of the member and of the nominee and are based on the GA-51 male mortality table projected with Scale C to 1970 with an age set forward of one year for retiring~~

members and an age set back of four years for nominees. The interest assumption is 5.0%.]

[(2) The 1992 reduction factors for optional forms of retirement annuities are independent of the gender of the member and the beneficiary and are based on the 1983 group annuity mortality table. The interest rate assumption is 8.5%.]

(2) [(3)] Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207. The option tables, along with the adjustments described in this subsection are adopted by reference and made a part of this rule for all purposes.

(b) Option factors. For retirements and annuities effective on or after January 1, 2009, reduction factors for optional annuities for service retirement, disability retirement, and death benefit plans under the JRS-I and JRS-II plans shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. These factors apply to annuities first payable January 1, 2009, and thereafter. For retirements and annuities effective prior to January 1, 2009, the previously adopted reduction factors that were in effect at the time of retirement or first annuity payment shall apply. [All optional annuities for service retirement, disability retirement, and death benefit plans under the JRS-1 are calculated using the 1981 factors. Option factors for service retirement, disability retirement, and for death benefit plans for a member of the JRS-II are calculated using the 1992 factors.] All option factors have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. Option [Both sets of option] factors are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(c) Formula for JRS-II reduction factors for death before age 65.

(1) A death benefit annuity of the Judicial Retirement System of Texas Plan Two on behalf of a member dying before age 65 while not eligible for an unreduced service retirement benefit is reduced for each whole or partial calendar month that occurs during the period from the date of death to the 65th birthday, including the months that contain the dates of death and birthday. For the first 120 months (ages 55-64), the annuity is reduced by one-third of 1.0% per month. For the next 60 months (ages 50-54), the annuity is reduced by one-fourth of 1.0% per month. For the next 60 months (ages 45-49), the annuity is reduced by one-sixth of 1.0% per month. For the next 120 months (ages 35- 44), the annuity is reduced by one-twelfth of 1.0% per month.

(2) A death benefit annuity on behalf of a member dying before age 65 while eligible for an unreduced service retirement benefit shall not be reduced for age.

(3) JRS-II reduction factors for death before age 65 have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. For deaths on or after January 1, 2009, reduction factors for death before age 65 shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For deaths prior to January 1, 2009, the previously adopted factors that were in effect at the time of death shall apply. The set of reduction factors is available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(d) Reserve factors. The reserve factors for JRS-II are adopted by reference and made a part of this rule for all purposes. For periods beginning on or after January 1, 2009, the reserve factors for death before age 65 shall be those factors adopted by the board based on assumptions adopted by the board on May 13, 2008. For periods prior to January 1, 2009, the previously adopted factors that were in effect during such period shall apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(e) Dollar limitations for maximum annual benefit. Service retirement annuities shall conform to dollar limitations and applicable adjustments under the Internal Revenue Code of 1986, § 415 (26 United States Code §415) as determined by the federal commissioner of internal revenue.

§77.21. Purchase of Additional Service Credit.

(a) The provisions of this section apply only to the Judicial Retirement System of Texas Plan Two (JRS-II).

(b) An eligible member may establish equivalent membership service credit authorized by §838.108, Texas Government Code, as provided in this section. The provisions of §77.15 of this Chapter do not apply to service credit established under this section.

(c) A member is eligible to establish service credit under this section in the membership class in which the member holds a position if the member:

(1) has 120 months of service credit for one or more periods of time during which the member held a position as a judge and the required contributions were made;

(2) is a member of the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(d) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used by the system to determine the actuarial present value.[÷] The additional service credit tables for JRS-II are adopted by reference and made a part of this rule for all purposes. For additional service credit purchased on or after January 1, 2009, the additional service credit tables shall be those tables adopted by the board based on assumptions adopted by the board on May 13, 2008. For additional service credit purchased prior to January 1, 2009, the previously adopted tables that were in effect at the time the additional service credit was purchased shall apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.
[Figure: 34 TAC §77.21(d)]

(e) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(f) Credit shall be established in whole year increments of credit.

(g) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that

the member had on the date of the deposit required by subsection (d) of this section.

(h) Credit established under this section may not be used to compute the amount of a disability retirement annuity.

(i) A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under §838.102, Texas Government Code, but may again establish credit as provided in this section.

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

Filed with the Office of the Secretary of State on June 26, 2008.

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Paula A. Jones
General Counsel
Employees Retirement System of Texas
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For further information, please call: (512) 867-7288

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PART 11. OFFICE OF THE FIRE FIGHTERS' PENSION COMMISSIONER

CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §302.5, §302.6

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §302.5, regarding correction of errors in membership or qualified service in the System, and new 34 TAC §302.6, adopting by reference a form for such corrections.

The amendments to §302.5 would simplify the procedure for the correction of errors in enrolling members or granting service credit by eliminating the requirements of a formal letter and a copy of meeting minutes of a local board showing the change and substituting submission of a prescribed form. The commissioner would have the authority to require additional information on a case-by-case basis.

The new §302.6 would adopt by reference the required form.

Lisa Ivie Miller, Commissioner, has determined that the public benefit, for the first five years that the amended and new rules are in effect, will be to reduce administrative time and paperwork and therefore, costs for both participating departments and the System. Therefore the costs are reduced for both local and state governments.

Small businesses or individuals would not be affected by the adoption of the amended and new rules.

Comments on the proposed amendments and new rule may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577, no later than August 18, 2008. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

The amendments and new section are proposed under the statutory authority of Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System.

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

§302.5. Correction of Errors.

(a) A local board may correct an error in enrollment in membership or computation of qualified service by completing and submitting to the Commissioner the prescribed form. The completed form must be: [~~a letter sent to the commissioner~~]

(1) signed by the chair and secretary of the local board and the administrative head of the department; and[~~,~~]

(2) accompanied by [~~a copy of the meeting minutes of the local board showing approval of the change and~~] any applicable past due contributions necessitated by the change.

(b) The Commissioner may require the local board to provide additional documentation.

§302.6. Correction Form.

The Board adopts by reference Correction Form No. 200 D, August 1, 2008, for corrections under §302.5 of this title (relating to Correction of Errors). Form 200 D, Letter for Correction of Errors, can be found on the Office of the Fire Fighters' Pension Commissioner's website, www.ffpc.state.tx.us or by going directly to http://www.ffpc.state.tx.us/tesrs/forms/Form%20200D%20Correction%20of%20Errors.pdf.

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 24, 2008.

TRD-200803306
Craig Hudgins
General Counsel
Office of the Fire Fighters' Pension Commissioner
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 936-3372

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CHAPTER 310. ADMINISTRATION OF THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

34 TAC §310.10

The State Board of Trustees of the Texas Emergency Services Retirement System (System) proposes amendments to 34 TAC §310.10, regarding voluntary payments by departments participating in the System to provide benefit enhancements for annuitants.

The purpose of the amendments are to specify five kinds of post-retirement increases that a department participating in the System could make to annuitants' benefits: an additional one-time payment, a cost-of-living adjustment based on an annual increase in the consumer price index, an annuity increase to a minimum monthly amount, an annuity increase of a specified amount for each year of service, or a percentage increase other than a cost-of-living adjustment. The amended rule would allow a department to apply an increase to only fully vested annuitants if it chose.

Lisa Ivie Miller, Commissioner, has determined that the public benefit for the first five years that the amended rule is in effect will be to inform departments, for their consideration, about common post-retirement benefit increases employed in other public retirement systems, while ensuring that proposed increases do not unconstitutionally discriminate among recipients and do not impose significant administrative costs on the System.

As in the current version of the rule, participating departments do not have to adopt any post-retirement benefit enhancements, but if they choose to do so, the System's actuary must first certify that the department's proposed payment schedule will be sufficient to fully finance the proposed increase. For this reason, the rule as amended would not impose a cost on a local government that it did not elect to accept.

Small businesses or individuals would not be affected by the adoption of the proposed amended rule.

Comments on the proposed amendments may be submitted in writing to Lisa Ivie Miller, Commissioner, Office of the Fire Fighters' Pension Commissioner, P.O. Box 12577, Austin, Texas 78711-2577, no later than August 18, 2008. Comments may also be submitted electronically to rules@ffpc.state.tx.us or faxed to (512) 936-3480.

This agency hereby certifies that the proposed amended rule has been reviewed by legal counsel and found to be within the agency's legal authority to adopt and further certifies that the proposed amended rule has been reviewed by the System's retained actuaries and found to be cost neutral.

The amendments are proposed under the statutory authority of Title 8, Texas Government Code, Subtitle H, Texas Emergency Services Retirement System, §864.0135.

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

§310.10. Voluntary Payments by Departments.

(a) A participating department, as authorized by this section, may make one or more supplemental payments to retirees and other beneficiaries of the pension system, or may provide an increase in the amount of annuities paid to retirees and other beneficiaries of the system. A department may choose to apply a supplemental payment or increase in annuities to all beneficiaries or to only those whose benefits are derived from a person who was eligible to retire under §308.1(a) of this title (relating to Eligibility for Retirement Annuity). [~~, contingent upon the following conditions of this section.~~]

(b) An increase in benefits may consist of: [~~A participating department must meet the following conditions before a supplemental payment or increase in annuity to retirees or beneficiaries is implemented:~~]

(1) an additional, one-time payment that does not exceed 100 percent of an annuitant's monthly scheduled payment; [~~A participating department shall make payments to the system that are necessary to finance one or more supplemental payments to retirees or beneficiaries of the department.~~]

(2) a one-time permanent annuity increase based on the 12-month increase in the Consumer Price Index for All Urban Consumers as of December of the preceding year; [~~A participating department shall make payments to the system to finance an increase in annuities paid to annuitants of the department. The increase must apply to all annuitants in the same classification but may be based on persons who qualified for an annuity under a previously lower contribution rate.~~]

(3) a one-time permanent increase to allow each annuity to reach a minimum monthly amount; [~~Payments to the system may not be made under this section unless the system's actuary first determines that the payments to the system will be sufficient to finance the anticipated additional benefits.~~]

(4) a one-time permanent increase that adds to each annuity a specified amount for each whole year of credited service for the department; or [~~The department must enter into a contractual agreement as prescribed by the Office of the Firefighter's Pension Commissioner.~~]

(5) a one-time permanent percentage increase to each annuity.

(c) Before it may implement a supplemental payment or annuity increase under this section, a participating department shall:

(1) obtain from the Commissioner a determination from the system's actuary that the department's payments to the system will be sufficient to finance the anticipated additional benefits; and

(2) contract with the Commissioner to make quarterly payments to the system that are necessary to finance the increase in benefits.

(d) A supplemental payment or increase in benefits must apply to all annuitants in the same classification but may be based on persons who qualified for an annuity under a previously lower contribution rate.

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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Craig Hudgins
General Counsel
Office of the Fire Fighters' Pension Commissioner
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For further information, please call: (512) 936-3372

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 4. EMPLOYMENT PRACTICES
SUBCHAPTER E. SICK LEAVE POOL PROGRAM

43 TAC §§4.50, 4.51, 4.55, 4.56

The Texas Department of Transportation (department) proposes amendments to §4.50, purpose, §4.51, definitions, §4.55, contribution returns, and §4.56, withdrawals, concerning the sick leave pool program.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments revise definitions, change eligibility requirements, and clarify existing language. These changes will allow the department to control abuse of the sick leave pool, make the program more consistent with other state agencies' sick leave pool programs, and more specifically tailor the program to ensure the leave is available only to those dealing with a catastrophic illness or injury.

Amendments to §§4.50, 4.51, 4.55 and 4.56 require employees to exhaust all types of paid leave, instead of just sick leave, before being eligible to obtain leave from the sick leave pool. This change will make the department's sick leave pool program consistent with those of other state agencies. It will also decrease the perception that the sick leave pool program is susceptible to abuse, which is expected to increase employees' willingness to donate their excess sick leave to the pool.

Amendments to §4.51, Definitions, clarify that Human Resources Officer means an employee with a human resources business job title; add a definition of paid leave to include accrued sick leave, vacation leave, and regular or Fair Labor Standards Act compensatory time earned by an employee; clarify that "severe physical condition" refers to the condition of the patient, regardless of whether the patient is the employee or the employee's family member and requires them to be incapacitated instead of off work for 12 continuous weeks or more for the current episode. Subsequent paragraphs are renumbered.

Amendments to §4.56, Withdrawals, change the restriction on requests for withdrawal of sick leave criteria from abuse of sick leave to abuse of any type of leave in the 12 months preceding the date that leave from the pool will be needed. Employees can use any type of their own accrued leave when they are out of work due to illness. Broadening the definition of leave abuse that would make an employee ineligible for sick leave pool provides better control of the program and decreases the perception that the sick leave pool program is susceptible to abuse. Limiting the time during which an employee is not eligible for sick leave pool to the 12 months preceding the need for the leave will allow employees to change the behavior that led to the discipline and allow them to again become eligible for sick leave pool. These amendments allow the department to better protect its assets by focusing the stricter controls on those employees who are most likely to attempt to abuse the program without making it unnecessarily difficult for other employees to obtain leave under the program.

FISCAL NOTE

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

Diana L. Isabel, Director, Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Ms. Isabel has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Ms. Isabel has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be better protection of department assets, more effective use of employee time and better use of the hours donated to the sick leave pool. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§4.50, 4.51, 4.55, and 4.56, may be submitted to Diana L. Isabel, Director, Human Resources Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Government Code, §661.002 which provides that the governing body of a state agency shall adopt rules and prescribe procedures relating to the operation of the agency sick leave pool.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 661, Subchapter A.

§4.50. Purpose.

The purpose of the sick leave pool program is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all paid leave [~~sick leave time~~]. Authority for the creation of the sick leave pool program is contained in Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

§4.51. Definitions.

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

(1) Catastrophic illness or injury--A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period of time and that forces the employee to exhaust all paid [~~sick~~] leave earned by that employee.

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

(7) Human resources officer--An employee with a human resources business job title and [~~in a district, division, or office~~] who is responsible for verifying the accuracy of all employee paid [~~sick~~] leave records. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

(8) - (9) (No change.)

(10) Paid Leave--Accrued sick leave, vacation leave, and regular or Fair Labor Standards Act compensatory time earned by an employee.

(11) [~~(10)~~] Pool administrator--The Director of the Human Resources Division or designee who administers the department's sick leave pool program.

(12) [~~(11)~~] Request--An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

(13) [~~(12)~~] Severe physical condition--A physical illness or injury that will likely result in death or causes the patient [~~employee~~] to be incapacitated [~~off work~~] for 12 continuous weeks or more for the current episode.

(14) [~~(13)~~] Severe psychological condition--A psychological illness that results in:

(A) a patient being suicidal or capable of harming themselves or others and requires five days or more inpatient hospitalization; or

(B) electroshock treatment.

(15) [~~(14)~~] Sick leave--Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his or her immediate family who is actually ill.

(16) [~~(15)~~] Sick leave pool--A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

(17) [~~(16)~~] Withdrawal--An approved transfer of sick leave hours from the department sick leave pool.

§4.55. Contribution Returns.

(a) Restrictions.

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

(3) All paid [~~accrued sick~~] leave must be exhausted by the employee before hours will be returned from a previous contribution.

(4) - (6) (No change.)

(b) Procedures.

(1) (No change.)

(2) The human resources officer shall verify all paid [~~sick~~] leave balances and the date and time all paid [~~accrued sick~~] leave was or will be exhausted.

(3) (No change.)

§4.56. Withdrawals.

(a) Restrictions.

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

(3) With the request for withdrawal, an employee who has been formally disciplined for abuse of [~~sick~~] leave in the 12 months preceding the date on which the leave from the pool will be needed must provide, at his or her expense, a second health care provider certification from a different doctor chosen by the department. The pool administrator will deny the request if the second health care provider does not certify that a catastrophic condition exists.

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

(8) The time transferred will begin on the date and time the employee exhausted all paid [~~sick~~] leave or, in cases that are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(9) (No change.)

(10) An employee must exhaust all paid [~~sick~~] leave before using hours approved from the sick leave pool.

(11) (No change.)

(12) An employee who is in need of additional sick leave after exhausting all paid [~~sick~~] leave shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(13) - (17) (No change.)

(b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying all paid [~~sick~~] leave balances and the date and time all paid [~~sick~~] leave was or will be exhausted.

(2) - (5) (No change.)

(6) The pool administrator will determine the amount of sick leave transferred for each request based on:

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

(C) the date and time all paid [~~sick~~] leave was or will be exhausted; and

(D) (No change.)

(7) - (9) (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 27, 2008.

TRD-200803365
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-8683

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CHAPTER 15. TRANSPORTATION PLANNING AND PROGRAMMING

SUBCHAPTER H. TRANSPORTATION CORPORATIONS

43 TAC §15.94

The Texas Department of Transportation (department) proposes new §15.94, CDA Projects Corporation, concerning transportation corporations.

EXPLANATION OF PROPOSED NEW SECTION

The Texas Transportation Commission (commission) is currently undertaking competitive procurement processes under the comprehensive development agreements law (Transportation Code, Chapter 223, Subchapter E) for the North Tarrant Expressway and the I-635 Managed Lanes projects, among others. Federal law now authorizes the use of private activity bonds, which can substantially lower the cost of borrowing, for certain transportation projects, and thus the financing methodology proposed for the comprehensive development agreement for each project will likely include the use of proceeds from the issuance of private activity bonds. It is anticipated that the private activity bonds will be issued by a corporation acting on behalf of the commission, and the proposed new section provides for the creation of a limited purpose corporation with the specific authority to issue the bonds, subject to commission approval, as provided by Transportation Code, Chapter 431.

New §15.94, CDA Projects Corporation, authorizes the creation of a corporation with the authority to issue private activity bonds for transportation projects to be developed under comprehensive development agreements, as approved by the commission.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years the new section as proposed is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section.

Mr. Bass has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT AND COST

Mr. Bass has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the new section will be, for any transportation project developed under a comprehensive development agreement, the lowering of the cost of financing the project and the resultant lowering of the total cost of the transportation project to the state. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §15.94 may be submitted to James Bass, Chief Financial Officer, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on August 11, 2008.

STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.201, which authorizes the commission to enter into comprehensive development agreements, and Transportation Code, §431.023, which authorizes the commission to approve the creation of a transportation corporation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter E and Transportation Code, Chapter 431.

§15.94. CDA Projects Corporation.

(a) The commission by order may authorize the creation of a corporation under the Act for the sole purpose of issuing private activity bonds for transportation projects to be developed under comprehensive development agreements (CDA) entered into by the department under Transportation Code, Chapter 223, Subchapter E.

(b) The creation, dissolution, and all powers, duties, and functions of the corporation are governed by the Act and the other sections of this subchapter do not apply, except as provided by this section.

(c) Only a full-time, permanent employee of the department may be appointed or serve as a director of the corporation.

(d) Section 15.86 of this subchapter, relating to conflict of interest, applies to the directors and employees of the corporation.

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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Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-8683

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CHAPTER 25. TRAFFIC OPERATIONS
SUBCHAPTER A. GENERAL

43 TAC §25.1

The Texas Department of Transportation (department) proposes amendments to §25.1, Texas Manual on Uniform Traffic Control Devices (MUTCD).

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §25.1 adopt by reference the 2006 Texas MUTCD, Revision 1 and revise the department's Internet website address.

The Texas MUTCD is amended periodically to maintain substantial conformance with the National MUTCD to allow use of a single manual for local, state, and Federal-aid highway projects. The National MUTCD defines the standards used by road managers nationwide to install and maintain traffic control devices on all streets and highways open to public travel. The National MUTCD is published by the Federal Highway Administration (FHWA) under Title 23, Code of Federal Regulations, Part 655, Subpart F.

The FHWA recently completed two amendments to the National MUTCD and Texas is required to incorporate these changes into the state manual. The federal changes are included in Revision 1 of the manual.

The changes to the Texas MUTCD, Revision 1 include changes to the introduction by incorporating new federal language regarding the term "open to public travel." There has been confusion in the past about the applicability of the Texas MUTCD to roads not maintained by public agencies such as toll roads, non-gated residential developments, shopping centers, airports, etc. The FHWA clarified this through a final rule issued on January 16, 2007 which provided definitions and discussion on the applicability of the manual to private roads open to public travel. Text will be added to the introduction section of the manual to detail the types of roads "open to the public" and add new definitions for "private property open to public travel" and "public facility." "Open to the public" is defined in the Texas MUTCD to include roadways and areas where the public is allowed to travel without restriction. The new text is added to the Texas MUTCD to bring it into compliance with this federal change.

New Section 2A.09 is added to the Texas MUTCD, Revision 1 regarding required minimum standards for sign retroreflectivity. The FHWA issued its final rule on sign retroreflectivity with an effective date of January 22, 2008. States are required to adopt this new rule within two years and be in full compliance with the new federal requirements by the beginning of 2018. This change will incorporate new text and compliance deadlines.

Revisions in the Texas MUTCD, in Sections 1A.11 and 6F.01, reflect the current department website address.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five-years the amended section is in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the new section. The proposed amendments to the Texas MUTCD contained in §25.1 may require some local governments to use a slightly more costly sign sheeting to meet the new requirements regarding retroreflectivity. However, this change will result in increased sign longevity and should offset any initial additional costs. In addition, there is a reasonable full implementation date of 2018. There is no impact to the state as Texas already complies with these requirements due to the department's current sign policies.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended section.

PUBLIC BENEFIT

Mr. Lopez also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more uniform use of traffic control devices and increased highway safety. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §25.1 may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 11, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation. More specifically Transportation Code, §544.001 relates to the department's authority to adopt a manual of uniform traffic control devices.

CROSS REFERENCE TO STATUTE

Transportation Code, §544.001.

§25.1. Uniform Traffic Control Devices.

(a) The 2006 Texas Manual on Uniform Traffic Control Devices, Revision 1, which is filed with this section and hereby incorporated by reference, was prepared as required by law to govern standards and specifications for all such traffic control devices to be erected and maintained upon any street, highway, bikeway, public facility, or private property [~~all streets, highways, and bicycle trails that are~~] open to public travel within this state, including those under local jurisdiction. Copies of the manual are available online through the Texas Department of Transportation web site, www.txdot.gov [~~www.dot.state.tx.us~~], and are on file for public inspection with the Office of the Secretary of State, Texas Register Division, James Earl Rudder State Office Building, 1019 Brazos St., Room 245, Austin, Texas 78701.

(b) - (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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Bob Jackson
General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8683

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SUBCHAPTER B. PROCEDURES FOR ESTABLISHING SPEED ZONES

43 TAC §§25.20 - 25.22, 25.25

The Texas Department of Transportation (department) proposes amendments to §25.20, Definitions, §25.21, Introduction, §25.22, Regulatory and Advisory Speeds, and §25.25, Application of Advisory Speeds, all concerning procedures for establishing speed zones.

EXPLANATION OF PROPOSED AMENDMENTS

The department is required to establish procedures for establishing speed zones under Transportation Code, §544.353(e). These procedures must be followed by department staff when creating a speed limit other than the prima facie maximum allowed under state law. The procedures must also be followed by municipalities, regional mobility authorities, regional tollway authorities, and by the commanders of United States military reservations in certain circumstances. The proposed revisions to the procedures are technical in nature and are designed to ensure that they are current and accurate. The department is also amending the rule to remove information about how to determine advisory speed limits. The statute does not require the commission adopt procedures for setting advisory speed limits, therefore, the department has determined that the Procedures for Establishing Speed Zones manual is better suited for the detailed information concerning advisory speed limits.

Amendments to §25.20, Definitions, change the definition of the term "district" by removing the reference to the current number of geographical areas. This amendment accommodates changes to the current department organizational structure.

Amendments to §25.21(b)(2)(K) clarify the authority of regional tollway authorities, regional mobility authorities, and commanding officers of United States military reservations to alter speed limits. Currently these entities are required to follow the department's speed zone procedures when altering a speed limit. To conform to the language contained in Transportation Code, §545.354(f), this subparagraph is amended to note that these entities must follow the department's speed zone procedures only when altering or setting a speed limit based on an engineering and traffic study.

Amendments to §25.21(c)(2)(B) and §25.25(b)(1)(C) remove references to the use of a ball-bank indicator for determining advisory speed restrictions on curves. The Procedures for Establishing Speed Zones manual provides detailed information on how to determine advisory speed restrictions for curves using the ball-bank indicator. Since this is an advisory speed posting, it is unnecessary to have the information in both the rules and the manual. Providing the information in the manual allows the department to address and adopt new procedures without requiring a rule change. This will allow the department to authorize the use of new technology as it becomes available.

Amendments to §25.22, Regulatory and Advisory Speeds, make various technical corrections. This includes deletion of references to sign types that are no longer in use, correcting existing references to the Texas Manual on Uniform Traffic Control Devices, and revising figures depicting typical signing practices.

Amendments to §25.25, Application of Advisory Speeds, make various technical corrections. Section 25.25(a)(2)(A) and (B) is revised to remove references to signs that are no longer in use.

Amendments to §25.25(c)(1)(A) remove an inaccurate parenthetical statement about the lack of traffic circles in Texas. The design feature is now more commonly used.

Amendments to §25.25(d)(2)(A) remove references to signs that are no longer in use.

Amendments to §25.25(e)(4)(A) make a conforming change regarding the use of the ball-bank indicator as amended in §25.25(b), relating to curves and turns.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five-years the amended sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The proposed changes are essentially technical corrections intended to ensure that the existing rules are complete and accurate.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended section.

PUBLIC BENEFIT

Mr. Lopez also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be increased highway safety. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §§25.20 - 25.22, and §25.25 may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 11, 2008.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the Texas Department of Transportation. More specifically Transportation Code, §545.353 relates to the department's authority to establish speed limits.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 545, Subchapter H.

§25.20. Definitions.

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

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

(3) District--A [~~One of the 25~~] geographical area [~~areas~~] managed by a district engineer, in which the department conducts its primary work activities.

(4) - (13) (No change.)

§25.21. Introduction.

(a) (No change.)

(b) Background.

(1) (No change.)

(2) Authority to set speed zones.

(A) - (J) (No change.)

(K) The authority of regional tollway authorities, regional mobility authorities, and the Commanding Officer of a United States Military Reservation to alter the speed limits are addressed in Transportation Code, §§370.033, 545.354, and 545.358. These decision making authorities are required to follow the speed zone procedures [~~as~~] adopted by the department when altering, on the basis of an engineering and traffic study, speed limits on off-system turnpikes or on-system highways within the confines of a military reservation.

(L) (No change.)

(3) (No change.)

(c) Factors affecting safe speed.

(1) (No change.)

(2) Design and physical factors of the roadway.

(A) (No change.)

(B) Chapter 5, Sections 2 and 5 of the Procedures for Establishing Speed Zones manual provides the methods that must be used to determine if a curve or an obstruction to sight distance requires an advisory speed restriction.

[~~(B) Speed restrictions, if any, imposed by some curves can be calculated easily and checked by the use of the ball bank indicator, described in §25.25(b) of this subchapter (relating to Curves and Turns). Likewise, the restriction imposed by obstructions to sight distance can be calculated.~~]

(C) (No change.)

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

§25.22. Regulatory and Advisory Speeds.

(a) (No change.)

(b) Regulatory speed zones.

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

(5) Regulatory speed signs (R2 Series).

(A) Signs for regulatory speed zones shall be:

(i) from the R2 series as shown in the Texas Manual on Uniform Traffic Control Devices [~~for Streets and Highways~~] (TMUTCD); and

(ii) of the appropriate design, including size, text, and color.

(B) At the end of speed zones on conventional highways where the maximum legal rural speeds are permissible, a combination of the R2-1 SPEED LIMIT XX [~~2860~~] and R2-3 NIGHT XX [~~2860~~] sign, or larger size sign showing those limits, should be erected in accordance with the TMUTCD.

(C) At the end of speed zones on freeways where the maximum legal rural speeds are permissible, the R2-1 [~~FR2-1~~] SPEED LIMIT XX [~~2860~~] sign (in combination with the R2-3 [~~FR2-3~~] NIGHT XX [~~2860~~] sign, where applicable) showing those limits shall be erected.

(D) The following Figure illustrates the typical location and frequency of signs for regulatory speed zones.
Figure: 43 TAC §25.22(b)(5)(D)

(i) Distances shown between speed limit signs are examples and may be greater, depending on the results of speed checks.

(ii) Posted regulatory speed limits will be based on the 85th percentile, as described in §25.23(b) of this subchapter.

(6) (No change.)

(c) Construction regulatory and advisory speeds.

(1) Introduction. Traffic control in work sites should be designed on the assumption that drivers will only reduce their speeds if they clearly perceive a need to do so. Reduced speed zoning should be avoided as much as practicable.

(2) Advisory construction speeds.

(A) Advisory speed plates (CW13-1) in conjunction with construction warning signs can often be used more appropriately than construction regulatory speed signs.

(B) The advisory speed plates are intended to supplement construction warning signs advising drivers of a safe speed to drive through the section signed. See Part 6 [~~VI~~] of the Texas Manual on Uniform Traffic Control Devices (TMUTCD) for sign detail and typical application diagrams.

(C) The advisory speed can be altered as needed by project conditions, and several different advisory speeds can be used for varying conditions throughout the project.

(3) Regulatory construction speed zones.

(A) Regulatory construction speed limits should be used only for sections of construction projects where speed control is of major importance and enforcement is available.

(B) Regulatory construction speed signs (R2-1) should be removed during periods when they are not needed in order to minimize interference with traffic. See Part 6 [~~VI~~] of the TMUTCD for sign detail.

(C) According to Part 6 [~~VI~~] of the TMUTCD reduced [~~states: "Reduced~~] speed zoning should be avoided as much as practicable.[~~"~~] Reduced speeds should only be posted in the vicinity of work being performed and not throughout the entire project. Traffic control plan designs should, as much as possible, accommodate the speeds existing prior to construction. These decisions, however, require engineering judgment depending on the nature of the project and other factors which affect the safety of the traveling public and construction workers.

(D) On sections of highway under construction, speed studies and other studies normally made in determining speeds to be posted for a regulatory speed zone are not required. In selecting the speeds to be posted, consideration should be given to:

(i) safe stopping sight distances;

(ii) construction equipment crossings;

(iii) the nature of the construction project; and

(iv) any other factors which affect the safety of the traveling public and construction workers.

(E) Only those speed limits authorized by commission minute order or city or county ordinance or resolutions may be posted.

(F) Construction speed zones are automatically canceled when construction is complete.

(4) Request for regulatory construction speed zones. If a city desires the commission to establish the zones, then it should send a written request to that district.

(5) Advisory speed construction warning plates (CW13-1).

(A) The CW13-1 [~~or SCW13-1~~] ADVISORY SPEED plate may be used in conjunction with any construction warning sign to indicate the maximum safe speed for passenger cars around a curve or through a hazardous location. It shall not be used in conjunction with any sign other than a construction warning sign, nor shall it be used alone.

(B) The CW13-1 [~~or SCW13-1~~] plate shall always be mounted on the same post with, and immediately below, the construction warning sign to which it applies.

[~~(i)~~ ~~The CW13-1 plate shall be used with construction warning signs smaller than 36 by 36 inches.~~]

[~~(ii)~~ ~~The SCW13-1 plate shall be used with construction warning signs 36 by 36 inches and larger.~~]

(C) The CW13-1 [~~or SCW13-1~~] plate is classed with the construction warning signs because, when used, it is in effect a part of a construction warning sign.

(6) Regulatory construction speed limit signs.

(A) R2-1[~~, ER2-1, or FR2-1~~] SPEED LIMIT signs shall be used for signing construction speed zones.

(B) Speed limit signs shall be erected only for the limits of the section of roadway where speed reduction is necessary for the safe operation of traffic and protection of construction personnel. In most cases, this will involve only a short section of roadway where work is in progress, but in some cases, it will involve partially completed sections extending for some distance.

(C) It is imperative that proper speed limits be posted in construction work zones. Improperly posted work zone speed limits adversely affect the flow of traffic by:

(i) encouraging driver disrespect for all speed limits; and

(ii) endangering the driver who observes an unreasonably low posted speed limit.

(D) The reduced speed limits are effective only within the limits where signs are erected, even though the entire length of the project may be covered by commission minute order. The following Figure shows typical signing of a construction speed zone.
Figure: 43 TAC §25.22(c)(6)(D)

(7) Covering or removing temporarily unnecessary reduced speed signs.

[~~(7)~~ ~~If signs are temporarily unnecessary.~~]

(A) If the reduced speed limits are not necessary for the safe operation of traffic during certain construction operations or those days and hours the contractor is not working, the regulatory construction speed limit signs should be made inoperative by:

(i) moving the signs to the edge of the right of way and facing them away from the roadway; or

(ii) covering the signs when the reduced speed limits are not necessary (Care should be taken to delineate the sign post so it does not become an invisible obstacle at night adjacent to the roadway.)

(B) Leaving speed limit signs in place when not needed has at least three adverse effects:

(i) drivers ignore the signs, and by doing so, they are subject to arrest;

(ii) respect for all speed limit signs is lessened; and

(iii) the law-abiding driver becomes a traffic hazard by observing the reduced speed.

(8) Signs installed by the contractor.

(A) Even though a contractor may furnish and/or install speed limit signs on a construction project, the engineer must see that contractors do not erect any signs of their own design with speed limits of their choosing.

(B) Except under the immediate direction of the engineer, contractors have no responsibility whatsoever for the design, location, or maintenance of speed limit signs.

(d) School speed zones.

(1) Introduction. Reduced speed limits should be used for school zones during the hours when children are going to and from school. Usually such school speed zones are only considered for schools located adjacent to highways or visible from highways. Pedestrian crossing activity should be the primary basis for reduced school speed zones. However, irregular traffic and pedestrian movements must also be considered when children are being dropped off and picked up from school. If, for some reason, there is a delay in the installation of a school flasher, other static signs for school zones should be installed as soon as possible after the minute order is approved.

(2) Signs.

(A) Where the department is responsible for signing school speed zones, the zones shall be signed with a combination of the S4-3 SCHOOL and the R2-1 SPEED LIMIT sign assembly. Flashing beacons shall also be used with the S4-4 WHEN FLASHING sign to identify the periods the school speed limit is in force. One sign, S5-1, could be used, which is a combination of these. The S5-1 SCHOOL SPEED LIMIT XX [~~2860~~] WHEN FLASHING may be used in place of the S4-3, R2-1, and S4-4. A commission minute order or city or county ordinance or resolution authorizing the reduced speed limit is required prior to use of these signs in school zones. Cities should be allowed to sign school speed zones in accordance with the other options set out in the Texas Manual on Uniform Traffic Control Devices.

(B) The S4-3, R2-1 and S4-4 sign assembly with flashers shall be mounted on a permanent type mounting and placed at each zone limit of the section of highway, road, or street through which the speed limit has been reduced. The sign assembly with flashing beacons may be placed off the shoulder of the road, in the median, or overhead to face traffic entering the school speed zone. An illustration of signing for school speed zones is shown in the TMUTCD. Other types of signs used by cities should be similarly located in conformance with the TMUTCD.

(3) Intervals of operation.

(A) Generally, the zones indicated on the signs should be in effect only during the following specified intervals:

(i) from approximately 45 minutes before school opens until classes begin;

(ii) from the beginning to the end of the lunch period; and

(iii) for a 30 minute period beginning at the close of school.

(B) The intervals of operation of the flashing beacons on the School Zone Speed Limit Assembly may be extended or revised for school events as mutually agreed upon by the school district and the entity responsible for the operation of the flashing beacons. In this case, the flashing beacons should only be operated when there is an increase in vehicular activity or pedestrian traffic in and around the roadway associated with the school event.

(4) More information. See the Texas Manual on Uniform Traffic Control Devices, Part 7 [~~VII~~], for more details on school areas.

(e) (No change.)

§25.25. Application of Advisory Speeds.

(a) Overview.

(1) (No change.)

(2) Advisory speed sign posting.

(A) The W13-1 [~~or SW13-1~~] ADVISORY SPEED sign may be used in conjunction with any warning sign to indicate the maximum safe speed for passenger cars around a curve or through a hazardous location. It shall not be used in conjunction with any sign other than a warning sign, nor shall it be used alone.

(B) The W13-1 [~~or SW13-1~~] sign shall always be mounted on the same post and immediately below the warning sign to which it applies.

[(i) ~~The W13-1 sign shall be used with warning signs smaller than 36 by 36 inches.~~]

[(ii) ~~The SW13-1 sign shall be used with warning signs 36 by 36 inches and larger.~~]

(C) The following Figure shows typical warning and advisory speed signing applications.
Figure: 43 TAC §25.25(a)(2)(C) (No change.)

(b) Curves and turns.

[~~(1) Introduction~~]

(1) [~~(A)~~] Horizontal curves having a safe operating speed of 5 miles per hour or more below the posted maximum speed limit should be signed with advisory speed limits.

(2) [~~(B)~~] Vertical curves may also be signed with advisory speed limits.

[~~(C) The speed to be posted will be based on results obtained from test runs in a vehicle equipped with a ball-bank indicator, not the calculated value. The ball-bank indicator can be electric or manual.~~]

(3) The method described in Chapter 5, Section 2 of the Procedures for Establishing Speed Zones manual will be used to determine the advisory speed to be posted for vertical curves.

[~~(2) Calculated speed.~~]

[~~(A) For curves and turns, the calculated speed is to be used as a guide for making the initial test run and as a check on the speed obtained by the use of the ball-bank indicator. The calculated speed is not, however, to be used as the sole basis for selecting the posted speed. See "Selecting Speed for Posting" in paragraph (3) of this subsection for additional discussion.~~]

[~~(B) Calculate the design speed of the curve under consideration using the following formula.~~]
[~~Figure: 43 TAC §25.25(b)(2)(B)~~]

[~~(3) Selecting speed for posting.~~]

[~~(A) Remember, the speed to be posted shall be based on the results obtained from test runs with the ball-bank indicator, not the calculated value.~~]

[~~(B) The posted speed shall be a multiple of 5 miles per hour.~~]

[~~(C) In selecting the speed to be posted, care should be taken that the calibrated speed for any given speedometer reading is used rather than the speedometer reading itself.~~]

[~~(D) As a final check, the posted speed is aimed at the highest value that will permit the average car to travel around the curve in its own lane without causing an uncomfortable side throw to its passengers.~~]

[~~(E) The speed to be posted on the curve should not be reduced arbitrarily below that determined by ball-bank indicator test runs.~~]

[~~(F) When there is a reverse curve or a series of three or more curves, the advisory speed sign shall show the value for the curve having the slowest safe speed in the series.~~]

(c) Intersections.

(1) Introduction. Advisory zones may be posted at:

(A) intersections such as traffic circles [~~(only a few of which are left in the state)~~] designed for an operating speed less than the speed of the approaches; and

(B) intersections with restricted sight distances which require a reduction in speed for safe operation.

(2) (No change.)

(d) Narrow and one-lane bridges.

(1) (No change.)

(2) Placement of signs.

(A) The normal location of the W5-2 [~~or W5-2a~~] NARROW BRIDGE or W5-3 ONE LANE BRIDGE signs, under which a W13-1 [~~or SW13-1~~] ADVISORY SPEED sign would be mounted, is specified in Table 2C-4 [~~2c-4~~] of the latest edition of the Texas Manual on Uniform Traffic Control Devices [~~for Streets and Highways~~].

(B) (No change.)

(e) Descending grades of six percent or greater.

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

(4) If a curve is involved.

(A) If a curve is within the limits of or at the bottom of such a grade, the advisory speed for the curve should be determined by the method described in Chapter 5, Section 2 of the Procedures for Establishing Speed Zones manual [~~procedure found in subsection (b) of this section~~].

(B) (No change.)

(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 27, 2008.

TRD-200803368
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER O. CRASH RECORDS INFORMATION SYSTEM

43 TAC §§25.975 - 25.977

The Texas Department of Transportation (department) proposes new §§25.975 - 25.977 relating to the collection, analysis, and reporting of crash records.

EXPLANATION OF PROPOSED NEW SECTIONS

Senate Bill 766, 80th Legislature, Regular Session, 2007, transferred the collection and analysis of accident records from the Department of Public Safety to the Texas Department of Transportation effective October 1, 2007. The Department of Public Safety had rules contained in 37 TAC §§3.7 - 3.9 concerning crash investigations which, under Senate Bill 766, became rules of the department on October 1, 2007. The department is adopting these new rules to regulate the collection of crash information.

New §25.975, Crash Record Statistical Analysis, provides reference to the external manuals the department uses to classify motor vehicle crashes and notes that these manuals will be available on the department's web site.

The Manual on Classification of Motor Vehicle Traffic Accidents was developed under the direction of the American Association of Transportation Safety Information Professionals of the National Safety Council. The manual is published by the National Safety Council and adopted by the American Standards Institute. The use of this manual ensures that Texas conforms to national standards when classifying the severity and damage of motor vehicle crashes.

The Model Minimum Uniform Crash Criteria (MMUCC) has been developed jointly by the Governor's Highway Safety Association, the National Highway Traffic Safety Administration, the Federal Motor Carrier Safety Administration, and the Federal Highway Administration. The MMUCC provides a uniform data set for states to use when describing motor vehicle crashes. Use of the MMUCC ensures that Texas conforms to national standards and that the crash data produced by Texas can be used to create a uniform overall picture of national traffic safety conditions.

New §25.975(b) provides that only a death caused by a motor vehicle crash that occurs within 30 days of the crash will be counted as a motor vehicle fatality. This period conforms to national standards used by the National Highway Traffic Safety Administration of the United States Department of Transportation. It also pro-

vides clear guidance to law enforcement agencies as to when a death should be considered as related to a motor vehicle crash.

New §25.975(c) establishes the last business day of June of each year for the date that crash reports must to be submitted to the department to be included in the previous year's crash records statistical analysis. This provision provides law enforcement officers with approximately 180 days to submit any reports from the previous calendar year before the department closes the data base. The department must close and finalize the statistical data base in order to complete the annual motor vehicle crash report required under state law.

New §25.976, Reporting by Involved Drivers, details the requirements for drivers who are reporting crashes as required under Transportation Code, §550.061. The new section sets out the circumstances under which the statute requires a driver to report a crash that is not investigated by a law enforcement officer and provides that the report must be on a form prescribed by the department. The form is available on the department website at www.txdot.gov.

New §25.977, Reporting by Investigating Officers, details the responsibilities of a law enforcement officer when reporting a motor vehicle crash to the department. The section lists the circumstances under which an officer is required to submit a crash report on a form prescribed by the department. These criteria are established under Transportation Code, §550.062(a).

New §25.977(b) outlines the categories of information that will be included in the officer crash report form as produced by the department. These categories include information about the crash; information about all vehicles involved in the crash; information about each person involved in the crash; and other factors required for the department to comply with any state or federal reporting requirements. Section 25.977(c) indicates the form is available on the department website at www.txdot.gov.

Information about the crash will include information such as date, location, time of day, weather conditions, whether the crash occurred in a construction work zone, an officer's narrative of what actually happened, and any factors that may have contributed to the crash. Information about vehicles will include information such as the type of vehicle, license plate numbers, whether the vehicle was covered by liability insurance, whether the vehicle was towed from the crash site, and the rating of damage to the vehicle. Information about persons involved in the crash will include information such as name of each driver and passenger involved in the crash, driver's license numbers, license status, whether an alcohol specimen was taken from the driver, if any charges against a driver were filed, and whether the occupants of a vehicle were using safety belts.

These criteria comply with the categories contained in the Fatality Analysis Reporting System of the National Highway Traffic Safety Administration of the United States Department of Transportation. Use of these categories ensures that crash data collected by the state conforms to uniform national standards and that overall crash data produced by Texas can be effectively used in national crash data analysis. Collection of uniform data by all states can assist in the improvement of national traffic safety.

New §25.977(d) notes that incomplete or inaccurate crash reports, with the exception of location information, will be returned to the originating law enforcement agency for correction. This provision is added to ensure that the department's crash records data base is as complete and accurate as possible. Existing §25.972(b) allows the department to make minor corrections to a submitted crash report with inaccurate location information.

New §25.977(e) provides that an officer investigating a crash involving a commercial motor vehicle must also complete the commercial motor vehicle supplemental report on a form prescribed by the department. This ensures that the department has complete and accurate information about motor vehicle crashes involving commercial vehicles and is able to comply with all federal requirements concerning commercial motor vehicle crash data.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five-years the new sections are in effect there will be minimal fiscal implications to state or local government as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Carlos A. Lopez, P.E., Director, Traffic Operations Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

PUBLIC BENEFIT AND COST

Mr. Lopez also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the sections will be more accurate and complete crash data for the State of Texas. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no significant adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new §§25.975 - 25.977 may be submitted to Carlos A. Lopez, P.E., Director, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 11, 2008.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which authorizes the Texas Transportation Commission to promulgate rules for the conduct of the work of the department, and more specifically Transportation Code, §550.064, and Transportation Code, §601.004 which authorize the department to prescribe the form of motor vehicle crash reports.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 550, and Transportation Code, §601.004.

§25.975. Crash Record Statistical Analysis.

(a) The department will classify motor vehicle crashes by the standards established in the following manuals available through the department web site at *www.txdot.gov*:

(1) the Manual on Classification of Motor Vehicle and Traffic Accidents as adopted by the American Standards Institute, Inc.; and

(2) the Minimum Model Uniform Crash Criteria (MMUCC) Guideline.

(b) For department reporting purposes, only a death caused by the crash that occurs within 30 days after the motor vehicle crash will be counted as a motor vehicle traffic crash fatality.

(c) A crash report must be submitted by the last business day of June of the year following the year in which the crash occurs, so that it may be entered into the crash record data base and included in the final year end statistical analysis for the year in which the crash occurred.

§25.976. Reporting by Involved Drivers.

(a) A driver involved in a motor vehicle crash that is not investigated by law enforcement is required to submit a driver's crash report within 10 days of the date of the crash on a form prescribed by the department if the crash resulted in:

(1) injury to or the death of a person; or

(2) $1000 or more of property damage to the property of any one person.

(b) The form is available through the department website at *www.txdot.gov*.

§25.977. Reporting by Investigating Officers.

(a) A law enforcement officer who investigates a motor vehicle crash shall submit a crash record report within 10 days of the accident on a form prescribed by the department if the crash resulted in:

(1) injury to or death of a person;

(2) $1000 or more of property damage to the property of any one person.

(b) The crash record report form must include:

(1) information about the crash;

(2) information about all vehicles involved in the crash;

(3) information about each person involved in the crash; and

(4) other factors necessary for the department to comply with state and federal reporting requirements.

(c) The form is available through the department's website at *www.txdot.gov*.

(d) Incomplete or inaccurate crash reports, with the exception of location information as described in §25.974(b) of this subchapter, will be returned to the originating law enforcement agency for correction.

(e) An officer investigating a crash involving a commercial motor vehicle also shall submit a commercial motor vehicle enforcement supplemental report on a form prescribed by the department.

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 27, 2008.

TRD-200803369
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: August 10, 2008
For further information, please call: (512) 463-8683

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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 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 34. REGULATION OF LOBBYISTS

SUBCHAPTER B. REGISTRATION REQUIRED

1 TAC §34.45

The Texas Ethics Commission withdraws the proposed amendments to §34.45 which appeared in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1670).

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803350
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: June 26, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER C. COMPLETING THE REGISTRATION FORM

1 TAC §34.65

The Texas Ethics Commission withdraws the proposed amendments to §34.65 which appeared in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1671).

Filed with the Office of the Secretary of State on June 26, 2008.

TRD-200803351
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: June 26, 2008
For further information, please call: (512) 463-5800

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SUBCHAPTER D. LOBBY ACTIVITY REPORTS

1 TAC §34.85

The Texas Ethics Commission withdraws the proposed amendments to §34.85 which appeared in the February 29, 2008, issue of the *Texas Register* (33 TexReg 1671).

Filed with the Office of the Secretary of State on June 26, 2008.

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Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Effective date: June 26, 2008
For further information, please call: (512) 463-5800

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER G. OTHER PROVISIOINS

22 TAC §573.76

The Texas Board of Veterinary Medical Examiners withdraws the proposed amendments to §573.76 which appeared in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2640).

Filed with the Office of the Secretary of State on June 23, 2008.

TRD-200803287
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: June 23, 2008
For further information, please call: (512) 305-7563

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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 16. ECONOMIC REGULATION

PART 8. TEXAS RACING COMMISSION

CHAPTER 311. OTHER LICENSES

SUBCHAPTER A. LICENSING PROVISIONS

DIVISION 1. OCCUPATIONAL LICENSES

16 TAC §311.3

The Texas Racing Commission (Commission) adopts amendments to 16 TAC §311.3, concerning Information for Background Investigation, with changes to the proposed text as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3531).

Section 311.3 requires applicants for a new or renewed license to submit fingerprints along with their application documents so that the Commission may conduct a criminal history check. Section 311.3 also provides certain exceptions to the requirement to submit fingerprints, including an exception for those who have submitted fingerprints within the previous five years. The adopted changes to §311.3 reduce this exception from a five year period to a three year period.

The amendments are adopted with a change from the proposal as published. Section 311.3(a)(1) is modified to clarify that the Department of Public Safety may require applicants to submit fingerprints in a format other than on a paper form.

The Commission received no comments in response to the proposed amendments.

The amendments are adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

§311.3. Information for Background Investigation.

(a) Fingerprint Requirements and Procedure.

(1) Except as otherwise provided by this section, an applicant for a license must submit with the application documents a set of the applicant's fingerprints in a form prescribed by the Department of Public Safety. If the applicant is not an individual, the applicant must submit a set of fingerprints on the above-referenced forms for each individual who:

(A) serves as a director, officer, or partner of the applicant;

(B) holds a beneficial ownership interest in the applicant of 5.0% or more; or

(C) owns any interest in the applicant, if requested by the Department of Public Safety.

(2) The fingerprints must be taken by a peace officer or a person authorized by the Commission.

(3) Not later than 10 business days after the day the Commission receives the sets of fingerprints under this section, the Commission shall forward the fingerprints to the Department of Public Safety.

(4) A person who desires to renew an occupational license must have submitted a set of fingerprints pursuant to this section within the three years prior to renewal or provide a new set of fingerprints for classification by the Federal Bureau of Investigation.

(5) Waiver.

(A) Pursuant to Texas Civil Statutes, Article 179e, §7.10, the Commission will waive the fingerprint requirements in this section for an applicant for an owner or trainer license if:

(i) the individual presents proof of a valid owner or trainer license issued in a racing jurisdiction that requires the submission of fingerprints to the Federal Bureau of Investigation and the Commission verifies that fingerprints were submitted by that jurisdiction for the applicant within the three years preceding the date of the application in Texas; and

(ii) the applicant's permanent residence is outside the State of Texas.

(B) This subsection does not apply to an applicant who:

(i) has a criminal history in another state, as revealed by a report by the Federal Bureau of Investigation or other reliable criminal information sources;

(ii) maintains a residence or is employed, whether self-employed or otherwise, in Texas; or

(iii) obtains a license badge issued by the Commission which gives the applicant access to a restricted area on association grounds.

(C) Notwithstanding a waiver of the fingerprint requirements under this subsection, the Commission reserves the right, at its sole discretion, to require the submission of fingerprints after a license has been issued.

(b) Criminal History Record.

(1) For each individual who submits fingerprints under subsection (a) of this section, the Commission shall obtain a criminal history record maintained by the Texas Department of Public Safety and the Federal Bureau of Investigation.

(2) The Commission may obtain criminal history record information from any law enforcement agency.

(3) Except as otherwise provided by this subsection, the criminal history record information received under this section from any law enforcement agency that requires the information to be kept confidential as a condition of release of the information is for the exclusive use of the Commission and its agents and is privileged and confidential. The information may not be released or otherwise disclosed to any person or agency except in a criminal proceeding, in a hearing conducted by the Commission, on court order, or with the consent of the applicant. Information that is in a form available to the public is not privileged or confidential under this subsection and is subject to public disclosure.

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 26, 2008.

TRD-200803361
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 833-6699

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DIVISION 2. OTHER LICENSES

16 TAC §311.51

The Texas Racing Commission adopts the repeal of 16 TAC §311.51, Interim License to Conduct Race Meetings. The Commission proposed the repeal in conjunction with its review of 16 TAC, Part 8, Chapter 311, Other Licenses, in accordance with Government Code, §2001.039. The proposed repeal was published in the April 25, 2008, edition of the *Texas Register* (33 TexReg 3369) and is adopted without change to the proposal as published. The section will not be republished.

The repeal will eliminate a rule that exceeded the statutory authority of the Commission to adopt. Article 6 of the Texas Racing Act provides that the Commission may issue four specific types of horse racetrack licenses and may issue up to three greyhound racetrack licenses. Article 6 also provides that the Commission may issue a temporary license for up to one year in the event of the death of a license holder. However, neither the general licensing provisions of Article 5 nor the specific racetrack licensing provisions of Article 6 of the Texas Racing Act contains any statutory provisions authorizing the creation of a new racetrack license type such as the Interim License to Conduct Race Meetings.

The Commission received no comments during the notice period in response to the published notice. However, during the meeting at which the Commission proposed the repeal, representatives of Retama Park, Sam Houston Race Park, and the Lawley Group addressed the Commission and questioned whether the repeal would adversely affect existing debt holders' interests in racetracks. The Commission voted to propose the repeal and directed staff to work with the industry to assess there were any statutorily authorized methods of addressing these interests. During the meeting in which the Commission adopted the repeal, a representative of the Lawley Group restated his concerns that the repeal would adversely affect debt holders' interests. The Commission disagrees with this concern on the basis that there are no rights or privileges conferred by §311.51 because the rule itself exceeded the Commission's authority to adopt. The Commission has directed staff to continue to work with the industry to present a statutorily authorized alternative for addressing the debt holders' interests in a racetrack.

The repeal is adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

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 23, 2008.

TRD-200803282
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 13, 2008
Proposal publication date: April 25, 2008
For further information, please call: (512) 833-6699

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CHAPTER 319. VETERINARY PRACTICES AND DRUG TESTING
SUBCHAPTER D. DRUG TESTING
DIVISION 2. TESTING PROCEDURES

16 TAC §319.336

The Texas Racing Commission (Commission) adopts amendments to 16 TAC §319.336, concerning Payment of Testing Costs, without changes to the proposed text as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3532).

Section 319.336 relates to the accounting and payment of drug testing costs out of money held by racing associations to pay outstanding pari-mutuel tickets and vouchers. The amendments to §319.336 replace the specific process detailed in subsection (c)(1) with a referral to new §321.36, which is adopted elsewhere in this issue of the *Texas Register*.

The Commission received no comments in response to the proposed amendments.

The amendments are adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

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 26, 2008.

TRD-200803362

Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 833-6699

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CHAPTER 321. PARI-MUTUEL WAGERING
SUBCHAPTER A. MUTUEL OPERATIONS
DIVISION 3. MUTUEL TICKETS AND VOUCHERS

16 TAC §§321.31, 321.33, 321.36, 321.37, 321.41, 321.42

The Texas Racing Commission adopts amendments to 16 TAC §§321.31, 321.33, 321.37, and 321.41; and new §321.36 and §321.42, concerning mutuel tickets and vouchers. The amendments and new sections are adopted without changes to the proposed text as published in the May 2, 2008, issue of the *Texas Register* (33 TexReg 3533).

These sections relate to the information that must be printed on the face of each pari-mutuel ticket and voucher, the cashing of outstanding tickets and vouchers, the expiration of tickets and vouchers, and the remittance of unclaimed outstanding tickets and vouchers after drug testing costs have been paid. The proposed amendments provide that outstanding tickets and vouchers expire one year after issuance, require that each ticket and voucher must have the expiration date printed on its face, and describe the process by which associations must remit expired tickets and vouchers to the Commission after offsetting allowable drug testing costs. These changes are necessary to align the rules with the statutory changes in the Texas Racing Act that occurred as a result of House Bill 2701, which was passed in the 80th Regular Session of the Texas Legislature.

The amendment to §321.31, concerning Vouchers, requires that the expiration date of a voucher be on its face.

The amendments to §321.33, concerning Expiration Date, provide that tickets and vouchers issued on or after September 1, 2007, expire one year after the date of issuance. The changes also provide that tickets issued during August 2007 will expire at the close of business on September 29, 2008, and that vouchers issued prior to September 2007 shall not expire.

New §321.36, concerning Remittance of Unclaimed Outs and Vouchers, provides that racing associations shall remit payments on a quarterly basis along with reports that show the amount of unclaimed outstanding tickets and vouchers that expired, the amount needed to reimburse the association for drug testing costs, and the amount of excess expired tickets and vouchers due to the Commission.

The amendment to §321.37, concerning Cashed Tickets and Vouchers, requires racing associations to ensure the security of outstanding vouchers.

The amendment to §321.41, concerning Cashing Outstanding Tickets, changes the length of time from 10 days to 21 days before an issued but uncashed ticket becomes outstanding.

New §321.42, concerning Cashing Outstanding Vouchers, sets out the process an association must follow when cashing outstanding vouchers.

The Commission received no comments in response to the proposal.

The amendments and new sections are adopted under the Texas Revised Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting horse or greyhound racing involving wagering and other rules to administer the Texas Racing Act, and §11.01, which requires the Commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse racing.

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 26, 2008.

TRD-200803363
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: July 16, 2008
Proposal publication date: May 2, 2008
For further information, please call: (512) 833-6699

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY
SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text or manual as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3866) and will not be republished. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The adopted amendment adopts applicable excerpts of the Performance-Based Monitoring Analysis System 2008 Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. Given the statewide application of the PBMAS and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual PBMAS Manual have been adopted since the first PBMAS Manual was developed in 2004-2005. The PBMAS evolves from year to year, and the intent is to annually update 19 TAC §97.1005 to refer to the most recently published PBMAS Manual.

The adopted amendment to 19 TAC §97.1005 updates the current rule by adopting excerpted sections of the PBMAS 2008 Manual. These excerpted sections describe the specific criteria and calculations that will be used to assign 2008 PBMAS performance levels.

The 2008 PBMAS includes several key changes from the 2007 system. Texas Assessment of Knowledge and Skills (TAKS) (Accommodated) results for English Language Arts (Grade 11), Mathematics (Grade 11), Science (Grades 5, 8, 10, and 11), Science (Grade 5 Spanish), and Social Studies (Grades 8, 10, and 11) have been incorporated into TAKS performance indicators as appropriate. TAKS Grade 8 Science results have also been incorporated into all TAKS performance indicators. As a result of the Texas English Language Proficiency Assessment System (TELPAS) standard setting timeline, the Reading Proficiency Test in English (RPTE) Multi-Year Beginning Proficiency Level Rate indicator used in the 2007 PBMAS has been suspended and will be reinstated with the 2009 PBMAS. No Child Left Behind (NCLB) Indicator #1(i-ii) used in the 2007 PBMAS has been replaced with Title I, Part A TAKS passing rate indicators in Mathematics, Reading/ELA, Science, Social Studies, and Writing. In addition, three new Title I, Part A Report Only indicators have been added to the NCLB program area.

A new indicator to measure potential disproportionate out-of-school suspensions of students with disabilities has been added to the special education program area. Several new or revised participation indicators are being implemented in the 2008 PBMAS. These indicators measure students' participation in TAKS, TAKS (Accommodated), TAKS-Modified, and TAKS-Alternate. Finally, adjustments have been made to the performance level cut points for all PBMAS TAKS performance indicators, and a hold harmless provision has been added to the special education program area to address the impact of the phase-in of TAKS (Accommodated) and Grade 8 Science results into the 2008 PBMAS. Changes to the PBMAS indicators for 2008 are marked in the manual as *"New!"* for easy reference.

The adopted amendment also modifies subsection (d) to specify that the PBMAS manual adopted for the school years prior to 2008-2009 will remain in effect with respect to those school years.

The TEA determined that the adopted amendment will have no direct adverse economic impact for small businesses or microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal began May 16, 2008, and ended June 15, 2008. No public comments were received.

The amendment is adopted under the Texas Education Code, §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The amendment implements the Texas Education Code, §7.028.

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 25, 2008.

TRD-200803337
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 15, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.13

The Texas Board of Professional Engineers adopts an amendment to §137.13, relating to Inactive Status, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2635) and will not be republished.

The adopted rule change would not require a license holder who is filing for inactive status to pay the $200 fee increase as provided under the Texas Engineering Practices Act, Texas Occupations Code §1001.206.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and bylaws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state; Occupations Code §1001.206 exempting licensees in Inactive Status from paying the fee increase; and Occupations Code §1001.355 providing for an Inactive Status for license holders.

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 30, 2008.

TRD-200803387
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: July 20, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 440-7723

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER C. LICENSE RENEWALS

22 TAC §571.57

The Texas Board of Veterinary Medical Examiners adopts new §571.57, regarding the Board's ability to first apply any monetary funds sent to the Board to any outstanding administrative penalties for the licensee, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2637) and will not be republished.

New §571.57 allows the Board to first apply any monetary funds sent to the Board to any outstanding administrative penalties for the licensee. The Board is seeking to ensure payment of administrative penalties assessed by the Board without spending additional state resources.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter. Texas Occupations Code, Chapter 801, is affected by this new rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2008.

TRD-200803288
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER F. RECORDS KEEPING

22 TAC §573.51

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.51, regarding rabies control, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2638) and will not be republished.

The adopted amendment to §573.51 would require a veterinarian that issues a rabies vaccination certificate or the veterinary practice where the certificate was issued to retain a readily retrievable copy of the certificate. The adopted amendment conforms the Board's rule to the current practice and policy of the Board where the veterinary practice may keep the certificate if the certificate was issued there and the client has not transferred when a veterinarian leaves the veterinary practice.

One individual commented that the Board's amendment is redundant to the Department of State Health Services rule, adding to the ever-increasing volume of regulations. The proposed amendment is not a new regulation the Board is adding but rather a clarification of a rule already in place and conforming the rule to the Board's current practice and policy.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter. Texas Occupations Code, Chapter 801, is affected by this amendment.

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 23, 2008.

TRD-200803289
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.62

The Texas Board of Veterinary Medical Examiners adopts an amendment to §573.62, regarding the violation of Board orders or negotiated settlements, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2638) and will not be republished.

The adopted amendment to §573.62 authorizes the Board to deny a request to renew a license if the licensee has not paid a final administrative penalty. The adopted amendment also lays out the circumstances where the rule does not apply. The Board is seeking to ensure payment of administrative penalties assessed by the Board without spending additional state resources.

No comments were received regarding adoption of the proposed amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter. Texas Occupations Code, Chapter 801, is affected by this amendment.

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 23, 2008.

TRD-200803290
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.67

The Texas Board of Veterinary Medical Examiners adopts the repeal of §573.67, regarding temporary license suspensions, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2639) and will not be republished.

The repeal of §573.67 is in conjunction with adopted new §575.35 as part of the agency rule review of Chapter 575. The repeal will allow for better organization of Chapter 573 and Chapter 575 of the Board's rules. The subject matter regarding temporary license suspensions is addressed in adopted new §575.35. Chapter 575 generally discusses the practice and procedure rules for the Board, and therefore is a more appropriate place for a rule regarding temporary license suspensions.

No comments were received regarding repeal of the rule.

The repeal is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter. Texas Occupations Code, Chapter 801, is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2008.

TRD-200803291
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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22 TAC §573.77

The Texas Board of Veterinary Medical Examiners adopts the repeal of §573.77, regarding cease and desist procedures, without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2640) and will not be republished.

The repeal of §573.77 is in conjunction with adopted new §575.50 as part of the agency rule review of Chapter 575. The repeal will allow for better organization of Chapter 573 and Chapter 575 of the Board's rules. The subject matter regarding cease and desist procedures is addressed in adopted new §575.50. Chapter 575 generally discusses the practice and procedure rules for the Board, and therefore is a more appropriate place for a rule regarding cease and desist procedures.

No comments were received regarding repeal of the rule.

The repeal is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) that authorizes the Board to adopt rules necessary to administer the chapter. Texas Occupations Code, Chapter 801, is affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2008.

TRD-200803292
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

The Texas Board of Veterinary Medical Examiners (Board) adopts amendments to §§575.2 - 575.6, 575.22, and 575.27, new §§575.7 - 575.10, 575.28 - 575.30, 575.35, 575.40, 575.50, 575.60, and 575.62, and the repeal of §§575.7 and 575.30 - 575.32, concerning practice and procedure provisions. Sections 575.2 - 575.6, 575.22, 575.27, 575.8 - 575.10, 575.28 - 575.30, 575.35, 575.40, 575.60, 575.62, and the repeal of 575.7 and 575.30 - 575.32 are adopted without changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2642) and will not be republished. New §575.7 and §575.50 are adopted with changes to the proposed text as published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2642). The text of the rules will be republished.

The adopted amendments, new rules, and repeals result from the Board's rule review conducted in accordance with Texas Government Code, §2001.039.

Elsewhere in this issue of the *Texas Register,* the Texas Board of Veterinary Medical Examiners adopts the rule review of Chapter 575.

The Board adopts the following changes to Chapter 575 that clarifies the rules of practice and procedure before the Board, including but not limited to, contested case hearings, Board meetings, complaints, informal conferences, temporary license suspension proceedings, and cease and desist procedures.

Generally, a few comments were received regarding grammar corrections. The Board respectfully disagrees with the comments and finds that the language is clear as written. Also, a few comments were received objecting to several rules where the language was changed from directing the Executive Director to perform a certain task to allowing the Executive Director to assign a task to be performed to a staff member of the agency at the Executive Director's direction. The individuals commenting were concerned this would increase the power of the Executive Director beyond what is the current level. This language was inserted to allow the agency to perform tasks set forth in the Board's rules with maximum efficiency. This language does not increase the power of the Executive Director as the Executive Director under these rules was already assigned to perform these tasks. Instead, it would allow other members of the staff to perform some of these tasks if the Executive Director delegates the authority to those individuals for the sake of efficient use of agency resources.

The adopted amendment to §575.2 clarifies that items shall be filed with the Board office rather than specifically with the Executive Director, and shall be deemed received when received in the Board office rather than specifically received by the Executive Director. The Board is seeking to provide greater clarification that anyone may accept items filed in the Board office, rather than specifically the Executive Director in order to ensure

the proper processing of the filed items without the intervention of the Executive Director, especially when the Executive Director is not available. This rule will allow more efficient use of staff resources to accomplish the goal of processing items filed with the Board.

The adopted amendment to §575.3 provides further clarification regarding the Board's procedure for counting days prescribed by this chapter or by a State Office of Administrative Hearings (SOAH) order, further clarification regarding the Board's procedure for disputes involving the computation of time and Board's procedure involving extensions of filing deadlines. The Board is seeking to provide greater clarification of the procedure for counting days as well as the procedure for disputes involving the computation of time and for requests for extensions of time.

Language is revised in §575.4 to provide gender inclusive language, with no substantive changes to the rule.

The adopted amendment to §575.5 provides further clarification regarding the procedures for a party to a contested case hearing to request a subpoena. In addition, the adopted amendments further define the means available to the Board to serve subpoenas. Also, the adopted amendments clarify the amount available for payment by the Board for a witness of the Board at a contested case hearing, as well as notes that the pendency of a SOAH proceeding does not preclude the Board from issuing an investigative subpoena at any time. The Board is seeking to provide greater clarification of the procedure for a party to request a subpoena, to make the process involving subpoenas more smooth for the parties involved. In addition, the amendments provide by rule the Board's access to other means available under the law to serve subpoenas. The Board also seeks with the amendments to conform to the current law regarding the payment of witness fees. Finally, the Board is seeking to keep open the option to issue an investigative subpoena at any time, to ensure the receipt of all information needed by the Board to make an informed decision regarding whether a violation of the Act or the Board's rules has occurred.

The adopted amendment to §575.6 provides gender inclusive language and deletes provisions regarding the Board's practice and procedure regarding final decisions and orders, and motions for rehearing, as these issues are addressed in new §575.8 and §575.9. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information under the Board's rules.

The Board repeals §575.7 regarding costs of appeal. The topic of costs of appeal are discussed in new §575.10. The Board adopts a new §575.7, outlining the presentation procedures for Proposals for Decisions in contested case hearings before the Board. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information under the Board's rules and to provide better clarification regarding the procedures for presentation of Proposal for Decision in contested case hearings before the Board.

Adopted new §575.8 outlines and clarifies the Board's practice and procedure regarding final decisions and orders, as previously addressed in §575.6. The Board is seeking to better organize the rules under the rule review process to provide the public easier access to the information under the Board's rules and provide clarification of the Board's practice and procedure regarding final decisions and orders.

Adopted new §575.9 outlines the procedure before the Board regarding motions for rehearing as previously addressed in §575.6. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules.

Adopted new §575.10 states the apportionment of costs in mediations and administrative hearings, appeals and related costs. The Board is seeking to better organize the rules under the rule review process to provide the public easier access to the information available under the Board's rules and clarify the authority of the Board to assess the costs of preparing the record for appeal to the party who appeals as authorized under the Administrative Procedures Act (APA), §2001.177, as well as other costs of the administrative hearing and mediation.

The adopted amendment to §575.22 provides further clarification regarding the actions the Board may take in reinstating a veterinarian's license and adds gender inclusive language. The Board is seeking to provide greater clarification of the actions the Board may take in reinstating a veterinary license as authorized under the Veterinary Licensing Act.

The adopted amendment to §575.27 provides further clarification regarding the Board's practice and procedure involving complaints against licensees and removes subsections involving complaint logs, investigation of complaints, informal conferences, contested case hearings, and contingency plans for Board members. The issue of investigation of complaints is addressed in new §575.28. The issue of informal conferences and contingency plans for Board members is addressed in new §575.29. The issue of Board procedures regarding contested case hearings is addressed in new §575.30. The Board is seeking to remove the complaint log, as the process no longer serves any useful purpose for the Board. The Board is also seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules.

Adopted new §575.28 restates the Board's procedure involving investigations conducted by the Board as removed from §575.27, and simplifies the language to make the rule easier to read. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules.

Adopted new §575.29 restates the Board's procedure regarding informal conferences and contingency plans for Board members as removed from §575.27. In addition, the adopted new rule would allow the Enforcement Committee's designee to notify parties of the dismissal of a complaint, advise the licensee of the alleged violations and offer a settlement, or inform the licensee of their right to an administrative hearing. The adopted new rule provides further clarification of the Informal Settlement Conference procedure before the Enforcement Committee, including providing for additional negotiations and allowing for communications with Board members on the Enforcement Committee in the settlement process. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules. The Board is also seeking to create a contingency plan in case the Board Secretary is unable to serve in their official capacity. The Board is also seeking to provide the opportunity and process for additional negotiations between the Board staff and licensees in order to facilitate agreements that are satisfactory to both parties.

The Board repeals §575.30 regarding criminal convictions. The topic of criminal convictions is discussed in new §575.50. The

Board adopts new §575.30 regarding contested case hearings at SOAH, restates the removed language from §575.27 regarding the contested case hearings before the Board. The new rule replaces the requirement of filing a complaint affidavit with SOAH, with filing a complaint, and further clarifies the Board's procedure with regards to filing complaints with SOAH. The new rule deletes specific requirements from the Board procedure for filing with SOAH as they are redundant to rules set forth by SOAH and the Administrative Procedure Act and are more properly placed in Board policy. The new rule also further delineates the presumption of receipt of a Notice of Hearing to the last known address registered with the Board for the licensee. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules and to provide better clarification to the public regarding the Board processes for filing contested cases with SOAH and streamline the Board's process for filing contested cases with SOAH.

The Board repeals §575.31 regarding alternative dispute resolution. The topic of alternative dispute resolution is discussed in adopted new §575.60.

The repeal is to allow better organization of Chapter 575. New §575.60 discusses the issue of alternative dispute resolutions.

The Board repeals §575.32 regarding negotiated rulemaking. The repeal allows for better organization of Chapter 575. Adopted new §575.62 discusses the issue of negotiated rulemaking.

Adopted new §575.35 outlines and clarifies the Board's process and procedure for those proceedings, as previously addressed in §573.67. The adopted new rule also clarifies evidence rules for these proceedings. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules and provide clarification of the Board's practice and procedure regarding temporary license suspension.

Adopted new §575.40 restates the language in repealed §573.77 regarding the Board's cease and desist procedures. The adopted new rule also states the purpose of the rule. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules and provide a statement of the Board's purpose for the cease and desist procedures.

Adopted new §575.50 restates the language in repealed §575.30 regarding criminal convictions. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules. Section 575.50 is adopted with changes to subsection (f). During the proposal, the last sentence in subsection (f) was inadvertently left off. The subsection reads as follows:

(f) Notwithstanding the provisions of (a) through (e) of this section, the Board shall suspend or revoke a veterinarian's license in accordance with the Occupations Code, §801.406, where the veterinarian has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

Adopted new §575.60 restates the language in repealed §575.31 regarding alternative dispute resolutions. The adopted new rule also adds gender inclusive language. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules.

Adopted new §575.62 restates the language in repealed §575.32 regarding negotiated rulemaking. The adopted new rule adds the requirement that the notice of a proposed new rule or amendment of an existing rule shall be made in accordance with the Administrative Procedure Act, to conform the rule to the current practice of the Board, and to add gender inclusive language. The Board is seeking to better organize the rules under the rule review process to provide the public with easier access to the information available under the Board's rules.

The following comments were received:

Comments regarding §575.4 were received from a few individuals disagreeing with the necessity for the current wording in the current rule regarding the need for courtesy and respect towards Board members. The Board respectfully disagrees, as the Board believes that by courtesy and respect being shown by both public members and the Board, meetings will run more smoothly, and both sides will be more likely to hear the substance of the discussion rather than the distraction of personal accusations. The Board president, as the presiding officer of the Board meeting, makes the determination of whether anyone is not acting with courtesy and respect during the Board meeting, as he or she is tasked with the job of ensuring the Board meetings are kept civil so that the meetings run efficiently, timely and with the information needed for the Board to act.

One comment was received regarding §575. 5 by an individual stating the amendment was vague and ambiguous where the amendment stated that the subpoena should be made to the Board but addressed to a sheriff or constable. The Board respectfully disagrees. The rule states exactly what needs to occur for the subpoena to be processed by the Board. The Board has been given authority to process subpoenas requested by the opposing party. However, the sheriff or constable is the one who is actually serving the subpoena. Therefore, as at other state agencies who have this same ability, the requesting party should send the request for the subpoena to the Board but address the subpoena to the sheriff or constable they wish to have serve the subpoena.

No comments were received regarding the adoption of the proposed amendment to §575.6, except regarding grammar as generally discussed above.

Based on comments received regarding §575.7, the Board is deleting the requirement that a party shall not inquire into the mental processes used by the Board in arriving at its decision. This is a nonsubstantive change to the rule. One individual commented that it would be inappropriate for the Board to conduct an investigation after an Administrative Law Judge (ALJ) has rendered a proposal for decision. Nothing in this rule discusses the Board conducting an investigation after the ALJ has rendered a proposal for decision.

Regarding 575.8, one comment was received stating that it would be improper for the Board to limit the ALJ's authority to determine an appropriate sanction in a proposal for decision. The Board believes that there is no statutory authority that prevents the Board from being the final arbitrator in the appropriate sanction in a proposal for decision.

No comments were received regarding adoption of proposed new §575.9.

Regarding new §575.10, one comment was received stating that the costs of preparing the record for appeal should be assessed by the ALJ at SOAH not the Board. The Board notes that the APA authorizes the Board to assess the costs to the party who appeals.

Regarding §575.22, one comment was received regarding the perceived requirement that the Board reinstate a veterinarian's license after five years from the effective date of such cancellation or revocation regardless of the circumstances involved in the cancellation or revocation of the license. This language is not an amendment to the current language already in the rule. In addition, this is not a mandatory requirement that the Board will reinstate the license, rather that the Board, if the circumstances warrant it, may reinstate the license. One comment was received asking that the language involving the Board's ability to consider the status of financial support to petitioner's family be removed. This language is in the current rule promulgated by the Board thus it is not a new policy for the Board. This is merely a possible consideration for the Board, not a requirement, and allows the Board to consider possible extenuating circumstances and have a compassionate response in a situation if the facts warrant such a response. In addition, comments were received regarding grammar in the rule as discussed generally above.

Regarding §575.27, comments were received from individuals asking that the complaint log language not be removed. The original purpose of the complaint log was to identify the number of people that were requesting complaint forms as compared to the number of people that actually filed a complaint with the Board. The complaint log no longer serves any useful purpose because of the more widespread use of the Internet, that allows the public to go to the Board's website and print the complaint form without ever contacting the Board. Comments were received requesting that language be added to this rule for a report to the Board of dismissed complaints to be stated orally in open session. The Board respectfully disagrees, since the Board is already advised in writing of the number of dismissed complaints and this requirement would add considerable time to already lengthy Board meetings.

Regarding 575.28, one comment was received requesting the number of veterinarians at the Informal Settlement Conference be specifically limited to two. The Board respectfully disagrees, as the Enforcement Committee, in certain cases, asks for other veterinarians to sit in on an Informal Settlement Conference where they have a specialized insight due to their own veterinary practice. Comments were received asking for the language regarding the prompt notification of acknowledgement to be more specific. The Board respectfully disagrees, as this would unduly hamper the staff's ability to prioritize and handle tasks as the agency's resources permit. The Board is unaware of a recent concern by complainants regarding the time in which they received an acknowledgement of their complaint by the staff. Comments were received requesting the complaintant receive a copy of the licensee's response in an investigation. This policy was recently discussed at a Board meeting and the Board has elected to keep this policy as is. The Board set the current rule as the licensee is unable to respond to the complaint unless the licensee is aware of the complaintant charges. There is a concern that the provision of the licensee's response will result in an unending circle of accusations between the licensee and the complainant. If the veterinarian members of the Enforcement Committee determine there is a possible violation based upon the complaint, the response, the medical records, and any other evidence discovered, the licensee will be asked to attend an Informal Settlement Conference and the complainant will have an opportunity to refute any statement made by the licensee at that time. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place. Comments were received requesting the change in the language in paragraph (5) be changed back to a requirement that the Director of Enforcement interview the complainant to obtain additional information. The Board respectfully disagrees, as it is not always possible to reach the complainants. The Board has a policy of attempting to contact and interview complainants but this is not always possible. Comments were received requesting it become mandatory for secondary opinions to be contacted in every case. The Board respectfully disagrees, as the Enforcement Committee is tasked with reviewing the cases presented before them based upon their knowledge as licensed veterinarians. However, the veterinarians on the Enforcement Committee do, on occasion, when the circumstances warrant, ask for secondary opinions, often from respected board certified specialists in particular fields. The Board does not believe that every standard of care case should be reviewed by a secondary opinion. However, if the complainant or the veterinarian obtains a second opinion the Enforcement Committee may consider the opinion in evaluating the case. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place. One comment requested a public member review standard of care violations against licensees. The Board respectfully disagrees, as another licensed veterinarian is more qualified to review the medical aspects of a case to determine whether there has been a standard of care violation. One individual provided a comment that more Board members should attend the Informal Settlement Conference and especially more public members. The Board respectfully disagrees, as asking more than four Board members to the Informal Settlement Conference would create a quorum of the Board in violation of the Open Meetings Act and would circumvent the purpose of the Enforcement Committee.

Regarding §575.29, comments were received requesting additional language be added to the rule requiring complainant's legal counsel to be present at the Informal Settlement Conference. The Board respectfully disagrees, and leaves this decision at the discretion of the Executive Director who will be able to determine whether the settlement process with the licensee will be helped or harmed by the presence of the complainant's legal counsel at the Informal Settlement Conference. However, it should be noted, a very low percentage of complainants are represented by counsel and even fewer have ever been denied access to an Informal Settlement Conference. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place. One comment was received requesting the number of veterinarians at the Informal Settlement Conference be specifically limited to two. The Board respectfully disagrees, as the Enforcement Committee, in certain cases, asks for other veterinarians to sit in on an Informal Settlement Conference where they have a specialized insight due to their own veterinary practice. Comments were received asking for language which would not allow either party to meet privately with the Enforcement Committee, at the Enforcement Committee's request, as it was perceived by the individuals as creating secrecy around the process. The Board respectfully disagrees, as the rule currently states this same policy and provides the reasoning behind it, to "maintain decorum." In addition, the purpose of the meeting, as the name states, is a settlement conference, and just as in other mediations, it is often necessary for the parties to meet separately and outside of the presence of the other party in order for a settlement to be

reached. Two comments were received requesting the removal of the language allowing the Executive Director to have discretion regarding the procedure followed at the Informal Settlement Conference. The Board respectfully disagrees, as it is necessary for there to be an individual that runs the process and procedure at the Informal Settlement Conference to allow for slight deviations from the procedure if necessary due to extenuating circumstances and the determination has been previously made that the most appropriate staff person is the Executive Director. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place. Two comments were received requesting the replacement of the word "allegations" with "complaint" in subsection (d). The Board respectfully disagrees, as the general counsel for the agency drafts allegations using the investigative report and a review of the facts in the case, and not all of the complaint may be determined by Enforcement Committee members to warrant a violation of the Board's rules. In addition, other violations may be found in a review of the facts surrounding a complaint that would not have been mentioned in the complaint but Enforcement Committee members may wish to be discussed at an Informal Settlement Conference. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place. Two comments were received asking for the removal of language requiring the agreement of the licensee in order for the Board to order restitution in a case at Informal Settlement Conference. The Board respectfully disagrees, as the Texas Veterinary Licensing Act requires the agreement of the licensee in the assessment of restitution. Only the Texas Legislature has the power to remove this requirement. This is not a new policy being set forth in a rule but rather a reorganization of the current rule in place.

Regarding §575.30, one comment was received requesting additional language in the rule to require the Board to send notice to any licensee's attorney. The Board respectfully disagrees, as the Board's current policy is to send notice to the licensee's attorney of record and this would not be necessary to be delineated in the Board's rules. One comment was received requesting language in the rule to be changed to require the Board to accept the proposal for decision without any further changes. The Board respectfully disagrees, as this would not be fulfilling the purpose of the Board as set forth in the APA to review the proposal for decision. The APA specifically addresses this issue and provides guidelines for the Board to follow when it is reviewing the proposal for decision and making changes, if any.

No comments were received regarding the repeal of §575.31.

One comment was received regarding the repeal of §575.32, requesting the Board to not repeal the rule, as negotiated rulemaking will no longer exist. The Board respectfully disagrees, as adopted new §575.62 discusses the issue of negotiated rulemaking.

No comments were received regarding the adoption of proposed new §575.35.

No comments were received regarding the adoption of proposed new §575.40.

No comments were received regarding the adoption of the proposed new §575.50.

Regarding §575.60, two comments were received requesting the complainant to be included in any alternative dispute resolution process. The Board respectfully disagrees, as the alternative dispute resolution process is used to mediate the disagreement between the Board and the licensee once the Enforcement Committee has determined a violation of the Act and/or the Board's rules has occurred. The complainant is no longer a party to any lawsuit at this point forward, therefore it is not appropriate for the complainant to attend an alternative dispute resolution conference.

Regarding §575.62, two comments were received regarding the designation of other staff members by the general counsel to be the negotiated rulemaking coordinator, and requesting the removal of the authority to designate other staff members. The Board respectfully disagrees, as this authority is necessary to effectively use the staff's time and resources of the agency.

22 TAC §§575.2 - 575.10, 575.22, 575.27 - 575.30, 575.35, 575.40, 575.50, 575.60, 575.62

The amendments and new rules are adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter. The Board has determined the reasons for initially adopting the rules discussed above in the rule review of Chapter 575 continue to exist.

§575.7. Presentation of Proposal for Decision.

(a) Notice of oral argument. All parties and the ALJ who has issued a proposal for decision shall be given notice of the opportunity to attend and provide oral argument concerning a proposal for decision before the board. Notice shall be sent by hand delivery, regular mail, certified mail - return receipt requested, courier service, or registered service to the ALJ's office and the parties' addresses of record.

(b) Arguments before the Board. The order of the proceeding shall be as follows:

(1) the ALJ shall present and explain the proposal for decision;

(2) the party adversely affected shall briefly state the party's reasons for being so affected supported by the evidence of record;

(3) the other party or parties shall be given the opportunity to respond;

(4) the party with the burden of proof shall have the right to close;

(5) board members may question any party as to any matter relevant to the proposal for decision and evidence presented at the hearing;

(6) at the end of all arguments by the parties, the board may deliberate in closed session and shall determine the charges on the merits and take action on a final decision in open session.

(c) Limitation. A party shall not be disruptive of the orderly procedure of the board's routines.

§575.50. Criminal Convictions.

(a) In a process under Chapter 53, Occupations Code, the Board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a veterinarian. This subsection applies to persons who are not imprisoned at the time the Board considers the conviction.

(b) The Board shall revoke a license upon the imprisonment of a licensee following a felony conviction or revocation or felony

community supervision, parole, or mandatory supervision. A person currently incarcerated because of a felony conviction may not sit for license examination, obtain a license under the Veterinary Licensing Act, Occupations Code, Chapter 801, or renew a previously issued license to practice veterinary medicine.

(c) The Board shall, in determining whether a criminal conviction directly relates to the duties and responsibilities of a veterinarian, consider the factors listed in the Occupations Code, §53.022.

(d) In determining the present fitness to perform the duties and discharge the responsibilities of a veterinarian who has been convicted of a crime, the Board shall consider, in addition to the factors referenced in subsection (c) of this section, the factors listed in the Occupations Code, §53.023.

(e) The practice of veterinary medicine places the veterinarian in a position of public trust. A veterinarian practices in an autonomous role in the treating and safekeeping of animals; prescribing, administering and safely storing controlled substances; preparing and safeguarding confidential records and information; and accepting client funds. The following crimes relate to the practice of veterinary medicine. The commission of each indicates a violation of the public trust, and a lack of integrity and respect for one's fellow human beings and the community at large.

(1) any felony or misdemeanor conviction of which fraud, dishonesty or deceit is an essential element;

(2) any criminal violation of the Veterinary Licensing Act, or other statutes regulating or pertaining to the practice or profession of veterinary medicine;

(3) any criminal violation of statutes regulating other professions in the healing arts;

(4) deceptive business practices;

(5) a misdemeanor or felony offense involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

(E) theft;

(F) sexual assault;

(G) injury to a child or to an elderly person;

(H) child abuse or neglect;

(I) tampering with a government record;

(J) animal cruelty;

(K) forgery;

(L) perjury;

(M) bribery;

(N) mail fraud;

(O) diversion or abuse of controlled substances, dangerous drug, or narcotic; or

(P) other misdemeanors or felonies, including violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency of the person to be unable to perform as a licensee or to be unfit for licensure, if action by the Board will promote the intent of the Veterinary Licensing Act, Board rules, including this chapter, and the Occupations Code, Chapter 53.

(f) Notwithstanding the provisions of (a) through (e) of this section, the Board shall suspend or revoke a veterinarian's license in accordance with the Occupations Code, §801.406, where the veterinarian has been convicted of a felony under the Health and Safety Code, §485.033, or the Health and Safety Code, Chapter 481 or 483.

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 23, 2008.

TRD-200803294
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: July 13, 2008
Proposal publication date: March 28, 2008
For further information, please call: (512) 305-7563

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22 TAC §§575.7, 575.30 - 575.32

The repeals are adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a) which states that the Board may adopt rules necessary to administer the chapter. The Board has determined the reasons for initially adopting the rules discussed above in the rule review of Chapter 575 continue to exist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 23, 2008.

TRD-200803293
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 2. FACILITY ADMISSION AND USE FEES

31 TAC §53.30

The Texas Parks and Wildlife Department (the department) adopts an amendment to §53.30, concerning Facility Admission and Use Fees, with changes to the proposed text as published

in the April 18, 2008, issue of the *Texas Register* (33 TexReg 3161).

The change to §53.30(5)(C)(iii)(III) would reduce the fee range for use of the shooting range to $10 to $40. The department inadvertently proposed a fee range of $20 to $40.

The amendment reorganizes the fee structure for reserving and using facilities on the Parrie Haynes Ranch; establishes minimum fees for department-provided meal services; creates a fee discount for facility use by youth groups; adds definitions to clarify words and terms; increases the amounts of existing fee ranges; waives fees for sub-lessees and persons participating in volunteer activities; and clarifies that the use of specific ranch facilities is by reservation only.

The Parrie Haynes Ranch is a 4,525-acre property the department leases from the Texas Youth Commission. During summer months, the department, with the consent of the Texas Youth Commission, subleases the property to the C5 Youth Foundation (formerly Camp Coca-Cola) for the operation of a camp for high-potential youth from risk-filled environments. In addition, the C5 Youth Foundation has made significant infrastructure improvements to and investments in the Parrie Haynes Ranch in support of the operation of the camp. To the extent that other uses do not conflict with the use of the ranch by the C5 Foundation and are consistent with the department's mission and the department's lease from the Texas Youth Commission, the department manages the property as an outdoor learning center and conference, environmental, and equestrian facility serving primarily youth.

The current fee structure does not address the complete range of facilities and activities available on the ranch and the current fee ranges specified by rule are insufficient to recover the majority of the cost of operating the facility. The rules reconfigure the fee structure to account for all facilities and activities available to the public, stipulate the fee range for each facility or activity, and provide for a fee discount for youth groups. The amendment is intended to allow the department to recover a larger percentage of operational expenses while continuing to provide affordable opportunity for organizations and entities, especially youth groups.

The rule in effect prior to this rulemaking addressed fee ranges in a very broad fashion for ranch facility components. The department determined that it was necessary to assign fee ranges more specifically on the ranch. For instance, the previous rule specified individual fee ranges only for the larger houses on the ranch, and an aggregate fee range for "lodging," by which was meant the small cabins on the ranch. Because the facilities on the ranch are not all the same, the amendment as adopted identifies the specific smaller components such as cabins, meeting rooms, pavilion, and pool and assigns specific fee ranges to each.

Additionally, the amendment creates definitions, makes clarifications, and adds stipulations as noted.

The amendment to §53.30(5)(A) defines the meanings of specialized words and terms used in the paragraph for purposes of providing for the unambiguous interpretation of the paragraph or to reduce repetition of lengthy phrases.

For the sake of avoiding needless repetition, the amendment to §53.30(5)(A)(i) defines "rig" to mean a tandem of one vehicle and one horse trailer.

The amendment to §53.30(5)(A)(ii) defines "volunteer" as "a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch." The definition is necessary because another provision of the amendment would waive all fees for volunteers and the department wishes to be clear as to what is meant by the term.

The amendment to §53.30(5)(A)(iii) defines the term "youth group" as "a group at least 60% of which are 17 years of age or younger." The department chose 17 years of age as the maximum age for youth in order to be consistent with the statutory definition of "youth" in the Parks and Wildlife Code (e.g., §§11.0172(a)(2), 61.058, 62.014). The minimum percentage composition of youth necessary for a group to qualify as a youth group is based on the minimum level of adult supervision acceptable to the department and is consistent with criteria used by most school districts for supervision of children on away-from-school activities.

The amendment to §53.30(5)(B) clarifies that use of specific ranch facilities by the public is on a reservation-only basis. Use of the Parrie Haynes Ranch facilities and activities (other than the equestrian center) is restricted to reservation-only because the ranch is not staffed or otherwise equipped to handle walk-up business.

The Parrie Haynes Ranch consists of two areas, the Hilltop Complex on the west side of the ranch, and the Equestrian Center on the east side of the ranch. The amendment to §53.30(5)(C) establishes fee ranges for the various facilities on the Hilltop Complex portion of the ranch. The fee ranges were developed with the intent of providing facilities and services at prices similar to those found at comparable facilities elsewhere in the state. The department compared rental prices for cabins, houses, meeting rooms, dining halls, pavilions, pools, and day use at Belton Lake Outdoor Recreation Center, Heart of Texas Baptist Encampment, Pine Cove Retreats, McKinney Roughs and Canyon of the Eagles (Lower Colorado River Authority), Camp Allen, the Texas 4-H Center, and the T-Bar-M resort and has determined that the proposed fee ranges are consistent with comparable fees for similar facilities and activities.

The amendment to §53.30(5)(D) establishes fee ranges for camping and day use on the ranch. For the purposes of these rules, the department views camping as overnight visitation that does not include lodging in one of the buildings on the ranch. The camping fees are established at two levels, primitive and with recreational vehicle electrical hookup.

The amendment to §53.30(5)(E) establishes fee ranges for use of the Equestrian Center. In addition, the amendment allows the closure of the equestrian center to overnight visitation and the waiver of fees by order of the executive director when necessary to address staffing and management priorities. The provision is necessary because the ranch is minimally staffed.

The amendment to §53.30(5)(F) establishes a fee range for meals provided by the department. The minimum fee for meal service will be calculated on the basis of a 25-person party. The Parrie Haynes Ranch is minimally staffed; meal preparation, service, and cleanup represent a significant operational investment of staff time and cannot be provided on a cost-effective basis for fewer than 25 people.

The amendment to §53.30(5)(G) provides for exceptions to the provisions of the rule. The amendment to §53.30(5)(G)(i) establishes a standard 40% discount on fees for the use of cer-

tain ranch facilities by youth groups. As noted earlier, the Parrie Haynes Ranch was donated to the state for the benefit of youth and is leased by the department from the Texas Youth Commission for that purpose. In order to provide affordable opportunities for groups and organizations that serve youth populations, the department believes that fees for youth groups should be substantially less than those charged to other groups and individuals.

The Parrie Haynes Ranch is used by other governmental entities under interagency and interlocal contracts pursuant to the requirements of Government Code, Chapters 771 and 791; therefore, the amendment to §53.30(5)(G)(ii) would note that fact for the sake of clarity.

The amendment to §53.30(5)(G)(iii) also waives all fee requirements for volunteers and Texas Youth Commission-approved sub-lessees. In operating and maintaining the Parrie Haynes Ranch the department receives donated labor and program delivery benefits from volunteer individuals and organizations. The amendment waives the fees for such persons in order to maximize and encourage volunteer activities on the ranch. As previously noted, the department subleases the property to the C5 Youth Foundation (formerly Camp Coca-Cola), for the operation of a camp for high-potential youth from risk-filled environments. The camp is operated completely at the expense of the C5 Youth Foundation and therefore the department believes it is appropriate to waive all fees for the camp.

The amendment to paragraph (5) also standardizes terminology by creating standard rental time-unit of a "24-hour period" to replace current references to "per night" and "per day" as they occur throughout the rule.

The rule as adopted will function by assigning a fee or fee range to each of the facilities and services available to the public on the Parrie Haynes Ranch.

The department received two comments opposing adoption of the proposed amendment. Both commenters offered a specific explanation or rationale for opposing adoption. Those comments, accompanied by the agency's response, are as follows.

One commenter opposed adoption and stated that prices are already too high. The department disagrees with the commenter and responds that current fees on the Parrie Haynes Ranch are insufficient to recoup a reasonable percentage of the cost of operating the ranch. Therefore, the department must raise fees in order to maintain current levels of service to the public. The department also notes that the fees as adopted are consistent with other, similar facilities in the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that $40 per night is too high for the Cowboy Cabin. The department disagrees with the comment and responds that the $40 per night fee is the upper boundary of the fee range and the fee range as adopted is consistent with the prices charged for similar accommodations elsewhere in the state. No changes were made as a result of the comment.

The department received four comments supporting adoption of the proposed amendment.

No groups or associations commented on adoption of the proposed amendment.

The amendment is adopted under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee for entering, reserving, or using a facility or property owned or managed by the department.

§53.30. Facility Admission and Use Fees.

As determined and authorized by the executive director, the department may charge entrance and facility use fees within the ranges established or the amounts specified in this section.

(1) Texas Freshwater Fisheries Center.

(A) The department may charge entrance fees, not to exceed $6 for daily entrance, and $15 for an annual pass.

(B) The executive director, or his designee, may:

(i) establish additional entrance requirements for student groups and teachers as necessary, to enhance student utilization of the center; and

(ii) waive fee requirements when such a waiver is in the best interest of the public or the department.

(C) Rental and use fees for meeting/convention room rental--$0 to $500.

(2) Sea Center Texas.

(A) daily entrance--$0 to $5; and

(B) annual pass--$0 to $20.

(3) Old Tunnel Wildlife Management Area. Entrance fees:

(A) visitors under five years of age--free

(B) visitors 6-16 years of age--$2 to $5;

(C) visitors over 16 years of age--$5 to $10;

(D) visitors 65 years of age and over--$3 to $5;

(E) group tours--$75 to $90; and

(F) youth group tours--$40 to $50.

(4) Mason Mountain Wildlife Management Area.

(A) bunk (per night)--$20 to $24;

(B) room (per night)--$60 to $72; and

(C) Big House rental--$300 to $360 per day.

(5) Parrie Haynes Ranch.

(A) Definitions.

(i) Rig--a vehicle/horse trailer tandem;

(ii) Volunteer--a person the department has authorized to access the Parrie Haynes Ranch to provide maintenance, development, program delivery, or other similar assistance to the Parrie Haynes Ranch; and

(iii) Youth group--a group at least 60% of which are 17 years of age or younger.

(B) General. Use of the Parrie Haynes Ranch facilities listed in subparagraphs (C), (D) and (F) of this paragraph is on an as-available basis by reservation only.

(C) Facility fees. On the basis of availability, use of the Longhorn Lodge, Hoblitzelle Activity Pavilion, Rio Vista Hall, Buffalo Bunkhouse Meeting Rooms, and Pool is included for groups of 25 or more persons who purchase lodging and meals at the Hilltop Complex.

(i) Lodging.

(I) Mountain Laurel House--$150 to $250 per 24-hour period;

(II) Lone Star House--$250 to $400 per 24-hour period;

(III) Buffalo Bunkhouse--$300 to $600 per 24-hour period;

(IV) Cabins (Llano, Frio, Comal, Lantana, Primrose, Rattlesnake, Hawk, Coyote, and Bobcat)--$300 to $500 per 24-hour period, subject to applicable occupancy restrictions; and

(V) Rustic Hunter's Cabin--$50 to $100 per 24-hour period.

(ii) Other facilities.

(I) Longhorn Lodge (classroom)--$150 to $250 per 24-hour period;

(II) Hoblitzelle Activity Pavilion--$100 to $150 per 24-hour period;

(III) Buffalo Bunkhouse (meeting rooms)--$50 to $150 per 24-hour period;

(IV) Rio Vista Hall--$150 to $250 per 24-hour period;

(V) pool--$150 to $250 per 24-hour period (lifeguard not provided).

(iii) Miscellaneous.

(I) kayak rental--$10 to $40 per kayak per 24-hour period;

(II) ropes challenge course--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one certified facilitator provided by the user).

(III) shooting range--$10 to $40 per person per 24-hour period (must be accompanied by or include at least one person, provided by the user, who is certified by the department or the National Rifle Association as a hunter education instructor); and

(IV) Hilltop equestrian arena--$200 to $300 per 24-hour period.

(V) Youth Hunting Package (maximum: two nights, lodging (Rustic Hunter's Cabin) and hunting only)--$20 to $60 per person per 48-hour period;

(D) camping and day use:

(i) camping:

(I) primitive--$5 to $20 per person per 24-hour period; and

(II) RV/electrical connection--$16 to $30 per 24-hour period.

(ii) day use: $3 to $15 per person per 24-hour period.

(E) Equestrian Center fees. When necessary to address staffing and management priorities, the Executive Director by order may close the equestrian center to overnight visitation and waive the fees established in this subparagraph.

(i) Day use (includes overnight, no lodging)--$10 to $20 per 24-hour period per rig;

(ii) Overnight (with electrical hook-up)--$16 to $30 per 24-hour period per rig;

(iii) Extra vehicle--$5 to $15 per 24-hour period;

(iv) Cowboy Cabin--$20 to $40 per 24-hour period;

(v) Hideout Clubhouse (including porch)--$120 to $200 per 24-hour period; and

(vi) Hideout Clubhouse (porch only)--$60 to $80 per 24-hour period.

(F) Meals.

(i) Meal fees shall be from $5 to $25 per person per meal, depending on the meal plan selected.

(ii) For groups of fewer than 25 people, the minimum meal fee shall be the fee that would be charged to a group of 25 persons, depending on the meal plan selected.

(G) Exceptions.

(i) The fees listed in subparagraph (C)(i) of this paragraph shall be discounted by 40% for youth groups.

(ii) Use of the Parrie Haynes Ranch by governmental entities shall be by agreement according to the relevant provisions of Government Code, Chapters 771 and 791, regarding Interagency Cooperation and Interlocal Cooperation.

(iii) Volunteers are exempt from all fee requirements.

(iv) Existing subleases of Parrie Haynes Ranch approved by the Texas Youth Commission are exempt from the provisions of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 27, 2008.

TRD-200803381
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: July 17, 2008
Proposal publication date: April 18, 2008
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER NN. FIREWORKS TAX

34 TAC §3.1281

The Comptroller of Public Accounts adopts an amendment to §3.1281, concerning fireworks tax, without changes to the proposed text as published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 3894).

The amendment implements House Bill 539, 80th Legislature, 2007, which changed Occupations Code, §2154.202, to include

a period beginning May 1 and ending at midnight on May 5 as a period during which a retail fireworks permit holder is authorized to sell fireworks to the public if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border in a county in which the commissioners court has approved the sale of fireworks during that period. The definition of "sales tax" has been added to subsection (a) of the rule. The list of items that are excluded from the fireworks tax base has been moved from subsection (b) and combined with the exemption information under subsection (d). The caption for subsection (d) has been changed to reflect that reorganization. The payment provisions in subsection (e) have been reorganized under subsections (f) - (h). Due date information has been moved to subsection (f) and expanded to provide a due date of August 20 for remittance of fireworks tax collected during the new May 1 - May 5 sales period; the original effective date for the fireworks tax has been deleted from the subsection. Information regarding prepayment and timely filing discounts is found under new subsection (g); and late payment penalty and interest is covered under new subsection (h).

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, and taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, Chapter 161, and Occupations Code, §2154.202(g)(3).

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 24, 2008.

TRD-200803304
Martin Cherry
General Counsel
Comptroller of Public Accounts
Effective date: July 14, 2008
Proposal publication date: May 16, 2008
For further information, please call: (512) 475-0387

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 8. MOTOR VEHICLE DISTRIBUTION

The Texas Department of Transportation (department) adopts new §8.87, License Terms and Fees, and new §8.88, Transition Period for the Issuance of Two-Year Licenses, and amendments to §8.133, General Distinguishing Number, all concerning license terms. New §8.87 and §8.88 and amendments to §8.133 are adopted without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2912) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

The adopted amendments and new sections are necessary to give effect to House Bill 2651, 80th Legislature, Regular Session, 2007. Licenses issued by the department to new and independent motor vehicle dealers, motor vehicle manufacturers, distributors, converters, their representatives, lessors, and lease facilitators currently expire one year after the date of issuance. HB 2651 removes the annual renewal requirement for motor vehicle distribution licenses and authorizes the department to set the period for which licenses are valid.

New §8.87, License Terms and Fees, states that the license period is two years for all licenses, general distinguishing numbers, and license plates issued by the department under Occupations Code, Chapter 2301 or Transportation Code, Chapter 503 unless otherwise provided for by statute. Due to an increase in requirements over the years, the application processing time has increased, which has resulted in backlogs for the issuance and renewals of licenses. A two-year license term will reduce the renewal backlog and associated call volume. Reduction of the renewal workload will allow the department to provide better service to the public and process license renewals in a more timely manner.

New §8.87 incorporates the existing requirements of §8.133(i)(2) that metal plates issued by the department in connection with a license expire on the same date as the license. The language is transferred from Subchapter E, General Distinguishing Numbers, to Subchapter C, Licenses, Generally, to clarify that the requirements apply to all licensees, including manufacturers who may have manufacturer license plates but do not hold general distinguishing number licenses. The two-year license term will not apply to personalized prestige dealer license plates, also known as vanity plates, issued under Transportation Code, §503.0615. Those plates are issued by county tax assessor collectors under the authority of the Vehicle Titles and Registration Division of the department and are not affected by these amendments.

New §8.87 further clarifies that the annual license fees required by statute will be multiplied by the number of years in the license term to determine the amount of the fee, which is due at the time of application. Fees are not increased, although licensees will be required to pay two years of license fees at one time.

New §8.88, Transition Period for the Issuance of Two-Year Licenses, describes how the transition from one to two-year license periods will be accomplished. During the first year of implementation, the department will randomly select one-half of the licensees whose license will be renewed for a one-year term. Prior to renewal of those licenses, the department will notify the licensees of their license term. The phased implementation will balance the renewal workload between the years in the two-year license cycle. If an application for a new license is received by the department after August 31, 2008, the licensee will be issued a two-year term. This section automatically expires on December 31, 2009 by which time the transition to the two-year license term will have been completed.

Amendments to §8.133, General Distinguishing Number, remove specific references to a one-year license term. Language clarifying the term of a license and requiring payment of a license fee in full at the time of application is transferred to new §8.87. The language is transferred because the requirements apply to all licensees as opposed to only general distinguishing

number license holders. Language regarding the issuance and expiration of dealer metal plates is also transferred to new §8.87. The metal plates issued by the division will be issued for the same period as the license.

In addition, the amendments correct citations in §§8.133(b)(8), 8.133(c)(1), and 8.133(f). The amendments also correct formatting and punctuation errors in §8.133(c)(5) and (6).

COMMENTS

No comments on the proposed amendments and new sections were received.

SUBCHAPTER C. LICENSES, GENERALLY

43 TAC §8.87, §8.88

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155 and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle distribution licensees and Occupations Code, §2301.301 and Transportation Code, §503.010, which authorize the commission to establish the term of the licenses to which the new rules apply.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, Subchapter G, and Transportation Code §§503.007, 503.008, 503.010, and 503.011.

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 27, 2008.

TRD-200803370
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 17, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER E. GENERAL DISTINGUISHING NUMBERS

43 TAC §8.133

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Occupations Code, §2301.005 and §2301.155 and Transportation Code, §503.002, which authorize the commission to establish rules for motor vehicle distribution licensees and Occupations Code, §2301.301 and Transportation Code, §503.010, which authorize the commission to establish the term of the licenses to which the new rules apply.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2301, Subchapter G, and Transportation Code §§503.007, 503.008, 503.010, and 503.011.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Bob Jackson
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Texas Department of Transportation
Effective date: July 17, 2008
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For further information, please call: (512) 463-8683

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CHAPTER 17. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §17.28, §17.40

The Texas Department of Transportation (department) adopts amendments to §17.28, concerning specialty license plates, symbols, tabs, and other devices, and new §17.40, marketing of specialty license plates through a private vendor, all concerning motor vehicle registration. The amendments to §17.28 and new §17.40 are adopted with changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2916).

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTION

The adopted amendments and new section are necessary to implement the provisions of House Bills 191, 2282, and 2627 of the 80th Legislature, Regular Session, 2007; and to update or clarify existing information.

House Bill 191 amended Transportation Code, §502.184 and Transportation Code, Chapter 504 to standardize the fees assessed for specialty license plates issued to active or former members of the United States Armed Forces and their surviving spouses.

House Bill 2282 amended Transportation Code, Chapter 504 by adding new §504.316, which requires the department to issue specialty license plates to persons who have received the Legion of Merit medal and provides the fees associated with issuance of Legion of Merit License Plates.

House Bill 2627 amended Transportation Code, §504.701 and §504.702 by decreasing the amount of deposit that must be submitted to the department by a sponsoring entity prior to manufacture of specialty license plates authorized by a law. The deposit amount was decreased from $15,000 to $8,000.

Amendments to §17.28(b)(2) clarify that the license plate fee for the Legion of Merit specialty license plate is the same amount as the fee for other military specialty license plates. House Bill 2282, enacted during the regular session of the 80th Legislature, added Transportation Code, §504.316, which provides for the issuance of license plates for Legion of Merit medal recipients and sets the fees for those plates. House Bill 191 amended

several provisions relating to specialty plates that are authorized for certain types of military service and honors and established a general structure for fees charged for those plates. Section 14 of House Bill 191 provides that, in the case of an inconsistency between the provisions of that bill and another bill that was enacted during the regular session that relates to fees for military specialty plates, House Bill 191 controls. The fee provision of House Bill 2282 conflicts with the fee structure provided under House Bill 191; under Section 14 of House Bill 191, the fee structure provided by that bill controls. The language added in the rule expressly provides the statutory authority for charging a fee that is different than the fee provided by Transportation Code, §504.316.

New subparagraph (C) of §17.28(b)(2) states the existing policy that the fee for specialty plates is non-refundable after the application is submitted and the issuance is approved by the department. The application fee is used to offset the administrative costs of processing the application. Subsequent subparagraphs are relettered.

Amendments to §17.28(b)(3), (d)(2)(B), and (d)(3)(C) address changes related to the Legion of Valor license plates. Legion of Valor is deleted from the list of specialty license plates that require an application to be submitted to the department to allow those plates to be processed by the county tax assessor-collector offices. This change makes applying for those plates more convenient. Legion of Valor license plates are also deleted from the list of license plates that expire in March of each year. This change allows the department to stagger the expiration of Legion of Valor license plates to distribute the work more evenly throughout the year.

In response to a comment received, new paragraph (4) of §17.28(b), Gift plates, is added to provide the existing procedure for purchasing a general distribution specialty license plate as a gift for another person.

Amendments to §17.28(d)(2)(C) revise the language of that provision to delete Texas Guard license plates from the list of license plates that expire in June of each year. This change allows the department to stagger the expiration of Texas Guard license plates to distribute the work more evenly throughout the year. Subsequent subparagraphs are relettered.

Amendments to redesignated subparagraph (E) of §17.28(d)(3) clarify that the six and eight year periods for the issuance of new specialty license plates at no charge is calculated from the date of issuance of personalized license plates and other specialty license plates, respectively. This language is added to eliminate confusion regarding whether the six and eight year periods for the issuance of new specialty license plates begins to run from the date of issuance or on the one year anniversary of the date of issuance.

Amendments to §17.28(e)(1)(C) and (2) delete references to Transportation Code, §504.851 as the procedure for the transfer of new specialty license plates created under Transportation Code, §504.851 is being adopted in new §17.40(f). The deletion of former subparagraph (A) of §17.28(e)(2) removes the ability to transfer specialty license plates issued under Transportation Code, Chapter 504, Subchapters B and G, between persons. Currently, there is little demand for this service, and the procedure is burdensome. This prohibition is combined with the substance of former subparagraph (B) of §17.28(e)(2) into new subparagraph (A) of §17.28(e)(2).

Amendments to §17.28(f)(2) clarify that interim replacement tags issued for non-personalized specialty license plates will include the new specialty license plate number and not the number on the license plate that has been lost, destroyed, or mutilated. At the time the replacement tags are issued, the department invalidates the lost, destroyed, or mutilated non-personalized license plate number and updates its records to reflect the new license plate number. If the lost, destroyed, or mutilated license plate number is personalized, the same personalized license plate number will be shown on the interim replacement tag. Additionally, the term "cardboard" has been deleted to allow the department discretion to select the material from which the interim replacement tags are made.

To conform to the changes made by House Bill 2627, the amendments to §17.28(g)(2)(A) and (C)(ii) change the amount of the deposit required prior to manufacture of new specialty license plates from $15,000 to $8,000.

Existing §17.28(j), Marketing of specialty license plates through a private vendor, is repealed and new language regarding the marketing of specialty license plates is adopted in new §17.40. The substance of existing §17.28(j) is redundant of Transportation Code provisions and is, therefore, unnecessary.

New §17.40, Marketing of specialty license plates through a private vendor, is adopted to address provisions for the specialty license plate vendor program. Transportation Code, §504.851 requires the department to contract with a vendor to provide for the marketing and sale of specialty and personalized license plates. The statute requires that the department establish by rule the fees for the issuance of the vendor-marketed specialty and personalized plates. The fee schedule allows vehicle owners to purchase vendor-designed license plates for multiple years by paying at the time of purchase all specialty plate fees, including the applicable renewal fees, at a price that is lower than the total of the corresponding annual fees. The fee schedule includes fees for one-year, five-year, or ten-year periods. Owners of multi-year specialty license plates must pay all statutorily prescribed registration fees as required by Transportation Code, Chapter 502 to use the plates on a motor vehicle. The fee for the issuance of a vendor-marketed specialty license plate will range from $95 and $795 based on the category and time span of license plate.

New §17.40(a), Refunds, adds a refund policy for vendor-marketed specialty license plates that is identical to the policy for specialty license plates approved by the department.

New §17.40(b), Multi-year, vendor-marketed specialty license plates, explains that the vendor will directly market specialty license plates that may be purchased for one-year, five-year, and ten-year periods. The multi-year options will allow the vendor to reduce the cost of the license plate as compared to the purchase of similar plates annually by eliminating some of the administrative duties. The issuance of multi-year specialty license plates does not effect the requirement that a person must pay the registration fees under Transportation Code, Chapter 502 to use the plates on a motor vehicle.

New §17.40(c), Payment of fees, provides that the specialty license plate fee is paid directly to the vendor. The language requires that all multi-year specialty license plate fees be paid at one time to benefit from the reduced fee. The language clarifies that specialty license plate fees are in addition to the annual registration fees.

New §17.40(d), License plate categories and associated fees, provides the categories of specialty license plates that will be

marketed by the vendor and the schedule of fees for each category. The vendor will offer three categories of specialty license plates: Color/Themed, Limited Edition/Special Event, and Luxury/Prestige license plates. At the time of purchase, the purchaser will have the option of paying the annual specialty license plate fee for a period of one, five, or ten years. The multi-year fees are designed to encourage customers to pay for multiple years at the initial purchase by passing on cost savings. The department resources associated with maintaining an annual license plate decrease significantly with multi-year license plates. The fee structure developed by the vendor will enable the department to recoup all costs associated with implementation of the program, compensate the vendor for start up costs and the risk incurred by this venture, and allow the vendor to make a profit if enough vendor-marketed plates are purchased. To assist with the development of the fee structure, the vendor commissioned nationally recognized research firms to conduct two studies. The firms conducted a poll of Texans aged 18 and above from various cities who either owned a vehicle that had been purchased in the previous three years or who indicated an intent to purchase a vehicle in the next 12 months. Of the Texans polled, 26 percent indicated that they were amenable to paying the adopted fees for specialty license plates. Of those who were amenable to paying the adopted fees, 80 percent indicated that they would consider giving a specialty license plate as a gift. The vendor recommended fee schedules for the specialty license plates that research indicated would maximize profits for the vendor, and in turn would maximize revenues for the state, from the sale of vendor-marketed plates. The fees reflect the vendor's recommendations.

New §17.40(e), Replacement, adds a replacement policy for vendor-marketed specialty license plates that is the same as the replacement policy for specialty license plates approved by the department. The application for replacement must be made directly to a county tax assessor-collector. Upon application and payment of the statutory fee for replacement of a personalized specialty license plate, as provided in Transportation Code, §504.101(d), an interim temporary tag will be issued by the county tax assessor-collector for use on the vehicle until the vendor-marketed specialty license plate has been remanufactured.

New §17.40(f), Transfer of vendor-marketed specialty license plates, adds a transfer policy for vendor-marketed specialty license plates that tracks the provisions of §17.28(e) relating to the transfer policy for specialty plates approved by the department. The language provides an explanation regarding when vendor-marketed specialty license plates may be transferred between vehicles and prohibits the transfer of vendor-marketed specialty license plates between owners.

New §17.40(g), Gift plates, adds a policy for the purchase of vendor-marketed specialty license plates as a gift and the use of the plates on a motor vehicle. The ability to give plates will expand the market of the plates, thus increasing the state's revenue. The procedure includes information that will track the name of the recipient and the vehicle identification of the recipient's vehicle. For clarification, new §17.40(g)(1) changes the word "signs" to "submits" since these plates may be sold over the Internet.

COMMENTS

One comment was received from the Texas Commission on the Arts that neither supported nor objected to new §17.40.

Comment: The commenter requested clarification regarding whether gift plates, as addressed in new §17.40(g), were also available for general distribution specialty license plates issued under Transportation Code, Chapter 504, Subchapter G, or were only available for vendor-marketed specialty license plates issued in accordance with §17.40(g).

Response: The provisions for gift plates proposed in §17.40(g) do not apply to general distribution specialty license plates issued under Transportation Code, Chapter 504, Subchapter G. The provisions apply only to vendor-marketed specialty license plates issued in accordance with this section. However, under current department practice a person may place an order for a general distribution specialty license plate in the name of a person who is to receive the gift plate and provide the vehicle information for the vehicle on which the license plate will be displayed. This current practice is being added as §17.28(b)(4).

Comment: The commenter also requested clarification on whether only Texas residents were eligible to receive gift plates or if out-of-state residents may receive a gift plate if the statement required in §17.40(g)(1)(C) is provided stating the gift plate will not be displayed on a vehicle.

Response: Non-Texas residents may not receive a vendor-marketed specialty license plate as a gift. Transportation Code, §502.002 authorizes issuance of Texas license plates that may be used on a motor vehicle only to Texas residents. For some general distribution specialty license plates, a souvenir license plate may be obtained as a gift for an out-of-state resident, in accordance with Transportation Code, §504.003.

In addition, §17.40(d)(1), (2), and (3) is changed to no longer provide the one-, five- and ten-year license plate prices in list form with the (A), (B), and (C) separators. These changes are made to avoid confusion with the way the pricing categories are worded in the contract.

Section 17.40(d)(2) is also changed to reflect the correct number of alphanumeric characters that may be displayed on Limited Edition or Special Event license plates. The correct number is up to six alphanumeric characters.

Lastly, §17.40(g)(1) is corrected to eliminate the requirement that a person must submit a signed statement when applying for a gift plate since a majority of applications for the vendor-marketed license plates will be processed via the Internet. The requirement for submission of a signed statement unnecessarily complicates the application process and, therefore, is being removed.

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §504.004, which authorizes the commission to adopt rules to administer issuance of specialty license plates, symbols, tabs, or other devices and Transportation Code, §504.851, which authorizes the commission to establish fees for the issuance or renewal of vendor-marketed license plates.

CROSS REFERENCE TO STATUTE

Transportation Code, §§502.184, 504.3015, 504.316, 504.701, 504.702, 504.801, 504.851, and 504.852.

§17.28. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapter 504, charges the department with the responsibility of issuing a plate or plates, symbols, tabs, or other devices that, when attached to a vehicle as prescribed by the department, act as the legal registration insignia for the period issued. In addition, Transportation Code, Chapter 504, charges the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates.

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in §17.22 of this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. In accordance with Acts of the 80th Legislature, Regular Session, 2007, Chapter 1166, Section 14, the fees for Legion of Merit license plates issued under Transportation Code, §504.316 are determined under Transportation Code, §504.3015(a). If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5.00 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity;

(ii) a letter issued by a governmental entity on that agency's letterhead;

(iii) discharge papers; or

(iv) a death certificate.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) Congressional Medal of Honor;

(B) County Judge;

(C) Federal Administrative Law Judge;

(D) State Judge;

(E) State Official;

(F) U.S. Congress--House;

(G) U.S. Congress--Senate; and

(H) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle;

(ii) Classic Travel Trailer;

(iii) Cotton Vehicle;

(iv) Disaster Relief;

(v) Forestry Vehicle;

(vi) Golf Cart;

(vii) Log Loader;

(viii) Military Vehicle; and

(ix) Parade.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(3) Validation stickers and tabs. Instead of license plates, the department will issue validation stickers and tabs to the following vehicles.

(A) Classic Motor Vehicles. Validation stickers will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of a Classic Motor Vehicle.

(B) Certain Exhibition Vehicles. Validation stickers or tabs will be issued for display on vehicles with existing Texas license plates that were originally issued the same year as the model year of the Exhibition Vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a certificate of title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of golf carts. If a golf cart does not meet the statutorily prescribed criteria for Golf Cart license plates but must be registered, its registration classification will be determined by whether it is designed as a 4-wheeled truck, a 4-wheeled passenger vehicle, or a 3-wheeled motorcycle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Other classes of vehicle. A specialty license plate design may be varied to accommodate its use on motor vehicles other than passenger cars and light trucks. The department will determine whether a specialty license plate will be made available for one or more classes of vehicles in addition to passenger cars and light trucks and, if so, to which class or classes. In making this determination, the department will consider the cost of redesigning a specialty license plate to accommodate another class of vehicle, the potential demand for that specialty license plate on that class of vehicle, and other factors bearing on the potential cost or benefit to the public of expanding the availability of a specialty license plate.

(8) Personalized plate numbers.

(A) Issuance. The director will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the director if the alpha-numeric sequence:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §17.22(c)(3) of this chapter, as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle;

(iv) Apportioned;

(v) Congressional Medal of Honor;

(vi) Cotton Vehicle;

(vii) Disabled Veteran;

(viii) Disaster Relief;

(ix) Farm Trailer (except Go Texan II);

(x) Farm Truck (except Go Texan II);

(xi) Farm Truck Tractor (except Go Texan II);

(xii) Fertilizer;

(xiii) Forestry Vehicle;

(xiv) Log Loader;

(xv) Machinery;

(xvi) Parade;

(xvii) Permit;

(xviii) Rental Trailer;

(xix) Soil Conservation; and

(xx) Texas Guard.

(F) Fee. The statutorily prescribed personalized license plate fee will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal

application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five year period. The following license plates and registration numbers are issued for a five-year period:

(i) Antique Vehicle and Antique Motorcycle license plates and Antique tabs;

(ii) Military Vehicle license plates and registration numbers;

(iii) Parade license plates; and

(iv) Foreign Organization license plates.

(B) March expiration dates. The following license plates expire each March 31:

(i) Congressional Medal of Honor;

(ii) Cotton Vehicle;

(iii) Disaster Relief.

(C) June expiration dates. Honorary Consul license plates expire each June 30.

(D) September expiration dates. Log Loader license plates expire each September 30.

(E) December expiration dates. The following license plates expire each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(F) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal Notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of Notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Return of documents. The owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department.

(D) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(E) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §17.22 of this subchapter, except for those plates listed in clauses (i) or (ii) of this subparagraph or unless this section or other law requires the issuance of new license plates to the owner.

(i) New license plates will be issued when the following specialty license plates are renewed:

(I) Antique Motorcycle;

(II) Antique Vehicle;

(III) Congressional Medal of Honor;

(IV) County Judge;

(V) Disaster Relief;

(VI) Federal Administrative Law Judge;

(VII) Military Vehicle;

(VIII) Parade;

(IX) State Judge;

(X) State Official;

(XI) U.S. Congress--House;

(XII) U.S. Congress--Senate; and

(XIII) U.S. Judge.

(ii) New license plates shall be issued at no extra cost every six years from the date of issuance for renewed personalized license plates, and every eight years from the date of issuance for other specialty license plates, in accordance with the provisions of §17.22 of this subchapter.

(F) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the specialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application

through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates, Antique Motorcycle license plates, and Antique tabs;

(ii) Military Vehicle license plates and registration numbers;

(iii) Classic Auto, Classic Truck, Classic Motorcycle, and Classic Travel Trailer license plates;

(iv) Parade license plates;

(v) Forestry Vehicle license plates; and

(vi) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters B and G, may not be transferred between persons. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, D, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraph (1) and paragraph (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Interim replacement tags. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates. The county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number when the department's records indicate that the vehicle displaying the personalized license plates, symbols, tabs, or other devices or the license plates, symbols, tabs, or other devices themselves were reported as stolen. On expiration or recovery of the stolen vehicle or license plates, symbols, tabs, or other devices, the department will issue, at the owner's request, replacement license plates, symbols, tabs, or other devices bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit or license plate fees set forth in paragraph (2) of this subsection.

(2) The written request must be accompanied by:

(A) a deposit in the amount of $8,000 in the form of a single payment, made payable to the Texas Department of Transportation; or

(B) if the license plates are presold, the prescribed number of properly executed applications for that license plate accompanied by a single payment, made payable to the Texas Department of Transportation, in an amount equal to the prescribed fees for issuance of those license plates; or

(C) if the sponsoring entity submits less than the prescribed number of properly executed applications for that license plate accompanied by a single payment, a deposit made payable to the Texas Department of Transportation, that consists of:

(i) the prescribed license plate fees for those applications submitted; and

(ii) a deposit equal to $8,000 less the prescribed portion of those license plate fees to be retained by the department, and deposited to the State Highway Fund, for issuance of the license plates for which applications are submitted.

(3) The deposit submitted to the department under paragraph (2)(A) or (2)(C) of this subsection will be returned to the sponsoring entity only if the prescribed number of sets of the applicable license are issued or presold.

(4) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the prefix "SO" and are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801. It applies whether the new license plate originated as a result of an application or on the department's own initiative.

(A) The executive director will appoint no fewer than three employees of the department to a specialty license plate committee. The committee shall meet at least once every six months and shall review all completed specialty license plate applications.

(B) The committee may request additional information from an applicant if necessary to reach a decision.

(C) The recommendation of the committee will be based on the following:

(i) the projected sales of the license plate as demonstrated in the marketing plan and by the listing of target purchasers;

(ii) compliance with Transportation Code, §504.801; and

(iii) other information provided during the application process.

(D) If the committee recommends the issuance of a proposed specialty license plate, notice of the proposed new license plate will be published in the *Texas Register* and the license plate design will be posted on the department's web site to receive public comment. Comments must be received 10 days from the date the notice is published in the *Texas Register*.

(E) Specialty license plate applications that are restricted to certain individuals or groups of individuals (qualifying plates) will be reviewed by the committee using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates). The limited number of potential purchasers will be a factor in the approval decision.

(2) Applications for the creation of new specialty license plates.

(A) Requirements. To apply for the creation of a new specialty license plate, an applicant must submit a written application on a form approved by the director. The application shall include:

(i) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(ii) a current certification provided by the Internal Revenue Service on that department's letterhead, stating that the applicant is a not-for-profit enterprise;

(iii) a draft design of the specialty license plate;

(iv) projected sales of the plate, including an explanation of how the projected figure was established;

(v) a marketing plan for the plate including a description of the target market;

(vi) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenues from the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(vii) other information necessary for the committee to reach a decision regarding approval of the requested specialty plate.

(B) Application Process.

(i) The application must be complete to be considered by the committee.

(ii) If the committee reviews an application and determines that additional information is needed from the applicant that may contribute to the application decision, the decision on the application will be postponed until the next committee meeting.

(iii) If the additional requested information is not received prior to the next committee meeting the application will not be considered and will be returned to the applicant as incomplete.

(iv) The executive director will make the final decision on the specialty license plate application based on the committee's recommendation and the comments received during the posting period.

(v) An applicant whose application is not approved by the executive director must submit a new application and supporting documentation to be considered again by the committee.

(3) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The department has final approval of all specialty license plate designs and can adjust or reconfigure the submitted draft design to comply with the format of the license plate specifications.

(4) Redesign of specialty license plate.

(A) At the request of the original or subsequent applicant, the department may redesign a specialty license plate.

(B) A request for a new design will go through the application and approval process required by this subsection.

(C) An approved license plate redesign does not require the full deposit required by Transportation Code, §504.702.

(D) The original or subsequent applicant will pay a redesign cost to cover administrative expenses.

§17.40. Marketing of Specialty License Plates through a Private Vendor.

(a) Refunds. Fees for vendor-marketed specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(b) Multi-year vendor-marketed specialty license plates. Purchasers will have the option of purchasing vendor-marketed specialty license plates for one-year, five-year or ten-year periods.

(c) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor-marketed specialty license plates will be paid directly to the vendor for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor-marketed specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor-marketed specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(d) License plate categories and associated fees. The vendor will design, market, and offer for sale categories of customized specialty license plates that meet legibility and reflectivity standards established by the department. The categories and the associated fees are provided in this subsection.

(1) Color/Themed license plates. Color/Themed license plates include license plates with a variety of pre-approved background and character color combinations that may be customized with five characters that are either three alpha and two numeric characters or two numeric and three alpha characters. The fees for issuance of Color/Themed license plates are $95 for one year; $295 for five years; and $395 for ten years.

(2) Limited Edition/Special Event license plates. Limited Edition/Special Event license plates may be customized with any six alphanumeric characters on department-approved colored backgrounds or designs approved by the department. Special Event license plates will be made available to coincide with extraordinary events of public interest to Texas registrants. The fees for issuance of Limited Edition/Special Event license plates are $195 for one year; $495 for five years; and $595 for ten years.

(3) Luxury/Prestige license plates. Luxury/Prestige license plates may be customized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of Luxury/Prestige license plates are $395 for one year; $695 for five years; and $795 for ten years.

(e) Replacement.

(1) Application and fees. When vendor-marketed specialty license plates are lost, destroyed, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacement license plates and pay the statutory replacement fee for personalized license plates provided in Transportation Code, §504.101(d).

(2) Interim replacement tags. If the vendor-marketed specialty license plates are lost, destroyed, or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor-marketed specialty license plate number will be shown on the interim replacement tags.

(f) Transfer of vendor-marketed specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor-marketed specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor-marketed specialty license plates may not be transferred between persons.

(g) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

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 27, 2008.

TRD-200803372
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 17, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 463-8683

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CHAPTER 18. MOTOR CARRIERS

The Texas Department of Transportation (department) adopts the repeal of §§18.80 - 18.96, concerning vehicle storage facilities, and §§18.100 - 18.104, concerning nonconsent towing fees schedule. The repeals of §§18.80 - 18.96 and §§18.100 - 18.104 are adopted without changes to the proposed text as published in the April 11, 2008, issue of the *Texas Register* (33 TexReg 2925) and will not be republished.

EXPLANATION OF ADOPTED REPEALS

House Bill 2094, 80th Legislature, Regular Session, 2007, transferred all functions and activities performed by the department relating to tow trucks, towing operations, and vehicle storage facilities to the Department of Licensing and Regulation (TDLR). The transfer of responsibilities occurred on February 1, 2008. The department is no longer involved in the regulation of these entities.

TDLR proposed rules regarding these subjects in the February 8, 2007, issue of the *Texas Register* (33 TexReg 1027). The rules proposed by TDLR address similar issues and will provide for continued regulation of these entities. House Bill 2094 transferred the rules of the department to TDLR. The repeal of these sections is for the purpose of removing provisions that no longer have legal effect.

COMMENTS

No comments on the proposed repeals were received.

SUBCHAPTER G. VEHICLE STORAGE FACILITIES

43 TAC §§18.80 - 18.96

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

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 27, 2008.

TRD-200803373
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 17, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 463-8683

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SUBCHAPTER H. NONCONSENT TOWING FEES SCHEDULE

43 TAC §§18.100 - 18.104

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically House Bill 2094, 80th Legislature, Regular Session, 2007.

CROSS REFERENCE TO STATUTE

Occupations Code, Chapter 2303.

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 27, 2008.

TRD-200803374
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: July 17, 2008
Proposal publication date: April 11, 2008
For further information, please call: (512) 463-8683

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal Title 16, Texas Administrative Code, Chapter 60, Texas Commission of Licensing and Regulation. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

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

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

Subchapter A. Authority and Responsibilities

§60.1. Authority

§60.10. Definitions

Subchapter B. Organization

§60.60. Responsibilities of the Commission--General Provisions

§60.61. Responsibilities of the Commission--Meetings

§60.62. General Powers and Duties of the Commission

§60.63. Responsibilities of the Department and Executive Director

§60.64. Duration of Advisory Committee/Boards/Councils

§60.65. Petition for Adoption of Rules

§60.66. Negotiated Rulemaking

Subchapter C. Fees

§60.80. Program Fees

§60.81. Charges for Providing Copies of Public Information

§60.82. Dishonored Check Fee

§60.83. Late Renewal Fees

§60.84. Examination Fee Refund or Examination Rescheduling

Subchapter D. Practice and Procedure

§60.100. Purpose and Scope

§60.101. Filing, Computation of Time, and Notice

§60.150. Disposition by Agreement

§60.151. Alternative Dispute Resolution Policy

§60.152. Referral of Contested Matter for Alternative Dispute Resolution Procedures

§60.153. Appointment of Mediator

§60.154. Qualifications of Mediators

§60.155. Commencement of ADR

§60.156. Stipulations

§60.157. Agreements

§60.158. Confidentiality

§60.159. Place and Nature of Hearings

§60.160. Failure to Attend Hearing and Default

§60.170. The Adjudicative Hearing Record

§60.171. Proposals for Decision

§60.172. Filing of Exceptions and Replies

§60.173. Final Orders, Motions for Rehearing, and Emergency Orders

Subchapter E. Administration

Division 1. Vehicles

§60.200. Assignment and Use of Agency Vehicles

Division 2. Training

§60.210. Employee Training and Education

Division 3. Historically Underutilized Businesses

§60.220. Historically Underutilized Businesses Program

Division 4. Bid Opening and Tabulation

§60.230. Bid Opening and Tabulation

Division 5. Vendor Protests

§60.240. Definitions

§60.241. Protest Procedures

TRD-200803412
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2008

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The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal Title 16, Texas Administrative Code, Chapter 63, Personnel Employment Services. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

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

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§63.1. Authority

§63.10. Definitions

§63.20. Certificate of Authority Requirements

§63.21. Certificate of Authority Application Process

§63.40. Security Requirements

§63.70. Responsibilities of the Certificate Holder--General

§63.80. Fees--Original Certificate of Authority

§63.81. Fees--Renewal Certificate of Authority

§63.82. Fees--Duplicate Certificate of Authority

§63.90. Administrative Penalties and Sanctions

TRD-200803413
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2008

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The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal Title 16, Texas Administrative Code, Chapter 72, Staff Leasing Services. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

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

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§72.1. Authority

§72.10. Definitions

§72.20. Licensing Requirements

§72.70. Responsibility of Licensee

§72.71. Responsibility of Licensee--Records

§72.80. Fees--Licensing Application

§72.81. Fees--Licensing

§72.83. Fees--Duplicate Licensing/Name Change

§72.90. Sanctions--Administrative Sanctions/Penalties

TRD-200803414
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: July 1, 2008

♦ ♦ ♦

Adopted Rule Reviews

Texas Board of Professional Engineers

Title 22, Part 6

The Texas Board of Professional Engineers adopts the review of Chapter 131, Organization and Administration. The proposed notice of review was published in the February 15, 2008, issue of the *Texas Register* (33 TexReg 1393).

During its review, the Board determined that the initial reasons for adopting this chapter continues to exist. The chapter is therefore readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding the adoption of the review.

This concludes the Board's review of Chapter 131, Organization and Administration, as required by Texas Government Code §2001.039.

TRD-200803398

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 30, 2008

♦ ♦ ♦

The Texas Board of Professional Engineers adopts the review of Chapter 133, Licensing. The proposed notice of review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2350).

During its review, the Board determined that the initial reasons for adopting these chapters continue to exist. The chapter is, therefore, readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding the adoption of the review.

This concludes the Board's review of Chapter 133, Licensing, as required by Texas Government Code §2001.039.

TRD-200803388
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 30, 2008

♦ ♦ ♦

The Texas Board of Professional Engineers adopts the review of Chapter 135, Firm Registration. The proposed notice of review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2350).

During its review, the Board determined that the initial reasons for adopting these chapters continue to exist. The chapter is, therefore, readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding the adoption of the review.

This concludes the Board's review of Chapter 135, Firm Registration, as required by Texas Government Code §2001.039.

TRD-200803389
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 30, 2008

♦ ♦ ♦

The Texas Board of Professional Engineers adopts the review of Chapter 137, Compliance and Professionalism. The proposed notice of review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2350).

During its review, the Board determined that the initial reasons for adopting these chapters continue to exist. The chapter is, therefore, readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding the adoption of the review.

This concludes the Board's review of Chapter 137, Compliance and Professionalism, as required by Texas Government Code §2001.039.

TRD-200803390
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 30, 2008

♦ ♦ ♦

The Texas Board of Professional Engineers adopts the review of Chapter 139, Enforcement. The proposed notice of review was published in the March 14, 2008, issue of the *Texas Register* (33 TexReg 2350).

During its review, the Board determined that the initial reasons for adopting these chapters continue to exist. The chapter is, therefore, readopted in accordance with the requirements of the Texas Government Code, §2001.039.

No comments were received regarding the adoption of the review.

This concludes the Board's review of Chapter 139, Enforcement, as required by Texas Government Code §2001.039.

TRD-200803391
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: June 30, 2008

♦ ♦ ♦

Texas Racing Commission

Title 16, Part 8

The Texas Racing Commission (Commission) has completed its review of 16 TAC Part 8, Chapter 311, concerning Other Licenses, in accordance with Texas Government Code, §2001.039. Notice of the proposed rule review was published in the October 26, 2007, issue of the *Texas Register* (32 TexReg 7699).

The Commission received no comments on the proposed rule review.

As part of its review the Commission proposed and adopted amendments to §§311.1, 311.3, 311.101, 311.102, 311.104, 311.105, 311.108, 311.212, 311.214, 311.216, and 311.301; new §311.52 and §311.111; and the repeal of §311.51.

The Commission has determined that the reasons for initially adopting the chapter, with the changes described herein, continue to exist and readopts the chapter.

This completes the review of 16 TAC Part 8, Chapter 311.

TRD-200803364
Mark Fenner
General Counsel
Texas Racing Commission
Filed: June 27, 2008

♦ ♦ ♦

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of 43 TAC, Part 1, Chapter 1, concerning Management; and Chapter 11, concerning Design.

This review and readoption has been conducted in accordance with Texas Government Code, §2001.039. The Texas Transportation Commission has reviewed these rules and determined that the reasons for adopting them continue to exist. The department received no comments on the proposed rule review, which was published in the April 4, 2008, issue of the *Texas Register* (33 TexReg 2833).

This concludes the review of Chapters 1 and 11.

Questions regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation,

125 East 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200803375
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: June 27, 2008

♦ ♦ ♦

Texas Board of Veterinary Medical Examiners

Title 22, Part 24

The Texas Board of Veterinary Medical Examiners files this notice of adoption of the rule review of Chapter 575, Practice and Procedure. The review was conducted in accordance with Government Code, §2001.039. The proposed rule review was published in the March 28, 2008, issue of the *Texas Register* (33 TexReg 2703).

The Board has conducted a review of the rules in Chapter 575 and has preliminarily determined that the reasons for adopting the chapter continue to exist, with the adoption of 7 amendments, 10 new rules, and 2 repeals of rules, and 2 repeals and revisions of rules.

Elsewhere in this issue of the *Texas Register*, the Texas Board of Veterinary Medical Examiners contemporaneously adopts amendments, new rules, repeals, and repeals and revisions to Chapter 575.

The adopted amendments are: §575.2, Filing of Documents; §575.3, Computation of Time; §575.4, Conduct and Decorum; §575.5, Subpoenas; Witness Expenses; §575.6, Procedures following Contested Case Hearing; §575.22, Reinstatement of Veterinary Licenses; and §575.27, Complaints--Receipt.

The adopted new rules are: §575.8, Final Decision and Orders; §575.9, Motions for Rehearing; §575.10, Costs of Administrative Hearings; §575.28, Complaints--Investigations; §575.29, Informal Conferences; §575.35, Temporary License Suspensions; §575.40, Cease and Desist Procedures; §575.50, Criminal Convictions; §575.60, Alternative Dispute Resolution (ADR); and §575.62, Negotiated Rulemaking.

The adopted repeals are: §575.31, Alternative Dispute Resolution (ADR); and §575.32, Negotiated Rulemaking.

The repeals and replacements are: §575.7, Costs of Appeal to be revised to §575.7, Presentation of Proposal for Decision; and §575.30, Criminal Convictions to be revised to §575.30, Contested Case Hearing at SOAH.

The Commission readopts the remainder of Chapter 575 without changes.

No comments were received regarding adoption of the rule review.

This concludes the review of Chapter 575, Practice and Procedure.

TRD-200803386
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Filed: June 30, 2008

♦ ♦ ♦

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(a)

Liquor Permits	
Agent's Permit	$40.00
Airline Beverage Permit	$139.00
Beverage Cartage Permit	$64.00
Bonded Warehouse Permit	$58.00
Bonded Warehouse Permit (Dry Area)	$58.00
Brewer's Permit	$245.00
Brewpub License	$181.00
Carrier's Permit	$107.00
Caterer's Permit	$118.00
Daily Temporary Mixed Beverage Permit (Per Day)	$171.00
Daily Temporary Private Club Registration Permit	$192.00
Direct Shipper's Permit	$160.00
Distiller's & Rectifier's Permit	$149.00
Food and Beverage Certificate	$245.00
Forwarding Center Authority	$118.00
Industrial Permit	$111.00
Local Cartage Permit	$86.00
Local Distributor's Permit	$192.00
Local Industrial Alcohol Manufacturer's Permit	$139.00
Manufacturer's Agent's Permit	$40.00
Manufacturer's Agent's Warehousing Permit	$277.00
Market Research Packager's Permit	$54.00
Minibar Permit	$149.00
Mixed Beverage Permit	$256.00
Mixed Beverage Late Hours Permit	$139.00
Mixed Beverage Restaurant Permit with Food and Beverage Certificate	$256.00
Non Resident Brewer's Permit	$160.00
Non Resident Seller's Permit	$160.00
Out-of-State Wine Only Package Store	$235.00
Package Store Permit	$213.00
Package Store Tasting Permit	$75.00
Promotional Permit	$160.00
Wine Only Package Store Permit	$235.00
Passenger Train Beverage Permit	$256.00
Private Carrier's Permit	$107.00
Private Club Registration Permit	$383.00
Private Club Beer and Wine Permit	$383.00
Private Club Late Hours Permit	$149.00
Private Storage Permit	$86.00
Temporary Charitable Auction Permit	$171.00
Public Storage Permit	$86.00
Wholesaler's Permit	$298.00
General Class B Wholesaler's Permit	$277.00

Local Class B Wholesaler's Permit	$277.00
Wine and Beer Retailer's Permit Railway Car	$235.00
Wine and Beer Retailer's Permit Excursion Boat	$235.00
Wine Bottler's Permit	$256.00
Winery Permit	$298.00
Winery Storage Permit	$86.00
Beer Licenses	
Agent's Beer License	$40.00
Branch Distributor's License	$298.00
General Distributor's License	$298.00
Importer's License	$118.00
Importer's Carrier's License	$86.00
Local Distributor's License	$298.00
Manufacturer's License	$277.00
Manufacturer's Warehouse License	$235.00
Non Resident Manufacturer's License	$245.00
Beer Retailer's Off Premise License	$235.00
Beer Retailer's On Premise License	$235.00
Retail Dealer's On Premise Late Hours License	$139.00
Storage License	$86.00
Temporary License	$171.00
Temporary License Special 3 Day Wine and Beer	$171.00
Temporary License Special 4 Day Wine and Beer	$171.00
Wine and Beer Retailer's Permit	$235.00
Wine and Beer Retailer's Off Premise Permit	$235.00

Figure: 16 TAC §33.25(c)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Agent's Permit (A)	Chapter 35
Manufacturer's Agent's Permit (T)	Chapter 36
Agent's Beer License (BK)	Chapter 73

Figure: 16 TAC §33.25(d)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Airline Beverage Permit (AB)	Chapter 34
Bonded Warehouse Permit (J)	Chapter 46
Bonded Warehouse Permit (Dry Area) (JD)	Chapter 46
Brewpub License (BP)	Chapter 74
Carrier's Permit (C)	Chapter 41
Caterer's Permit (CB)	Chapter 31
Direct Shipper's Permit (DS)	Chapter 54
Distiller's & Rectifier's Permit (D)	Chapter 14
Forwarding Center Authority (FC)	16 TAC §35.6
Industrial Permit (I)	Chapter 38
Local Industrial Alcohol Manufacturer's Permit (LI)	Chapter 47
Market Research Packager's Permit (MR)	Chapter 49
Minibar Permit (MI)	Chapter 51
Mixed Beverage Permit (MB)	Chapter 28
Mixed Beverage Restaurant Permit (RM) with FB	Chapter 28
Mixed Beverage Late Hours (LB)	Chapter 29
Non-Resident Brewer's Permit (U)	Chapter 13
Non-Resident Seller's Permit (S)	Chapter 37
Out-of-State Wine Only Package Store Permit (QO)	Chapter 24
Package Store Permit (P)	Chapter 22
Package Store Tasting Permit (PS)	Chapter 52
Passenger Train Beverage Permit (PT)	Chapter 48
Private Carrier's Permit (O)	Chapter 42
Private Club Exemption Certificate Permit (NE)	Chapter 32
Private Club Registration Permit (N)	Chapter 32
Private Club Beer and Wine Permit (NB)	Chapter 32
Private Club Late Hours Permit (NL)	Chapter 33
Promotional Permit (PR)	Chapter 54
Wine Bottler's Permit (Z)	Chapter 18
Wine Only Package Store Permit (Q)	Chapter 24
Winery Permit (G)	Chapter 16
Winery Storage Permit (GS)	Chapter 45

Figure: 16 TAC §33.25(e)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Agent's Manufacturing Warehousing Permit (AW)	Chapter 55
Beverage Cartage Permit (PE)	Chapter 44
Brewer's Permit (B)	Chapter 12
Local Cartage Permit (E)	Chapter 43
Local Cartage Transfer Permit (ET)	Chapter 43
Local Distributor's Permit (LP)	Chapter 23
Private Storage Permit (L)	Chapter 45
Public Storage Permit (K)	Chapter 45
Storage License (SL)	Chapter 75
Wholesaler's Permit (W)	Chapter 19
General Class B Wholesaler's Permit (X)	Chapter 20
Local Class B Wholesaler's Permit (LX)	Chapter 21
Branch Distributor's License (BC)	Chapter 66
General Distributor's License (BB)	Chapter 64
Importer's License (BI)	Chapter 67
Importer's Carrier's License (BJ)	Chapter 68
Local Distributor's License (BD)	Chapter 65
Manufacturer's License (BA)	Chapter 62
Manufacturer's Warehouse License (MW)	Chapter 62
Non Resident Manufacturer's License (BS)	Chapter 63
Beer Retailer's Off Premise License (BF)	Chapter 71
Beer Retailer's On Premise License (BE) Counties under 1.4 million population	Chapter 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Original	Chapter 69
Beer Retailer's On Premise License (BE) Counties over 1.4 million population - Renewal	Chapter 69
Retail Dealer's On Premise Late Hours License (BL)	Chapter 70
Wine and Beer Retailer's On Premise License (BG) Counties under 1.4 million population	Chapter 25
Wine and Beer Retailer's On Premise License (BG) Counties over 1.4 million population	Chapter 25
Wine and Beer Retailer's Off Premise License (BQ)	Chapter 26
Wine and Beer Retailer's Permit Railway Car (Y)	Chapter 25
Wine and Beer Retailer's Permit Excursion Boat (V)	Chapter 25
Food and Beverage Certificate (FB)	Chapter 25

Figure: 16 TAC §33.25(f)

Permit/License Type (agency code)	**Texas Alcoholic Beverage Code Chapter**
Daily Temporary Mixed Beverage Permit (Per Day) (TB)	Chapter 30
Daily Temporary Private Club Registration Permit (TN)	Chapter 33
Temporary Charitable Auction Permit (CA)	Chapter 53
Temporary License	Chapter 72

Figure: 25 TAC §289.256(www)

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.201(d)(1)	Records of receipt, transfer, and disposal of radioactive material	Until disposal is authorized by the agency
§289.201(g)(7), §289.202(bbb)	Records of leak tests for specific devices and sealed sources	3 years
§289.203(b)(1)(B)	Current applicable sections of this chapter as listed in the radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(B)	Copy of the current radioactive material license	Until termination of the radioactive material license
§289.203(b)(1)(C), §289.256(f)(3)(A)	Current operating, safety, and emergency procedures	Until termination of the radioactive material license
§289.256(f)(3)(C)(i)	Qualifications of RSO	Duration of employment
§289.256(f)(3)(C)(ii)	Qualifications of authorized users	Duration of employment
§289.256(f)(3)(C)(iii)	Qualifications of authorized medical physicist	Duration of employment
§289.256(f)(3)(C)(iv)	Qualifications of authorized nuclear pharmacist, if applicable	Duration of employment
§289.256(g)(1)	Authority of RSO	Duration of employment
§289.256(g)(5)	Qualifications and dates of service for temporary RSO	3 years
§289.256(t)(3)	Written directives	3 years
§289.256(v)(4)	Calibration of instruments (dose calibrators)	3 years
§289.256(z)(2)	Sealed source/brachytherapy inventory	3 years
§289.256(bb)(3)	Surveys for ambient radiation exposure rate	3 years
§289.256(cc)(3) §289.256(eee)(2)	Patient release	3 years after date of release
§289.256(dd)(3)	Mobile nuclear medicine service client letters	Duration of licensee/client relationship
§289.256(dd)(3)	Mobile nuclear medicine service surveys	3 years
§289.256(ee)(2)	Decay in storage/disposal	3 years
§289.256(ii)(3)	Molybdenum-99 concentrations	3 years

Rule Cross Reference	Name of Records/Documents	Time Interval for Keeping Records/Documents
§289.256(ll)(2)	Safety instructions - unsealed radioactive materials	3 years
§289.256(ss)(3)	Surveys after sealed source implant and removal	3 years
§289.256(tt)(3)	Brachytherapy sealed sources accountability	3 years
§289.256(uu)(2)	Safety instructions - brachytherapy	3 years
§289.256(ww)(4)	Calibration measurements of brachytherapy sealed sources	3 years
§289.256(xx)(2)	Strontium 90 activity of source	Duration of life of source
§289.256(fff)(4)	Installation, maintenance, adjustment and repair-remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units	3 years
§289.256(iii)(3)	Dosimetry equipment calibration, intercomparison and comparison	Until termination of the radioactive material license
§289.256(jjj)(7)	Calibration - teletherapy units	3 years
§289.256(kkk)(9)	Calibration - remote afterleader units	3 years
§289.256(lll)(7)	Calibration - gamma stereotactic radiosurgery units	3 years
§289.256(mmm)(6)	Spot checks - teletherapy units	Until licensee no longer possesses unit
§289.256(nnn)(6)	Spot checks - remote afterloader	3 years
§289.256(ooo)(8)	Spot checks - gamma stereotactic radiosurgery units	3 years
§289.256(ppp)(5)	Technical requirements for mobile remote afterloader units	3 years
§289.256(qqq)(3)	Radiation surveys	Duration of the use of the unit
§289.256(rrr)(3)	Five-year inspection for teletherapy and gamma sterotactic radiosurgery units	Duration of the use of the unit
§289.256(uuu)(9)	Annotated report - medical event	Until termination of the radioactive material license
§289.256(vvv)(8)	Annotated report - dose to embryo/fetus or nursing child	Until termination of the radioactive material license

Figure: 31 TAC §65.331(e)

Salamanders
Three-toed Amphiuma (*Amphiuma tridactylum*)
Gulf Coast Waterdog (*Necturus beyeri*)
Lesser Siren (*Siren intermedia*)
Spotted Salamander (*Ambystoma maculatum*)
Marbled Salamander (*Ambystoma opacum*)
Mole Salamander (*Ambystoma talpoideum*)
Small-mouthed Salamander (*Ambystoma texanum*)
Southern Dusky Salamander (*Desmognathus auriculatus*)
Salado Salamander (*Eurycea chisholmensis*)
Texas Salamander (*Eurycea neotenes*)
Dwarf Salamander (*Eurycea quadridigitata*)
Jollyville Plateau Salamander (*Eurycea tonkawae*)
Valdina Farms Salamander (*Eurycea troglodytes*)
Western Slimy Salamander (*Plethodon albagula*)
Southern Red-backed Salamander (*Plethodon serratus*)
Eastern Newt (*Notophthalmus viridescens*)

Frogs and Toads
American Toad (*Bufo americanus*)
Cane Toad (*Bufo marinus*)
Cricket Frog (*Acris crepitans*)
Canyon Treefrog (*Hyla arenicolor*)
Cope's Gray Treefrog (*Hyla chrysoscelis*)
Squirrel Treefrog (*Hyla squirella*)
Gray Treefrog (*Hyla versicolor*)
Spotted Chorus Frog (*Pseudacris clarki*)
Spring Peeper (*Pseudacris crucifer*)
Southeastern Chorus Frog (*Pseudacris feriarum*)
Strecker's Chorus Frog (*Pseudacris streckeri*)
Barking Frog (*Eleutherodactylus augusti*)
Rio Grande Chirping Frog (*Eleutherodactylus cystignathoides*)
Spotted Chirping Frog (*Eleutherodactylus guttilatus*)
Cliff Chirping Frog (*Eleutherodactylus marnockii*)
Eastern Narrow-mouthed Toad (*Gastrophryne carolinensis*)
Great Plains Narrow-mouthed Toad (*Gastrophryne olivacea*)
Hurter's Spadefoot (*Scaphiopus hurterii*)
Crawfish Frog (*Rana areolata*)
Rio Grande Leopard Frog (*Rana berlandieri*)
Plains Leopard Frog (*Rana blairi*)
Green Frog (*Rana clamitans*)
Pig Frog (*Rana grylio*)
Pickerel Frog (*Rana palustris*)
Southern Leopard Frog (*Rana sphenocephala*)

Turtles
Painted Turtle (*Chrysemys picta*)
Chicken Turtle (*Deirochelys reticularia*)
Mississippi Map Turtle (*Graptemys kohni*)

Ouachita Map Turtle (*Graptemys ouachitensis*)
Texas Map Turtle (*Graptemys versa*)
River Cooter (*Pseudemys concinna*)
Rio Grande Cooter (*Pseudemys gorzugi*)
Texas River Cooter (*Pseudemys texana*)
Eastern Box Turtle (*Terrapene carolina*)
Ornate Box Turtle (*Terrapene ornata*)
Big Bend Slider (*Trachemys gaigeae*)
Yellow Mud Turtle (*Kinosternon flavescens*)
Eastern Mud Turtle (*Kinosternon subrubrum*)
Razor-backed Musk Turtle (*Sternotherus carinatus*)
Stinkpot (*Sternotherus odoratus*)

Lizards
Slender Glass Lizard (*Ophisaurus attenuatus*)
Long-nosed Leopard Lizard (*Gambelia wislizenii*)
Spot-tailed Earless Lizard (*Holbrookia lacerata*)
Keeled Earless Lizard (*Holbrookia propinqua*)
Round-tailed Horned Lizard (*Phrynosoma modestum*)
Dunes Sagebrush Lizard (*Sceloporus arenicolus*)
Blue Spiny Lizard (*Sceloporus cyanogenys*)
Graphic Spiny Lizard (*Sceloporus grammicus*)
Desert Spiny Lizard (*Sceloporus magister*)
Canyon Lizard (*Sceloporus merriami*)
Texas Spiny Lizard (*Sceloporus olivaceus*)
Rose-bellied Lizard (*Sceloporus variabilis*)
Coal Skink (*Eumeces anthracinus*)
Broad-headed Skink (*Eumeces laticeps*)
Many-lined Skink (*Eumeces multivirgatus*)
Prairie Skink (*Eumeces septentrionalis*)
Four-lined Skink (*Eumeces tetragrammus*)
Gray Checkered Whiptail (*Aspidocelis dixoni*)
Little Striped Whiptail (*Aspidocelis inornata*)
Laredo Striped Whiptail (*Aspidocelis laredoensis*)
New Mexico Whiptail (*Aspidocelis neomexicana*)
Mexican Plateau Spotted Whiptail (*Aspidocelis septemvittata*)
Desert Grassland Whiptail (*Aspidocelis uniparens*)

Snakes
New Mexico Blind Snake (*Leptotyphlops dissectus*)
Western Blind Snake (*Leptotyphlops humilis*)
Western Wormsnake (*Carphophis vermis*)
Ring-necked Snake (*Diadophis punctatus*)
Red-bellied Mudsnake (*Farancia abacura*)
Tamaulipan Hook-nosed Snake (*Ficimia streckeri*)
Chihuahuan Hooked-nosed Snake (*Gyalopion canum*)
Saltmarsh Snake (*Nerodia clarki*)
Mississippi Green Watersnake (*Nerodia cyclopion*)
Graham's Crayfish Snake (*Regina grahamii*)
Glossy Crayfish Snake (*Regina rigida*)
Red-bellied Snake (*Storeria occipitomaculata*)

Mexican Black-headed Snake (*Tantilla atriceps*)
Plains Gartersnake (*Thamnophis radix*)
Common Gartersnake (*Thamnophis sirtalis*)
Smooth Earthsnake (*Virginia valeriae*)

Mammals
Southern Short-tailed Shrew (*Blarina carolinensis*)
Elliot's Short-tailed Shrew (*Blarina hylophaga*)
Least Shrew (*Cryptotis parva*)
Desert Shrew (*Notiosorex crawfordi*)
Eastern Mole (*Scalopus aquaticus*)
Pallid Bat (*Antrozous pallidus*)
Mexican Long-tongued Bat (*Choeronycteris mexicana*)
Big Brown Bat (*Eptesicus fuscus*)
Western Mastiff Bat (*Eumops perotis*)
Silver-haired Bat (*Lasionycteris noctivagans*)
Western Red Bat (*Lasiurus blossevillii*)
Eastern Red Bat (*Lasiurus borealis*)
Hoary Bat (*Lasiurus cinereus*)
Northern Yellow Bat (*Lasiurus intermedius*)
Seminole Bat (*Lasiurus seminolus*)
Ghost-faced Bat (*Mormoops megalophylla*)
Southeastern Myotis (*Myotis austroriparius*)
California Myotis (*Myotis californicus*)
Western Small-footed Myotis (*Myotis ciliolabrum*)
Little Brown Myotis (*Myotis lucifugus*)
Northern Myotis (*Myotis septentrionalis*)
Fringed Myotis (*Myotis thysanodes*)
Cave Myotis (*Myotis velifer*)
Long-legged Myotis (*Myotis volans*)
Yuma Myotis (*Myotis yumanensis*)
Evening Bat (*Nycticeius humeralis*)
Pocketed Free-tailed Bat (*Nyctinomops femorosacca*)
Big Free-tailed Bat (*Nyctinomops macrotis*)
Western Pipistrelle (*Pipistrellus hesperus*)
Eastern Pipistrelle (*Pipistrellus subflavus*)
Townsend's Big-eared Bat (*Plecotus townsendii*)
Brazilian Free-tailed Bat (*Tadarida brasiliensis*)
Mexican Ground Squirrel (*Spermophilus mexicanus*)
Gray-footed Chipmunk (*Tamias canipes*)
Yellow-faced Pocket Gopher (*Cratogeomys castanops*)
Desert Pocket Gopher (*Geomys arenarius*)
Attwater's Pocket Gopher (*Geomys attwateri*)
Baird's Pocket Gopher (*Geomys breviceps*)
Plains Pocket Gopher (*Geomys bursarius*)
Jones' Pocket Gopher (*Geomys knoxjonesi*)
Texas Pocket Gopher (*Geomys personatus*)
Llano Pocket Gopher (*Geomys texensis*)
Botta's Pocket Gopher (*Thomomys bottae*)
Northern Pygmy Mouse (*Baiomys taylori*)
Hispid Pocket Mouse (*Chaetodipus hispidus*)

Rock Pocket Mouse (*Chaetodipus intermedius*)
Nelson's Pocket Mouse (*Chaetodipus nelsoni*)
Desert Pocket Mouse (*Chaetodipus penicillatus*)
Gulf Coast Kangaroo Rat (*Dipodomys compactus*)
Ord's Kangaroo Rat (*Dipodomys ordii*)
Banner-tailed Kangaroo Rat (*Dipodomys spectabilis*)
Mexican Spiny Pocket Mouse (*Liomys irroratus*)
Mexican Vole (*Microtus mexicanus*)
Prairie Vole (*Microtus ochrogaster*)
Woodland Vole (*Microtus pinetorum*)
White-throated Woodrat (*Neotoma albigula*)
Eastern Woodrat (*Neotoma floridana*)
Golden Mouse (*Ochrotomys nuttalli*)
Mearns' Grasshopper Mouse (*Onychomys arenicola*)
Northern Grasshopper Mouse (*Onychomys leucogaster*)
Marsh Rice Rat (*Oryzomys palustris*)
Plains Pocket Mouse (*Perognathus flavescens*)
Silky Pocket Mouse (*Perognathus flavus*)
Merriam's Pocket Mouse (*Perognathus merriami*)
Texas Mouse (*Peromyscus attwateri*)
Brush Mouse (*Peromyscus boylii*)
Cactus Mouse (*Peromyscus eremicus*)
Cotton Mouse (*Peromyscus gossypinus*)
White-footed Mouse (*Peromyscus leucopus*)
Deer Mouse (*Peromyscus maniculatus*)
Northern Rock Mouse (*Peromyscus nasutus*)
White-ankled Mouse (*Peromyscus pectoralis*)
Piñon Mouse (Peromyscus truei)
Fulvous Harvest Mouse (*Reithrodontomys fulvescens*)
Eastern Harvest Mouse (*Reithrodontomys humulis*)
Western Harvest Mouse (*Reithrodontomys megalotis*)
Plains Harvest Mouse (*Reithrodontomys montanus*)
Mexican Woodrat (*Neotoma mexicana*)
Southern Plains Woodrat (*Neotoma micropus*)
Tawny-bellied Cotton Rat (*Sigmodon fulviventer*)
Hispid Cotton Rat (*Sigmodon hispidus*)
Yellow-nosed Cotton Rat (*Sigmodon ochrognathus*)
Porcupine (*Erethizon dorsatum*)
Long-tailed Weasel (*Mustela frenata*)

Figure: 43 TAC §25.22(b)(5)(D)

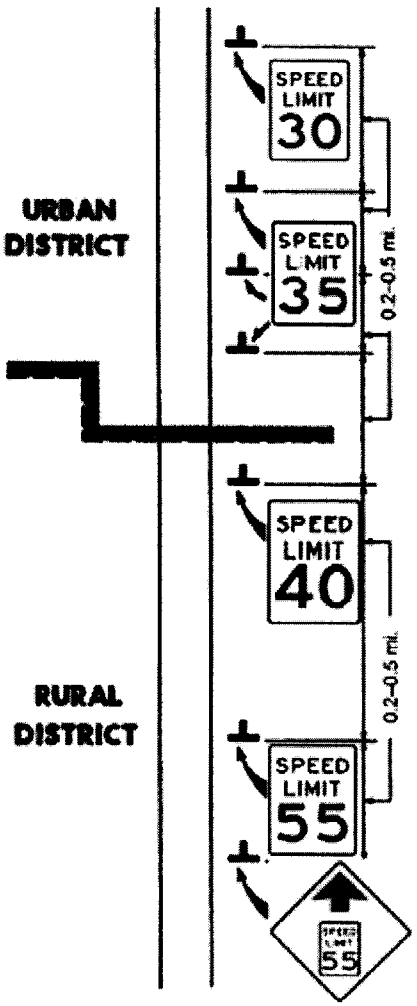

Figure 2: Example regulatory speed zone application showing spacing of signs transitioning from rural district to urban district and within the urban district.

Figure: 43 TAC §25.22(c)(6)(D)

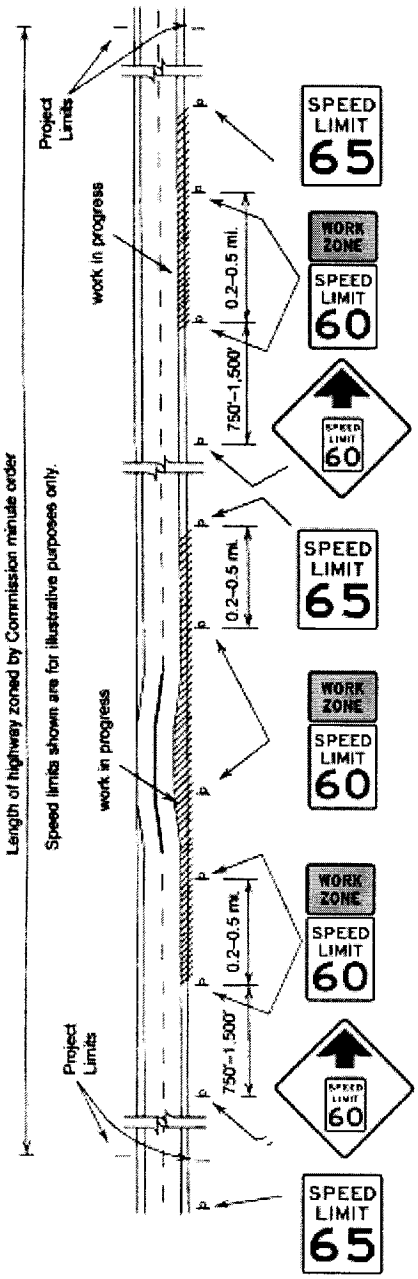

Figure 3: Typical construction speed zone

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.

The Texas Department of Agriculture

Notice of Public Hearing

The Texas Department of Agriculture (department) will hold a public hearing to take comments on proposed amendments to the Structural Pest Control Service rules, Title 4, Part 1, Chapter 7, Subchapter H, Divisions 1-6, as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5141).

The hearing will be held on Monday, July 21, 2008, beginning at 2:00 p.m., in Room 1-100 of the William B. Travis State Office Building, 1701 North Congress, Austin, Texas.

For more information, please contact Jim Muse, Director, Structural Pest Control Service, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, 1-866-918-4481.

TRD-200803409
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 1, 2008

♦ ♦ ♦

Request for Applications: Texans Feeding Texans: Home-Delivered Meal Grant Program

In accordance with Texas Agriculture Code, §12.042, as enacted by House Bill 407, and House Bill 1, 80th Legislature, Regular Session 2007, the state legislature has appropriated funding to the Texas Department of Agriculture (TDA) for distribution, pursuant to the Texans Feeding Texans: Home-Delivered Meal Grant Program (HDMGP), to governmental agencies or qualifying non-profit organizations that deliver meals to homebound persons that are elderly and/or have a disability. TDA will begin accepting applications from eligible organizations beginning September 1, 2008. Total funding for this application period is approximately $10 million.

Eligibility Criteria. To be eligible for HDMGP funds an applying organization must meet the following criteria:

1. Must be a governmental agency or a nonprofit private organization that is exempt from taxation under §501(a), Internal Revenue Code of 1986, as an organization described by §501(c)(3) of that code, that is a direct provider of home-delivered meals to the elderly or persons with disabilities in this state;

2. If a nonprofit private organization, must have a volunteer board of directors;

3. Must practice nondiscrimination;

4. Must have an accounting system or fiscal agent approved by the county in which it provides meals;

5. Must have a system to prevent the duplication of services to the organization's clients;

6. Must agree to use funds received under this section only to supplement and extend existing services related directly to home-delivered meal services;

7. Must have received a grant from the county in which the organization provides meals;

8. Must submit the grant application using the form provided by TDA;

9. Must submit a completed county resolution form, as provided by TDA; and

10. Must comply with HDMGP rules adopted by TDA (4 TAC §§1.950 - 1.962).

For purposes of this Grant Program, "Homebound" means a person who is unable to leave his or her residence without aid or assistance or whose ability to travel from his or her residence is substantially impaired; "Elderly" means an individual who is 60 years of age or older; and "Disability" means a physical, mental or developmental impairment, temporarily or permanently limiting an individuals capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating and housekeeping.

Submitting an Application. Applications will be accepted beginning September 1, 2008, and must be submitted on the form provided by TDA. Application forms will be available July 11, 2008, on TDA's website at: www.tda.state.tx.us or available upon request from TDA by calling (512) 463-6908. Applications must be mailed to TDA headquarters in Austin by the deadline provided below. Applications must be certified by the applicant, include required supporting documentation, and bear the notarized signatures of the organization's executive director or other responsible executive officer, and board chair, if applicable. An organization must submit a separate application for each county in which it provides home-delivered meal services.

Deadline for Submission of Applications. The postmark deadline for mailing of applications to TDA is **November 1, 2008**.

TDA will distribute funds after all valid applications are processed. Funds must be distributed by February 1, 2009. In the event that the amount of qualifying grants exceeds the amount of funds available, funds may be distributed on a pro rata basis.

Grant Agreement. Eligible organizations that qualify to receive grant funds must execute a Grant Agreement with TDA prior to the disbursement of any grant funds.

Further Information. Additional information about the HDMGP, the application process and program rules can be found on TDA's website: www.tda.state.tx.us. In addition, organizations may contact Betsy Levy, TDA Grants Specialist, at (512) 463-6908 or betsy.levy@tda.state.tx.us for more information.

TRD-200803410
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: July 1, 2008

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and Texas Health and Safety Code. Before the State may settle a judicial enforcement action, pursuant to the Texas 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 Act.

Case Title and Court: Settlement Agreement in *State of Texas v. Philip Sheridan, Individually, and d.b.a. Sheridan Water Supply*; Cause No. D-1-GV-07-001292; 98th Judicial District, Travis County, Texas.

Background: This suit alleges violations of the Texas Water Code and the Texas Health and Safety Code resulting from the inadequate operation of a water system in Bexar County, Texas. The Defendant is Philip Sheridan d.b.a. Sheridan Water Supply. The suit seeks civil penalties, injunctive relief, administrative penalties, attorney's fees and court costs.

Nature of Settlement: The settlement awards $1,000.00 in civil penalties to the State, but requires the Defendant to pay for and install the plumbing necessary to connect the homes served by Sheridan Water Supply to the San Antonio Water Authority's water system. The settlement awards $3,000.00 in attorney's fees to the State.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgments, and written comments on the proposed settlement should be directed to Vanessa Puig-Williams, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200803428
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 2, 2008

♦ ♦ ♦

Notice of Settlement

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 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 Acts.

Case Title and Court: *Harris County and State of Texas v. Andres Martinez*, Cause No. 2008-09959 in the 113th District Court of Harris County, Texas.

Nature of Defendant's Operations: Defendant Andres Martinez owned a mobile home park in Harris County. Harris County investigators discovered contaminated drinking water, wastewater discharges to a ditch, and overflowing septic systems at the park. Mr. Martinez agreed, as part of a temporary injunction, to bring bottled water to the residents in the park, to shut off all septic systems, and to provide portable toilets. Mr. Martinez complied with the temporary injunction requirements. There are no longer any residents living at the park.

Proposed Agreed Judgment: The judgment provides for Mr. Martinez to pay $2,000.00 in attorney's fees and expert witness expense. Five hundred of that amount is to be paid to the State and the remainder to Harris County. The judgment also includes permanent injunctive relief requiring Mr. Martinez to locate, vacuum out, and fill with soil all septic tanks at the park. The judgment also permanently enjoins Mr. Martinez from operating a mobile home park in Harris County.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the proposed judgment, and written comments on the proposed settlement should be directed to Liz Bills, Assistant Attorney General, 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 more information regarding this publication, contact Cindy Hodges, Agency Liaison, at (512) 936-1841.

TRD-200803430
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: July 2, 2008

♦ ♦ ♦

Texas Department of Banking

Notice of Public Hearing on Proposed Repeal of Existing 7 TAC §25.25 and Proposed New 7 TAC §25.25

The Texas Department of Banking (Department) will conduct a public hearing to receive testimony concerning the proposed repeal of existing 7 TAC §25.25 and proposed new 7 TAC §25.25, concerning conversions from trust-funded to insurance-funded prepaid funeral contracts. The proposal was published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5172).

The Department will hold a public hearing on these proposals in Austin on July 30, 2008, at 10:00 a.m. at the Brown Heatly Building, 4900 North Lamar Boulevard, Room 1410, Austin, Texas 78751. The hearing is limited to discussion of the rule proposal only.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Brenda Medina at (512) 475-1332.

Written comments may be submitted to General Counsel, Texas Department of Banking, Legal Division, 2601 North Lamar Boulevard, Suite 300, Austin, Texas 78705-4294 or by e-mail to legal@banking.state.tx.us no later than 5:00 p.m. on August 4, 2008. Copies of the proposed rule can be obtained from the department's website at *http://www.banking.state.tx.us/legal/rules/proposed.htm*. For further information, please contact Brenda Medina at (512) 475-1332.

TRD-200803360

A. Kaylene Ray
General Counsel
Texas Department of Banking
Filed: June 26, 2008

♦ ♦ ♦

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 June 20, 2008, through June 26, 2008. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this activity extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 2, 2008. The public comment period for this project will close at 5:00 p.m. on August 1, 2008.

FEDERAL AGENCY ACTIONS:

Applicant: Park Board of Trustees for the City of Galveston; Location: The borrow site to be added is adjacent to the South Jetty, just off of the East end of Galveston Island, in Galveston County, Texas. The borrow site can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate Latitude/Longitude Coordinates in NAD 83 (meters): Lat: 29.3373 degrees N, Long: 94.7161 degrees W. The placement areas can be located on the U.S.G.S. quadrangle maps titled: Galveston, Texas, and Lake Como, Texas. These placement areas extend west from the terminal end of the seawall at Latitude/Longitude Coordinates in NAD 83(meters): Lat: 29.2423 degrees N, Long: 94.8690 degrees W to the east boundary of the Galveston Island State Park. Project Description: The applicant proposes to amend their existing beach nourishment permit by adding two offshore borrow areas to the existing East Beach borrow sites. The method of removing the sand is dependent of contractor costs but could include one of the following methods: 1) Hydraulic dredging with the material being pumped through pipes to a temporary dredge material placement area and subsequently trucked to the beach, 2) Hopper dredging with hydraulic pumping out of the hopper and pipeline transport to the beach, 3) Hydraulic dredging with pipeline transport to the beach. Recent beach renourishment projects on the island have been completed using the trucking method. This amendment also requests to amend the current beach nourishment boundaries to an area extending 5.8 miles from the west end of the seawall to the Galveston Island State Park. The renourishment sand placement will construct a sand berm a maximum of 400 feet wide from the high tide line and sloping at a 30:1 slope into the Gulf of Mexico. CCC Project No.: 08-0161-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-01025 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 may 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 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 the consistency certifications for inspection, may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200803436
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 2, 2008

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract award for Texas Tuition Promise Fund (Texas Tomorrow Fund II Prepaid Tuition Unit) Plan Management Services:

The contract was awarded to OFI Private Investments, Inc. The total amount of the contract is based on the fair market value of assets under management. The term of the contract is June 24, 2008 through December 31, 2012.

The notice of request for proposals (RFP #182c) was published in the November 16, 2007, issue of the *Texas Register* (32 TexReg 8324).

TRD-200803420
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 1, 2008

♦ ♦ ♦

Notice of No Contract Award

The Texas Comptroller of Public Accounts announces this notice of no contract award under the Request for Proposals (RFP #180d) for certain collections services.

The notice of issuance of the RFP was published in the May 16, 2008, issue of the *Texas Register* (33 TexReg 4021).

TRD-200803345
Pamela G. Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 26, 2008

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Chapters 2161, as amended by House Bill 3560 (HB 3560), 80th Texas Legislature, Regular Session (2007), and Chapter 403, Texas Government Code, the Texas Procurement & Support Services Division (TPASS) of the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #186a) from qualified, independent firms to provide consulting services to Comptroller. The successful

respondent(s) will assist Comptroller and TPASS in conducting a Historically Underutilized Business (HUB) Disparity Study of State Contracting (Study) for the State of Texas, including preparation and submission of a written report complete with findings and recommendations to Comptroller. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about September 18, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Ron Pigott, Deputy General Counsel and Director, TPASS, Comptroller of Public Accounts, Central Services Building, 1711 San Jacinto, Austin, Texas 78711 (Issuing Office), telephone number: (512) 463-5038, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, July 11, 2008, after 10 a.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.cpa.state.tx.us after 10 a.m. (CZT) on Friday, July 11, 2008.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Pigott at: (512) 475-9040, no later than 2:00 p.m. (CZT), on Friday, July 25, 2008. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Friday, August 1, 2008, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents are solely responsible for confirming and are encouraged to confirm the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Deputy General Counsel's Office at the address specified above no later than 2 p.m. (CZT), on Friday, August 15, 2008. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents are solely responsible for confirming and are encouraged to confirm the timely receipt of Proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Any contract resulting from this RFP will be considered for award by the Deputy Comptroller in an open meeting attended by a quorum of the Statewide Procurement Advisory Council established under §2155.087, Texas Government Code; that open meeting is tentatively scheduled for September 15, 2008. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - July 11, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 25, 2008, 2 p.m. CZT; Official Responses to Questions Posted - August 1, 2008, or as soon thereafter as practical; Proposals Due - August 15, 2008, 2 p.m. CZT; Open Meeting Conducted by Deputy Comptroller to Consider Contract Award - September 15, 2008; Contract Execution - September 18, 2008, or as soon thereafter as practical; Commencement of Project Activities - September 18, 2008, or as soon thereafter as practical.

TRD-200803431

William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 2, 2008

♦ ♦ ♦

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and Chapter 404, Texas Government Code, the Comptroller of Public Accounts (Comptroller) on behalf of the Texas Treasury Safekeeping Trust Company (TTSTC or Trust Company) announces its Request for Proposals (RFP #188a) for the purpose of obtaining investment consulting services for the Trust Company. The selected consultant (Consultant) will advise and assist the Trust Company and Comptroller in administering the Trust Company's investment activities related to endowment and other funds (Funds). The Funds include, among others, the Tobacco Settlement Permanent Trust and related endowments. The Comptroller is issuing this RFP on behalf of the Trust Company so that the Trust Company may move forward with retaining the necessary investment consultant. The Comptroller and Trust Company reserve the right to award more than one contract under the RFP. If approved by the Trust Company, the Consultant will be expected to begin performance of the contract on or about September 1, 2008, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201M, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, July 11, 2008, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: http://esbd.cpa.state.tx.us after 10:00 a.m. CZT on Friday, July 11, 2008.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and Non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, July 25, 2008. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Friday, August 1, 2008, the Comptroller expects to post responses to questions on the ESBD. Late non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. (CZT), on Friday, August 15, 2008. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Trust Company and Comptroller will make the final decision.

The Comptroller and the Trust Company reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Trust Company not obligated to execute a contract on the basis of this notice

or the distribution of any RFP. The Comptroller and Trust Company shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - July 11, 2008, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - July 25, 2008, 2:00 p.m. CZT; Official Responses to Questions posted - August 1, 2008; Proposals Due - August 15, 2008, 2:00 p.m. CZT; Contract Execution - September 1, 2008, or as soon thereafter as practical; Commencement of Work - September 1, 2008.

TRD-200803432
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 2, 2008

♦ ♦ ♦

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 07/07/08 - 07/13/08 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/07/08 - 07/13/08 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.00[3] for the period of 07/01/08 - 07/31/08 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 for the period of 07/01/08 - 07/31/08 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.

[3]For variable rate commercial transactions only.

TRD-200803406
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 1, 2008

♦ ♦ ♦

Court of Criminal Appeals

Final Order Amending Texas Rules of Appellate Procedure

Misc. Docket No. 08-102

It is hereby ORDERED that:

1. Pursuant to Texas Government Code §§22.108 and 22.109, the Texas Rules of Appellate Procedure are amended as follows.

2. These amended rules take effect September 1, 2008.

3. The Clerk is directed to:

a. file a copy of this Final Order with the Secretary of State;

b. cause a copy of this Final Order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal;*

c. send a copy of this Final Order to each elected member of the Legislature before December 1, 2008; and

d. submit a copy of this Final Order for publication in the *Texas Register.*

SIGNED AND ENTERED this 30th day of June, 2008.

_____

Sharon Keller, Presiding Judge

_____

Lawrence E. Meyers, Judge

_____

Tom Price, Judge

_____

Paul Womack, Judge

_____

Cheryl Johnson, Judge

_____

Michael Keasler, Judge

_____

Barbara Hervey, Judge

_____

Charles Holcomb, Judge

_____

Cathy Cochran, Judge

TEXAS RULES OF APPELLATE PROCEDURE

RULE 25 PERFECTING APPEAL

RULE 25.2. Criminal Cases

(a) *Rights to Appeal.* **[no change]**

(b) *Perfection of Appeal.* In a criminal case, appeal is perfected by timely filing a sufficient notice of appeal. In a death-penalty case ~~,~~ ~~however,~~ it is unnecessary to file a notice of appeal, but, in every death-penalty case, the clerk of the trial court shall file a notice of conviction with the Court of Criminal Appeals within thirty days after the defendant is sentenced to death.

RULE 26 TIME TO PERFECT APPEAL

RULE 26.2. Criminal Cases

(a) *By the Defendant.* **[no change]**

(b) *By the State.* The notice of appeal must be filed within ~~15~~ 20 days after the day the trial court enters the order, ruling, or sentence to be appealed.

RULE 50 RECONSIDERATION ON PETITION FOR DISCRETIONARY REVIEW

Within 60 ~~30~~ days after a petition for discretionary review is ~~has been~~ filed with the clerk of the court of appeals that delivered the decision, ~~a majority of~~ the justices who participated in the decision may, as provided by subsection (a), ~~summarily~~ reconsider and correct or modify the court's opinion or judgment. Within the same period of time, any of the justices who participated in the decision may issue a concurring or dissenting opinion.

(a) If the court's original opinion or judgment is corrected or modified, that ~~the original~~ opinion or judgment is ~~must be~~ withdrawn and the modified or corrected opinion or judgment is ~~must be~~ substituted as the opinion or judgment of the court. No further opinions may be issued by the court of appeals. The original petition for discretionary review is not dismissed by operation of law, unless the filing party files a new petition in the court of appeals. In the alternative, the petitioning party shall submit to the court of appeals copies of the corrected or modified opinion or judgment as an amendment to the original petition.

(b) Any party may then file with the court of appeals a new petition for discretionary review seeking review of the corrected or modified opinion or judgment, including any dissents or concurrences, under Rule 68.2.

RULE 68 DISCRETIONARY REVIEW WITH PETITION

RULE 68.7. Court of Appeals Clerk's Duties

(a) *On Filing of the Petition.* **[no change]**

(b) *Reply.* The opposing party has 30 days after the timely filing of the petition in the court of appeals to file a reply to the petition with the clerk of the court of appeals. Upon receiving a reply to the petition, the clerk for the court of appeals must file the reply and note the filing on the docket.

(c) ~~(b)~~ *Sending Petition and Reply to Court of Criminal Appeals.* Unless a petition for discretionary review is dismissed under Rule 50, the clerk of the court of appeals must, within 60 ~~30~~ days after the petition is filed, send to the clerk of the Court of Criminal Appeals the petition and any copies furnished by counsel, the reply, if any, and any copies furnished by counsel, together with the record, copies of the motions filed in the case, and copies of any judgments, opinions, and orders of the court of appeals. The clerk need not forward any nondocumentary exhibits unless ordered to do so by the Court of Criminal Appeals.

RULE 68.9. ~~Reply~~ [deleted]

~~The opposing party has 30 days after the timely filing of the petition in the Court of Criminal Appeals unless additional time is allowed to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing a reply has expired, the petition will be treated as submitted to the Court and ready for disposition.~~

TRD-200803421
Louise Pearson
Clerk of the Court
Court of Criminal Appeals
Filed: July 1, 2008

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Employees Retirement System of Texas

Request for Qualifications - Real Estate Consultant

The Employees Retirement System of Texas (ERS) is soliciting applications from qualified real estate consultants to provide investment counselor/consulting services (Vendor). The objective of the Vendor will be to assist the ERS Board of Trustees, Investment Advisory Committee, and ERS staff in developing and carrying out a real estate investment program suitable for a public pension plan of ERS' size and that adheres to ERS investment policies.

It is anticipated that the real estate consulting services will begin on or after January 1, 2009, and continue for three years with the possibility to extend for two one-year periods at the option of ERS.

ERS will base its evaluation and selection of the firm(s) on factors that are in the best interest of ERS, including, but not limited to criteria outlined in this notice and in the Request For Qualifications (RFQ), such as the following, which are not necessarily listed in order of priority: compliance with the RFQ; qualifications of the proposed professional staff; technical expertise, including experience with providing similar consulting services to other public pension funds of a similar size to ERS or larger; the quality of the response, including the demonstration of a clear understanding of the scope of the work as well as the appropriateness and adequacy of proposed cost of the services; and other factors deemed appropriate by ERS.

ERS reserves the right to reject any response submitted which is not timely or does not meet the criteria specified in this notice and in the RFQ. ERS is under no legal requirement to execute a contract on the basis of this notice. ERS will not pay any costs incurred by any firm in responding to this notice or RFQ or in connection with the preparation thereof.

A copy of the complete RFQ can be obtained from ERS on or after July 7, 2008. To request a copy of the RFQ or for additional information, please contact Kelly Gonzales at ERS at (512) 867-7199, or by e-mail at kelly.gonzales@ers.state.tx.us. The deadline for receipt of responses by ERS is 4:00 p.m. on August 31, 2008.

TRD-200803440
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: July 2, 2008

♦ ♦ ♦

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 11, 2008**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 11, 2008**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment

procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: 284 San Gabriel, L.L.C.; DOCKET NUMBER: 2008-0610-WQ-E; IDENTIFIER: RN105444368; LOCATION: Bertram, Burnet County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 Texas Administrative Code (TAC) §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $750; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(2) COMPANY: ALIAHSAN ENTERPRISES, INC. dba Super Stop 8; DOCKET NUMBER: 2008-0418-PST-E; IDENTIFIER: RN101877223; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to maintain the required underground storage tank (UST) records and make them immediately available; 30 TAC §334.7(d)(3), by failing to provide an amended registration to the agency for any change or additional information regarding the USTs; 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to timely renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.8(c)(5)(A)(i) and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate; and 30 TAC §334.55(a)(6)(A), by failing to submit a site assessment and release determination report prior to the completion of the permanent removal from service; PENALTY: $4,200; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: AUSTIN EQUIPMENT COMPANY, LC; DOCKET NUMBER: 2008-0288-MLM-E; IDENTIFIER: RN104543780; LOCATION: Jarrell, Williamson County; TYPE OF FACILITY: rock quarry; RULE VIOLATED: 30 TAC §327.5(a), by failing to immediately abate and contain spills or releases of oil; 30 TAC §213.4(k) and Edwards Aquifer Water Pollution Abatement Plan (WPAP) Number 05022201, Factors Affecting Water Quality, by failing to comply with the approved WPAP by allowing vehicle maintenance to be performed outside the shop area; 30 TAC §213.4(k) and Edwards Aquifer WPAP Number 05022201, Permanent Pollution Abatement Measures, by failing to prevent regulated activities within a protective 50-foot stream buffer; 30 TAC §213.4(k) and Edwards Aquifer WPAP Number 05022201, Standard Condition Number 6, by failing to install and maintain temporary sediment controls; and 30 TAC §213.4(a)(1) and Edwards Aquifer WPAP Number 05022201, Standard Condition Number 4, by failing to obtain approval of a WPAP modification prior to initiating construction of the modification; PENALTY: $18,415; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(4) COMPANY: Franklin Bain; DOCKET NUMBER: 2008-0934-WOC-E; IDENTIFIER: RN103420550; LOCATION: Edmonson, Hale County; TYPE OF FACILITY: water operator; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $210; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: City of Carthage; DOCKET NUMBER: 2008-0948-WQ-E; IDENTIFIER: RN104356225; LOCATION: Panola County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Columbia-Brazoria Independent School District; DOCKET NUMBER: 2008-0368-MWD-E; IDENTIFIER: RN101179398; LOCATION: West Columbia, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a)(1), by failing to maintain authorization for the discharge of wastewater; PENALTY: $8,640; ENFORCEMENT COORDINATOR: Roshondra Lowe, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: G & R STORE, INC. dba 1 Stop Food Store; DOCKET NUMBER: 2008-0395-PST-E; IDENTIFIER: RN101562346; LOCATION: Lewisville, Denton County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all USTs are monitored in a manner which will detect a release; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to conduct proper release detection for the pressurized piping; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(c)(1), by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.49(a)(4) and the Code, §26.3475(d), by failing to provide corrosion protection; 30 TAC §115.242(3)(A) and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition; and 30 TAC §115.245(1) and (2) and THSC, §382.085(b), by failing to successfully complete all applicable tests using the procedures required in the commission's Vapor Recovery Test Procedures Handbook; PENALTY: $11,232; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Robert H. Griffin; DOCKET NUMBER: 2008-0336-MLM-E; IDENTIFIER: RN104985775; LOCATION: Mason, Mason County; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(a) and §335.4, by failing to prevent the unauthorized discharge of municipal solid waste and municipal hazardous waste; PENALTY: $5,250; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(9) COMPANY: Interstate Southwest, Ltd.; DOCKET NUMBER: 2008-0452-PWS-E; IDENTIFIER: RN103394722; LOCATION: Grimes County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(d)(2)(B)(v) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of 220 gallons; 30 TAC §290.46(f)(2) and (3)(D)(i) and (ii), by failing to provide water system records for review at the time of the investigation; 30 TAC §290.44(h)(4), by failing to have a backflow prevention assembly annually tested and certified to be operating within specifications by a recognized backflow assembly tester; 30 TAC §290.43(e), by failing to provide an intruder-resistant fence; 30 TAC §290.46(m)(4), by failing to maintain distribution system lines, water storage and pressure maintenance facilities, and related appurtenances in a watertight condition; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet in all directions from the well casing; and 30 TAC §290.43(c)(4), by failing to equip the ground

storage tank with an appropriate water level indicator; PENALTY: $1,777; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: KM Aviation, Inc.; DOCKET NUMBER: 2008-0396-AIR-E; IDENTIFIER: RN105377717; LOCATION: Denison, Grayson County; TYPE OF FACILITY: aircraft stripping and repainting; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain an air permit or satisfy the conditions of a permit by rule; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Sidney Wheeler, (512) 239-4969; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: LA CHIRPA, INC. dba Stadium Mart; DOCKET NUMBER: 2008-0946-PST-E; IDENTIFIER: RN101542470; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.50(d)(1)(B), by failing to implement inventory control measures; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Lee's United Construction Services, Inc.; DOCKET NUMBER: 2008-0361-AIR-E; IDENTIFIER: RN102871217; LOCATION: Zapata County; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §116.116(b)(1), New Source Review Special Permit (NSRSP) Number T-19175, General Condition 1, and THSC, §382.085(b), by failing to obtain a permit amendment prior to modifying the plant; 30 TAC §116.115(c), NSRSP Number T-19175, Special Condition (SC) 2.C., and THSC, §382.085, by failing to install water spray bars at material transfer points; and 30 TAC §116.115(c) and §116.116(b)(1), NSRSP Number T-19175, SC Number 2.D. and 2.G., and THSC, §382.085(b), by failing to comply with the representations made in the permit application; PENALTY: $2,700; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Miller Breweries West Limited Partnership; DOCKET NUMBER: 2008-0633-AIR-E; IDENTIFIER: RN102649399; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: beer brewery; RULE VIOLATED: 30 TAC §122.145(2)(B) and THSC, §382.085(b), by failing to submit a semiannual deviation report; PENALTY: $1,975; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Seven Points Sand & Gravel Inc.; DOCKET NUMBER: 2008-0939-WQ-E; IDENTIFIER: RN105484018; LOCATION: Navarro County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: The Card Group, Inc.; DOCKET NUMBER: 2008-0938-WQ-E; IDENTIFIER: RN105489827; LOCATION: Lufkin, Angelina County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: City of Tyler; DOCKET NUMBER: 2008-0937-WQ-E; IDENTIFIER: RN102916459; LOCATION: Tyler, Smith County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(17) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2008-0935-WQ-E; IDENTIFIER: RN105495360; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(18) COMPANY: City of Wichita Falls; DOCKET NUMBER: 2008-0936-WQ-E; IDENTIFIER: RN105495329; LOCATION: Wichita Falls, Wichita County; TYPE OF FACILITY: storm water; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a construction general permit; PENALTY: $700; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200803408
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 1, 2008

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Enforcement Orders

An agreed order was entered regarding Cowboy Foundations and Construction, Inc., Docket No. 2005-0050-WQ-E on June 23, 2008 assessing $3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dilley, Docket No. 2005-0223-MWD-E on June 23, 2008 assessing $2,540 in administrative penalties with $508 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Curtis Hamlin dba H & S Quick Stop, Docket No. 2005-1321-PST-E on June 23, 2008 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Gustine, Docket No. 2005-1455-MWD-E on June 23, 2008 assessing $10,575 in administrative penalties with $2,115 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-

4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hailu Sima Mesfin dba Classic Cleaners & Tailors, Docket No. 2006-1064-DCL-E on June 23, 2008 assessing $1,185 in administrative penalties with $237 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mimi Hoang Investment Inc. dba Rich Cleaners, Docket No. 2006-1427-DCL-E on June 23, 2008 assessing $3,555 in administrative penalties with $711 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Shahid Hameed dba RPS Discount, Docket No. 2006-1748-PST-E on June 23, 2008 assessing $5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Combs, Staff Attorney at (512) 239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding William Carl Bell dba Speedos, Docket No. 2006-1781-PST-E on June 23, 2008 assessing $22,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Don Pressly, Jr., Docket No. 2006-2099-PST-E on June 23, 2008 assessing $8,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Polk County, Docket No. 2007-0298-MSW-E on June 23, 2008 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Cynthia McKaughan, Enforcement Coordinator at (512) 239-0735, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding William M. Aldrup, Docket No. 2007-0497-LII-E on June 23, 2008 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Yubany A. Rodriguez dba AR Lawn & Landscape Care, Docket No. 2007-0607-LII-E on June 23, 2008 assessing $262 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tall Oaks Estates Water System, Docket No. 2007-1056-PWS-E on June 23, 2008 assessing $1,312 in administrative penalties with $262 deferred.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Post Oak Development of Texas, Inc., Docket No. 2007-1064-WQ-E on June 23, 2008 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Alonso Trejo, Docket No. 2007-1082-LII-E on June 23, 2008 assessing $875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Daniel Viss dba Daniel Viss Dairy, Docket No. 2007-1104-AGR-E on June 23, 2008 assessing $5,830 in administrative penalties with $1,166 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Jecha, Enforcement Coordinator at (512) 239-2576, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Barbara Miller dba Turner Water Service, Docket No. 2007-1107-PWS-E on June 23, 2008 assessing $29,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Patrick Jackson, Staff Attorney at (512) 239-6501, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Pipeline L.P., Docket No. 2007-1114-AIR-E on June 23, 2008 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Douglas L. Barr dba Texas Rock, Docket No. 2007-1119-WQ-E on June 23, 2008 assessing $6,300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frank De Los Santos, Docket No. 2007-1131-PST-E on June 23, 2008 assessing $5,250 in administrative penalties with $1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom Greimel, Enforcement Coordinator at (512) 239-5690,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of McAllen, Docket No. 2007-1251-WQ-E on June 23, 2008 assessing $22,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Manicured Landscapes, Inc., Docket No. 2007-1257-LII-E on June 23, 2008 assessing $263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barham A. Richard, Staff Attorney at (512) 239-0107, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Evant, Docket No. 2007-1291-PWS-E on June 23, 2008 assessing $2,095 in administrative penalties with $419 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Patrick Y. Shin dba Cedar Hill Cleaners, Docket No. 2007-1438-DCL-E on June 23, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Francisco Deluna dba Joint Aggies Irrigation, Docket No. 2007-1465-LII-E on June 23, 2008 assessing $262 in administrative penalties with $52 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-0086, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2007-1497-AIR-E on June 23, 2008 assessing $222,268 in administrative penalties with $44,453 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2007-1514-AIR-E on June 23, 2008 assessing $16,344 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Wills Point, Docket No. 2007-1573-MWD-E on June 23, 2008 assessing $18,600 in administrative penalties with $3,720 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TOTAL PETROCHEMICALS USA, INC., Docket No. 2007-1580-PWS-E on June 23, 2008 assessing $690 in administrative penalties with $138 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BK Services Inc. dba US 59 Fuel Mart, Docket No. 2007-1592-PST-E on June 23, 2008 assessing $2,675 in administrative penalties with $535 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding James Carter, Docket No. 2007-1596-PST-E on June 23, 2008 assessing $11,550 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Anna Cox, Staff Attorney at (512) 239-0974, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Equistar Chemicals, LP, Docket No. 2007-1715-AIR-E on June 23, 2008 assessing $20,431 in administrative penalties with $4,086 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Cindy Henderson & Melvin Henderson, Docket No. 2007-1782-MLM-E on June 23, 2008 assessing $5,092 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin O. Thompson, Staff Attorney at (512) 239-1297, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flying J Inc. dba Flying J Travel Plaza Orange, Docket No. 2007-1784-PST-E on June 23, 2008 assessing $20,500 in administrative penalties with $4,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LaPorte Business, Inc., Docket No. 2007-1785-PST-E on June 23, 2008 assessing $4,815 in administrative penalties with $963 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Technologies Inc., Docket No. 2007-1839-AIR-E on June 23, 2008 assessing $14,000 in administrative penalties with $2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting James Nolan, Enforcement Coordinator at (512) 239-6634,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HCNRC Real Estate, Ltd., Docket No. 2007-1852-WQ-E on June 23, 2008 assessing $2,100 in administrative penalties with $420 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amarillo Road Company, L.P., Docket No. 2007-1882-AIR-E on June 23, 2008 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Millennium Petrochemicals Inc., Docket No. 2007-1918-AIR-E on June 23, 2008 assessing $5,525 in administrative penalties with $1,105 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hillcroft Grocers, L.L.C., Docket No. 2007-1924-PST-E on June 23, 2008 assessing $7,650 in administrative penalties with $1,530 deferred.

Information concerning any aspect of this order may be obtained by contacting Wallace Myers, Enforcement Coordinator at (512) 239-6580, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Childress, Docket No. 2007-1932-MWD-E on June 23, 2008 assessing $5,450 in administrative penalties with $1,090 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc., (R&M), Docket No. 2007-1940-AIR-E on June 23, 2008 assessing $4,940 in administrative penalties with $988 deferred.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zarin, Inc. dba Collins & I-20 Mobil, Docket No. 2007-1951-PST-E on June 23, 2008 assessing $11,500 in administrative penalties with $2,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-1960-AIR-E on June 23, 2008 assessing $41,500 in administrative penalties with $8,300 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Matt Ray and Donnie Johnson, Docket No. 2007-1973-PST-E on June 23, 2008 assessing $7,875 in administrative penalties with $1,575 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Renaissance Stone Works, LLC, Docket No. 2007-1988-WQ-E on June 23, 2008 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrew Hunt, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Operating Partnership L.P. and Martin Product Sales LLC, Docket No. 2007-1992-IWD-E on June 23, 2008 assessing $34,240 in administrative penalties with $6,848 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Fairfield, Docket No. 2007-2000-PWS-E on June 23, 2008 assessing $712 in administrative penalties with $142 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Reliant Energy Channelview LP, Docket No. 2007-2002-AIR-E on June 23, 2008 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lake Whitney Resorts, LLC, Docket No. 2007-2005-PWS-E on June 23, 2008 assessing $1,522 in administrative penalties with $304 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Midway, Docket No. 2007-2018-PWS-E on June 23, 2008 assessing $1,422 in administrative penalties with $284 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ghuman Enterprise Inc. dba Amatos Food Mart 3, Docket No. 2007-2021-PWS-E on June 23, 2008 assessing $490 in administrative penalties with $98 deferred.

Information concerning any aspect of this order may be obtained by contacting Andrea Linson-Mgbeoduru, Enforcement Coordinator at (512) 239-1482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2007-2039-AIR-E on June 23, 2008 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning Roofing and Asphalt, LLC, Docket No. 2008-0015-AIR-E on June 23, 2008 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jack Neely dba Heights Water Company, Docket No. 2008-0039-PWS-E on June 23, 2008 assessing $392 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villarreal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JSW Steel (USA) Inc., Docket No. 2008-0049-AIR-E on June 23, 2008 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ogre, Inc. dba Mur-Tex Company, Docket No. 2008-0068-AIR-E on June 23, 2008 assessing $2,425 in administrative penalties with $485 deferred.

Information concerning any aspect of this order may be obtained by contacting Kimberly Morales, Enforcement Coordinator at (713) 422-8938, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valliani Enterprises, Inc., Docket No. 2008-0071-PST-E on June 23, 2008 assessing $8,500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Point Aquarius Municipal Utility District, Docket No. 2008-0126-MWD-E on June 23, 2008 assessing $2,980 in administrative penalties with $596 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3048, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hershel W. Conner, Docket No. 2008-0133-MSW-E on June 23, 2008 assessing $1,070 in administrative penalties with $214 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Fife, Enforcement Coordinator at (512) 239-2541, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Encinal, Docket No. 2008-0140-MSW-E on June 23, 2008 assessing $1,050 in administrative penalties with $210 deferred.

Information concerning any aspect of this order may be obtained by contacting John Shelton, Enforcement Coordinator at (512) 239-2563, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saint-Gobain Vetrotex America, Inc., Docket No. 2008-0216-AIR-E on June 23, 2008 assessing $5,850 in administrative penalties with $1,170 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Enviroplan Architects - Planners Austin, Inc., Docket No. 2008-0315-EAQ-E on June 23, 2008 assessing $2,625 in administrative penalties with $525 deferred.

Information concerning any aspect of this order may be obtained by contacting Lauren Smitherman, Enforcement Coordinator at (512) 239-5223, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Noe Alaniz, Docket No. 2008-0535-WOC-E on June 23, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Adam D. Lopez, Jr., Docket No. 2008-0574-WOC-E on June 23, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Donnie Earl Bristow, Docket No. 2008-0573-WOC-E on June 23, 2008 assessing $210 in administrative penalties.

Information concerning any aspect of this citation may be obtained by contacting Melissa Keller, SEP Coordinator at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaspar Electroplating Corporation, Docket No. 2006-1470-WQ-E on June 26, 2008 assessing $17,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Louis Moncus dba Moncus Sand & Gravel, Docket No. 2004-1071-WQ-E on June 26, 2008 assessing $9,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Double Diamond Utilities Co. dba White Bluff Community Water System, Docket No. 2006-1730-PWS-E on June 19, 2008.

Information concerning any aspect of this order may be obtained by contacting Marlin Bullard, Enforcement Coordinator at (713) 767-3694, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNW Enterprises, Inc. dba Super Stop 12 and Super Stop 13, Docket No. 2005-1300-PST-E on June 19, 2008 assessing $26,661 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200803438
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 2, 2008

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 11, 2008.** Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 11, 2008.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Bob Covington; DOCKET NUMBER: 2007-1384-WOC-E; TCEQ ID NUMBER: RN105209324; LOCATION: 5515 Old Highway 90, Orange, Orange County, Texas; TYPE OF FACILITY: underground storage tank (UST) installation and removal subcontract business; RULES VIOLATED: 30 TAC §§30.5(a), 30.301(b) and 334.55(a)(3), and Texas Water Code (TWC), §37.003, by failing to hold an on-site supervisor license prior to the removal of the USTs from the ground; PENALTY: $625; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(2) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2006-0875-AIR-E; TCEQ ID NUMBER: RN102579307; LOCATION: 2800 Decker Drive, Baytown, Harris County, Texas; TYPE OF FACILITY: oil refining and supply company; RULES VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 18287, Special Condition Number 1 and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent an avoidable emissions event in the CLEU3 on February 19, 2006, that lasted five minutes, releasing 9,090 pounds of the highly reactive volatile organic compound ethylene; PENALTY: $10,000; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(3) COMPANY: Fox Tree and Landscape Nursery, Inc. dba Mother Earth Landscape Materials; DOCKET NUMBER: 2007-1841-MLM-E; TCEQ ID NUMBER: RN104751177; LOCATION: 3037 Farm-to-Market Road 665, Petronila, Nueces County, Texas; TYPE OF FACILITY: composting, brush recycling, concrete recycling, and sand and select fill mining operation; RULES VIOLATED: 30 TAC §328.5(b) and §330.11(e), by failing to submit to the executive director at least 90 days prior to engaging in recycling activities a Notice of Intent to operate a recycling facility, and failing to submit a form or forms describing the types of materials being accepted for recycling, any storage of materials prior to recycling, how the materials will be recycled, and updates or changes to information contained in the facility report within 90 days of the effective date of the change; 30 TAC §328.5(c)(1), by failing to provide a written cost estimate showing the cost of hiring a third party to close the facility; 30 TAC §328.5(d) and §37.921, by failing to establish and maintain financial assurance for closure of a municipal solid waste recycling facility; 30 TAC §328.5(h), by failing to have a fire prevention and suppression plan; 30 TAC §26.121(a), by failing to obtain authorization to discharge storm water associated with an industrial activity through an individual permit or Multi-Sector General Permit; 30 TAC §116.602(a)(2), by failing to comply with the conditions of the Standard Permit for a Tier II Portable Rock Crusher; and 30 TAC §106.146(2), by failing to comply with the conditions of the Permit by Rule, Registration Number 76846 for the Soil Stabilization Plant; PENALTY: $18,721; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: Multi-Chem Group, LLC; DOCKET NUMBER: 2006-0516-MLM-E; TCEQ ID NUMBER: RN103948733; LOCATION: 349 Private Road 4473, Sonora, Sutton County, Texas; TYPE OF FACILITY: oilfield manufacturing facility; RULES VIOLATED: 30 TAC §116.116(a)(1) and TCEQ Permit Number 73375, General Condition 1, by failing to construct and operate facilities as represented in the application for TCEQ Air Permit 73375 (the Permit); 30 TAC §116.115(a) and TCEQ Air Permit Number 73375, Special Condition 3, by failing to comply with the annual production rate limit for products shipped off-site; 30 TAC §116.115(c) and TCEQ Air Permit Number 73375, Special Condition 7, by failing to store only mixtures listed in Attachment 1 to the Permit or approved through Special Condition Number 9; 30 TAC §116.115(c) and §335.9(a)(1),

TCEQ Air Permit Number 73375, Special Condition 8B, by failing to maintain emissions records which included calculated emissions of volatile organic compound from all storage tanks during the previous calendar month and the past 12 consecutive month period and failing to provide hazardous solid waste generation, storage, or disposal records upon request; 30 TAC §116.115(c), and TCEQ Air Permit 73375, Special Condition 10, by failing to analyze the pH of the scrubbing solution for scrubber EPN SCBR-1; 30 TAC §§331.10(a), 331.3(a), 335.2(a), and 335.431, and 40 Code of Federal Regulations (CFR) §144.26(a) and §268.7(a), by failing to prevent the unauthorized disposal of hazardous waste into a subsurface on-site sewage facility comprised to two septic tanks and drainfield lines; 30 TAC §335.4, by failing to prevent unauthorized discharge or disposal of the following wastestreams: 1) condensate cooling water from the laboratory discharging directly to the ground on-site, 2) wastes being discharged through cracks in the secondary containment of the tank farm adjacent to the blender warehouse, 3) wastes being allowed to discharge from the chemical storage warehouse, 4) rinseate wash area wastes discharged to the environment during rainfall events, 5) unknown wastes disposed of at the southwest corner of the raw material bulk storage tank farm, 6) wastewater discharges from the raw material bulk storage tank farm, 7) paint waste disposed of at the southwest corner of the finished product bulk storage tank farm area, 8) wastewater discharges from the finished product bulk storage tank secondary containment, 9) secondary containment area wastes dumped onto the ground, 10) waste spoils pile generated from the remediation of a November 7, 2005, spill without adequate run-on and run-off controls, 11) stained soils at the warehouse tank farm transfer pump, 12) unknown white crystalline substance discharging to the environment from an open top tank in the waste tank area, 13) several leaking 55-gallon containers, 14) stained soils located at the outside product storage area adjacent to the spoils pile, and 15) water softener wastewater being disposed of in an off-site surface equipment; 30 TAC §§335.6, 335.62, 335.63(a), 335.503(a), 335.504, and 335.513, and 40 CFR §262.11, by failing to conduct a hazardous waste determination and classification of 15 identified wastestreams and failing to have the wastestreams registered on the Notice of Registration with the appropriate United States Environmental Protection Agency identification number; 30 TAC §335.69(d)(1) and 40 CFR §262.34(c)(1)(i) and §265.173(a), by failing to keep containers of hazardous waste closed when not adding or removing waste; 30 TAC §335.69(d)(1) and 40 CFR §262.34(a)(3), by failing to label the laboratory waste tank with the words Hazardous Waste; and 30 TAC §327.3(b), by failing to notify the TCEQ no later than 24 hours after the discovery of the discharge; PENALTY: $70,380; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(5) COMPANY: Yong Cha Edney aka Yung Chea dba K Dry Cleaners; DOCKET NUMBER: 2006-1505-DCL-E; TCEQ ID NUMBER: RN105010466; LOCATION: 303 West Rancier Avenue, Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200803416

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 1, 2008

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 11, 2008.** The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 11, 2008.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Chantron Patrick Tes dba Texas Spirit Liquor Store; DOCKET NUMBER: 2007-1639-PST-E; TCEQ ID NUMBER: RN102284643; LOCATION: 1001 South Virginia Street, Terrell, Kaufman County, Texas; TYPE OF FACILITY: retail business for alcoholic beverages with two inactive underground storage tanks (USTs); RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed implementation date, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; and 30 TAC §334.22(a) and Texas Water Code (TWC), §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0048196U for Fiscal Years 1996-2007; PENALTY: $10,500; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Edna L. Rayford; DOCKET NUMBER: 2008-0098-PST-E; TCEQ ID NUMBER: RN101490738; LOCATION: 7943 Farm-to-Market Road 672, Dale, Caldwell County, Texas; TYPE OF

FACILITY: retails sales of gasoline; RULES 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, two USTs for which any applicable component of the system is not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(d)(3), by failing to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Account Number 0027646U for Fiscal Years 1992 - 2007; PENALTY: $11,550; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Austin Regional Office, 2800 South Interstate Highway 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(3) COMPANY: Guss Lines dba Lines Cactus Grove Mobile Home Park; DOCKET NUMBER: 2005-2046-PWS-E; TCEQ ID NUMBER: RN104103247; LOCATION: 2408 West Highway 90, Alpine, Brewster County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(d)(2)(A), by failing to operate the disinfection equipment to maintain a minimum free chlorine residual of 0.2 milligrams per liter in each finished water storage tank and throughout the distribution system at all times; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations or service agreement with provisions for proper enforcement to ensure that neither cross connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(e), by failing to operate the system under direct supervision of a certified water works operator at all times; 30 TAC §290.41(c)(1)(F), by failing to provide sanitary control easements for well number one and well number two; 30 TAC §290.41(c)(3)(B), (J), and (K), by failing to provide well number one and well number two with a casing that extends a minimum of 18 inches above the elevation of the finished floor of the pump room or natural surface, a concrete sealing block extending at least three feet from the well casing in all directions and a screened casing vent, which is faced downward and elevated so as to minimize the drawing of contaminants into the well; 30 TAC §290.46(v), by failing to install all water system electrical wiring in compliance with local or national electrical codes; 30 TAC §290.41(c)(3)(M), by failing to provide suitable sampling taps on the discharge lines for well number one and well number two to facilitate the collection of samples for chemical and bacteriological analysis directly from the well; 30 TAC §290.41(c)(3)(N), by failing to install a flow meter on each well pump discharge line to provide water usage records and to assist in more efficient system operation; 30 TAC §290.41(c)(3)(O), by failing to protect all water wells in a lockable building designed to prevent intruder access or enclose all water wells with intruder resistant fencing with lockable gates; 30 TAC §290.121(a) and §290.46(n)(2), by failing to develop a public water system siting and monitoring plan and failingto maintain a map of the distribution system so that valves and mains may be easily located during emergencies; 30 TAC §290.46(t), by failing to post a legible sign at each production, treatment, and storage facility by each community system; 30 TAC §290.46(n)(1) and (3), by failing to keep on file and make available for commission review accurate and up-to-date as-built plans or records, drawings and specifications for each treatment plant, pump station, and storage tank and failing to make available for review copies of well completion data for the wells; 30 TAC §290.46(m)(1), by failing to conduct an annual inspection of the pressure tanks; 30 TAC §290.45(b)(1)(E)(ii), by failing to provide a pressure tank capacity of 50 gallons per connection; 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A), by failing to collect and submit monthly water samples for bacteriological analysis for the months of July - October 2005 and failing to provide a public notification of the failure to collect the water samples for the months July - October 2005; and 30 TAC §290.51(a)(3) and TWC, §5.702, by failing to pay the Public Health Service Fee for Fiscal Year 2005, TCEQ Financial Administration Account Number 90220038; PENALTY: $6,813; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(4) COMPANY: Javier R. Martinez; DOCKET NUMBER: 2007-0936-LII-E; TCEQ ID NUMBER: RN103450953; LOCATION: 4646 Highway 6, Suite 215, Sugarland, Fort Bend County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system and representing to the public that he could perform a service for which a license is required; PENALTY: $625; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: Joe Lee Adams; DOCKET NUMBER: 2007-1687-MLM-E; TCEQ ID NUMBER: RN105072128; LOCATION: 394 Hill County Road 2128, Whitney, Hill County, Texas; TYPE OF FACILITY: real estate; RULES VIOLATED: 30 TAC §111.201 and §330.15(c), and THSC, §382.085(b), by failing to obtain written permission from the executive director of the TCEQ prior to conducting outdoor burning and failing to dispose of municipal solid waste at an authorized facility; PENALTY: $1,050; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: John Hunt; DOCKET NUMBER: 2007-1888-LII-E; TCEQ ID NUMBER: RN103447306; LOCATION: 16006 Craighurst Drive, Houston, Harris County, Texas; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: 30 TAC §30.5(b) and §344.4(a), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required, when not possessing a current license or registration; PENALTY: $267; STAFF ATTORNEY: Patrick Jackson, Litigation Division, MC 175, (512) 239-6501; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(7) COMPANY: Nhung T. Nguyen dba Anna's Cleaners and Alterations; DOCKET NUMBER: 2006-1675-DCL-E; TCEQ ID NUMBER: RN104309794; LOCATION: 2435 Texas Parkway, Suite P, Missouri City, Fort Bend County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Mary E. Coleman, Litigation Division, MC R-4, (817) 588-5917; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(8) COMPANY: Nolte Farms, LLC; DOCKET NUMBER: 2007-1854-PWS-E; TCEQ ID NUMBER: RN105160709; LOCATION: east side of State Highway 123 Bypass, four miles south of Interstate 10 near Seguin, Guadalupe County, Texas; TYPE OF FACILITY: recreation center that operates a non-community public water system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis, and failing to provide public no-

tice of the failure to sample during the months of February - April 2007, and July - August 2007; PENALTY: $1,812; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200803417
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 1, 2008

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Notice of Water Quality Applications

The following notices were issued during the period of June 26, 2008 through July 1, 2008.

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

CAL TEX LUMBER COMPANY INC. which operates Cal-Tex Lumber Plant, a sawmill manufacturing random length dimensionable lumber and fixed length stud lumber, has applied for a renewal of TPDES Permit No. WQ0004198000, which authorizes the discharge of wet deck storage water, boiler blowdown, external kiln condensate, vehicle/equipment wash down water, non-contact cooling water, and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located approximately 0.5 mile south on Farm-to-Market Road 1275 from the intersection of Farm-to-Market Road 1275 and State Highway 224, south of the City of Nacogdoches, Nacogdoches County, Texas.

CHAMBERS COUNTY MUNICIPAL UTILITY DISTRICT NO. 1 has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0014456001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 70,000 gallons per day. The facility is located 2,640 feet west of the intersection of State Highway 146 and Old Needlepoint Road, adjacent to, and on the east bank of Cedar Bayou in Chambers County, Texas.

CITY OF HAMILTON has applied for a renewal of TPDES Permit No. WQ0010492002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 880,000 gallons per day. The facility is located approximately 1,900 feet east of U.S. Highway 281 in the City of Hamilton and located immediately south of Pecan Creek at a point 2,800 feet north of State Highway 36 in Hamilton County, Texas.

EXXON MOBIL CORPORATION which operates a polyethylene and catalyst manufacturing plant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0002546000, which authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, and storm water at a daily average flow not to exceed 1,950,000 gallons per day via Outfall 001. The draft permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, water treatment wastes and storm water at a daily average flow not to exceed 1,950,000 gallons per day via Outfall 001. The facility is located immediately west of the Union Pacific Railroad line (about 1 mile west of Highway 146) and immediately east of Hatcherville Road and approximately 2 miles northwest of the City of Mont Belvieu, Chambers and Liberty County, Texas.

HYAS CORPORATION has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0014571001 to authorize the decrease of Interim I Phase of the existing permit from a daily average flow not to exceed 240,000 gallons per day to 75,000 gallons per day, and a decrease of the Interim II Phase from a daily average flow not to exceed 480,000 gallons per day to 150,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day in the Final Phase. The facility will be located approximately 550 feet south of Interstate Highway 10 and 2200 feet east of Igloo Road in Waller County, Texas.

MONTGOMERY COUNTY UTILITY DISTRICT NO. 3 has applied for a major amendment to TPDES Permit No. WQ0011203001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 1,500,000 gallons per day. The proposed amendment also requests to add an outfall to a more open area of Lake Conroe. The existing outfall will be retained for a limited period of time. The facility is located south of State Highway 105, approximately 8.5 miles west of the intersection of State Highway 105 and Interstate Highway 45 in Montgomery County, Texas.

TRS ENVIROGANICS INC. has applied for a renewal of Permit No. WQ0004462000, which authorizes the land application of sewage sludge and water treatment plant sludge for beneficial use. The current permit authorizes land application of sewage sludge and water treatment plant sludge for beneficial use on 1,350 acres. The land application site is located northwest of the City of Hempstead, on Highway 290, immediately northeast of where Highway 290 crosses the Brazos River in Waller County, Texas.

WEST CYPRESS HILLS WATER CONTROL AND IMPROVEMENT DISTRICT NO. 1 has applied for a new permit, Proposed Permit No. WQ0014857001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 310,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 72.08 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located approximately two miles southwest of the intersection of State Highway 71 and Cypress Ranch Boulevard in Travis County, Texas.

WHITE OAK UTILITIES INC. has applied for a renewal of TPDES Permit No. WQ0014133001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located at 21744 Farm-to-Market Road 1488, approximately 450 feet north of Farm-to-Market Road 1488 and approximately 1,100 feet east of the Montgomery/Waller County line in Montgomery County, Texas.

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-200803437
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 2, 2008

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public rate hearing to receive public comment on proposed Medicaid payment rates for 24 procedure codes resulting from the 2007 Healthcare Common Procedure Coding System (HCPCS) annual update for services provided by Ambulatory Surgical Centers (ASC) and Hospital Ambulatory Surgical Centers (HASC). HHSC is responsible for the reimbursement determination functions for the Texas Medicaid Program. The rate hearing will be held on Tuesday, July 29, 2008, at 2:00 p.m. in the Lone Star Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.201(e) - (f) and Chapter 32 of the Human Resources Code, §32.0282, which require public hearings on proposed payment rates for medical assistance programs.

Proposal. The 24 procedure codes were added as new benefits under the Texas Medicaid Program. The proposed rates are for type of service F procedure codes, and affect payments made to ASCs and HASCs. The proposed payment rates will be effective January 1, 2007.

Methodology and justification. The proposed rate was determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.8121, which addresses the reimbursement methodology for ASCs and HASCs.

Written Comments.

Written comments regarding the proposed reimbursement rate may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Amber Lovett, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by email to amber.lovett@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Lovett, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Lovett at (512) 491-1998.

Briefing Package.

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Ms. Lovett at (512) 491-1371, or by email to amber.lovett@hhsc.state.tx.us, or HHSC Rate Analysis, MC H-400 P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 at least 72 hours before the hearing, so appropriate arrangements can be made.

TRD-200803407
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 1, 2008

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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 29, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rate for the following specific procedure codes for physician-administered drugs and biologicals. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, 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 Texas Administrative Code (TAC) Title 1, §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursement.

Proposal. Proposed Medicaid Provider Payment Rates for Physician-Administered Drug Procedure Codes Associated with the Immunizations Medical Policy - 27 codes for Type of Service 1 (Medical Services) and 28 codes for Type of Service S (Texas Health Steps (THSteps)) program are proposed to be effective August 1, 2008.

Methodology and justification. The proposed payment rates are calculated in accordance with 1 TAC §355.8085, which addresses the Reimbursement Rates for Physicians and Certain Other Practitioners; and the specific fee guidelines published in Section 2.2.1.2 of the 2008 Texas Medicaid Provider Procedures Manual. Rule §355.8085 requires HHSC to review the fees for individual services at least every two years.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 14, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1438; by fax at (512) 491-1998; or by e-mail at Kimbra.rawlings@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rate may be submitted in lieu of, or in addition to, oral testimony until 5 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1438 by July 23, 2008, so appropriate arrangements can be made.

TRD-200803450
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2008

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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 29, 2008 at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for Eye Examinations Delivered by Optometrists. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Blvd, 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 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The proposed rates for eye examinations delivered by optometrists are calculated in accordance with 1 TAC §355.8085 and are proposed to be retroactively effective September 1, 2007.

Methodology and justification. The proposed payment rates for eye examinations delivered by optometrists are calculated in accordance with 1 TAC §355.8085.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 14, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@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 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by June 10, 2008, so appropriate arrangements can be made.

TRD-200803451
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2008

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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 29, 2008, at 2:00 p.m. to receive public comment on the proposed Medicaid payment rates for 41 procedure codes added as benefits of the Texas Medicaid Program as a result of the 2008 Healthcare Common Procedure Coding System (HCPCS) annual update. The public hearing will be held in the Lone Star Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.0282 and Title 1 of the Texas Administrative Code (TAC), §355.201(e) - (f), which require public notice and hearings on proposed Medicaid reimbursements.

Proposal. The 41 procedure codes were added as new benefits under the Texas Medicaid Program. The proposed payment rates for the new procedure codes include 2 durable medical equipment, 6 surgical, and 33 ambulatory surgical procedure codes associated with the 2008 HCPCS annual update. The rates are proposed to be effective retroactively to January 1, 2008.

Methodology and justification. The proposed rates for DME are calculated in accordance with 1 TAC §355.8021 and 1 TAC §355.8441; for surgical services, in accordance with 1 TAC §355.8085; and for ASC services, in accordance with 1 TAC §355.8121.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after July 14, 2008. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Kimbra Rawlings by telephone at (512) 491-1174; by fax at (512) 491-1998; or by e-mail at Kimbra.Rawlings@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 Kimbra Rawlings, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Kimbra Rawlings at (512) 491-1998; or by e-mail to Kimbra.Rawlings@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Kimbra Rawlings, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

People with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Kimbra Rawlings at (512) 491-1174 by July 24, 2008, so appropriate arrangements can be made.

TRD-200803452
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 2, 2008

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Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP #529-08-0187) for "Consulting Services to Provide Three Independent Studies." HHSC seeks to conduct court-ordered assessments of various Medicaid activities through the procurement of consulting services in accordance with the specifications contained in this RFP.

In compliance with *Frew, et al. v. Hawkins, et al.*, Civil Action No. 3:93CV65, Consent Decree, dated February, 1996, and Corrective Action Orders (CAOs), dated September 5, 2007, the HHSC seeks to procure court-ordered studies of various Medicaid activities.

The three (3) studies to be completed under this procurement are:

Study 1: Assessment of Case Management for Children and Pregnant Women (CPW) for Class Members;

Study 2: Study of the reasons that Class Members miss checkups and the effectiveness of various methods for outreach and informing (OI); and

Study 3: Study of Class Members who are enrolled in Texas Medicaid Managed Care but receive no health care services covered by managed care or receive only emergency room or inpatient hospital care (No Care).

The RFP is located in full on HHSC's Business Opportunities Page link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.html. HHSC also will post notice of the procurement on the Texas Marketplace on July 16, 2008.

The successful contractor(s) will be expected to complete the three (3) court-ordered studies in accordance with the directives of the Frew court for independent, unbiased, statistically valid, and timely assessments identified in the CAOs and to provide evidence based recommendations to HHSC for Medicaid improvements, corrective action, strategic action, rewards and/or sanctions based on the findings of the studies.

Health and Human Services Commission's Sole Point-of-Contact for Procurement is:

Elizabeth Ward

Texas Health and Human Services Commission

Enterprise Contract and Procurement Services

4405 North Lamar Boulevard

Austin, Texas 78756-3422

telephone: (512) 206-5416

e-mail: elizabeth.ward@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 5:00 p.m. Central Time on July 31, 2008. HHSC will post all written questions received with HHSC's responses on its website on August 15, 2008, or as they become available. All proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on September 3, 2008. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on July 28, 2008 at 1:00 p.m. in the Lone Star Conference Room at 11209 Metric Boulevard, Building H, Austin, Texas 78758.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200803402
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: June 30, 2008

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Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP #529-08-0170) for Consulting Services to Provide a Medical Check Up Completeness Study per Civil Action No. 3:93CV65 *(Frew et al., v. Hawkins, et al.).* HHSC seeks to contract with one vendor to fulfill the requirements pursuant to this RFP.

In compliance with *Frew, et al., v. Hawkins, et al.,* Civil Action No 3:93CV65, Consent Decree, dated February, 1996, and Corrective Action Orders (CAO), dated September 5, 2007, the HHSC seeks to procure a court-ordered study of Medical Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medical Check Up Completeness.

The RFP is located in full on HHSC's Business Opportunities Page under Contracting Opportunities link at http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.asp. HHSC also will post notice of the procurement on the Texas Marketplace on July 30, 2008.

The successful contractor(s) will be expected to complete one (1) court-ordered study in accordance with the directives of the *Frew, et al., v. Hawkins, et al.,* Civil Action No 3:93CV65, Consent Decree, dated February, 1996, and the Check Ups Corrective Action Order. HHSC is requesting procurement of vendor services to complete an independent, unbiased, statistically valid, and timely study of medical EPSDT medical check up completeness.

Health and Human Services Commission's Sole Point-of-Contact for Procurement:

Elizabeth Ward

Texas Health and Human Services Commission

Enterprise Contract and Procurement Services

4405 North Lamar Boulevard

Austin, Texas 78756-3422

telephone: (512) 206-5416

e-mail: eliziabeth.ward@hhsc.state.tx.us

All questions regarding the RFP must be sent in writing to the above-referenced contact by 2:00 p.m. Central Time on August 6, 2008. HHSC will post all written questions received with HHSC's responses on its website on August 18, 2008, or as they become available. All proposals must be received at the above-referenced address on or before 2:00 p.m. Central Time on August 29, 2008. Proposals received after this time and date will not be considered.

HHSC will hold a Vendor Conference on August 5, 2008 from 9:30 a.m. to 12:00 p.m. Central Time at Lone Star Conference Room, 11209 Metric Boulevard, Building H, Austin, Texas 78758.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200803419
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: July 1, 2008

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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 Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Denton	Molecular Insight Pharmaceuticals	L06138	Denton	00	05/27/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Abilene	Desert Industrial X-Ray LP	L04590	Abilene	83	06/11/08
Amarillo	Northwest Texas Healthcare System, Inc. DBA Northwest Texas Hospital	L02054	Amarillo	82	06/09/08
Austin	Austin Heart PA	L04623	Austin	57	06/05/08
Austin	Austin Heart PA	L04623	Austin	58	06/10/08
Austin	Austin Radiological Association	L00545	Austin	146	05/30/08
Beaumont	Advanced Cardiovascular Specialists LLP	L05512	Beaumont	14	05/29/08
Bonham	Attentus Bonham LP DBA Red River Regional Hospital	L03331	Bonham	35	06/09/08
Carthage	East Texas Medical Center Carthage	L02540	Carthage	36	06/02/08
Carthage	East Texas Medical Center Carthage	L02540	Carthage	37	06/12/08
Corpus Christi	Citgo Refining and Chemicals Company LP	L00243	Corpus Christi	41	06/10/08
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	46	06/05/08
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	47	06/12/08
Corpus Christi	M. Ayman Ghraowi MD PA DBA South Texas Institute of Cancer	L05652	Corpus Christi	06	05/30/08
Dallas	Southern Methodist University	L02887	Dallas	21	05/29/08
Deer Park	Irisndt, Inc.	L04769	Deer Park	56	06/06/08
Diboll	Tin, Inc. DBA Temple Inland Fiber Products Operation	L00935	Diboll	31	06/13/08
El Paso	Archana, Inc.	L05931	El Paso	03	05/29/08
El Paso	East El Paso Physicians Medical Center LLC	L05676	El Paso	08	06/05/08
Fort Worth	Maxum Health Services Corporation DBA Insight Diagnostic Center Eighth Avenue	L05887	Fort Worth	06	05/29/08
Fort Worth	Tarrant County Cardiology	L04659	Fort Worth	19	06/10/08
Freeport	Brazos Pipe & Steel Fabricators, Inc.	L02186	Freeport	29	06/11/08
Garland	Cardiology Consultants of North Dallas PA	L05454	Garland	10	06/02/08
Houston	H & G Inspection Company, Inc. DBA Statewide Maintenance Company	L02181	Houston	226	06/02/08
Houston	Houston Cyclotron Partners LP DBA Cyclotope	L05585	Houston	14	06/10/08
Houston	Kelsey Seybold Clinic PA	L00391	Houston	63	06/06/08
Houston	Northwest Houston Cardiology PA	L05823	Houston	05	06/10/08
Houston	One Step Diagnostic, Inc.	L05990	Houston	03	06/05/08
Houston	Petnet Houston LLC DBA Petnet Houston LLC	L05542	Houston	19	06/09/08
Houston	Radiographic Specialists, Inc.	L02742	Houston	58	06/05/08
Houston	Radiomedix, Inc.	L06044	Houston	03	06/02/08
Houston	River Oaks Imaging and Diagnostic LP	L04342	Houston	57	06/10/08
Houston	River Oaks Imaging and Diagnostic LP	L05455	Houston	15	06/10/08
Houston	Southwest Cardiovascular Consultants PA	L05396	Houston	07	06/02/08
Houston	Tops Specialty Hospital Ltd. DBA Tops Surgical Specialty Hospital	L05441	Houston	14	06/05/08
Houston	Trinity Physics Consulting LLC	L05639	Houston	02	06/09/08
La Porte	Acuren Inspection, Inc.	L01774	La Porte	246	06/06/08

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Longview	Diagnostic Clinic of Longview PA	L05817	Longview	08	06/09/08
McKinney	Columbia Medical Center of McKinney Subsidiary LP DBA Medical Center of McKinney	L02415	McKinney	41	05/29/08
Mesquite	Lone Star HMA LP DBA Dallas Regional Medical Center	L02428	Mesquite	48	06/11/08
Midlothian	TXI Operations LP	L01421	Midlothian	46	06/10/08
Odessa	Big State X-Ray	L02693	Odessa	70	06/11/08
Pasadena	Basell USA, Inc.	L01854	Pasadena	37	06/11/08
Pasadena	Techcorr USA LLC	L05972	Pasadena	46	06/10/08
Pasadena	Tracerco A business unit of Johnson Matthey Inc.	L03096	Pasadena	66	06/06/08
San Angelo	Hirschfeld Steel Company	L04361	San Angelo	17	06/05/08
San Antonio	Christus Santa Rosa Surgery Center LLP	L05805	San Antonio	07	06/11/08
San Antonio	Methodist Healthcare System of San Antonio DBA Methodist Hospital	L00594	San Antonio	243	06/11/08
San Antonio	South Texas Radiology Imaging Centers	L03518	San Antonio	61	06/02/08
San Antonio	VHS San Antonio Imaging Partners LP DBA Baptist M&S Imaging Centers	L04506	San Antonio	66	05/29/08
San Marcos	Texas State University	L03321	San Marcos	26	05/29/08
South Houston	GCT Inspection, Inc.	L02378	South Houston	101	06/06/08
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Springs	17	06/11/08
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs DBA Sulphur Springs Family Health Care Assc.	L05701	Sulphur Springs	12	06/11/08
The Woodlands	St. Lukes Community Medical Center The Woodlands	L05763	The Woodlands	11	06/10/08
Throughout Tx	Brazos Valley Inspection Services, Inc.	L02859	Bryan	65	06/13/08
Throughout Tx	Escot NDE, Inc. DBA Basin Industrial X-Ray	L05002	Corpus Christi	27	06/10/08
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	72	06/12/08
Throughout Tx	Intec	L05150	San Antonio	11	06/12/08
Throughout Tx	Marco Inspection Services LLC	L06072	Kilgore	13	06/11/08
Throughout Tx	Metco	L03018	Houston	186	06/11/08
Throughout Tx	Midwest Inspection Services	L03120	Perryton	108	06/11/08
Throughout Tx	Oceaneering International, Inc. Solus Schall Div.	L04463	Ingleside	58	06/09/08
Throughout Tx	Pacs Construction Laboratories	L05776	Houston	04	06/12/08
Throughout Tx	Protechnics Division of Core Laboratories LP	L03835	Houston	54	06/12/08
Throughout Tx	Rock Engineering and Testing Laboratory, Inc.	L05168	Corpus Christi	08	06/10/08
Throughout Tx	Team Industrial Services, Inc.	L00087	Alvin	185	06/12/08
Throughout Tx	Terra Testing, Inc.	L02464	Lubbock	35	06/11/08
Throughout Tx	Texas Dept of Transportation	L00197	Austin	139	06/11/08
Tyler	Tyler Cardiovascular Consultants PA CVC	L05242	Tyler	15	05/30/08
Victoria	Citizens Medical Center	L00283	Victoria	78	05/30/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Sugarland	Schlumberger Technology Corporation	L00109	Sugarland	55	06/06/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bellaire	Imaging Centers of Greater Houston LP DBA Greater Houston Imaging Medical Center	L05656	Bellaire	06	06/04/08

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, Radioactive Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200803376
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: June 27, 2008

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Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program Community Housing Development Organization (CHDO) Single Family and Rental Housing Development Program Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $5,966,488 in funding from the HOME Investment Partnerships Program for Community Housing Development Organizations (CHDO) to develop affordable rental housing for low-income Texans. The availability and use of these funds is subject to the Department's HOME Program Rule at Title 10 Texas Administrative Code (10 TAC) Chapter 53 in effect at the time the application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other federal regulations may also apply such as, but not limited to, 24 CFR parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR part 5, subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). The funds are set-aside for eligible CHDO and rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable housing development activities. All funds released under this NOFA are to be used for the creation of affordable single family and rental housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications will be accepted and subject to the Regional Allocation Formula until 5:00 p.m. August 25, 2008. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, will collapse into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $4,000,000 per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents (The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent) but will be limited follows:

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least 20 years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. For rental housing developments, the Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part will be recommended.

d) The RAF table listed below specifies the allocation of funds based on the 13 Uniform State Service Regions and the rural and urban distribution for each region.

Table 1. Regional, Rural, and Urban Funding Amounts

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	$336,759	5.6%	$336,697	100.0%	$62	0.0%
2	Abilene	$221,073	3.7%	$216,394	97.9%	$4,678	2.1%
3	Dallas/Fort Worth	$1,055,290	17.7%	$323,989	30.7%	$731,302	69.3%
4	Tyler	$758,527	12.7%	$591,573	78.0%	$166,954	22.0%
5	Beaumont	$350,596	5.9%	$317,507	90.6%	$33,089	9.4%
6	Houston	$423,701	7.1%	$173,866	41.0%	$249,836	59.0%
7	Austin/Round Rock	$253,845	4.3%	$142,926	56.3%	$110,919	43.7%
8	Waco	$280,019	4.7%	$148,937	53.2%	$131,082	46.8%
9	San Antonio	$304,580	5.1%	$191,121	62.7%	$113,459	37.3%
10	Corpus Christi	$431,592	7.2%	$357,601	82.9%	$73,990	17.1%
11	Brownsville/Harlingen	$1,048,681	17.6%	$760,432	72.5%	$288,249	27.5%
12	San Angelo	$302,926	5.1%	$211,416	69.8%	$91,510	30.2%
13	El Paso	$198,898	3.3%	$110,413	55.5%	$88,485	44.5%
	Total	$5,966,488	100.0%	$3,882,873	65.1%	$2,083,615	34.9%

e) Each CHDO that is awarded HOME funds may also be eligible to receive a grant for CHDO Operating Expenses. Applicants will be required to submit organizational operating budgets, audits and other financial and non-financial materials detailed in the HOME application. The award amount for CHDO Operating Expenses shall not exceed $50,000, with the exception that CHDO's who have never received a HOME award from the Department may receive Operating Expenses in accordance with 10 TAC §53.47(a)(7). Awards for operating expenses will be drawn over a two-year period of time. The Department reserves the right to limit an Applicant to receive not more than one award of CHDO Operating Expenses during the same fiscal year and to further limit the award of CHDO Operating Expenses.

f) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of

Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34 and §53.50, which involve only the acquisition, rehabilitation or construction of affordable developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME CHDO funding to qualified nonprofit organizations eligible for CHDO certification. CHDO Certification will be awarded in accordance with the rules and procedures as set forth in the HOME rules at 10 TAC §53.50, Community Housing Development Organization (CHDO) Certification. A separate application process is required for CHDO Certification. Review and approval of the CHDO Certification occurs during the threshold review process, however Applicants will not receive a formal certification until the award of the HOME funds has been approved by the Department's Board. The CHDO Application package will be available with all other application materials on the Department's website. A new Application for CHDO certification must be submitted to the Department with each new Application for HOME Development funds under the CHDO set aside.

b) CHDO Applicants must be the Sponsor, Owner or Developer of the proposed Development. Applicants who apply through a Limited Partnership will be required to provide evidence, at the time of CHDO certification and commitment, that the CHDO Applicant is the Managing General Partner of the partnership and has effective control (decision making authority) over the development and management of the property, pursuant to 24 CFR §92.300.

c) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §50.5 excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2007 Qualified

Allocation Plan (QAP), §§49.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the current Qualified Allocation Plan and Rules 10 TAC §50.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC 53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.44(6).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to §53.44(7).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants for rental housing development must target a minimum of 5% of the total units for individuals or families earning 30% or less of area median family income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in §2(c) of this NOFA.

v) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §49.9(h), excluding subsections (4)(I), (11), (12) and (15).

vi) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within

five (5) business days, will be terminated and must reapply for consideration of funds.

Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

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b) Pursuant to the HOME Rule §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency.

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e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us.

b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

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d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2008 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2008 Final ASPM.

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f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

HOME Division

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Attn: Barbara Skinner

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or via the U.S. Postal Service to:

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NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME CHDO Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200803447
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 2, 2008

♦ ♦ ♦

HOME Investment Partnerships Program Rental Housing Development Program for Persons with Disabilities Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $1,675,307 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing Persons with Disabilities. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ('HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §84.42 and §85.36 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing and accessible design/construction requirements. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program and accessibility design guidelines.

2) Allocation of HOME Funds

a) These funds are made available through a combination of $1,175,307 in deobligated and uncommitted funds from previous funding year and $500,000 from the Department's 2008 allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). Of the deobligated and uncommitted funds, $745,648 is available statewide and $429,659 is limited for use in a non-Participating Jurisdiction (non-PJ). These HOME funds have been set-aside for rental housing development proposals which involve new construction, rehabilitation, acquisition and rehabilitation of affordable rental housing development activities to assist Persons with Disabilities. All funds released under this NOFA are to be used for the creation of affordable adapted and accessible rental housing for Persons with Disabilities earning 60% percent or less of the Area Median Family Income (AMFI).

b) Approximately $1,245,648 will be available statewide for HOME units that serve persons with disabilities. The remaining $429,659 in funds is restricted for non-PJ use in rural areas for units that are serving persons with disabilities.

c) In accordance with 10 TAC §53.48, this NOFA will be an Open Application Cycle and funding will be available on a first-come, first-served Statewide basis. Applications will be accepted until 5:00 p.m. October 3, 2008 unless all funds are committed prior to this date. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding.

d) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $500,000 per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless the proposed development is located in a non-Participating Jurisdiction and a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents (The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent.) but will be limited as follows:

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

[1]The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent.

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least 20 years, in-kind contributions or grants from third party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan in whole or part will be recommended.

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34, which involve only the acquisition, rehabilitation or construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §50.5(a) excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 60% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the De-

partment for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926(d). To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2008 Qualified Allocation Plan (QAP), 10 TAC §50.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the 2008 Qualified Allocation Plan and Rules 10 TAC §50.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons with disabilities. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.44(6).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to 10 TAC §53.44(7).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the units serving persons with disabilities for individuals or families earning 30% or less of area median income. In addition, the applicant must target a minimum of 5% of the units serving persons with disabilities for individuals or families earning 50% or less of area

median income. Developments with existing and continuing USDA §515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development cost in loans, in-kind contributions, or grants from third party public or private entities.

v) All of the 2008 Qualified Allocation Plan and Rules at 10 TAC §50.9(h), excluding subsections (4)(I), (11), (12) and (15).

vi) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

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b) Pursuant to the QAP and 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department. If an application is determined ineligible pursuant to this section, the Application will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency.

c) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

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10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on October 3, 2008. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at (512) 475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us or Lora Lange at (512) 475-3033 or via e-mail at lora.lange@tdhca.state.tx.us.

b) If an Application is submitted to the Department for a Development that requests funds from two separate housing finance programs, and only one of the housing finance programs is operated as a competitive cycle, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2008 ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2008 ASPM.

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g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not an allowable or reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

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or via the U.S. Postal Service to:

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Post Office Box 13941

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NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200803446
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 2, 2008

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HOME Investment Partnerships Program Rental Housing Development Program Notice of Funding Availability (NOFA)

1) Summary

The Texas Department of Housing and Community Affairs ("the Department") announces the availability of approximately $5,000,000 in funding from the HOME Investment Partnerships Program for the development of affordable rental housing for low-income Texans. The availability and use of these funds is subject to the State HOME Rules at Title 10 Texas Administrative Code (10 TAC) Chapter 53 ("HOME Rules") in effect at the time application is submitted, the Federal HOME regulations governing the HOME program (24 CFR Part 92), and Chapter 2306, Texas Government Code. Other Federal regulations may also apply such as, but not limited to, 24 CFR Parts 50 and 58 for environmental requirements, Davis-Bacon Act for labor standards, 24 CFR §85.36 and §84.42 for conflict of interest and 24 CFR Part 5, Subpart A for fair housing. Applicants are encouraged to familiarize themselves with all of the applicable state and federal rules that govern the program.

2) Allocation of HOME Funds

a) These funds are made available through the Department's allocation of HOME funds from the U.S. Department of Housing and Urban Development (HUD). These HOME funds have been set-aside for rental housing development activities. At least $2,000,000 of these funds are set-aside for rental development proposals which involve the acquisition and rehabilitation of existing affordable housing that is at-risk of losing the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive. The remaining $3,000,000 in funds will be available to all eligible applicants for rental development activities. Applications for the Preservation Set-Aside must include evidence that any stipulation to maintain affordability in the contract granting the subsidy is at-risk of expiring, or that the federally insured mortgage on the Development is eligible for prepayment, within the next 24 months

from the date of application submission. An Application for a Development that includes the demolition of the existing units which have received any of the previously listed benefits will not qualify as a Preservation Development unless the redevelopment will include the same site and is supplemented with HOPE VI funding or funding from the Local Housing Authority's capital grant fund. All funds released under this NOFA are to be used for the creation of affordable rental housing for low-income Texans earning 80% or less of the Area Median Family Income (AMFI).

b) In accordance with 10 TAC §53.48, this NOFA will be conducted as an open application cycle and funding will be available on a first-come, first-served basis. Applications will be accepted and subject to the Regional Allocation Formula until 5:00 p.m. August 25, 2008. Any funds not requested in an application received by 5:00 p.m. August 25, 2008, will collapse into an open application cycle with funding available statewide and not subject to the RAF. Applicants are encouraged to review the application process cited above and described herein. Applications that do not meet minimum threshold and financial feasibility will not be considered for funding. Based on the availability of funds, applications for the statewide open application cycle will be accepted until 5:00 p.m. April 30, 2009.

c) The Department awards HOME funds, typically as a loan, to eligible recipients for the provision of housing for low, very low and extremely low-income individuals and families, pursuant to 10 TAC §53.41. Award amounts are limited to no more than $3 million per development. The minimum HOME award may not be less than $1,000 per HOME assisted unit. The maximum award may not exceed 90% of the Total Development Costs ("TDC") unless a resolution of support and commitment for a financial contribution to the development is made by the local unit of government in which the proposed development resides or the proposed development is located in an area where the HUD Fair Market Rents are less than the Calculated HOME Rents (The Calculated HOME Rents in this section refers to the calculated rent for a household earning 65% of the area median income for High HOME or 50% of the area median income for Low HOME before considering the HUD determined Fair Market Rent. The final High and Low HOME Rents for underwriting, operations and compliance is always limited to the lesser of this calculated rent and the HUD determined Fair Market Rent.) but will be limited follows:

Rent	Resolution from Local Government	Max award as % of TDC	% of TDC from other sources
FMR greater than High Home	No	90%	10%
FMR greater than High Home	Yes	92%	8%
FMR less than or equal to High Home	No	93%	7%
FMR less than or equal to High Home	Yes	95%	5%
FMR less than or equal to Low Home	No	96%	4%
FMR less than or equal to Low Home	Yes	98%	2%

The remaining percentage of total development cost must be in the form of permanent loans with a maturity of at least 20 years, in-kind contributions or grants from third-party private or public entities. Developments with USDA or other government-sponsored loans that will remain as permanent financing may be used to satisfy this requirement from a public or private entity. Loans or grants from the Department will not satisfy this requirement. The per-unit subsidy may not exceed the per-unit dollar limits established by the United States Department of Housing and Urban Development (HUD) under §221(d)(3) of the National Housing Act, which are applicable to the area in which the development is located, and as published by HUD. The Department's underwriting guidelines in 10 TAC §1.32 will be used which set as a minimum feasibility a 1.15 debt coverage ratio. Where the anticipated debt coverage ratio in the year after completion exceeds 1.35 before considering the proposed HOME funds, a repayable loan, in whole or part, will be recommended.

d) The RAF tables listed below specify the allocation of funds based on the 13 Uniform State Service Regions and the rural and urban county distribution for each region.

Table 1. Regional, Rural, and Urban Funding Amounts for Rental Housing Development

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	$169,325	5.6%	$169,294	100.0%	$31	0.0%
2	Abilene	$111,157	3.7%	$108,805	97.9%	$2,352	2.1%
3	Dallas/Fort Worth	$530,609	17.7%	$162,904	30.7%	$367,705	69.3%
4	Tyler	$381,394	12.7%	$297,448	78.0%	$83,946	22.0%
5	Beaumont	$176,283	5.9%	$159,645	90.6%	$16,638	9.4%
6	Houston	$213,041	7.1%	$87,421	41.0%	$125,619	59.0%
7	Austin/Round Rock	$127,635	4.3%	$71,865	56.3%	$55,771	43.7%
8	Waco	$140,796	4.7%	$74,887	53.2%	$65,909	46.8%
9	San Antonio	$153,145	5.1%	$96,097	62.7%	$57,048	37.3%
10	Corpus Christi	$217,008	7.2%	$179,805	82.9%	$37,203	17.1%
11	Brownsville/Harlingen	$527,286	17.6%	$382,352	72.5%	$144,934	27.5%
12	San Angelo	$152,314	5.1%	$106,302	69.8%	$46,012	30.2%
13	El Paso	$100,008	3.3%	$55,517	55.5%	$44,491	44.5%
	Total	$3,000,000	100.0%	$1,952,341	65.1%	$1,047,659	34.9%

Table 2. Regional, Rural, and Urban Funding Amounts for Rental Housing Preservation Development

Region	Place for Geographical Reference	Regional Funding Amount	Regional Funding %	Rural Funding Amount	Rural Funding %	Urban Funding Amount	Urban Funding %
1	Lubbock	$112,884	5.6%	$112,863	100.0%	$21	0.0%
2	Abilene	$74,105	3.7%	$72,537	97.9%	$1,568	2.1%
3	Dallas/Fort Worth	$353,739	17.7%	$108,603	30.7%	$245,136	69.3%
4	Tyler	$254,262	12.7%	$198,299	78.0%	$55,964	22.0%
5	Beaumont	$117,522	5.9%	$106,430	90.6%	$11,092	9.4%
6	Houston	$142,027	7.1%	$58,281	41.0%	$83,746	59.0%
7	Austin/Round Rock	$85,090	4.3%	$47,910	56.3%	$37,181	43.7%
8	Waco	$93,864	4.7%	$49,924	53.2%	$43,940	46.8%
9	San Antonio	$102,097	5.1%	$64,065	62.7%	$38,032	37.3%
10	Corpus Christi	$144,672	7.2%	$119,870	82.9%	$24,802	17.1%
11	Brownsville/Harlingen	$351,524	17.6%	$254,901	72.5%	$96,623	27.5%
12	San Angelo	$101,542	5.1%	$70,868	69.8%	$30,675	30.2%
13	El Paso	$66,672	3.3%	$37,011	55.5%	$29,661	44.5%
	Total	$2,000,000	100.0%	$1,301,561	65.1%	$698,439	34.9%

e) Developments involving rehabilitation must establish that the rehabilitation will substantially improve the condition of the housing and will involve at least $12,000 per unit in direct hard costs, unless the property is also being financed by the United States Department of Agriculture's Rural Development program. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

3) Eligible and Prohibited Activities

a) Eligible activities will include those permissible under the federal HOME Rule at 24 CFR §92.205, the State HOME Rules at 10 TAC §53.34, which involve only the acquisition, rehabilitation or construction of affordable rental developments.

b) Prohibited activities include those under federal HOME rules at 24 CFR §92.214 and 10 TAC §53.37.

c) Rental development funds will not be eligible for use in a Participating Jurisdiction (PJ). Any HOME funds available for serving households in a PJ will only be made available under a separate NOFA for Persons with Disabilities as described in the 2008 State of Texas Consolidated Plan One-Year Action Plan.

d) Refinancing of federally financed properties or use of HOME funds for properties constructed within five years of the submission of an Application for assistance will not be permissible.

4) Eligible and Ineligible Applicants

a) The Department provides HOME funding to qualified nonprofit organizations, for-profit entities, sole proprietors, public housing authorities and units of general local government.

b) Applicants may be ineligible for funding if they meet any of the criteria listed in §53.42 of the Department's HOME rule, and ineligibility with any requirements under 10 TAC §50.5(a) excluding subsections (5) - (8). Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Matching Funds

a) Applicants will be required to submit documentation on all financial resources to be used in the development that may be considered match to the Department's federal HOME requirements. Applicants must provide firm commitments as defined in accordance with the Federal HOME rules at 24 CFR §92.218 and the Department's Match Guide and will be provided with the appropriate forms and instructions on how to report eligible match.

6) Rental Housing Development Affordability Requirements

a) Applicants should be aware that there are minimum affordability standards necessary for HOME assisted rental developments. Initial occupancy income restrictions require that at least 90% of the units are affordable to persons below 60% AMFI and that 20% of the units are affordable to person below 50% AMFI. Over the remaining affordability period at least 20% of HOME assisted units should be affordable to persons earning 50% or less than the AMFI, all remaining units must be affordable to persons earning 80% or less than the AMFI.

b) Each development will have a two-tier affordability term.

i) The first tier will entail the federally required affordability term. For new construction or acquisition of new housing, this term is 20 years. For rehabilitation or acquisition of existing housing, the term is 5 years if the HOME investment is less than $15,000 per unit; 10 years if the HOME investment is $15,000 to $40,000 per unit; and 15 years if the HOME investment is greater than $40,000 per unit. This first tier is

subject to all federal laws and regulations regarding HOME requirements, recapture, net proceeds and affordability.

ii) The second tier of affordability is the additional number of years required to bring the total term of affordability up to 30 years or the term of the loan agreement. For example, the second tier of affordability on a 10-year federal affordability term is 20 additional years. The second tier, or remaining term, is subject only to state regulations and affordability requirements.

c) Properties will be restricted under a Land Use Restriction Agreement ("LURA"), or other such instrument as determined by the Department for these terms. Among other restrictions, the LURA may require the owner of the property to continue to accept subsidies which may be offered by the federal government, prohibit the owner from exercising an option to prepay a federally insured loan, impose tenant income-based occupancy and rental restrictions, or impose any of these and other restrictions as deemed necessary at the sole discretion of the Department in order to preserve the property as affordable housing on a case-by-case basis.

7) Site and Development Restrictions

a) Pursuant to 24 CFR §92.251, housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable, one of three model codes: Uniform Building Code (ICBO), National Building Code (BOCA), Standard (Southern) Building Code (SBCCI); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR §200.925 or §200.926. To avoid duplicative inspections when Federal Housing Administration (FHA) financing is involved in a HOME-assisted property, a participating jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

b) All other HOME-assisted housing (e.g., acquisition) must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR §982.401. When HOME funds are used for a rehabilitation development the entire unit must be brought up to the applicable property standards, pursuant to 24 CFR §92.251(a)(1).

c) Housing must meet the accessibility requirements at 24 CFR Part 8, which implements §504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and covered multifamily dwellings, as defined at 24 CFR §100.201, must also meet the design and construction requirements at 24 CFR §100.205, which implement the Fair Housing Act (42 U.S.C. §§3601 - 3619). Additionally, pursuant to the 2008 Qualified Allocation Plan (QAP), 10 TAC §50.9(h)(4)(G), Developments involving New Construction (excluding New Construction of nonresidential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A certification will be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

d) All of the current Qualified Allocation Plan and Rules 10 TAC §50.6, excluding subsections (d), (f), (g) and (h) apply.

e) Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units, pursuant to 10 TAC §53.45(b).

8) Threshold Criteria

a) Housing units subsidized by HOME funds must be affordable to low, very-low or extremely low-income persons. Mixed Income rental developments may only receive funds for units that meet the HOME program affordability standards. All applications intended to serve persons with disabilities must adhere to the Department's Integrated Housing Rule at 10 TAC §1.15.

b) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in 10 TAC §1.37, pursuant to 10 TAC §53.45(c).

c) All applications will be required to meet Section 8 Housing Quality Standards detailed under 24 CFR §982.401, Texas Minimum Construction Standards, as well as the Fair Housing Accessibility Standards and §504 of the Rehabilitation Act of 1973. Developments must also meet all local building codes or standards that may apply. If the development is located within a jurisdiction that does not have building codes, developments must meet the most current International Building Code.

d) Pursuant to 10 TAC §53.8(a), Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to be terminated under competitive application cycles. Applicants must provide notifications to:

i) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;

ii) all neighborhood organizations whose defined boundaries include the location of the Development;

iii) executive officer and Board President of the school district that covers the location of the Development;

iv) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and

v) the State Representative and State Senator whose district covers the location of the Development.

vi) the notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

e) The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

i) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the Applicant's cash reserve obligation or made promises in connection therewith, pursuant to 10 TAC §53.44(6).

ii) All contractors, consulting firms, and Administrators must sign and submit an affidavit with each draw to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions, pursuant to 10 TAC §53.44(7).

iii) To encourage the inclusion of families and individuals with the highest need for affordable housing, applicants must target a minimum of 5% of the total units for individuals or families earning 30% or less of area medium income for the development site. Additionally, 20% of the total units proposed must be HOME units. Developments with existing and continuing USDA 515 program loans and rental assistance or project-based Section 8 are exempt from this minimum target requirement.

iv) To encourage the involvement of other public agencies and private entities in affordable housing, applicants must provide a minimum percentage of the total development costs in loans, in-kind contributions, or grants from third-party public or private entities as identified in §(2)(c) of this NOFA.

v) All of the Qualified Allocation Plan and Rules in effect at the time of application submission at 10 TAC §50.9(h), excluding subsections (4) (I), (11), (12) and (15).

vi) An applicant is not eligible to apply for funds or any other assistance from the Department unless audits are current at the time of application or the Audit Certification Form has been submitted to the Department in a satisfactory format on or before the application deadline for funds or other assistance per 10 TAC §1.3(b).

9) Review Process

a) Pursuant to 10 TAC §53.48, each application will be handled on a first-come, first-served basis as further described in this section. Each application will be assigned a "received date" based on the date and time it is physically received by the Department. Then each application will be reviewed on its own merits in three review phases, as applicable. Applications will continue to be prioritized for funding based on their "received date" unless they do not proceed into the next phase(s) of review. Applications proceeding in a timely fashion through a phase will take priority over applications that may have an earlier "received date" but that did not timely complete a phase of review. Applications will be reviewed for Applicant and Activity Eligibility, Threshold Criteria, and Financial Feasibility as described in this NOFA.

Phase One will begin as of the Received Date and will include a review of eligibility and threshold criteria and all Application requirements. The Department will ensure review of materials required under the NOFA and ASPM and will issue a notice of any Administrative Deficiencies for threshold criteria and eligibility within 45 days of the Received Date. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Two, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds.

Phase Two will include a comprehensive review for financial feasibility for RHD and Single Family Development Program Activities. Financial feasibility reviews will be conducted by the Real Estate Analysis (REA) Division consistent with 10 TAC §1.32. REA will create an underwriting report identifying staff's recommended Loan terms, the Loan or Grant amount and any conditions to be placed on the Development. The Department will issue a notice of any Administrative Deficiencies within 45 days of the date the Application enters Phase Two. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into Phase Three, if applicable, and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not satisfied within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase and do not require additional review in Phase Three will be considered for placement on the next available Board meeting agenda.

Phase Three will only entail the review of the CHDO Certification Application. The Department will ensure review of these materials and issue notice of any Administrative Deficiencies on the CHDO Certification Application within 30 days of the Application enters Phase Three. Applicants who are able to resolve their Administrative Deficiencies within five (5) business days will be forwarded into the final review phase of the Application process and will continue to be prioritized by their Received Date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Only upon satisfaction of all Administrative Deficiencies will the Application be forwarded to the final phase of the Application process. Upon completion of the applicable final review phase, the Application will be considered for placement on the next available Board meeting agenda.

Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HOME funds before an Application has completed all phases of its review. In the case that all HOME funds are committed before an Application has completed all phases of the review process, the Department will notify the applicant that their application will remain active for ninety (90) days in its current phase. If new HOME funds become available, Applications will continue onward with their review without losing their Received Date priority. If HOME funds do not become available within ninety (90) days of the notification, the Applicant will be notified that their Application is no longer under consideration. The Applicant must reapply to be considered for future funding. If on the date an Application is received by the Department, no funds are available under this NOFA, the Applicant will be notified that no funds exist under the NOFA and the Application will not be processed.

b) Pursuant to the QAP and 10 TAC §53.42 if a submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review cannot reasonably be performed by the Department, as determined by the Department, will be terminated with notice and rights to appeal but without being processed as an Administrative Deficiency.

c) A site visit may be conducted as part of the HOME Program development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

d) The Department may decline to consider any Application if the proposed activities do not, in the Department's sole determination, represent a prudent use of the Department's funds. The Department is not obligated to proceed with any action pertaining to any Applications which are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department strives, through its loan terms, to securitize its funding while ensuring the financial feasibility of a Development. The Department reserves the right to negotiate individual elements of any Application.

e) In accordance with §2306.082 Texas Government Code and 10 TAC §53.6, it is the Department's policy to encourage the use of appropriate Alternative Dispute Resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdic-

tion. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC §1.17.

f) An Applicant may appeal decisions made by staff in accordance with 10 TAC §1.7.

10) Application Submission

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on April 30, 2009. The Department will accept applications from 8 a.m. to 5 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's web site until the deadline. For questions regarding this NOFA please contact Barbara Skinner at 512-475-1643 or via e-mail at barbara.skinner@tdhca.state.tx.us.

b) If an Application is submitted to the Department that requests funds from two separate housing finance programs, the Application will be handled in accordance with the guidelines for each housing program. The Applicant is responsible for adhering to the deadlines and requirements of both programs.

c) All applications must be submitted, and provide all documentation, as described in this NOFA and associated application materials.

d) Applicants must submit one complete printed copy of all Application materials and one complete scanned copy of the Application materials as detailed in the 2008 Final ASPM. All scanned copies must be scanned in accordance with the guidance provided in the 2008 Final ASPM.

e) The application consists of three parts: bound items, unbound items and electronic submission. A complete application for each proposed development must be submitted. Incomplete applications or improperly bound applications will not be accepted. The bound volumes of the application must be bound using red pressboard binders. Each volume must be submitted in a separate red pressboard binder. If the required documentation for a volume exceeds the capacity of one binder, a second binder may be used to subdivide the volume. Applicants must submit one complete printed copy of all application materials and one complete electronic or scanned copy stored on compact disc of the application materials as detailed in the 2008 Final ASPM.

f) Third party reports - If all applicable third party reports are not received at the time of application submission, the Application will be terminated.

g) All Application materials including manuals, NOFA, program guidelines, and all applicable HOME rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the HOME Rule and threshold requirements in effect at the time of the Application submission. Applications must be on forms provided by the Department, and cannot be altered or modified and must be in final form before submitting them to the Department.

h) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of $500.00 per Application. Payment must be in the form of a check, cashier's check or money order. Do not send cash. Section 2306.147(b) of the Texas Government Code requires the Department to waive Application fees for nonprofit organizations that offer expanded services such as child care, nutrition programs, job training assistance, health services, or human services. These organizations must include proof of their exempt status and a description of their supportive services in lieu of the Application fee. The Application fee is not a reimbursable cost under the HOME Program.

i) Applications must be sent via overnight delivery to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

221 East 11th Street

Austin, TX 78701-2410

or via the U.S. Postal Service to:

HOME Division

Texas Department of Housing and Community Affairs

Attn: Barbara Skinner

Post Office Box 13941

Austin, TX 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular HOME Rental Housing Development Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable State and Federal regulations.

TRD-200803443
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 2, 2008

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Texas Department of Insurance

Company Licensing

Application to change the name of PHOENIX INDEMNITY INSURANCE COMPANY to HALLMARK INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Phoenix, Arizona.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200803442
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 2, 2008

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Notice of Request for Qualifications for Special Deputy Receivers (RFQ-SDR-2008-1)

From July 11, 2008 through August 29, 2008, the Commissioner of Insurance (Commissioner) will be accepting applications for those interested in qualifying as a Special Deputy Receiver (SDR) for insurance

receiverships in the State of Texas. An SDR acts on behalf of the Commissioner in his capacity as the Receiver of an insurer that is placed in receivership pursuant to Chapter 443 of the Texas Insurance Code. *Individuals or legal entities may apply to be considered for appointment as an SDR.* Individuals or legal entities that were qualified under RFQ-SDR-2006-1 issued in 2006 or RFQ-SDR-2007-1 issued in 2007 do *not* need to re-apply under this RFQ-SDR-2008-1. All approvals will terminate August 31, 2009, regardless of the date of application or approval. An SDR's duties typically include:

Securing control of the insurer's operations, property, and records

Evaluating, collecting, investing, and liquidating assets as appropriate

Evaluating the insurer's work force to ensure proper staffing during all stages of receivership

Supervising litigation filed by and against the receivership estate

Operating information systems and extracting data

Investigating the liability of any parties responsible for the insurer's condition

Identifying any preferential transfers

Providing notice to policyholders, claimants and interested parties

Handling claims, and coordinating with state insurance guaranty associations

Creating and filing financial reports

Distributing assets to approved claimants

Request for Qualifications (RFQ) applicants who are approved (Qualified Applicants) will be notified on or after September 1, 2008. After they are approved, Qualified Applicants will be eligible to submit bids on any Requests for Proposals (RFP) for an SDR that are issued through August 31, 2009. Texas Department of Insurance (TDI) reserves the right to issue other RFQs for Qualified Applicants, if needed, at any time during the term of this RFQ.

TDI is not responsible for any costs incurred in responding to this RFQ or any subsequent RFP, and reserves the right to accept or reject any or all applications. Approval as a Qualified Applicant does not confer any rights to the applicant. TDI is under no obligation to award a contract on the basis of this RFQ or an RFP. An SDR is appointed only after the issuance of an RFP and the acceptance of a bid proposal by the Receiver.

Contact Information

The RFQ and application forms will be published on the TDI website on July 11, 2008. The forms may be downloaded at that time from http://www.tdi.state.tx.us/lorc/sdrcontractadmn.html. For a paper copy, contact Lewis Wright, Financial Program SDR Process, Texas Department of Insurance, P.O. Box 149104, Mail Code 305-2A, Austin, Texas 78714, telephone (512) 322-3463, e-mail sdrcontracting@tdi.state.tx.us. Questions and Answers regarding the RFQ will appear as needed on TDI's website at the address listed above.

Evaluation Criteria

Submissions will be evaluated on the basis of the criteria set forth in the RFQ.

Closing Date

Submissions must comply with all requirements of the RFQ and must be received by the designated contact person no later than 3:00 p.m. on August 29, 2008. Submissions received after that time and date will not be considered.

TRD-200803441
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 2, 2008

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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 FIRST ADMINISTRATORS, INC., a foreign third party administrator. The home office is DES MOINES, IOWA.

Application of TRIDENT BENEFIT ADMINISTRATORS, INC., a domestic third party administrator. The home office is EL PASO, TEXAS.

Application to change the name of HEALTH NETWORK AMERICA, INC. (using the assumed name HNA/TRIVERIS, INC.) to HEALTH NETWORK AMERICA, INC. (using the assumed name TRIVERIS, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application to change the name of MASS GROUP MARKETING, INC. to MASS GROUP MARKETING, INC. (using the assumed name FINANCIAL BENEFIT SERVICES, LLC), a domestic third party administrator. The home office is PLANO, TEXAS.

Application to change the name of THE FRANK GATES SERVICE COMPANY to THE FRANK GATES SERVICE COMPANY (using the assumed name AVIZENT), a foreign third party administrator. The home office is DUBLIN, OHIO.

Application to change the name of REBECCA L. IBISON (using the assumed name of TRUE BENEFITS ADMINISTRATORS) to TRUE BENEFITS ADMINISTRATORS, LLC, a domestic third party administrator. The home office is FLOWER MOUND, TEXAS.

Application to change the name of INSURANCE MANAGEMENT ADMINISTRATORS OF LOUISIANA, INC. to INSURANCE MANAGEMENT ADMINISTRATORS, INC., a foreign third party administrator. The home office is SHREVEPORT, LOUISIANA.

Application to change the name of DISABILITY MANAGEMENT ALTERNATIVES, LLC to DISABILITY MANAGEMENT ALTERNATIVES, LLC (using the assumed name of HEWITT LCG), a foreign third party administrator. The home office is FARMINGTON, CONNECTICUT.

Application to change the name of HEALTHFIRST TPA, INC. to HEALTHFIRST TPA, INC. (using the assumed name of TRISURANT), a domestic third party administrator. The home office is TYLER, TEXAS.

Application to change the name and home office of MEDE AMERICA CORPORATION OF OHIO, TWINSBURG, OHIO to MEDE AMERICA OF OHIO, LLC, a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

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-200803435

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 2, 2008

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Texas Lottery Commission

Instant Game Number 1066 "Slingo®"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1066 is "SLINGO®". The play style is "coordinate with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1066 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 1066.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75 and JOKER SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1066 - 1.2D

PLAY SYMBOL	CAPTION
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JOKER SYMBOL	

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $40.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $25,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1066), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1066-0000001-001.

K. Pack - A pack of "SLINGO®" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configuration A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "SLINGO®" Instant Game No. 1066 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SLINGO®" Instant Game is determined once the latex on the ticket is scratched off to expose 75 (seventy-five) Play Symbols. The player must scratch each horizontal SPIN line to reveal the YOUR SLINGO NUMBERS play symbols. The player must scratch the corresponding numbers in the SLINGO GRID. The player must scratch all free spots (Jokers) in the SLINGO GRID. If the player

matches all 5 numbers and free spots in a complete horizontal, vertical or diagonal line in the SLINGO GRID, the player wins the corresponding prize amount shown in the SLINGO LEGEND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 75 (seventy-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 75 (seventy-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 75 (seventy-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 75 (seventy-five) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. There will be exactly four (4) JOKER symbols in the SLINGO GRID.

C. The JOKER symbols will be randomly distributed in the SLINGO GRID.

D. No more than two (2) JOKER symbols will appear in the same column or row in the SLINGO GRID.

E. The JOKER symbol will not appear in YOUR SLINGO NUMBERS.

F. The numbers appearing in YOUR SLINGO NUMBERS will be unique.

G. A minimum of fifteen (15) of YOUR SLINGO NUMBERS will appear in the SLINGO GRID.

H. At least one (1) of the YOUR SLINGO NUMBERS revealed on the grid will be located in the last YOUR SLINGO NUMBERS SPIN (SPIN 10).

I. The seventy-five (75) font numbers will be randomly distributed in YOUR SLINGO NUMBERS and YOUR SLINGO GRID with the following exceptions:

A. Font numbers 01 - 15 will only appear in Column 1

B. Font numbers 16 - 30 will only appear in Column 2

C. Font numbers 31 - 45 will only appear in Column 3

D. Font numbers 46 - 60 will only appear in Column 4

E. Font numbers 61 - 75 will only appear in Column 5

J. The numbers in the SLINGO GRID will be unique.

K. All tickets not winning in the SLINGO GRID will have a minimum of eight (8) near wins. A near win is a horizontal, vertical or diagonal line less one (1) number revealed.

L. Tickets winning with 10 lines will not form a blackout.

2.3 Procedure for Claiming Prizes.

A. To claim a "SLINGO®" Instant Game prize of $2.00, $4.00, $5.00, $10.00, $20.00, $40.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas

Lottery Retailer may, but is not required to pay a $40.00, $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SLINGO®" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SLINGO®" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "SLINGO®" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "SLINGO®" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1066. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1066 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	967,680	10.42
$4	564,480	17.86
$5	322,560	31.25
$10	161,280	62.50
$20	80,640	125.00
$40	21,000	480.00
$50	12,600	800.00
$100	4,200	2,400.00
$500	2,436	4,137.93
$1,000	336	30,000.00
$25,000	9	1,120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.72. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1066 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1066, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200803418
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 1, 2008

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Office of the Controller, Lotto Texas® Jackpot Estimation, Procedure

The agency has determined that information that is confidential by law, because it goes to the security of the lottery, is contained within the procedure referenced below. The confidential information has been redacted within this procedure.

TEXAS LOTTERY COMMISSION

OFFICE OF THE CONTROLLER

PROCEDURE

Number: OC-JE-002 Page: 1 of 8	Title: *Lotto Texas*® Jackpot Estimation	Approval: Anthony Sadberry, Executive Director
Effective Date:	Approval Date:	Review Date:

PROCEDURE NUMBER
OC-JE-002 [Supersedes OC-JE-002 effective February 13, 2007]

PURPOSE
To provide standard guidelines for projecting and estimating sales for future *Lotto Texas* estimated annuitized jackpot prize amounts that will be advertised.

SCOPE
This procedure applies to the Office of the Controller, the Lottery Operations Division, and the Executive Division.

RESPONSIBILITY
This procedure is primarily the responsibility of the Controller, Financial Operations Manager, Lottery Operations Director, Lottery Products Manager, the Deputy Executive Director, the Executive Director, and designated jackpot team personnel (jackpot team) in the Office of the Controller and the Lottery Products Department. The final approval for the estimated jackpot to advertise will be provided by the Executive Director.

GENERAL
The Texas Lottery Commission (TLC) jackpot team ensures that *Lotto Texas* sales and other information necessary to estimate the jackpot amount to be advertised is gathered so the Controller, the Lottery Products Manager and the Lottery Operations Director, or their designee(s) may review and recommend estimates and projections that will be presented to the Deputy Executive Director and the Executive Director, or their designee(s). The Executive Director, or their designee, has the sole authority to approve the final projected estimated annuitized jackpot to advertise for *Lotto Texas* Drawings.

The "Lotto Texas" On-Line Game rule is found in the Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter D, Rule 401.305. The Lotto Texas Game rules state, "The jackpot prize for a drawing is the greater of 40.47 percent of the proceeds from Lotto Texas ticket sales for all drawings in the roll cycle and any earnings on an investment of all or part of the sales proceeds, paid in 25 annual installments; or the amount advertised in accordance with subsection (e) of the Lotto Texas On-Line Game Rule as the estimated jackpot for the drawing, paid in 25 annual installments."

A roll cycle is a series of drawings that ends when there is a drawing for which one or more tickets are sold that match the six numbers drawn in the drawing. A new roll cycle begins with the next drawing after a drawing for which one or more jackpot tickets are sold that match the six numbers drawn in the drawing.

The advertised amount shall be an amount payable in 25 annual installments. To the extent that the advertised amount is based on projected sales, the projections shall be fair and reasonable. The Executive Director, or designee, may approve an increase in the amount of the jackpot originally advertised for a drawing if the increase is supported by reasonable sales projections. The Lottery Products Department will be responsible for notifying all necessary personnel and/or vendors.

REFERENCE
OC-WP-003, *Lotto Texas* Jackpot Payment and Investment

PROCEDURE

I. Timeline

1. The completed Lotto Texas Jackpot Estimation Worksheet shall be presented to the Executive Director no later than 4:00 p.m. on Wednesdays and Fridays.
2. In the event there is a delay in presenting the worksheet to the Executive Director, the jackpot team shall immediately determine the cause for the delay and inform each member of the jackpot estimation team of the cause for the delay.
3. Distribution of estimated jackpot information as outlined in Section VI shall be completed by close of business, or 5:00 p.m. on Wednesdays and Fridays.
4. The advertised jackpot for the current draw may be increased based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot. The Executive Director, or their designee, will be consulted regarding the time frame for increasing the advertised jackpot amount.
5. In the event Wednesday or Friday falls on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved, or if, due to a large jackpot level, a Friday estimation is delayed until Saturday, the above deadlines may be revised as needed.

II. Compile Estimate Information:

1. Determine the Interest Factor: Investment cost information is obtained from the Texas Treasury Safekeeping Trust Company by designated Controller staff and approved by

Financial Operations Manager prior to each estimation. Controller staff requests the estimated cost of 25 annual payments to yield the advertised jackpot. The interest factor is calculated by dividing the advertised jackpot by the estimated cost, including the initial payment required, to fund an investment stream that would yield the total advertised jackpot over a 25-year period. Note that the investment information may not be obtainable if the appropriate financial institutions and/or brokers are not open for business such as on business holidays. In those instances either a request for the information is made the day before or the prior estimation interest factor is used.

2. Compile actual draw sales for the current drawing: Draw sales for each *Lotto Texas* drawing are recorded both on the [redacted]

III. Estimate the Sales and Jackpot Support for the Current and Future Draws:

The Office of the Controller and the Lottery Products Department will independently estimate draw sales and jackpot support for the current *Lotto Texas* drawing and project the jackpot to be advertised for the next drawing in the event of a roll. Estimations may be made on a day prior to Wednesday or Friday if Wednesday or Friday fall on a holiday and management has agreed that the sales trends and jackpot levels are such that an early estimation may be achieved. If the estimation is completed prior to the holiday, at least one member of the estimation team will review sales prior to the drawing for changes in *Lotto Texas* sales or other factors that may impact jackpot prize support. If a revision to the advertised jackpot on the day of estimation or the day of the drawing is necessary, management or their designee(s) will be contacted.

1. Project the *Lotto Texas* draw sales for the current drawing: Estimations are made each Wednesday and Friday. If the draw day is on a Wednesday, estimate sales for that Wednesday. If the draw day is on a Saturday, estimate sales for Friday and Saturday. However, jackpot estimations may be updated at any time if either of the Lottery Products or Controller staff believe that changes in *Lotto Texas* sales or other factors may impact jackpot prize support. Estimate draw sales by using historical sales data and other relevant factors that may impact sales. Combine the actual draw sales to date with the projected draw sales for the remainder of the draw period to calculate the total projected draw sales.

    a) Evaluate historical sales data: Project the current draw day sales by estimating the expected increase/decrease in sales using the hourly sales trend and/or growth pattern for previous like-day drawings. Hourly sales information for Wednesday and Friday are available from [redacted]

    b) Other factors to consider in estimating draw sales, along with evaluating historical sales data, include but are not limited to:

- Wednesday draw sales are generally lower than Saturday draw sales.
- length of time since a large jackpot was advertised
- effect of holidays (Holidays generally cause sales to peak early and then fall below average on the holiday.)
- weather throughout the state, especially in key markets
- sales trends for like jackpots and/or most recent roll cycles
- current advertising/promotions schedule
- relevant media issues
- on-line terminal connection problems
- jackpots advertised in neighboring states and similar games such as Mega Millions
- new on-line game launches or other game enhancements
- overall trends in sales over similar time periods
- other - IRS deadlines, spring break, strength of the economy, etc.

It is not necessary to evaluate all these factor for every estimate. Sound judgment should be used in determining which factors to consider.

2. Evaluate Sales Support for the Current Advertised Jackpot: Determine the projected *Lotto Texas* jackpot sales support given the current advertised jackpot.

   a) If sales proceeds and the Lotto Texas prize reserve fund, if applicable, are not sufficient to pay a jackpot prize, the TLC shall use funds from other authorized sources, including the State Lottery Account as identified in Government Code, Section 466.355.

   b) The advertised jackpot for the current draw may be increased prior to the draw based on revised sales projections, if the Executive Director, or their designee, determines that sales have grown sufficiently to support an increased advertised jackpot.

3. Estimate sales for the next draw in the event of a rollover: To estimate sales for the next draw, use historical sales data and any other relevant information as described in 1.a) and 1.b) above.

4. Project a range of prospective estimated annuitized jackpot prize amounts that may be advertised in the event of a rollover: Use estimated draw sales for the current draw, estimated draw sales for the next draw, and the estimated interest factor to identify a range of prospective estimated annuitized jackpot prize amounts.

   a) The estimated annuitized jackpot prize amount will automatically be set to four million dollars for the first draw following a draw in which at least one jackpot prize ticket is identified.

b) The range of projected estimated annuitized jackpot amounts to advertise in the event of a rollover should reflect at least one million dollars greater than the current advertised jackpot.

c) Controller staff will complete a checklist to verify that all prior information is correct and that all of the required steps have been completed.

IV. Approval of Estimated Annuitized Jackpot Amount to Advertise:

1. Office of the Controller and Lottery Products Department personnel should consult with each other regarding the most fair and reasonable sales projections and other factors which may impact jackpot prize support for the estimated annuitized jackpot amount to advertise. Office of the Controller and Lottery Products Department staff will agree on a negotiated sales projection and this information will be presented to the Controller, the Products Manager and Lottery Operations Director or their designee(s), for their independent recommendations to the Deputy Executive Director and the Executive Director. In the event that any member of the above authorized staff is unavailable to sign the jackpot estimation worksheet in person, then approval of the projected estimated annuitized jackpot amount to advertise in the event of a rollover can be authorized and documented by email, pager or phone. Temporary signature authority may be designated to appropriate personnel that will be accountable for jackpot estimation approval. Additionally, this temporary signature authority designation may be granted to an individual on this list of authorized signatures reflected above. For example, the Lottery Operations Director may grant temporary signature authority to the Products Manager thus resulting in two signatures from the Products Manager. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.

   a) The recommendation of the jackpot amount to advertise in the event of a rollover should typically be based on the "low end" sales support shown at the time of estimation, however, for marketing related purposes there may be instances when the recommended jackpot could be based on an amount exceeding the "high end" sales support.

   b) The range of potential jackpots to advertise in the event of a rollover should be used by management as a tool to understand the amount of additional funds that may be required to fund the jackpot prize. In the event that "low end" sales do not support a roll from the currently advertised jackpot, the TLC will roll the jackpot in $1 million increments.

2. In the event one of the authorized staff (Controller, Products Manager or Lottery Operations Director) identified in Section IV.1. is unavailable for signature authority and temporary signature authority cannot be obtained by 4:00 p.m., the matter shall be

brought to the attention of the Deputy Executive Director, Executive Director, or person in charge of the agency by Executive Order (in that order), who shall appoint one of the authorized staff identified in Section IV.1. to act instead of the unavailable signatory. The temporary signature authority should be designated to appropriate personnel that will be accountable for jackpot estimation approval.

3. The recommended jackpot amount to advertise is then presented to the Deputy Executive Director for review and concurrence or disagreement, and ultimately to the Executive Director for final approval of the subsequent (annuitized) jackpot prize amount that will be advertised in the event of a *Lotto Texas* jackpot rollover. The *Lotto Texas Jackpot Estimation Worksheet* presented will state the projected current (annuitized) jackpot prize amount for the current draw. In the event that any member of the above authorized staff is unavailable to sign the worksheet in person, then approval can be authorized and documented by email, pager or phone. Temporary signature authority for the Deputy Executive Director and the Executive Director may be designated to appropriate personnel other than those individuals listed above in Section IV.1 that will be accountable for jackpot estimation approval. Temporary signature authorization is to be in writing, by email or pager, and should specify the effective length of time. Documentation of such approval or delegation shall be kept with the estimation file maintained by Lottery Products Department and a copy of the documentation should be provided to each member of the jackpot estimation team.

4. In the event the Deputy Executive Director or the Executive Director is not available, the matter shall be brought to the attention of the Executive Director or Deputy Executive Director or their designee(s). The Deputy Executive Director or Executive Director shall appoint an authorized person other than those individuals identified in Section IV.1. to act instead of the unavailable signatory. In the event neither the Executive Director or their designee nor the Deputy Executive Director or their designee are available, the matter shall be brought to the attention of the person in charge of the agency by Executive Order who shall designate a substitute signature authority for the absent signatory authority that will be accountable for jackpot estimation approval. This will ensure the reliability and business continuity required for the advertisement of future prospective *Lotto Texas* estimated annuitized jackpot prize amount. Should this occur, the substitute signature authority event shall be documented and kept in the estimation file maintained by the Lottery Products Department and a copy of the documentation shall be provided to each member of the jackpot estimation team. The Internal Auditor, Chairman of the Commission, and each Commissioner should also be provided notification of the substitute signature authority event. Following this notification, documentation should also be placed in the estimation file maintained by the Lottery Products Department.

V. Distribution of Estimated Jackpot Information on the Agency Website:

1. The Office of Controller staff will perform the following:
   a) After the Executive Director has approved an advertised estimated jackpot under subsection (e) of the Lotto Texas On-Line Game Rule, a member of the

jackpot team will post the amount of ticket sales, if any, for previous drawings in the roll cycle, the amount of projected ticket sales for the upcoming drawing, investment information used to determine the advertised estimated jackpot, and other information used to determine the advertised estimated jackpot. This may be achieved by uploading a scan of the signed *Lotto Texas Jackpot Estimation Worksheet*.

b) The interest factor calculated by the agency based on investment information obtained from the Texas Treasury Safekeeping Trust Company and used by the TLC to determine the advertised jackpot will be entered on the [redacted] for posting to the agency website.

c) The approved estimated jackpot for the next draw in the roll cycle and the approximate cash value of the estimated jackpot will be entered on the [redacted] for posting to the agency website and will be published after the draw if no jackpot tickets were sold.

d) In addition, the approximate cash value of the jackpot prize amount for four million dollars is entered on the advertised jackpot screens for posting to the agency website and publishing after the draw if a jackpot prize ticket is sold for a drawing.

VI. Distribution of Estimated Jackpot Information:

1. The On-Line Product Specialist or designee:
   a) Fills in the approved estimated annuitized jackpot prize amount and the associated approximate cash value amount for the next drawing on the [redacted] In addition, the approximate cash value for the annuitized four million dollar starting jackpot amount is also filled in. This form is used to notify the Lottery Operator of the estimated annuitized jackpot prize amount and the associated approximate cash value for the next drawing.

   b) Faxes a copy of the [redacted] to the Lottery Operator for processing.

   c) Reviews the entry of the current advertised *Lotto Texas* jackpot prize amount, the estimated annuitized jackpot prize amount to be advertised in the event of a rollover and the associated approximate cash values for these annuitized amounts in the [redacted] The application is used to disseminate estimated annuitized jackpot information and the associated approximate cash value amount to the agency website as well as to pertinent TLC staff.

   d) If the application is not functioning and the dissemination of the roll amount cannot be automatically sent, the [redacted] must be physically delivered to

the Texas Lottery Computer Room so the agency website can be updated by Information Resources after the drawing results are finalized. Before 5:00 p.m., an e-mail message must be sent to pertinent TLC and vendor staff to notify them of the jackpot prize amount that will be advertised in the event of a rollover.

e) Calls the Lottery Operator's control room to verify receipt of the fax and to confirm that the *Lotto Texas* estimated annuitized jackpot prize amount and the approximate cash value is legible. The name of the Lottery Operator staff member and time and date the verification took place shall be kept in the estimation file maintained by the Lottery Products Department.

f) Sends a voicemail broadcast message to pertinent TLC and vendor staff, notifying them of the estimated annuitized jackpot prize amount that will be advertised in the event of a rollover.

2. The Office of Controller staff will email the final and approved jackpot estimation worksheet to the Internal Audit Department, the Legislative Budget Board and the Governor's Office.

a) Internal Audit Department Contacts:
Assigned Internal Audit Contact – (contact name)@lottery.state.tx.us

b) Legislative Budget Board Contacts:
Assigned Budget Analyst - (analyst name)@lbb.state.tx.us
Assigned Revenue Analyst – (analyst name)@lbb.state.tx.us.

c) Governor's Office Contact:
Assigned Analyst, Governor's Advisor Budget Planning and Policy, (analyst name)@governor.state.tx.us

VII. Distribution of information when the current advertised jackpot prize amount is changed:

If the estimated annuitized jackpot prize amount that is currently advertised is changed prior to the drawing, Lottery Products Department personnel will update the outdoor billboards with the new *Lotto Texas* estimated annuitized jackpot prize amount to advertise and will also contact the advertising agency(s) and the Lottery Operator control room. Media Relations will notify the media that there is a new estimated annuitized jackpot prize amount being advertised.

TRD-200803392
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 30, 2008

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Public Hearing

A public hearing to receive public comments regarding the proposed procedure, Lotto Texas Jackpot Estimation Procedure, OC-JE-002 will be held on Wednesday, September 10, 2008, at 10:00 a.m. at the Texas Lottery Commission, Commission Auditorium, First Floor, 611 E. Sixth Street, Austin, Texas 78701.

Persons requiring any accommodation for a disability should notify Michelle Guerrero, Executive Assistant to the General Counsel, Texas Lottery Commission at (512) 344-5113 at least 72 hours prior to the public hearing.

TRD-200803394
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: June 30, 2008

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North Central Texas Council of Governments

Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG is seeking consultant assistance to develop a "Southern Dallas County Comprehensive Planning Project". This will serve as a guide for local governments in the study area and should include proposals for the identification/location of current and proposed land uses; strategies to facilitate neighborhood stabilization/revitalization; strategies to facilitate new housing development; strategies to encourage sustainable, mixed-use, compact, and green development; comparable regulatory review structure; an inventory of the transportation infrastructure; and a model development code. The plan should also include a marketing strategy based on the technical analyses of the workscope, segmented by market type and jurisdiction based on a Commercial Market Study. The plan will provide a clear identification of potential "clients" for the area, potential development locations with site-specific needs, and recommendations regarding potential next steps to reach out to those "clients".

Due Date

Proposals must be received no later than 5 p.m., Central Daylight Time, on Friday, August 8, 2008 to Karla Weaver, Senior Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the RFP, contact Therese Bergeon at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200803439
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: July 2, 2008

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Notice of Contractor Contract Award

Pursuant to the provisions of Texas Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of contractor contract award. The contractor proposal request appeared in the April 11, 2008, issue of the *Texas Register* (33 TexReg 3073). The selected contractor will provide transportation services for the Hurst-Euless-Bedford (HEB) Transit Project.

The Contractor selected for this project is the Chisholm Trail Chapter of the American Red Cross, 1515 S. Sylvania Avenue, Fort Worth, Texas 76111. The maximum amount of this contract is $600,000 over a four-year period.

TRD-200803395
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: June 30, 2008

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Texas Parks and Wildlife Department

Public Notice and Opportunity for Comment

Land Acquisition - Randall County

On July 17, 2008, the Texas Parks and Wildlife Commission (the Commission) in a Special Called Meeting will consider, among other things, the potential acquisition of 2,898 acres adjacent to Palo Duro Canyon State Park in Randall County. The meeting will start at 10:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the potential transaction. Public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by e-mail at corky.kuhlmann@tpwd.state.tx.us, or in person at the meeting.

TRD-200803426
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 2, 2008

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Public Notice and Opportunity for Comment

Land Acquisition - Cameron County

On July 17, 2008, the Texas Parks and Wildlife Commission (the Commission) in a Special Called Meeting will consider, among other things, compensation for the potential transfer of 2.5 acres at the Anacua Unit of the Las Palomas Wildlife Management Area (WMA) to the federal government. The compensation would be in the form of a donation to the department of 25.3 acres adjoining the Arroyo Colorado Unit of the Las Palomas WMA by a third-party land trust. Both tracts are located in Cameron County. The meeting will start at 10:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed exchange. Public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road,

Austin, Texas 78744, by e-mail at ted.hollingsworth@tpwd.state.tx.us, or in person at the meeting.

TRD-200803427
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 2, 2008

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Public Notice and Opportunity for Comment

Land Acquisition - Presidio County

On July 17, 2008, the Texas Parks and Wildlife Commission (the Commission) in a Special Called Meeting may consider, among other things, the potential acquisition of a 6,817-acre inholding at Big Bend Ranch State Park in Presidio County. The meeting will start at 10:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed acquisition. Public comment may be submitted to Ted Hollingsworth, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by e-mail at ted.hollingsworth@tpwd.state.tx.us, or in person at the meeting.

TRD-200803449
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: July 2, 2008

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Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on June 25, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cebridge Acquisition, LP d/b/a Suddenlink Communications for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 35808 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the City Limits of Tye, 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 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 35808.

TRD-200803405
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 2008

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Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on June 20, 2008, with the Public Utility Commission of Texas for an amendment to a certificated service area boundary in Waller and Grimes Counties, Texas.

Docket Style and Number: Application of Central Telephone Company of Texas d/b/a Embarq to Amend a Certificate of Convenience and Necessity for a Minor Boundary Change Between the Waller Exchange of AT&T Texas and the Plantersville Exchange of Embarq. Docket Number 35800.

The Application: The minor boundary amendment will transfer a portion of Embarq's service territory in the Saddle Creek Subdivision in the Plantersville exchange to AT&T's Waller exchange. This amendment will allow AT&T to provide local exchange telephone service to the entire Saddle Creek Subdivision. AT&T has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by July 18, 2008, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 35800.

TRD-200803384
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2008

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Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on June 24, 2008, pursuant to the Public Utility Regulatory Act, TEXAS UTILITY CODE ANNOTATED §14.101 and §37.154 (Vernon 2007 & Supplemental 2007) (PURA).

Docket Style and Number: Joint Application of Coleman County Electric Cooperative, Inc. and Golden Spread Electric Cooperative, Inc. to Transfer Certificate Rights, Docket Number 35805.

The Application: This transaction involves the approval of the sale of transmission facilities and associated certificate of convenience and necessity rights from Coleman County Electric Cooperative, Inc. (Coleman) to Golden Spread Electric Cooperative, Inc. (Golden Spread). Specifically, Coleman, one of Golden Spread's member distribution cooperatives and a full requirements wholesale power customer of Golden Spread, has agreed to sell all of its transmission facilities located in Callahan, Coleman, Concho, and Runnels Counties to Golden Spread. The Coleman facilities are valued at $551,454 and generally consist of 33 miles of transmission lines, high-side substation facilities and related SCADA equipment.

The purpose of the transaction is to lower Coleman's costs. Under its existing financing arrangements with the National Rural Electric Cooperative Financing Corporation (CFC), Coleman must establish rates that maintain a "debt service coverage" ratio of 1.35. In conjunction with this sale, Golden Spread will assume certain of Coleman's notes that are secured by its facilities. However, as a generation and transmission cooperative, Golden Spread is eligible to enter into a new mortgage with CFC that requires a DSC of 1.00. The lower DSC requirement reduces the level of the rates necessary to meet the mortgage terms.

Coleman's operations and maintenance (O&M) expenses will not change because Coleman will continue to operate and maintain the facilities and will be compensated by Golden Spread for the cost of these services. The financing costs and the O&M expenses will be passed on to Coleman through Golden Spread's wholesale rates. Therefore, while Coleman's wholesale rates will increase, its overall cost of service will decline because the effective cost of capital will be lower and its operational expenses will not change.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All correspondence should refer to Docket Number 35805.

TRD-200803383
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2008

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Notice of Workshop Rulemaking Relating to Increase in Lifeline Discount Amount

The staff of the Public Utility Commission of Texas (PUC or commission) has initiated Project Number 35629, *Rulemaking Relating to Increase in Lifeline Discount Amount.* P.U.C. Substantive Rule §26.412, relating to Lifeline Service Program, will be amended to increase the Lifeline Discount Amount (LDA) by an amount equal to 25% of any increases to residential basic network service rates in regulated exchanges of the AT&T Texas, Verizon, Embarq, and Windstream, or their successors. The increase in the LDA is a result of the settlement agreement approved by the commission in its order filed on April 25, 2008 in Docket Number 34723, *Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and Substantive Rule §26.403*.

The commission has made available for comment the draft proposal of the amended rule, and questions at the PUC website (www.puc.state.tx.us/rules/rulemake/index.cfm) under Project Number 35629. Parties are requested to review the draft rule prior to attending the workshop.

The commission staff will hold a workshop to discuss the rule on Wednesday, July 16, 2008, at 10:00 a.m. in the Commissioners' Hearing Room, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78701.

Questions concerning Project Number 35629 should be referred to Stephen Mendoza, Rate Analyst, Rate Regulation Division, (512) 936-7394, or Susan Goodson, Attorney, Legal Division, (512) 936-7292. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200803385
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 27, 2008

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Texas Council on Purchasing from People with Disabilities

Request for Comment Regarding the Management Fee Rate Charged by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) will review and approve the management fee rate charged by the central nonprofit agency, TIBH Industries Inc., for its services to the community rehabilitation programs for Fiscal Year 2009 as required by §122.019(e) of the Texas Human Resources Code. This review will be conducted at the Council's meeting on Friday, September 19, 2008. The Council's meeting will be held at the Henry B. Gonzales Convention Center, 200 East Market Street, San Antonio, Texas. TIBH Industries Inc. has requested that the Council set the management fee rate at 6.25% of the sales price for products, 6% of the contract price for services, and 5% for Temporary Services. The Council seeks public comment on TIBH Industries Inc. management fee rate request as required by §122.030(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Monday, September 8, 2008 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 111 E. 17th Street, Austin, Texas 78711.

For all other questions or comments, contact the Council at (512) 463-3244. In addition, hearing and speech impaired individuals with text telephones (TTY) may also contact the Council at (800) 531-5441.

TRD-200803377
Ron Pigott
Deputy General Counsel, TPASS Division
Texas Council on Purchasing from People with Disabilities
Filed: June 27, 2008

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Request for Comment Regarding the Services Performed by TIBH Industries Inc. (Central Nonprofit Agency)

Notice is hereby given that the Texas Council on Purchasing from People with Disabilities (Council) intends to review the services provided by the central nonprofit agency, TIBH Industries Inc., for Fiscal Year 2008 as required by §122.019(c) of the Texas Human Resources Code. This review will be considered at the next Council meeting on Friday, September 19, 2008. The Council's meeting will be held at the Henry B. Gonzales Convention Center, 200 East Market Street, San Antonio, Texas. The Council requests that interested parties submit comments regarding the services of TIBH Industries Inc. in its operation of the State Use Program, under §122.019(a) - (b) of the Texas Human Resources Code.

Comments should be submitted in writing on or before Monday, September 8, 2008 to Kelvin Moore of the Texas Council on Purchasing from People with Disabilities, 111 E. 17th Street, Austin, Texas 78711.

For all other questions or comments, contact the Council at (512) 463-3244. In addition, hearing and speech-impaired individuals with text telephones (TTY) may also contact the Council at (800) 531-5441.

TRD-200803378
Ron Pigott
Deputy General Counsel
Texas Council on Purchasing from People with Disabilities
Filed: June 27, 2008

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Texas Department of Transportation

Notice of Request for Proposal

The Texas Department of Transportation (department) announces a Request for Proposal (RFP) for:

1. Job Access Reverse Commute
2. New Freedom
3. State Planning Assistance
4. Rural Transportation Assistance
5. Intercity Bus
6. Rural Discretionary

These public transportation projects will be funded through the Federal Transit Administration (FTA). It is anticipated that multiple projects from multiple funding programs will be selected for State Fiscal Year 2009. Project selection will be administered by the department's Public Transportation Division (PTN). Selected projects will be awarded in the form of grants, with payments made for allowable reimbursable expenses or for defined deliverables. The proposer will become a subrecipient of the department.

Purpose: The RFP invites proposals for services to develop, promote, coordinate, or support public transportation. The objectives for these proposals are to support the nonurbanized and small urban areas of Texas, to support services to meet the intercity travel needs of residents, or to support the infrastructure of the public transportation network through planning, marketing assistance, local match assistance, and vehicle capital and facility investment. In the process of meeting these objectives, projects will also support and promote the coordination of public transportation services across geographies, jurisdictions, and program areas. Coordination between nonurbanized and urbanized areas and between client transportation services and other types of public transportation are particular objectives.

Eligible Projects: Eligible types of projects have been defined by the department in accordance with FTA guidelines, other laws and regulations, and in consultation with members of the public transportation and the intercity bus industries. These include projects for vehicle capital, planning, marketing, facilities, training, technical and operating assistance, and research.

Eligible Applicants: Eligible subrecipients include state agencies, local public bodies and agencies thereof, private-nonprofit organizations, operators of public transportation services, private consultants, state transit associations, transit districts, and private for-profit operators.

Availability of Funds: In accordance with Transportation Code, Chapter 455, the department provides funding for public transportation projects funded through programs administered by the FTA as established in Title 49, United States Code, §5304 State Planning Assistance, §5311 Rural Discretionary programs, §5311(b)(3) Rural Transportation Assistance, §5311(f) Intercity Bus program, §5316 Job Access Reverse Commute, and §5317 New Freedom. Proposers shall be required to enter into a grant agreement as a subrecipient of the department.

Review and Award Criteria: Proposals will be evaluated against a matrix of criteria and then prioritized. Subject to available funding, the department is placing no preconditions on the number or the types of projects to be selected for funding. The department reserves the right to conduct negotiations pertaining to a proposer's initial responses including, but not limited to, specifications and prices. An approximate balance in funding awarded to the types of projects, or an approximate geographic balance of selected projects, may be seen as appropriate, depending on the proposals that are received. The department may consider these additional criteria when recommending prioritized projects to the Texas Transportation Commission.

Key Dates and Deadlines:

July 11, 2008. RFP posted on the department's PTN website.

August 29, 2008. Statewide Pre-Proposal Video Teleconference.

November 3, 2008. Deadline for submitting written questions about the request for proposal will no longer be accepted after this date.

December 12, 2008. Deadline for receipt of proposals is 5:00 p.m. at the department's PTN office in Austin, Texas.

March 1, 2009. Target date for the department to complete the evaluation, prioritization, and negotiation of proposals.

April 30, 2009. Target date for presentation of project selection recommendations to the Texas Transportation Commission for action.

July - September, 2009. Target date for all project grant agreements to be executed, with approved scopes of work and calendars of work.

To Obtain a Copy of the RFP: The RFP will be posted on the Public Transportation Division website at:

http://www.txdot.gov/services/public_transportation/transportation_rfp.htm.

Proposers with questions relating to the RFP should contact Cheryl Mazur at **PTN-Programmgmt@dot.state.tx.us** or by phone at (512) 416-2812.

TRD-200803445
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 2, 2008

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Public Notice - Photographic Traffic Signal Enforcement Systems: Municipal Reporting of Traffic Crashes

The Texas Department of Transportation (department) is requesting that each municipality subject to the requirements contained in Transportation Code, §707.004 provide the required data to the department no later than August 31, 2008 in order for the department to meet the mandated deadline for an annual report to the Texas Legislature.

Pursuant to Transportation Code, §707.004, each municipality operating a photographic traffic signal enforcement system or planning to install such a system must compile and submit to the department certain statistical information. Before installing such a system, the municipality is required to submit a written report on the number and type of traffic crashes that have occurred at the intersection over the last 18 months prior to installation. The municipality is also required to provide annual reports to the department after installation showing the number and type of crashes that have occurred at the intersection.

The department is required by Transportation Code, §707.004 to produce an annual report of the information submitted to the department by December 1 of each year beginning on December 1, 2008.

The department has created a web page detailing municipal reporting requirements and to allow the required data to be submitted electronically: **http://www.txdot.gov/services/traffic_operations/red_lights/city_reporting.htm**.

For additional information contact the Texas Department of Transportation, Traffic Operations Division, 125 East 11th Street, Austin, Texas 78701-2483 or call (512) 416-3118.

TRD-200803393

Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: June 30, 2008

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Texas Unified Certification Program for the Certification of Disadvantaged Business Enterprises

Six governmental entities within the state have entered into a Memorandum of Agreement (MOA) to establish the Texas Unified Certification Program (TUCP). The TUCP provides a statewide certification process for the federal Disadvantaged Business Enterprise programs in Texas in accordance with Title 49, Code of Federal Regulations, Parts 23 and 26. The certifying agencies are the Texas Department of Transportation (department), the City of Houston, the City of Austin, the Corpus Christi Regional Transportation Authority, the North Central Texas Regional Certification Agency, and the South Central Texas Regional Certification Agency. The TUCP was approved by the United States Department of Transportation on April 18, 2008. Copies of the MOA and the standard operating procedure for TUCP are available at the department's Internet website, **www.txdot.gov**.

TRD-200803444
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 2, 2008

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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 30 (2005) is cited as follows: 30 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 "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles 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 (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).