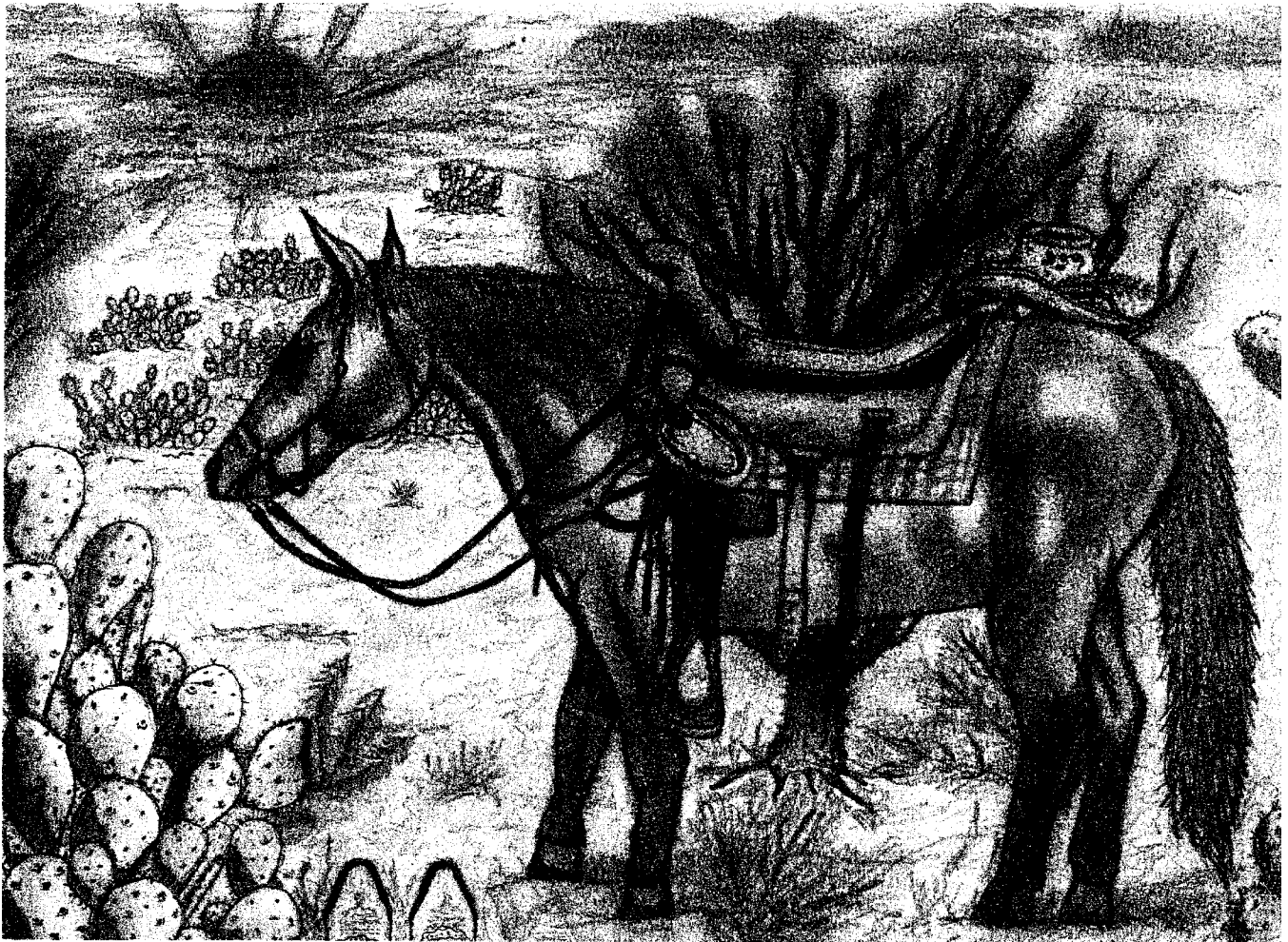

TEXAS REGISTER

Volume 34 Number 3

January 16, 2009

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

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

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

Secretary of State –
Hope Andrade

Director –
Dan Procter

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

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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 December 18, 2008

Appointment as Judge of the 168th Judicial District Court, El Paso County, for a term until the next General Election and until his successor shall be duly elected and qualified, Christopher Antcliff of El Paso. Judge Antcliff is replacing Judge Guadalupe Rivera who has been duly elected and qualified to serve on the 8th Court of Appeals.

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2009, Ly H. Nguyen of Sugar Land (Ms. Nguyen is being reappointed).

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2011, Ralph Diaz of Corpus Christi (Mr. Diaz is being reappointed).

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2013, Byron E. White of Arlington (Mr. White is being reappointed).

Appointed to the Produce Recovery Fund Board for a term to expire January 31, 2013, Bernard J. Thiel, Jr. of Lubbock (replacing Steven Jones of Lubbock whose term expired).

Appointed to the One Call Board for a term to expire August 31, 2011, James Wynn of Midland (replacing Virginio Ortega of Lubbock who resigned).

Appointed to the Texas Woman's University Board of Regents for a term to expire February 1, 2011, Harry L. Crumpacker, II of Prosper (replacing Sharon Venable of Dallas who resigned).

Appointed to the Texas Medical Board for a term to expire April 13, 2013, James Scott Holliday of University Park (replacing Roberta Kalafut of Abilene who resigned).

Appointed to the Rio Grande Regional Water Authority Board of Directors, pursuant to SB 707, 80th Legislature, Regular Session, for a term to expire February 1, 2011, Roel Rodriguez of McAllen.

Appointed to the Texas Commission on Jail Standards for a term to expire January 31, 2009, Franklin Tam Terry of White Deer (replacing Mark Gilliam of Rockport who resigned).

Appointed to the Texas Medical Board District Four Review Committee for a term to expire January 15, 2012, John R. Guerra of Mission (replacing Bobby Howard of Corpus Christi whose term expired).

Appointed to the Assistive and Rehabilitative Services Council for a term to expire February 1, 2013, Donald D. Roy of Mt. Pleasant (replacing Robert Peters of Tyler who resigned).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2010, Travis Todd Miller of Orange (Dr. Miller is being reappointed).

Appointed to the Jefferson and Orange County Board of Pilot Commissioners for a term to expire August 22, 2010, Martin E. Broussard

of Beaumont (replacing Morris Carter, Jr. of Port Arthur whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2009, Randell K. Resneder of Lubbock (replacing Sue Ford of Bedford whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2009, Dennis Borel of Austin (Mr. Borel is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2010, Scotty Sherrill of Nacagdoches (Ms. Sherrill is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2010, Saul Herrera of Midland (replacing Morgan Talbot of McAllen whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2010, Karen Swearingen of Rowlett (replacing Robert Hawkins of Bellmead whose term expired).

Appointed to the State Independent Living Council for a term to expire October 24, 2010, Donald L. Landry of Groves (Mr. Landry is being reappointed).

Appointed to the State Independent Living Council for a term to expire October 24, 2011, Gloria N. Greeder of El Paso (replacing Marcia Ingram of McAllen whose term expired).

Appointments for December 23, 2008

Designating Dr. Thomas E. Tenner, Jr. as Presiding Officer of the Texas Council on Cardiovascular Disease and Stroke for a term at the pleasure of the Governor. Dr. Tenner is replacing Dr. Michael Hawkins of Austin as presiding officer.

Appointed as Justice of the Fourth Appellate District, Place 2, effective January 1, 2009, for a term until the next General Election and until her successor shall be duly elected and qualified, Marialyn Barnard of San Antonio. Ms. Barnard is replacing Justice Catherine Stone who was elected Chief Justice of the Fourth Appellate District.

Appointed as District Attorney for the 344th Judicial District, Chambers County, pursuant to HB 2569, 80th Legislature, Regular Session, effective January 1, 2009, for a term until the next General Election and until her successor shall be duly elected and qualified, Cheryl Swope Lieck of Anahuac.

Appointed as Judge of the 429th Judicial District Court, Collin County, pursuant to SB 1951, 80th Legislature, Regular Session, effective January 1, 2009, for a term until the next General Election and until her successor shall be duly elected and qualified, Jill R. Willis of Allen.

Appointed to the Texas Optometry Board for a term to expire January 31, 2009, Cynthia Jenkins of Irving (replacing Elsa Silva of El Paso who resigned).

Appointed to the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2009, Carlos R. Chacon of El Paso (replacing Catherine Estrada of Fort Worth who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2009, Richard L. Beard of Mesquite (replacing Thalia Munoz of Roma who resigned).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2011, John Q. Gowan of Dallas (replacing Susan Scott-Galindo of Bryan whose term expired).

Appointed to the Statewide Health Coordinating Council for a term to expire August 1, 2013, Davidica Blum of Georgetown (replacing David Valdez of San Antonio whose term expired).

Appointed to the Commission on Human Rights for a term to expire February 1, 2009, Veronica Vargas Stidvent of Austin (replacing Patricia Asip of Plano who resigned).

Appointed to the Commission on Human Rights for a term to expire February 1, 2013, Danny L. Osterhout of Andrews (replacing Nila Wipf of Harlingen whose term expired).

Appointed to the Commission on Human Rights for a term to expire February 1, 2013, Thomas M. Anderson of Richmond (Mr. Anderson is being reappointed). Mr. Anderson will serve as presiding officer of the commission.

Appointed to the Texas Board of Architectural Examiners for a term to expire January 31, 2013, Linda Diane Steinbrueck of Driftwood (Ms. Steinbrueck is being reappointed).

Appointed to the Texas Council on Cardiovascular Disease and Stroke for a term to expire February 1, 2013, Michael M. Hawkins of Austin (pursuant to Health and Safety Code Chapter 93, Section 93.0002).

Appointed to the Texas Health Services Authority, pursuant to House Bill 1066, 80th Legislature, Regular Session, for a term to expire June 15, 2009, Donna Montemayor of San Antonio.

Appointed to the Texas Industrialized Building Code Council for a term to expire February 1, 2010, Martin J. Garza of San Antonio (Mr. Garza is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2011, Rene Requenez of Edinburg (replacing Crece Palmer of Watauga who resigned).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2013, Andrew D. Crim of Fort Worth (replacing Ed Rankin of Dallas whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2013, Lora Taylor of Houston (replacing Susan Berkley of Alvin whose term expired).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2013, Brenda Coleman-Beattie of Austin (Ms. Coleman-Beattie is being reappointed). Ms. Coleman-Beattie will service as presiding officer of the council.

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2013, Cynthia Johnston of Dallas (Ms. Johnston is being reappointed).

Appointed to the Texas Council for Developmental Disabilities for a term to expire February 1, 2013, Susan Vardell of Sherman (Ms. Vardell is being reappointed).

Appointments for December 31, 2008

Appointed to the Trinity River Authority Board of Directors for a term to expire March 15, 2011, Martha A. Hernandez of Burleson (replacing Shanda Perkins of Burleson who resigned).

Appointed to the Statewide Emergency Services Personnel Retirement Fund Board of Trustees for a term to expire September 1, 2011, Don Shipman of Colleyville (replacing Allen J. Scopel of Rosenberg whose term expired).

Appointed to the Statewide Emergency Services Personnel Retirement Fund Board of Trustees for a term to expire September 1, 2013, Danny Key of Friendswood (replacing Paul Loeffler of Alpine whose term expired).

Appointed to the Statewide Emergency Services Personnel Retirement Fund Board of Trustees for a term to expire September 1, 2013, Ronald V. Larson of Horizon City (replacing Powell Choate, Jr. of Mineral Wells whose term expired).

Appointed to the Statewide Emergency Services Personnel Retirement Fund Board of Trustees for a term to expire September 1, 2013, Maxie Patterson of Spring (Mr. Patterson is being reappointed).

Appointed to the Texas Emancipation Juneteenth Cultural and Historical Commission for a term to expire February 1, 2011, Vicki D. Blanton of Dallas (replacing Eddie Richardson of Lubbock whose term expired).

Appointed to the Texas Emancipation Juneteenth Cultural and Historical Commission for a term to expire February 1, 2013, William H. Watson of Lubbock (replacing Lynda Tarr of Houston whose term expired).

Rick Perry, Governor

TRD-200900012



Executive Order

RP 69

Relating to the creation of the Governor's Commission for Disaster Recovery and Renewal

WHEREAS, Texas was battered by three hurricanes and a major tropical storm during a 90 day period in 2008, causing major damage along the Texas coast; and

WHEREAS, for the first time in Texas history, all Texas coastal counties were designated presidentially declared disaster areas at the same time in 2008; and

WHEREAS, local governments alone do not have the resources needed for communities to fully recover from the devastating effects of a hurricane or major tropical storm or to adequately prepare for future disasters; and

WHEREAS, full recovery from a disaster and preparation for future disasters requires a comprehensive, integrated approach that incorporates the private sector; foundations; and the federal, state and local government; and,

WHEREAS, local officials are best equipped to assess the impact of disasters on their residents and to develop recovery plans for their communities; and

WHEREAS, local leaders have a vested interest in ensuring the economic revitalization of their communities following a disaster.

NOW THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Creation. The Governor's Commission for Disaster Recovery and Renewal ("Commission") is hereby created. The Commission shall:

- 1) Work cooperatively with the ongoing Hurricane Ike Recovery and Coordination Effort to document Texas communities' recovery needs and assist in seeking full federal reimbursement for recovery.
- 2) Develop recommendations designed to reduce the impact of natural disasters and build public-private partnerships that improve the state's ability to mitigate, respond to, and recover from disasters.
- 3) Recommend courses of action that will help devastated communities not only rebuild their economic base but also improve the quality of life and economic prosperity of their residents.

Composition and Organization. The Commission shall consist of up to 31 members appointed by the governor and include representatives of the private enterprise community; foundation; and local and state government. The governor may designate a member of the Commission to serve as chair of the Commission. The county judge of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Hidalgo, Jackson, Jefferson, Kenedy, Kleberg, Liberty, Matagorda, Nueces, Orange, Refugio, San Patricio, Starr, Victoria, and Willacy counties shall be *ex officio*, non-voting members of the Commission. The governor may fill any vacancy that may occur and may appoint other voting or *ex officio*, non-voting members as needed. Any state or local officers or employees appointed to serve on the Commission shall do so in addition to the regular duties of their respective offices or positions. All appointees serve at the pleasure of the governor.

Sub-committees. The Chair may appoint sub-committees to fulfill the purposes of the Commission.

Meetings. The Commission shall meet not less than quarterly. The Chair shall determine the meeting times and places for the Commission.

Expenses. Commission members serve without compensation but may be reimbursed for actual and necessary expenses incurred in the performance of the duties of the Commission.

Administrative and Financial Support. State agencies, local governments and non-profit corporations may provide staff and funding to assist the Commission as necessary.

Coordination. The Commission, through its advisory efforts, shall coordinate with the federal, state and local governments.

Recommendations and Report. The Commission shall develop a report containing recommendations identifying:

- critical needs of communities that will assist them in achieving full recovery from the effects of recent disasters;
- processes, protocols and standards to assist in preparing for future disasters; and
- strategies and organizational alignments to build back affected communities better than they were before the disasters.

The Commission shall submit a final report to the governor, lieutenant governor, and speaker of the House of Representatives, no later than June 30, 2009, unless modified by the governor.

This executive order supersedes all previous orders on this matter that are in conflict or inconsistent with its terms and this order shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 20th day of November, 2008.

Rick Perry, Governor

TRD-200900013

◆ ◆ ◆
Proclamation 41-3169

TO ALL TO WHOM THESE PRESENTS SHALL COME:

WHEREAS, a vacancy now exists in the membership of the Texas Senate District No. 17, which consists of parts of Brazoria, Chambers, Fort Bend, Galveston, Harris, and Jefferson Counties; and

WHEREAS, the results of the special election have been officially declared on this date; and

WHEREAS, no candidate in the special election received a majority of the votes cast, as required by Section 203.003 of the Texas Election Code, and

WHEREAS, Section 2.025(a) of the Texas Election Code requires a special runoff election to be held not earlier than the 20th or later than the 45th day after the date of the canvass of the main election; and

WHEREAS, Section 3.003 of the Texas Election Code requires the election to be ordered by proclamation of the Governor;

NOW, THEREFORE, I, RICK PERRY, GOVERNOR OF TEXAS, under the authority vested in me by the Constitution and Statutes of the State of Texas, do hereby order a special runoff election to be held in Senate District No. 17 on Tuesday, December 16, 2008, for the purpose of electing a State Senator for Senate District No. 17 to serve the remainder of the term that began on January 9, 2007.

Early voting by personal appearance shall begin on December 8, 2008, in accordance with Section 85.001(b) of the Texas Election Code.

A copy of this order will be mailed immediately to the County Judges of Brazoria, Chambers, Fort Bend, Galveston, Harris and Jefferson Counties, and all appropriate writs will be issued and all proper proceedings will be followed, to the end that said election may be held to fill the vacancy in Senate District No. 17 and its result proclaimed in accordance with law.

IN TESTIMONY WHEREOF, I have hereto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 17th day of November, 2008.

Rick Perry, Governor

Attested by: Coby Shorter, III, Deputy Secretary of State

TRD-200900014

◆ ◆ ◆
Proclamation 41-3170

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, did issue an Emergency Disaster Proclamation on September 8, 2008, as Hurricane Ike posed a threat of imminent disaster along the Texas Coast and in specified counties in Texas. The disaster proclamation was subsequently renewed through December 6, 2008, in the wake of Hurricane Ike.

WHEREAS, Hurricane Ike struck the State of Texas on September 13, 2008, causing substantial destruction in South and East Texas.

WHEREAS, Hurricane Ike continues to create a state of disaster for the people in the State of Texas.

WHEREAS, the state of disaster includes the counties of Anderson, Angelina, Aransas, Archer, Austin, Bell, Bexar, Bowie, Brazoria, Brazos, Burleson, Calhoun, Cass, Chambers, Cherokee, Collin, Colorado, Comal, Coryell, Dallas, Denton, Ellis, El Paso, Fort Bend,

Franklin, Freestone, Galveston, Grayson, Gregg, Grimes, Hardin, Harris, Harrison, Henderson, Hill, Hopkins, Houston, Hunt, Jackson, Jasper, Jefferson, Johnson, Kaufman, Lamar, Lavaca, Leon, Liberty, Limestone, Lubbock, Madison, Marion, Matagorda, McLennan, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Parker, Polk, Potter, Randall, Robertson, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, Shelby, Smith, Tarrant, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Van Zandt, Victoria, Waller, Walker, Washington, Webb, Wharton, Williamson, Wise and Wood.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the incident.

The renewal of the disaster proclamation becomes effective on December 7, 2008, and shall remain in effect until January 5, 2009, unless renewed or terminated.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 15th day of December, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200900015



Proclamation 41-3171

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, do hereby certify that severe storms and tornadoes that occurred December 8, 2008, have caused a disaster in Grayson County, in the State of Texas.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby declare a state of disaster in the county listed above based on the existence of such disaster, and direct that all necessary measures both public and private as authorized under Section 418.017 of the code be implemented to meet that disaster.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this disaster are suspended for the duration of the incident. In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 14th day of December, 2008.

Rick Perry, Governor

Attested by: Esperanza "Hope" Andrade, Secretary of State

TRD-200900016



THE ATTORNEY GENERAL

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

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

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

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

Request for Opinions

RQ-0772-GA

Requestor:

The Honorable Warren Chisum

Chair, Committee on Appropriations

Texas House of Representatives

P.O. Box 2910

Austin, Texas 78768-2910

Re: Whether the Hall County Hospital District may contribute funds for the construction of a building to house emergency service vehicles operated by the City of Turkey (RQ-0772-GA)

Briefs requested by January 30, 2009

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

TRD-200900053

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: January 7, 2009



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 357. HEARINGS

The Texas Health and Human Services Commission (HHSC) proposes to repeal Chapter 357, Subchapters A and D - H and proposes new Chapter 357, Subchapter A. Specifically, HHSC proposes to repeal: Subchapter A, §§357.1, 357.3, 357.5 - 357.7, 357.9, 357.11 - 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27 and 357.29, concerning Medicaid Fair Hearings; Subchapter D, §§357.301 - 357.305, concerning Fair Hearings; Subchapter E, §§357.351 - 357.360, concerning Appeals Process; Subchapter F, §§357.401 - 357.417, concerning Hearing Procedure; Subchapter G, §357.441 and §357.442, concerning Social Service Appeals; and Subchapter H, §§357.461 - 357.463, concerning Medical Services Appeals. HHSC replaces the repeal with new Subchapter A, §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23 and 357.25, concerning Uniform Fair Hearing Rules. HHSC also proposes amendments to Subchapter R, §357.702 and §357.703, concerning Judicial and Administrative Review of Hearings.

Background and Justification

HHSC is required to have procedural rules that direct the conduct of client fair hearings. At consolidation of the human services agencies, the fair hearing rules at Texas Department of Human Services were transferred to HHSC. At that time, only fair hearing rules for Medicaid appeals existed at HHSC.

The proposal will repeal the existing sets of fair hearing rules and propose new rules that provide a clearer picture of the rules that govern client appeals at HHSC. In addition, the proposed rules conform to commission practice and fulfill the purpose intended by Government Code §531.0055: that performance of administrative support services for health and human services agencies, including legal support, is the responsibility of HHSC.

The proposed changes to §357.702 and §357.703 clarify the definition of "notice" and that the administrative review is limited to the record considered by the hearing officer. The proposed changes also provide an exception to the 30-day timeframe for requesting an administrative review.

Section-by-Section Summary

New §357.1, describes specific definitions used in the chapter.

New §357.3 sets forth HHSC's authority to issue rules and regulations governing fair hearings, as well as the standards for fair hearings that apply to programs, agency designees, and clients.

New §357.5 describes the responsibilities of the HHSC hearing officer.

New §357.7 describes the responsibilities of the agency and/or its designee.

New §357.9 describes burden of proof in a fair hearing.

New §357.11 describes notice and continued benefits.

New §357.13 describes the appellant's rights and responsibilities.

New §357.15 describes the fair hearing scheduling and hearings notice requirements.

New §357.17 describes the different types of hearings.

New §357.19 describes other procedures such as postponement, dismissals, etc.

New §357.21 describes the use of interpreters in a fair hearing.

New §357.23 describes decisions and actions of the hearing officer.

New §357.25 describes fair hearing records and confidential information.

The amendment to §357.702(4) clarifies the type of notice and the record to be reviewed in an administrative review.

The amendment to §357.703(b)(2) describes an exception to the 30-day timeframe for requesting an administrative review.

Fiscal Note

Tracy Henderson, Chief Financial Officer, has determined that for the first five years the proposal is in effect, there will be no fiscal implications for state government or local governments as a result of enforcing or administering the proposal.

Public Benefit

Paul Leche, Special Counsel for Appeals, has determined that, for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of repealing Chapter 357, Subchapters A and D - H, promulgating new rules at Chapter 357, Subchapter A, and revising Subchapter R, §357.702 and §357.703 will be that all parties and their attorneys, as well as all other members of the public involved in the fair hearing process at HHSC, will have clear, comprehensive and up-to-date rules to follow.

Small and Micro-business Impact and Effect on Local Employment

There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the proposal, because the proposal increases flexibility for appellants and does not add any new requirements for businesses. There is no an-

anticipated economic cost to persons who are required to comply with the proposal. There is no anticipated effect on local employment in geographic areas affected by these sections.

Regulatory Analysis

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

Takings Impact Statement

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

Public Comment

Questions about the content of this proposal may be directed to Fairy Davenport Rutland, Appeals Director, at (512) 231-5717. Written comments on the proposal may be submitted to Fairy Davenport Rutland, Texas Health and Human Services Commission, HHSC Appeals Division, P.O. Box 149030 (MC W-613), Austin, Texas 78714-9030, or by e-mail to fairy.rutland@hhsc.state.tx.us, within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. MEDICAID FAIR HEARINGS

1 TAC §§357.1, 357.3, 357.5 - 357.7, 357.9, 357.11 - 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25, 357.27, 357.29

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Statutory Authority

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

§357.1. *Purpose and Scope.*

§357.3. *Definitions.*

§357.5. *Notice of Agency Action.*

§357.6. *Notice of MCO Action and Resolution of MCO Appeals.*

§357.7. *Maintaining Benefits or Services.*

§357.9. *Hearing Official.*

§357.11. *Preliminary Matters for a Standard Fair Hearing.*

§357.12. *Preliminary Matters for an Expedited Fair Hearing for Individuals Enrolled With an MCO.*

§357.13. *Location of Hearing and Accommodations.*

§357.15. *Telecommunication.*

§357.17. *Document Hearing.*

§357.19. *Privileges.*

§357.21. *Burden of Proof.*

§357.23. *Procedural Rights of the Individual.*

§357.25. *Dismissal of Hearing.*

§357.27. *Recording.*

§357.29. *Hearing Decisions.*

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

Filed with the Office of the Secretary of State on January 5, 2009.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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



SUBCHAPTER D. FAIR HEARINGS

1 TAC §§357.301 - 357.305

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

§357.301. *Rule and Regulation Authority.*

§357.302. *Definitions.*

§357.303. *Principles.*

§357.304. *Requirements.*

§357.305. *Administrative Review of Fair Hearing Decisions.*

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

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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SUBCHAPTER E. APPEALS PROCESS

1 TAC §§357.351 - 357.360

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

- §357.351. *Group Hearings.*
- §357.352. *Information on Right of Appeal.*
- §357.353. *Hearing Officer.*
- §357.354. *Notice Requirement--Proposed Termination or Reduction of Assistance.*
- §357.355. *Food Stamp Client Participation in Fair Hearings.*
- §357.356. *Fair Hearing Request.*
- §357.357. *Time and Place of Hearing.*
- §357.358. *Level-of-Care Hearings.*
- §357.359. *Notice for Disability Determination Hearings.*
- §357.360. *Notice in Preadmission Screening and Annual Resident Reviews.*

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

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SUBCHAPTER F. HEARING PROCEDURE

1 TAC §§357.401 - 357.417

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

- §357.401. *Conduct of Fair Hearing.*
- §357.402. *Fair Hearing Proceedings.*
- §357.403. *Private (Ex Parte) Consultations.*
- §357.404. *Confidential Material.*
- §357.405. *Furnishing Medical Information.*

- §357.406. *Interrogatories.*
- §357.407. *Prehearing Conference.*
- §357.408. *Order of Fair Hearings.*
- §357.409. *Action by Hearing Officer.*
- §357.410. *Decisions by Hearing Officer.*
- §357.411. *Public Access to Decisions.*
- §357.412. *Transcripts.*
- §357.413. *Retroactive Payments or Restored Benefits or Services.*
- §357.414. *Recovery of Benefits in 10-day Appeals.*
- §357.415. *Time Limits on Appeals.*
- §357.416. *Transient Appeals.*
- §357.417. *Time Periods for Dismissals.*

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

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SUBCHAPTER G. SOCIAL SERVICES APPEALS

1 TAC §§357.441, §357.442

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

- §357.441. *Requirements.*
- §357.442. *Reversals.*

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

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SUBCHAPTER H. MEDICAL SERVICES APPEALS

1 TAC §§357.461 - 357.463

(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 Health and Human Services Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The repeals affect Title 1, Part 15, Chapter 357, Subchapters A, D - H, and R. No other statutes, articles or codes are affected by the proposal.

§357.461. *Requirements.*

§357.462. *Right of Appeal.*

§357.463. *Retroactive Benefits.*

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

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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SUBCHAPTER A. UNIFORM FAIR HEARING RULES

1 TAC §§357.1, 357.3, 357.5, 357.7, 357.9, 357.11, 357.13, 357.15, 357.17, 357.19, 357.21, 357.23, 357.25

The new rules are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The new rules affect Title 1, Part 15, Chapter 357, Subchapters A, D - H and R. No other statutes, articles or codes are affected by these proposed new rules.

§357.1. *Definitions.*

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

(1) Across-the-Board Reduction of Services--An automatic change adversely affecting some or all recipients. Examples include, but are not limited to:

(A) changes in social security benefits;

(B) changes in federal or state law; or

(C) termination of a program.

(2) Action Effective Date--The date the agency action becomes effective.

(3) Adequate Notice--Notice in accordance with applicable law, rules, and regulations of the programs.

(4) Affirmative Defense--An explanation for an appellant's actions that excuses or justifies the appellant's behavior.

(5) Agency--Any one of the agencies listed under the Health and Human Services Agencies.

(6) Agency Action--The agency's decision to:

(A) reduce, suspend, terminate or deny benefits;

(B) deny certification of a household; or

(C) grant a benefit in an amount less than requested.

(7) Agency Representative--An individual from an agency or its designee who is authorized to represent the agency or its designee in a fair hearing.

(8) Appeal--A request for a review of an agency action or failure to act that may result in a fair hearing.

(9) Appellant--A client who requests a fair hearing.

(10) Authorized Representative--A person designated by the appellant in writing or designated by statute, regulation, or rule who may act on behalf of the appellant at the fair hearing.

(11) Benefit--A service administered or assistance provided by the agencies or their designees, including determining eligibility for services in the Supplemental Nutrition Assistance Program (formerly the Food Stamp Program), TANF, and Medicaid-funded programs, and other agency programs in which state or federal law or rules provide a client the right to a fair hearing.

(12) Certified Spanish/English Interpreter--An interpreter who is certified by one of the following entities:

(A) American Translators Association;

(B) Federally Certified Court Interpreter through the Federal Court Interpreter Certification Examination;

(C) Interpreter Certification offered through a four-year college or university;

(D) State Certification Programs;

(E) United States Department of State (Escort, Seminar, or Conference level); or

(F) Any other nationally recognized certification program.

(13) CFR--Code of Federal Regulations.

(14) Client--A person who applies for or receives benefits from one of the HHS Agencies.

(15) Date of Appeal Request--The date on which the appellant or the appellant's authorized representative clearly expresses, in writing or orally as required, a desire to appeal.

(16) Date of Decision--The date of the hearing officer's decision, as noted on the decision document.

(17) Date of Notice of Agency Action--The date on the written notice informing the client of the agency action.

(18) Day--Calendar day, unless otherwise specified.

(19) Designee--A contractor, employee, or other agent designated to act for an agency.

(20) Fair Hearing--An informal proceeding held before an impartial HHSC hearing officer in which a client appeals an agency action. These hearings are not open to the public.

(21) Health and Human Services (HHS) Agencies:

(A) Health and Human Services Commission (HHSC);

(B) Department of Aging and Disability Services (DADS);

(C) Department of Assistive and Rehabilitative Services (DARS);

(D) Department of Family and Protective Services (DFPS);

(E) Department of State Health Services (DSHS); and

(F) A reference to an agency includes a designee.

(22) Health Plan--Includes MCO's, ICM and PCCM plans.

(23) Hearings Administrator--The administrator for fair and fraud hearings in the HHSC Appeals Division who oversees daily operations and staff conducting fair hearings.

(24) Hearings Officer--An HHSC employee designated by the Director of the Appeals Division who is responsible for conducting fair hearings and issuing decisions.

(25) Integrated Care Management (ICM) Program--A Medicaid managed care plan where an ICM Contractor manages and coordinates acute care services and long term services and supports for eligible Medicaid clients.

(26) Language Services--Any services that ensure effective communication for full participation of all parties in a hearing.

(27) Managed Care Organization (MCO)--An entity that has a current Texas Department of Insurance certificate of authority to operate as a health maintenance organization (HMO) or as an approved nonprofit health corporation under the Texas Insurance Code.

(28) Nursing Home Action--The nursing home's decision to transfer or discharge a client.

(29) Party--An appellant or his authorized representative or an agency or its representative.

(30) PASARR--Pre-Admission Screening and Resident Review Determination.

(31) Person with Limited English Language Proficiency (LEP)--Person who does not speak English as a primary language and who has a limited ability to read, speak, write, or understand English.

(32) Primary Care Case Management (PCCM)--A managed care model allowed under federal regulations in which the Commission contracts with providers to form a managed care provider network.

(33) Prior Authorization Request--A request for services that is reimbursable only if authorization or approval for the services is obtained before services are rendered.

(34) Texas Health Steps (THSteps)--A program under Medicaid that provides medical and dental check-ups, diagnosis, and treatment to eligible clients from birth through age 20. THSteps was formerly known as EPSDT.

(35) TANF--Temporary Assistance for Needy Families.

§357.3. Authority and Right to Appeal.

(a) Health and Human Services (HHS) System Authority and Responsibilities.

(1) The Health and Human Services Commission (HHSC) is authorized by law to adopt and implement rules to administer the programs it oversees. These uniform fair hearing rules apply to the TANF program, the Supplemental Nutrition Assistance Program, all Medicaid-funded services, and all other agency programs that are required by

state or federal law or rules to provide the right to a fair hearing. HHSC delegates to the Appeals Division the authority to appoint hearings officers and to hear fair hearings.

(2) HHSC Appeals Division is responsible for:

(A) publishing fair hearing rules;

(B) receiving fair hearings appeal requests;

(C) conducting fair hearings; and

(D) issuing decisions.

(b) Right to Fair Hearing.

(1) Clients of Medicaid-funded services, TANF, the Supplemental Nutrition Assistance Program, and other agency programs in which state or federal law or rules provides a right to a fair hearing, are entitled to appeal the following actions:

(A) an action to reduce, suspend, terminate, or deny benefits;

(B) a failure to act with reasonable promptness on a client's claim for benefits or services;

(C) a decision to transfer or discharge a resident from a skilled nursing facility or nursing facility;

(D) an adverse determination made regarding preadmission screening and resident review (PASARR);

(E) the denial of a prior authorization request; and

(F) the failure to reach a service authorization decision within the time period specified by federal law.

(2) Time for Fair Hearing. The client has the right to appeal:

(A) the current level of food stamp benefits anytime within a food stamp certification period; and

(B) in all other actions, within 90 days from the date on the notice of agency action.

(3) Manner of Requesting Fair Hearing. The client may appeal more than one action at the same time and, unless otherwise provided in program rules or notices, in writing or orally.

(4) The Right to a Fair Hearing--Exceptions:

(A) Under the Supplemental Nutrition Assistance Program the household may request a fair hearing when it is aggrieved by a mass change in benefits.

(B) Under all other programs, the agency is not required to grant a hearing if the sole issue is a federal or state law requiring an automatic change adversely affecting some or all clients.

(C) The client can appeal the application to him of an across-the-board reduction in benefits or services on the ground that he is not in the class affected by the automatic change.

§357.5. Hearings Officer Responsibilities.

(a) Fair hearings are conducted by an impartial hearings officer who:

(1) does not have a personal involvement in the case;

(2) was not involved in the initial determination of the action that is being contested; and

(3) was not the agency representative who took the action or the immediate supervisor of that representative.

(b) The hearings officer's supervisor may reassign the fair hearing to another officer.

(c) Responsibilities. The hearings officer conducts the fair hearing as an informal proceeding, not as a formal court hearing, and is not required to follow the Texas Rules of Evidence or the Texas Rules of Civil Procedure.

(1) General duties. The hearings officer:

(A) determines whether a client requested a fair hearing in a timely manner, or had good cause for failing to do so;

(B) schedules a pre-hearing conference to resolve issues of procedure, jurisdiction, or representation, if necessary;

(C) requires the attendance of agency representatives, or witnesses, if necessary;

(D) is prohibited from engaging in ex parte communication, whether oral or written, with a party or the party's representative or witness relating to matters to be adjudicated; and

(E) arranges for reasonable accommodations for disclosed disabilities.

(2) During the hearing, the hearings officer:

(A) makes the official recording of the hearing;

(B) ensures that the appellant's and agency's rights are protected;

(C) determines whether there is a need for an interpreter;

(D) limits the number of persons in attendance at the hearing if space is limited;

(E) controls the use by others of cameras, videos, or other recording devices;

(F) administers oaths and affirmations;

(G) ensures consideration of all relevant points at issue and facts pertinent to the appellant's situation at the time the action was taken;

(H) considers the appellant's changed circumstances, when appropriate and possible;

(I) requests, receives, and makes part of the record all relevant evidence;

(J) regulates the conduct and course of the fair hearing to ensure due process and an orderly hearing;

(K) conducts the hearing in a way that makes the appellant feel most at ease; and

(L) orders, if determined to be necessary, an independent medical assessment or professional evaluation to be paid for by the agency or the agency's designee.

(3) After the hearing, the hearings officer:

(A) makes a decision based on the evidence presented at the hearing;

(B) determines if the agency's or its designee's action is in compliance with statutes, policies, or procedures;

(C) allows the appellant to request and receive a copy of the recording at no charge;

(D) except as provided in subparagraph (E) of this paragraph, issues a timely written decision, and includes findings of fact, conclusions of law, pertinent statutes, and a final order;

(E) issues a decision in THSteps cases containing the purpose of the hearing, the legal authority, procedural history, summary of the evidence, findings of fact, conclusions of law, and relevant authorities; and

(F) to ensure compliance, orders the agency, its representative or designee to implement the order within the time limits specified in the relevant federal regulation, monitors compliance with the order, and notifies program management if the order is not implemented.

§357.7. Agency and Designee Responsibilities.

(a) The agency must:

(1) accept a request for a fair hearing submitted within 90 days from the date on the notice of agency action, or, under the Supplemental Nutrition Assistance Program, at any time during the food stamp certification period;

(2) notify the HHSC Appeals Division within five days of the date the client expresses a desire to appeal; and

(3) allow the client to appeal more than one action at the same time.

(b) The agency or the agency's representative or designee must:

(1) allow the appellant to review the appeal procedures in HHSC's policies;

(2) provide to the hearings officer and the appellant, at no cost, copies of all documentation and evidence to be used in the fair hearing;

(3) appear at the scheduled hearing;

(4) be prepared to explain and defend the decision or action taken against the appellant; and

(5) implement the hearings officer's final order within the time limit specified in the relevant federal regulation.

§357.9. Burden of Proof in a Fair Hearing.

The burden of proof in a fair hearing regarding a specific issue is proof by a preponderance of the evidence. The party that bears the burden of proof meets the burden if the stronger evidence, on the whole, favors that party, as determined by the hearings officer. Depending on the type of hearing, the following apply:

(1) The agency or its designee bears the burden of proof.

(2) The MCO, PCCM or ICM bears the burden of proof.

(3) The nursing facility bears the burden of proof in transfer and discharge hearings.

(4) The appellant bears the burden of proof:

(A) to show good cause, i.e., demonstrate why the appellant did not appear at a scheduled hearing; or

(B) to prove an affirmative defense, i.e., demonstrate that the appellant attempted to comply with program rules.

§357.11. Notice and Continued Benefits.

(a) The agency must:

(1) follow the notice requirements set forth in the appropriate state or federal law or regulation for the affected program;

(2) give clients timely and adequate notice, as appropriate, of the right to a fair hearing;

(3) explain the right of appeal;

(4) explain the procedures for requesting an appeal;

(5) explain the right to be represented by others, including legal counsel;

(6) provide information about legal services available in the community;

(7) continue benefits if required to do so by state or federal regulations or statutes; and

(8) not reinstate or continue food stamp benefits if a client requests a fair hearing after the date his certification period has ended.

(b) In Medicaid cases, except as specifically provided in federal regulations, the following apply:

(1) The written notice to an individual of the individual's right to a hearing must:

(A) contain an explanation of the circumstances under which Medicaid is continued if a hearing is requested; and

(B) be mailed at least 10 days before the date the individual's Medicaid eligibility or service is scheduled to be terminated, suspended, or reduced, except as provided by federal rules.

(2) If a hearing is requested before the date a Medicaid recipient's service, including a service that requires prior authorization, is scheduled to be terminated, suspended, or reduced, the agency may not take that proposed action before a decision is rendered after the hearing unless:

(A) it is determined at the hearing that the sole issue is one of federal or state law or policy; and

(B) the agency promptly informs the recipient in writing that services are to be terminated, suspended, or reduced pending the hearing decision.

§357.13. Appellant Rights and Responsibilities.

(a) Requesting an Appeal. Only the appellant or the appellant's authorized representative has the right to appeal an action by an agency. The appellant may choose in writing any individual or institution to serve as an authorized representative.

(b) During the appeal process, the appellant has the right to:

(1) reapply for assistance;

(2) receive continued benefits if required by state or federal regulation or statute;

(3) confer with supervisory staff within the appropriate agency about the case prior to the hearing;

(4) continue with the fair hearing after a case adjustment or correction is made;

(5) request that reasonable accommodations due to disability or language comprehension be provided at the hearing at no cost;

(6) make an audio recording of the fair hearing;

(7) examine at a reasonable time before the date of the hearing and during the hearing:

(A) the content of the appellant's case file; and

(B) all documents and records to be used by the agency or the skilled nursing facility or nursing facility at the hearing;

(8) review the appeal procedures outlined in agency policy; and

(9) request a copy of the official recording at no charge after the decision is issued.

(c) An appellant or an authorized representative or legal counsel may send written interrogatories or request a pre-hearing conference to get additional information. The written interrogatories must be clear and concise, contain no more than 30 questions, and be submitted no less than 20 days prior to the hearing.

(d) Procedural Rights. The appellant has the right to:

(1) present the case personally or with the aid of others, including but not limited to the appellant's representative or legal counsel;

(2) bring witnesses;

(3) present information about all pertinent facts and circumstances;

(4) present arguments or address anything about the case without undue interference;

(5) confront and cross-examine adverse witnesses; and

(6) submit documentary evidence to the hearings officer before, during, or after the hearing as allowed by the hearings officer. Evidence submitted after the hearing, if accepted, must be entered into the record and shared with all parties.

(e) Appellant's Responsibilities. The appellant or the appellant's authorized representative is responsible for:

(1) participating in the fair hearing; and

(2) informing the hearings officer prior to the fair hearing that the appellant needs an interpreter or other accommodation due to a disability.

§357.15. Scheduling Hearings and Notice Requirements.

(a) Scheduling:

(1) Except as provided by paragraph (2) of this subsection, the hearings officer schedules fair hearings in the order in which the requests are received and determines a reasonable date, time, and place for the fair hearing.

(2) For good cause, the hearings officer may schedule fair hearings other than in the order in which the requests were received.

(3) The hearings officer must expedite hearing requests as provided in §357.17(b) of this subchapter (relating to Types of Hearings).

(b) Notice Requirements. No less than 14 days prior to the fair hearing, the fair hearings office sends all parties notice of the date, time, and place of the scheduled hearing. The notice informs the appellant:

(1) of the basis for the action or intended action taken by the agency or its designee;

(2) of the fair hearing procedures;

(3) of the name, address, and telephone number of the person to notify in the event the appellant cannot attend the hearing;

(4) of legal services that may be available to provide representation at the hearing;

(5) of the requirement to contact the hearings officer before the scheduled hearing to request reasonable accommodations due to disability or language comprehension;

(6) that the fair hearing will be dismissed for failure to appear without good cause;

(7) that documents to be used in the fair hearing are available for appellant's examination at a reasonable time before, during, and after the hearing; and

(8) that the case file is available for review upon request.

§357.17. Types of Hearings.

(a) Telephone and In-Person Hearings.

(1) The hearings officer conducts fair hearings by telephone ensuring that all parties are able to hear and respond to each other;

(2) An appellant may request that a hearing be conducted in person; and

(3) The hearings officer determines whether good cause for an in-person hearing exists.

(b) Expedited Appeals. The following hearings are expedited:

(1) Hearings for Transients--Transient appeals are food stamp and/or TANF appeals submitted by an appellant who plans to move from the jurisdiction of the hearings officer before the hearing decision would normally be issued. An example of a transient appeal is an appeal filed by a household that includes migrant farm workers. The hearing must be held and a decision made within 15 working days from the date the hearings officer receives the hearing request if:

(A) the appellant agrees to the reduced notice of the time, date, and place of the hearing; and

(B) the hearings officer has sufficient information available to make a decision without requesting additional information.

(2) Managed Care Organization (MCO) Hearings which includes PCCM and ICM models.

(A) Expedited hearings are granted an individual if the health plan or health plan provider determines that taking the time for resolution of a fair hearing could seriously jeopardize the individual's life or health or ability to attain, maintain, or regain maximum function;

(B) The appellant may request an expedited fair hearing within 10 days after the date the notice of health plan action is mailed;

(C) The request for an expedited fair hearing must be submitted according to the instructions provided in the notice of health plan action;

(D) The hearing is held within three business days after the receipt of the case file from the health plan which must be immediately forwarded to the Appeals Division; and

(E) If a request for an expedited fair hearing is not received within the 10-day period, the appellant is deemed to have waived the right to an expedited fair hearing. A request received after the tenth day is considered a request for a fair hearing.

(c) Requesting a Fair Hearing Rather Than an Expedited Appeal on Health Plan Actions.

(1) The appellant may file an appeal with the health plan and/or request a fair hearing from the State within 90 days after the date on the notice of health plan action.

(2) The request for a fair hearing must be submitted according to the instructions provided in the notice of health plan appeal resolution.

(3) If a request for a fair hearing is not received within the 90-day period, the appellant is deemed to have waived the right to a fair hearing, and the action of the health plan becomes final.

(d) Group Hearings--The hearings officer may consolidate hearings, upon request of multiple appellants, if the sole issue involved in the cases is one of Federal or State law or policy. In all cases except food stamp cases, the request must be in writing, signed by each appellant, and state the common issue(s). Requests for group hearings in food stamp cases may be made orally or in writing. An appellant may also withdraw from a group hearing at any time before a final decision is issued. If an appellant wishes to withdraw, he must submit a signed request in writing. Group hearings follow the same procedures as individual hearings.

§357.19. Other Procedures.

(a) Postponement. The hearings officer considers a postponement for a hearing only if the appellant or his authorized representative contacts the appropriate appeals office before the scheduled hearing is to occur.

(1) Food Stamp Fair Hearings--The appellant is entitled to receive one postponement of up to 30 days. Additional postponements may be approved if the hearings officer determines that there is good cause.

(2) All other Fair Hearings--The hearings officer may postpone a fair hearing if the hearings officer determines that good cause exists.

(3) The hearings officer must state in writing the decision on the request to postpone and send it to the appellant and agency.

(b) Dismissals.

(1) The hearings officer dismisses the fair hearing if the appellant fails to appear at the scheduled hearing.

(2) The appellant will have 30 days to submit in writing a request to re-open the hearing and the reasons that he failed to appear at the scheduled fair hearing.

(3) The hearings officer will consider the request and determine whether the appellant had good cause for missing the scheduled hearing. If the hearings officer determines the appellant had good cause for failing to appear, the hearings officer will re-open the hearing and set a new hearing date.

(4) The hearings officer documents the dismissal in writing and sends the decision to the parties.

(c) Withdrawals.

(1) Only the appellant or his or her authorized representative can withdraw the request for appeal.

(2) The appellant or his or her authorized representative must make the request to withdraw in writing to the hearings officer, an agency representative, or designee.

(3) If the appellant or his authorized representative orally requests to withdraw the appeal, he must confirm the request in writing. If a written request is not submitted, the hearings officer must notify the appellant in writing that if the written request is not received within 10 days, the appeal will be withdrawn based upon the original oral request.

(4) An oral request to withdraw during a hearing will be accepted in lieu of a written withdrawal.

(5) If an appellant dies during the appeal process, the hearings officer considers the appeal withdrawn unless the hearings officer

is notified that the authorized representative or the appellant's executor intends to pursue the appeal.

(d) Recessed Fair Hearings. Once the hearing has begun, the hearings officer may recess the hearings proceedings if the hearings officer finds good cause for the recess. Following notice to both sides, the hearings officer may reconvene the hearing, if necessary.

(e) Administrative Review. Except for TANF decisions, an administrative review of a hearings decision is provided as set forth in §§357.701 - 357.703 of this chapter (relating to Purpose and Application, Definitions and Process and Timeframes).

(f) Review of TANF Decisions.

(1) An appellant or his or her authorized representative may make a timely request for a review of the decision.

(2) A request for a review of the decision must be post-marked within 30 days of the date of notice of the hearings officer's decision, and must be addressed to the hearings administrator.

(3) The scope of the review is limited to determining whether the hearings officer followed laws, procedures, and program rules introduced in the hearing.

§357.21. Interpreters in Fair Hearings.

(a) Determining the Need for Interpreters.

(1) The hearings officer informs the appellant on the record that he will be provided an interpreter at no cost if the appellant can show that the appellant or required participants are not able to participate in the hearing due to a language barrier.

(2) No interpreter is required if the hearings officer determines that all participants are sufficiently fluent in the same language so that no barrier is present.

(b) Types of Interpreters.

(1) Spanish/English--HHSC Appeals Division uses a certified interpreter;

(2) Other Spoken languages--HHSC Appeals Division makes every effort to use the most qualified interpreter for a person with limited English proficiency whose native language is not English or Spanish; and

(3) Sign Language--HHSC Appeals Division provides a qualified sign language interpreter for a person who is hearing impaired and requests the service.

(c) Use of an Interpreter.

(1) An interpreter is not required if the hearings officer determines that all parties are able to communicate effectively in the appellant's primary language and all hearing participants state on the record that they can communicate.

(2) The basis of the hearings officer's decision will be stated on the record.

(d) Effectiveness of Interpretation. If a party or authorized representative, during a fair hearing, makes a legitimate objection concerning the interpretation by an interpreter, the hearings officer:

(1) informs the authorized representative and the appellant of the right to request that the case be reheard;

(2) addresses the objection or complaint concerning the quality of the interpretation, including a request to rehear the case;

(3) finishes the hearing with the original interpreter; or

(4) provides a new interpreter at a later date.

§357.23. Hearings of Officer Decision and Actions.

(a) Time Limits for Issuing Decisions.

(1) Food stamp hearings--60 days from the date the appeal request is received by the agency or designee.

(2) Non-food stamp hearings--90 days from the date the appeal request is received by the agency or designee.

(3) The time limit for issuing a decision may be extended by as many days as the fair hearing is postponed or recessed at the request of the appellant.

(b) Decisions by Hearings Officer. The hearings officer issues a decision based exclusively on testimony and evidence introduced at the hearing. The hearings officer must:

(1) issue a written decision in English;

(2) provide the appellant with a copy of the decision; and

(3) provide a translated cover letter in Spanish for hearing decisions where a Spanish interpreter was used. The cover letter instructs the appellant to call the hearings officer if he needs assistance to understand the decision. An appellant who indicates by telephone, in person, or in writing that assistance is needed to understand the decision must receive an explanation of the hearing decision from bilingual personnel within a reasonable period.

(c) Sustained Decisions in THSteps Appeals--If the decision sustains the agency action reducing, suspending, denying, or terminating a requested service:

(1) on the basis that there is no federal financial participation, the decision must contain an explanation of the basis for the hearings officer's decision, applying the state and federal law to the individual's particular request; or

(2) on the basis that the service is not medically necessary, the decision must contain an explanation of the medical basis for the hearings officer's decision, applying the agency's policy or the accepted standards of medical practice to the individual's particular medical circumstances; and

(3) All THSteps decisions must contain legal authority, purpose of the hearing, procedural history, summary of evidence, relevant authorities, findings of fact, and conclusions of law.

(d) Decisions that are Reversed. The hearings officer reverses a decision of the agency or designee if the action or inaction is not supported by the evidence introduced at the hearing, and is not supported by statutes, policies, or procedures applicable at the time the action or inaction occurred. The agency may be instructed to issue retroactive payments or restored benefits in accordance with applicable rules, regulations, and statutes.

(e) Decisions that are Upheld. The hearings officer upholds a decision of the agency or its designee if the action is in accordance with statutes, policies, and procedures introduced at the hearing.

(f) Reopened Hearings--Appellant. The hearings officer may reopen an appeal and reconsider the decision if, within 12 months of the decision date, the appellant presents evidence that:

(1) the hearings officer has determined the information would have affected the outcome of the original decision;

(2) shows the original decision was not valid; and

(3) was not presented at the hearing by the appellant.

(g) Authority of the Hearing Officer to Re-issue a Decision. The hearings officer has the authority to withdraw, revise, and re-issue

a decision. The hearings officer may re-issue the decision within 20 days of the date of the original decision if the hearings officer becomes aware of an error of law or fact that would have affected the outcome of the decision.

§357.25. Records and Confidential Information.

(a) Record Maintenance. The official record of the hearing includes the exhibits offered to the hearings officer, the exhibits admitted, the recording of the hearing, any briefs or memoranda filed in connection with the hearing, the hearings officer's decision, and any items filed in connection with administrative review and the decision on administrative review.

(b) Hearing Record Retention Maintained by Appeals Division.

(1) Records of food stamp cases--three years from the decision date.

(2) Records of all other cases--four years from the decision date.

(c) Public Access.

(1) HHSC Appeals Division records and decisions are available for public inspection and copying, but are also subject to federal and state rules and statutes regarding confidentiality.

(2) Names, addresses, and other identifying information about household members and other individuals who provide information about the household, medical information, and the status of pending criminal prosecutions are confidential.

(3) An appellant or authorized representative may record the hearing or request a copy of the recording, at no cost, from the hearings officer.

(4) All other public access to hearings records and decisions is subject to the Texas Public Information Act.

(5) The agency will redact all confidential information from the hearings decision and make the decision available to the public, without cost, within 30 days of the date of the hearing decision in Texas Health Step appeals.

(d) Confidential Information. Confidential information that can not be shared with hearing participants may not be considered by the hearings officer.

(e) Privileged Communication. No party to a fair hearing is required to disclose at the hearing information that is privileged from discovery by federal or state law, including communications between a lawyer and an appellant, a husband and a wife, a member of the clergy and a person seeking spiritual advice, or the name of an informant whose identity is protected from compelled disclosure.

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 January 5, 2009.

TRD-200900023

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: February 15, 2009

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



SUBCHAPTER R. JUDICIAL AND ADMINISTRATIVE REVIEW OF HEARINGS

1 TAC §357.702, §357.703

The amendments are proposed under §531.033 of the Government Code, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties.

The amendments affect Title 1, Part 15, Chapter 357, Subchapters A, D - H and R. No other statutes, articles or codes are affected by these proposed amendments.

§357.702. Definitions.

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

(1) Administrative Review--A desk review performed by an HHS System attorney of a hearing decision related to benefits provided under the public assistance programs of Chapters 32 and 33, Human Resources Code and is limited to the hearing record that was considered by the hearings officer.

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

(4) Date of Notice of Hearings Officer's Decision--The date on the written notice that contains the hearings officer's decision [informs the client of the agency action or decision].

(5) - (8) (No change.)

§357.703. Process and Timeframes.

(a) (No change.)

(b) The following provisions establish the process and timelines for an administrative review under this subchapter.

(1) (No change.)

(2) To be timely, a request for an administrative review of the hearing officer's decision must be postmarked not later than the 30th day after the date of the notice of the decision and must be addressed to the hearings administrator. A request for administrative review will be considered timely if filed after 30 days, where Appellant demonstrates good cause. Exception: The 30 days does not begin until a new decision is issued if the appellant or appellant's representative is working with the hearing officer to reopen or reschedule the hearing.

(3) Within 10 days of receipt of the request for administrative review, the Commission designates a HHS System attorney to handle the administrative review of the hearing decision on behalf of the HHS System Agency. The assigned attorney reviews the hearing decision and the hearings record upon which it is based for errors of law and errors of fact using the "preponderance of evidence" standard. This standard means that the evidence as a whole shows that the fact sought to be proved is more probable than not.

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

(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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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.15

The Texas Board of Professional Engineers proposes an amendment to §131.15, relating to Committees. The proposed amendment is related to the frequency of meetings of the Enforcement Committee.

The proposed rule would change the frequency of the Enforcement Committee meetings to an as-needed basis. This is intended to prevent scheduling unnecessary meetings when there is an insufficient agenda.

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there is a potential for minor positive fiscal implications for the state and local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there may be cost savings due to committee meetings not held. This will only occur if the committee does not meet and will be determined on a case-by-case basis. There is no additional cost to licensees or other individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is the efficient operation of committees to the Board.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws 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.

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

§131.15. *Committees.*

(a) The board chair shall appoint the following standing committees as stated in paragraphs (1) - (5) of this subsection, composed of four board members at least one of whom is a public member. A committee quorum shall consist of three members. Committee appointments shall be made by the chair for a term of two years but may be terminated at any point by the chair. Committee members may be re-appointed at the discretion of the chair. The board chair shall appoint a committee chair.

(1) General Issues Committee. The committee shall meet no less than twice each fiscal year to evaluate issues and possibly develop proposed actions for the full board on issues of importance to the board and the profession. Such issues might include engineering ethics, professionalism in practice, legislation, board management, and engineering business issues. The vice chair of the board shall be a committee member and shall chair the committee during his or her elected term.

(2) Licensing Committee. The committee shall meet no less than twice each fiscal year to evaluate issues and possibly develop proposed actions for the full board on licensing issues. The committee may participate in activities such as evaluating rules concerning licensing of engineers; evaluating education and continuing education program requirements; conducting personal interviews of applicants; evaluating applications; participating in national and international engineering licensing activities on the board's behalf; providing general guidance to the executive director on licensing issues; and evaluating any other issue indirectly or directly relating to engineering licensing.

(3) Compliance and Enforcement Committee. The committee shall meet as required [~~no less than twice each fiscal year~~] to evaluate issues and possibly develop proposed actions for the full board on enforcement issues. The committee may participate in activities such as evaluating rules concerning enforcement of the Act; reviewing the progress of major enforcement cases or groups of cases; suggesting sanctions for violations of the Act; participation in national and international engineering law enforcement activities on the board's behalf; providing general guidance to the executive director on enforcement issues; and evaluating any other issue indirectly or directly relating to engineering law enforcement.

(4) Policy Advisory Opinion Committee. The committee shall meet as required to review, prepare and recommend policy advisory opinions regarding the interpretation or application of the Act and to perform related activities pursuant to board approval. The committee shall follow the process and procedures for issuing advisory opinions as prescribed in Subchapter G of this chapter (relating to Advisory Opinions).

(5) Legislative Issues Committee. The committee shall meet as needed to consider legislative matters that may affect the practice of engineering in the state. Pursuant to the Chapter 556, Texas Government Code, the committee shall not lobby or strive to influence legislation regarding the practice of engineering but meet to consider board responses to pending legislation and assist in answering related inquiries from the Texas Legislature, Governor or other state agency or governmental entity during the legislative session. The committee shall report to the full board on actions and activities addressed on behalf of the board.

(b) - (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 December 31, 2008.

TRD-200806726

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: February 15, 2009

For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.63

The Texas Board of Professional Engineers proposes an amendment to §137.63, relating to the engineers' responsibility to the profession.

The proposed rule clarifies the expectations of engineers as it relates to being a faithful agent to their employers and to their clients. The rule also includes examples of what constitutes being a faithful agent. In developing this amendment, the Board consulted the Code of Ethics of the American Society of Civil Engineers (available at <http://www.asce.org/professional/ethics>).

Lance Kinney, P.E., Deputy Executive Director for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency, licensees, or individuals. There is no adverse fiscal impact to the estimated 1,000 small or 5,300 micro businesses regulated by the Board of Engineers. A Regulatory Flexibility Analysis is not needed because there is no adverse economic effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the proposed amendment is a clarification of rule language.

Comments may be submitted no later than 30 days after the publication of this notice to Lance Kinney, P.E., Deputy Executive Director, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-0417.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws 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; and Chapter 2001, Texas Government Code, requiring a four year rule review of all agency rules.

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

§137.63. *Engineers' Responsibility to the Profession.*

(a) (No change.)

(b) The engineer shall:

(1) endeavor to meet all of the applicable professional practice requirements of federal, state and local statutes, codes, regulations, rules, ordinances, or standards in the performance of engineering services;

(2) exercise reasonable care or diligence to prevent the engineer's partners, associates, and employees from engaging in conduct which, if done by the engineer, would violate any provision of the Texas Engineering Practice Act, general board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services;

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or board rules;

(4) act as faithful agent for their employers or clients through actions that include, but are not limited to, the following: [5]

(A) as faithful agents for employers by utilizing their employer's time, equipment, resources and project information only for the benefit of their employer and not for personal gain or the benefit of any outside employment purposes; and

(B) as faithful agents for clients by:

(i) clearly defining expectations and responsibilities of the engineer and client for a project;

(ii) completing all engineering services for projects under the scope, terms, costs and established time frames of verbal or written agreements between the engineer and the client or the client's representative;

(iii) providing their client or the client's representative with written communication in a timely manner of any changes to the scope, terms, costs and established time frames for projects; and

(iv) keeping lines of communication open and responding verbally or by written communication in a timely manner to any requests for information from their client or the client's representative pertaining to a project.

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party; and

(6) practice engineering in a careful and diligent manner.

(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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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.254, §289.260

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

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §289.254, concerning licensing of radioactive waste processing and storage facilities, and §289.260, concerning licensing of uranium recovery and byproduct material disposal facilities.

BACKGROUND AND PURPOSE

The repeal of §289.254 and §289.260 is necessary as the result of Senate Bill 1604, 80th Legislative Session, 2007, that amended Health and Safety Code, §401.011, and transferred the regulatory authority for licensing and inspection of low-level waste processing and uranium recovery and disposal from the department to the Texas Commission on Environmental Quality (TCEQ).

SECTION-BY-SECTION SUMMARY

Section 289.254 and §289.260 are being repealed in their entirety in order to be consistent with legislation, which transferred all regulatory authority from the department to the TCEQ and, therefore, the rules are unnecessary.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that there will be no fiscal implications to the state or local governments as a result of repealing the sections as proposed because no requirements resulting in any fiscal implication were added or deleted. The program was transferred from one state agency to another.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses, micro-businesses, or other persons required to comply with §289.254 and §289.260 as proposed for repeal. 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 is no anticipated negative impact on local employment.

STATEMENT OF NO ADVERSE ECONOMIC IMPACT

Pursuant to the requirement of Government Code, §2006.002(c) (amended by House Bill 3430, 80th Legislative Session, 2007),

the department has determined that none of the proposed changes "may have an adverse economic effect on small businesses subject to the proposed rule." This determination is made because there will be no adverse economic impact on any regulated entity as a result of these repeals.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the repeals are in effect, the repeal of these rules will benefit the public by eliminating unnecessary and unenforceable rules. The authority over this industry has been transferred by legislation to the TCEQ, and any rules would be their responsibility. If the department does not repeal these rules, there will appear to be dual regulation.

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 proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposed repeals may be submitted to Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Division of Regulatory Services, Environmental and Consumer Safety Section, Department of State Health Services, P.O. Box 149347, MC 1987, Austin, Texas 78714-9347, (512) 834-6770, extension 2239, or by e-mail 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 proposed repeals 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 website (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.

STATUTORY AUTHORITY

The proposed repeals are 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 proposed repeals affect the Health and Safety Code, Chapters 401 and 1001; and Government Code, Chapter 531.

§289.254. *Licensing of Radioactive Waste Processing and Storage Facilities.*

§289.260. *Licensing of Uranium Recovery and Byproduct Material Disposal Facilities.*

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 January 5, 2009.

TRD-200900011

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: February 15, 2009

For further information, please call: (512) 458-7111 x6972



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

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

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.15

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §215.15, concerning Enrollment Standards. Subsection (a) is amended to add medical and psychological evaluations to the enrollment requirements. Subsection (d) is amended to reflect the effective date of these changes. The amendment will make the enrollment requirements more closely reflect the licensing requirements and will ensure individuals entering an academy will be eligible to be licensed upon graduation.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there could be an effect on state or local governments as a result of administering this section. State or local governmental agencies may pay for the medical and psychological evaluations or they could choose to require the enrollees to pay.

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by having the enrollment requirements more closely reflect the licensing requirements.

The Commission has determined that there may be a monetary and time cost to the individual meeting this requirement prior to enrolling in academies, however there will be a positive benefit for the individual and the public by ensuring that individuals entering an academy will be eligible to be licensed upon graduation. There will be no anticipated cost to small business as a result of the proposed amendment.

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

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

The rule amendment as proposed is in compliance with Texas Occupations Code, Chapter 1701, §1701.255, Enrollment Qualifications.

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

§215.15. *Enrollment Standards.*

(a) In order for an individual to enroll in any basic licensing course that provides instruction in defensive tactics, arrest procedures, firearms, or use of a motor vehicle for law enforcement purposes, the academy must have on file:

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

(3) written documentation that the individual has been examined by a physician, selected by the appointing, employing agency, or the academy, who is licensed by the Texas Medical Board. The physician must be familiar with the duties appropriate to the type of license sought. Prior to enrollment, the individual must be declared in writing by that professional to be:

(A) physically sound and free from any defect which may adversely affect the performance of duty appropriate to the type of license sought; and

(B) show no trace of drug dependency or illegal drug use after a physical examination, blood test, or other medical test;

(4) written documentation that the individual has been examined by a psychologist, selected by the appointing, employing agency, or the academy, who is licensed by the Texas State Board of Examiners of Psychologists. The psychologist must be familiar with the duties appropriate to the type of license sought. This examination may also be conducted by a psychiatrist. Prior to enrollment, the individual must be declared in writing by that professional to be in satisfactory psychological and emotional health to serve as the type of officer for which the license is sought. The examination must be conducted pursuant to professionally recognized standards and methods:

(A) the commission may allow for exceptional circumstances where a licensed physician performs the evaluation of psychological and emotional health. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed; or

(B) the examination may be conducted by qualified persons identified by §501.004, Occupations Code. This requires the appointing agency to request in writing and receive approval from the commission, prior to the evaluation being completed.

(b) - (c) (No change.)

(d) The effective date of this section is May 1, 2009 [~~October 5, 2008~~].

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 December 31, 2008.

TRD-200806730

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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



CHAPTER 217. LICENSING REQUIREMENTS

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes the repeal of and new Title 37, Texas Administrative Code, §217.7 concerning Reporting the Appointment and Termination of a Licensee. The section proposed for repeal addresses the requirements for appointing and terminating a licensee. The proposed repeal of and new rule would clarify the requirements for appointment and termination of a licensee. These requirements include: initial license application, preemployment, and termination reporting.

Through the proposed new §217.7, the commission is reflecting changes made by House Bill 2445 of the 80th Texas Legislature. The proposal would repeal the current requirements from rule and specify the reporting requirements of an agency receiving a preemployment request and the termination reporting requirements.

Current §217.7, relating to Reporting the Appointment and Termination of a Licensee, proposed for repeal describes the reporting requirements for preemployment and termination of the 79th Texas Legislature.

Proposed new §217.7, relating to Reporting the Appointment and Termination of a Licensee, would clarify the preemployment requirements, agency responsibilities, and break in service requirements.

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

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be a positive benefit to the public with a clearer understanding by the law enforcement community as to the requirements for appointment and termination of a licensee.

The Commission has determined that for each year of the first five years the repeal and new section are in effect, there will be no anticipated cost to small business, individuals, or both.

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

37 TAC §217.7

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

The repeal is proposed under Texas Occupations Code, §1701.151 which authorizes the Commission to adopt rules for the administration of Chapter 1701.

The proposed repeal implements House Bill 2445, 80th Texas Legislature, Regular Session, 2007.

§217.7. Reporting the Appointment and Termination of a Licensee.

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 December 31, 2008.

TRD-200806755

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

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



37 TAC §217.7

The new section is proposed under Texas Occupations Code, §1701.151 which authorizes the Commission to adopt rules for the administration of Chapter 1701.

The proposed new section implements Texas Occupations Code, §1701.451 and §1701.452.

§217.7. Reporting the Appointment and Termination of a Licensee.

(a) Before a law enforcement agency may hire a person licensed under Chapter 1701, Occupations Code, the agency head or the agency head's designee must, on the agency's letterhead with the appropriate signature:

(1) make a written request to the commission for any employment termination report regarding the person that is maintained by the commission under this chapter; and

(2) submit to the commission on the form prescribed by the commission confirmation that the agency:

(A) conducted in the manner prescribed by the commission a criminal background check regarding the person;

(B) obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C) obtained from the commission any service or education records regarding the person maintained by the commission; and

(D) contacted each of the person's previous law enforcement employers.

(b) A law enforcement agency that obtains a consent form described by subsection (a)(2)(B) of this section shall make the person's employment records available to a hiring law enforcement agency on request.

(c) Before appointing a licensee whose license is inactive or has expired, an agency shall ensure that the individual meets the current minimum standards for licensure.

(d) An agency that appoints an individual who already holds a valid, active license appropriate to that position must notify the commission of such appointment not later than 30 days after the date of appointment. The appointing agency must have on file documentation that a peace officer licensee is compliant with weapons qualification according to §217.21 of this chapter within the last 12 months.

(e) If the appointment is made after a 180-day break in service, the agency must have the following on file and readily accessible to the commission:

(1) a new criminal history check by name, sex, race and date of birth from both TCIC and NCIC;

(2) a new declaration of psychological and emotional health;

(3) a new declaration of lack of any drug dependency or illegal drug use; and

(4) one completed applicant fingerprint card or, pending receipt of such card, an original sworn, notarized affidavit by the applicant of his or her complete criminal history; such affidavit to be maintained by the agency while awaiting the return of completed applicant fingerprint card; and

(5) for peace officers, weapons qualification according to §217.21 of this chapter within the last 12 months.

(f) When an individual licensed by the commission or a telecommunicator separates from appointment or employment with an agency, the agency shall submit a report to the commission in the currently prescribed commission format that reports the separation. The report shall be submitted within 7 business days following the date of separation. If a licensee has filed a timely grievance or appeal within the personnel policies of the agency, the agency shall not be required to file the report until all administrative remedies have been exhausted. The agency shall provide the individual who is the subject of the report a copy of the report within 7 business days after the date of separation.

(g) An agency must retain records kept under this section for a minimum of 5 years after the licensee's termination date with that agency. The records must be maintained in a format readily accessible to the commission.

(h) A report or statement of separation submitted under subsection (f) of this section is exempt from disclosure under the Public Information Act, Chapter 552, Government Code, unless the individual resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses, and is subject to subpoena only in a judicial proceeding.

(i) The effective date of this section is May 1, 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 December 31, 2008.

TRD-200806728

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: February 15, 2009

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



CHAPTER 229. TEXAS PEACE OFFICERS' MEMORIAL

37 TAC §229.1

The Texas Commission on Law Enforcement Officer Standards and Education (Commission) proposes an amendment to Title 37, Texas Administrative Code by amending §229.1, concerning General Eligibility of Deceased Texas Peace Officers. The title will be amended to reflect the title of Government Code §3105.003. Subsection (a) is amended to reflect changes to the Government Code §3105.003. These amendments are necessary to ensure that the Commission rule is in compliance with the statute, which allows eligibility for federal law enforcement officers and municipal, county, or state corrections or detention officers.

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

The Commission has determined that for each year of the first five years the section as proposed will be in effect, there will be a positive benefit to the public by ensuring that all eligible peace officers, federal law enforcement officers, and municipal, county, or state corrections or detention officers are recognized on the Texas Peace Officers' Memorial as authorized by Government Code §3105.003.

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

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

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

The rule amendment as proposed is in compliance with Texas Government Code, Chapter 3105, §3105.003, Eligibility for Memorial.

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

§229.1. Eligibility for Memorial [~~General Eligibility of Deceased Texas Peace Officers~~].

(a) A person is eligible to have the person's name on the memorial if the person was killed in the line of duty and was: [~~A deceased Texas peace officer, killed in the line of duty, is eligible for inclusion on the Texas peace officers' memorial if the person was:~~]

(1) a law enforcement officer or peace officer for this state or a political subdivision of this state under Article 2.12, Code of Criminal Procedure, or other law;

(2) a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure;

(3) a corrections or detention officer or county or municipal jailer employed or appointed by a municipal, county, or state penal institution in this state; or

~~{(1) a Texas peace officer among those listed under the Texas Code of Criminal Procedure, Article 2.12;}~~

~~{(2) a Texas peace officer among those licensed by the Texas Commission on Law Enforcement Officer Standards and Education, under the Government Code, Chapter 415, or Occupations Code 1701 a federal law enforcement officer or special agent performing duties in this state, including those officers under Article 2.122, Code of Criminal Procedure;}~~

~~{(3) a Texas peace officer among those listed under the Texas Education Code;}~~

~~{(4) a Texas peace officer among those named as such by other Texas law;}~~

(4) ~~{(5)}~~ a Texas peace officer who, in historical perspective, would be eligible under any of the preceding criteria.~~;~~ ~~or~~

~~{(6) a Texas corrections officer employed or appointed by a municipal, county or state penal institution.}~~

(b) The effective date of this section is May 1, 2009. ~~[as amended shall be June 1, 2004.]~~

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 December 31, 2008.

TRD-200806729
Timothy A. Braaten
Executive Director
Texas Commission on Law Enforcement Officer Standards and Education

Earliest possible date of adoption: February 15, 2009

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

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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 37. PUBLIC SAFETY AND CORRECTIONS

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

CHAPTER 215. TRAINING AND EDUCATIONAL PROVIDERS AND RELATED MATTERS

37 TAC §215.5

The Texas Commission on Law Enforcement Officer Standards and Education withdraws the proposed amendment to §215.5

which appeared in the July 25, 2008, issue of the *Texas Register* (33 TexReg 5902).

Filed with the Office of the Secretary of State on December 31, 2008.

TRD-200806756

Timothy A. Braaten

Executive Director

Texas Commission on Law Enforcement Officer Standards and Education

Effective date: December 31, 2008

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



ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION PROCEEDINGS

**1 TAC §§159.1, 159.3 - 159.5, 159.7, 159.9, 159.11, 159.13,
159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27,
159.29, 159.31, 159.33, 159.35, 159.37, 159.39, 159.41**

The State Office of Administrative Hearings (SOAH) adopts the repeal of §§159.1, 159.3 - 159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33, 159.35, 159.37, 159.39, and 159.41. The repeals are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5107).

The existing rules have been developed to provide a uniform set of procedural rules to be followed in administrative license suspension cases at SOAH. Repeal of the existing rules will allow the simultaneous adoption of new rules, which are being concurrently adopted, that remain uniform in application but that are clearer, updated, and easier to use.

Comments to the repeals were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: A commenter believes the repeal of §159.11(c) of this title (relating to Continuances) will remove the defendant's opportunity to seek a continuance based on a bona fide medical condition that prevents the defendant or the defendant's attorney from attending the hearing.

SOAH Response: SOAH notes that it is required to follow Texas Transportation Code §524.032(c) which provides for the continuance. SOAH repeals the rule because it was repetitive of the statute.

The repeals are adopted under Texas Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings, Texas Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and §2003.050, which requires SOAH to adopt rules governing the procedures, including discovery procedures, that relate to a hearing conducted by SOAH.

The repeals affect the following statutes: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

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 December 31, 2008.

TRD-200806731

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Effective date: January 20, 2009

Proposal publication date: July 4, 2008

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



CHAPTER 159. RULES OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

SUBCHAPTER A. GENERAL

1 TAC §§159.1, 159.3, 159.5, 159.7

The State Office of Administrative Hearings (SOAH) adopts new §§159.1, 159.3, 159.5, and 159.7, comprising new Subchapter A. The new rules are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5108). These adopted new rules concern the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter A, General, includes §§159.1, Scope; 159.3, Definitions; 159.5, Computation of Time; and 159.7, Other SOAH Rules of Procedure. The new subchapter and sections are adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

Comments to the new rules were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: A commenter said the hearings process works well under current rules and no changes are necessary.

SOAH's response: SOAH agrees that the process works well but believes the amendments are needed to comply with statutory changes and to streamline procedures that unnecessarily consume state resources.

One commenter inquired about the effective date of the newly adopted rules.

SOAH's response: The new rules become effective on the date of their adoption.

A commenter said the new rules will affect breath test technical supervisors who own small businesses, so it is incorrect to state that small businesses will not be affected.

SOAH's response: SOAH notes that the rules make no change to current procedures regarding these businesses.

The new rules are adopted under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rules: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200806732
Kerry D. Sullivan
General Counsel

State Office of Administrative Hearings

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Proposal publication date: July 4, 2008

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



SUBCHAPTER B. REPRESENTATION

1 TAC §159.51

The State Office of Administrative Hearings (SOAH) adopts new §159.51, comprising new Subchapter B. The new rule is adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5110). The adopted new rule concerns the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter B, Representation, includes §159.51, Withdrawal of Counsel. The new subchapter and section is adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

Comments to the new rule were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: A commenter asked that the new section specifically list a defendant's failure to pay attorney's fees as good cause for an attorney's withdrawal.

SOAH's response: SOAH believes each case should be addressed individually and will consider each motion to withdraw on its merits.

The new rule is adopted under Texas Transportation Code §§522.105, 524.002 and 724.003, which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rule: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

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 December 31, 2008.

TRD-200806733

Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

Effective date: January 20, 2009

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



SUBCHAPTER C. WITNESSES AND SUBPOENAS

1 TAC §159.101, §159.103

The State Office of Administrative Hearings (SOAH) adopts new §159.101, and §159.103, comprising new Subchapter C. The new rules are adopted with changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5110). In response to comments, an addition was made to §159.101. To clarify language in §159.103, but not in response to a comment, a repetitive sentence was deleted from subsection (b), a word was changed in subsection (f)(1) and a phrase was added to subsection (i)(4). These adopted new rules concern the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter C, Witnesses and Subpoenas, includes §159.101, Breath Test Operator and Technical Supervisor; and §159.103, Subpoenas. The new subchapter and sections are adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

Comments to the new rules were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: Commenters asked SOAH to require defendants to pay professional fees and travel expenses for a breath test operator or technical supervisor whose appearance is requested pursuant to §159.101 and Texas Transportation Code §524.039. The commenters asserted that failure to establish a mechanism for payment of these fees conflicts with Texas Government Code §2001.103 which states, "Any witness subpoenaed or otherwise compelled to attend a hearing shall receive reimbursement of their costs from the party requesting their presence."

SOAH's response: SOAH agrees that the issue of whether a breath test operator or technical supervisor should receive

mileage reimbursement merits consideration but also finds such an addition to the proposed rules would be substantive and require publication and comment. SOAH will consider this comment when next proposing rule amendments.

Commenters think §159.101(a) lacks the clarity of current rules regarding the impact of a breath test operator's or technical supervisor's failure to appear when a defendant has requested their appearance.

SOAH's response: SOAH did not intend to change current procedure and has amended §159.101(a) by adding the last two sentences. The addition reflects the current practice of excluding test results when these witnesses do not appear.

A commenter asked for §159.101(a) to be amended to require all ALR hearings to be conducted by telephone or to remove the requirement for breath test technical supervisors to appear at hearings.

SOAH's response: SOAH believes these changes can only be effected by statute since Texas Transportation Code §524.039(a) requires the technical supervisors to appear when properly requested.

Several commenters said §159.103 will have an adverse effect on public safety because officers will be required to attend hearings rather than work on patrol, more officers will be required to appear for hearings, and law enforcement agencies will be required to pay more overtime for officers who appear at hearings.

SOAH's response: In SOAH's view, the section simply streamlines the procedure for issuing a subpoena; it does not expand the number of witnesses whose appearance may be required at a hearing. The streamlined procedure will conserve state resources.

A commenter stated that officers who testify at ALR hearings pursuant to §159.103 and then testify at criminal trials may be impeached based on prior statements, which will negatively impact prosecutions for driving while intoxicated.

SOAH's response: SOAH believes witnesses should be able to give consistent testimony in different venues.

A commenter asked SOAH not to require officers to produce tangible things as specified in §159.103(a)(1).

SOAH's response: SOAH notes that the proposed rules make no change to the current procedure, and officers will not be requested to bring items that are not in their actual possession.

One commenter asked that the subpoena form mentioned in §159.103(b) include DPS's phone number.

SOAH's response: SOAH has not yet finalized the subpoena forms but agrees the phone number should be included on the form.

Commenters said the proposed subpoena rule conflicts with the Texas Government Code §2001.089 because a showing of good cause is not specifically required before an attorney may issue a subpoena, as authorized in §159.103(b).

SOAH's response: SOAH disagrees with the comment because the rule will allow an attorney to issue a subpoena only for a peace officer who stopped or arrested the defendant. Issues relating to an officer's reasonable suspicion to stop the vehicle or probable cause to arrest the defendant are always relevant to ALR proceedings. Thus, good cause may be inferred based on the officer's determinations regarding these issues. Also, a

request for a subpoena will be required if a party seeks to subpoena any other witness and an ALJ will review the request for good cause. Finally, the APA does not require a showing of good cause; instead, Texas Government Code §2001.089(1) requires that, if good cause is shown, the subpoena must be issued.

Similarly, a commenter said that allowing defense attorneys to issue subpoenas will lead to abuse because they will issue subpoenas when an officer's presence is not needed.

SOAH's response: SOAH notes that the section allows issuance of those types of subpoenas that are routinely approved by SOAH ALJs under the current rules. Thus, the new section only authorizes a change in the way subpoenas are processed.

A commenter asked that SOAH require the service of subpoenas ten calendar days or five business before hearing.

SOAH's response: Previously, SOAH had no requirement for service by a specified time prior to a hearing, and §159.103(f)(2) requires service five days prior to the hearing. SOAH believes the five day requirement is reasonable. Section 159.5 of this title (relating to Computation of Time) already provides that if the period within which to perform some action under the rules is five days or less, the intervening Saturdays, Sundays, and legal holidays are not counted unless this chapter or a judge's order otherwise specifically provides. In addition, if an officer is not able to appear, DPS may seek a continuance.

Some defense attorneys asked SOAH to postpone adoption of §159.103(f)(3) to allow more time to study to increased costs defendants will be required to pay for mileage.

SOAH's response: SOAH does not find additional time is required for study of §159.103(f)(3). Defendants will not be required to pay mileage for a witness unless the witness must travel more than 25 miles roundtrip to the hearing. Also, defendants have the ability to control costs by requesting hearings by telephone; no mileage reimbursement is required for witnesses in those hearings. The mileage guide is based on the applicable mileage reimbursement rate as established by the legislature in the travel provisions of the General Appropriations Act and the number of miles traveled. (Texas Government Code §660.042 and §660.043). SOAH believes that reimbursement based on the mileage guide will be a more accurate and equitable way to reimburse witnesses for their mileage costs. In addition, costs to defendants will be reduced by the streamlined subpoena process.

One commenter objected to §159.103(h) which requires the person who requests a continuance to notify subpoenaed witnesses of the new hearing date. The commenter asserted that the Texas Government Code does not allow the shifting of this responsibility to a party who did not subpoena the witnesses.

SOAH's response: SOAH finds no prohibition in current law and considers the rule a fair way to lessen the inconvenience of a party who does not request a continuance.

A commenter believes §159.103(i)(2) will allow DPS to communicate ex parte with an ALJ regarding a motion to quash an attorney-issued subpoena.

SOAH's response: SOAH believes §159.103(i)(2) is limited by the provisions in paragraph (1) of the same subsection that requires a party to serve its motion to quash on the other party. Also, any party filing a motion must comply with §159.205 of this title (relating to General Requests for Relief). That section re-

quires a certificate of conference and service of the motion on the other party.

A commenter stated that requiring a subpoena to be served five calendar days before the hearing will put an unreasonable burden on defendants because an officer could resist service.

SOAH's response: The rules do not change the fact that officers must be served before their appearance is compelled. If a defendant cannot timely serve an officer, the defendant may take advantage of the continuance allowed by Texas Transportation Code §524.032.

A commenter asked SOAH to establish an alternative method for serving peace officers.

SOAH's response: SOAH does not have the authority to order law enforcement agencies to allow alternative service methods.

Another commenter asked for a provision that excludes admission of evidence from subpoenaed civilian witnesses who do not appear for the hearing.

SOAH's response: SOAH notes that when a subpoena has been issued for a civilian witness and the witness does not appear, the presiding judge will rule on admissibility of any evidence related to that witness in accordance with the Texas Rules of Evidence and other applicable law.

A commenter asked SOAH to require DPS to provide a routing slip on the date subpoena is issued.

SOAH's response: The rules include no change from current procedures.

The new rules are adopted under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rules: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

§159.101. *Breath Test Operator and Technical Supervisor.*

(a) Upon receipt of a timely request for the appearance of the certified breath test operator who administered the test and obtained the defendant's specimen to determine the level of alcohol concentration in the defendant's body and/or the certified breath test technical supervisor, DPS shall ensure that the requested individuals appear at the hearing. If the requested witness does not appear without good cause, the results of the test will not be admitted into evidence. If good cause is established for the witness's failure to appear, DPS will be entitled to a continuance.

(b) Requests for witnesses under this section are limited to cases under Texas Transportation Code §522.081(b)(4) and §522.081(d)(3)(C) and Chapter 524.

§159.103. *Subpoenas.*

(a) *Scope.*

(1) A subpoena may command a person to give testimony for an ALR hearing and/or produce designated documents or tangible things in the actual possession of that person.

(2) The party who causes a subpoena to issue must take reasonable steps to avoid imposing undue burden or expense on the person served.

(3) If a party that requests or issues a subpoena fails to timely appear at the hearing, any subpoenaed witnesses will be released.

(b) *Attorney-issued subpoenas.* An attorney who is authorized to practice law in the State of Texas may issue up to two subpoenas for witnesses to appear at a hearing. One subpoena may be issued to compel the presence of the peace officer who was primarily responsible for the defendant's stop or initial detention and the other may be issued to compel the presence of the peace officer who was primarily responsible for finding probable cause to arrest the defendant. If the same officer was primarily responsible for both the defendant's stop and arrest, the attorney may issue only one subpoena.

(c) *Subpoena request filed with judge.* No later than ten days prior to the hearing, a party may file a subpoena request with SOAH that demonstrates good cause to compel a witness's appearance in person or by telephone or video conference, when:

(1) a party intends to call more than two peace officers to testify as witnesses;

(2) a party seeks to compel the presence of witnesses who are not peace officers; or

(3) a defendant, who is not represented by an attorney, seeks to compel the presence of witnesses.

(d) *Subpoena form.* A subpoena request filed with a judge must be submitted on the form provided at www.soah.state.tx.us.

(e) *Judge's discretion.* The decision to issue a subpoena, as described in subsection (c) of this section, shall be in the sound discretion of the judge assigned to the case. The judge shall refuse to issue a subpoena if:

(1) the testimony or documentary evidence is immaterial, irrelevant, or would be unduly repetitious; or

(2) good cause has not been demonstrated.

(f) *Service upon witness.*

(1) The party who issues or is granted a subpoena shall be responsible for having the subpoena served in accordance with Texas Rule of Civil Procedure 176.5, or by accepted alternative methods established by a peace officer's law enforcement agency.

(2) A subpoena must be served at least five calendar days before the hearing.

(3) After a subpoena issued by an attorney or judge is served upon a witness, a witness fee check or money order in the amount of \$10 and the return of service of the subpoena must be filed at SOAH at least three calendar days prior to the hearing. In addition, if the witness will be traveling more than 25 miles round-trip to the hearing from the witness's office or residence, mileage reimbursement must also be filed with SOAH at the same time. The amount of mileage reimbursement will be that listed in the state mileage guide at <http://ecpa.cpa.state.tx.us/mileage/Mileage.jsp>.

(4) If special equipment will be required in order to offer subpoenaed documents or tangible things, the party seeking their admission shall be required to supply the necessary equipment. The party requesting a subpoena duces tecum may be required to advance the reasonable costs of reproducing the documents or tangible things requested.

(g) *Service upon opposing party.*

(1) A party that issues a subpoena under subsection (b) of this section must serve the opposing party with a copy of the subpoena on the same date it is issued.

(2) A party that requests a subpoena under subsection (c) of this section must serve the opposing party with a copy of the request at the time it is filed with SOAH.

(3) A party that serves a subpoena must provide the opposing party with a copy of the return of service when the subpoena has been served and not later than three calendar days prior to the hearing.

(h) Continuing effect. A properly issued subpoena remains in effect until the judge releases the witness or grants a motion to quash or for protective order. If a hearing is rescheduled and a subpoena is extended, and unless the judge specifically directs otherwise, the party who requested the continuance shall promptly notify any subpoenaed witnesses of the new hearing date.

(i) Motion to quash or for protective order.

(1) On behalf of a subpoenaed witness, a party may move to quash a subpoena or for a protective order. A party that moves to quash a subpoena must serve the motion on the other party at the time the motion is filed with SOAH.

(2) A party may seek an order from the judge at any time after the motion to quash or motion for protective order has been filed.

(3) In ruling on motions to quash or for protection, the judge must provide a person served with a subpoena an adequate time for compliance, protection from disclosure of privileged material or information, and protection from undue burden or expense. The judge also may impose reasonable conditions on compliance with a subpoena.

(4) If a subpoena request is denied or if a subpoena is quashed, any witness fee or mileage reimbursement fee that has been tendered to a witness or filed with SOAH shall be returned to the party who tendered the fees.

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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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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



SUBCHAPTER D. DISCOVERY

1 TAC §159.151

The State Office of Administrative Hearings (SOAH) adopts new §159.151, comprising new Subchapter D. The new rule is adopted with changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5112). In response to comments, the number of days by which discovery must be produced has been changed. To clarify language but not in response to comments, SOAH has also made changes to the new section. In addition to typographical corrections, SOAH has deleted the last sentence in paragraph (4) because it was

repetitive of §159.103(f)(4) of this title (relating to Subpoenas). The adopted new rule concerns the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter D, Discovery, includes §159.151, Prehearing Discovery. The new subchapter and section is adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

Comments to the new rule were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: Commenters said the number of days between when DPS must file discovery until a subpoena must be served is insufficient.

SOAH's response: SOAH agrees and has changed the rule to require discovery to be served ten days before the hearing, rather than five days as had been proposed.

A commenter asked SOAH not to require officers to comply with subpoenas duces tecum as specified in paragraph (4).

SOAH's response: SOAH notes that the proposed rule makes no change to the current procedure, and officers will not be requested to bring items that are not in their actual possession.

The new rule is adopted under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rule: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

§159.151. Prehearing Discovery.

The scope of prehearing discovery in these proceedings is as follows:

(1) A defendant shall be allowed to review, inspect and obtain copies of any non-privileged documents or records in DPS's ALR file or in the possession of DPS's ALR Division. All requests for discovery must be in writing and shall be served upon DPS as prescribed in 37 TAC §17.16 (relating to Service on the Department of Certain Items Required to be Served on, Mailed to, or Filed with the Department). The request for discovery may not be filed with DPS sooner than the date of the request for hearing and may not be filed sooner than five days from the date of the notice of suspension. Upon a showing of harm by the defendant, and upon a showing of a proper request for discovery, no document in the ALR Division's actual possession will be admissible unless it was provided to the defendant within five business days of the receipt of the request for production. If the ALR Division does not have any or all the documents in its actual possession, it shall respond within five business days of defendant's request, setting out that it does not have the documents in its actual possession. DPS has a duty to supplement all its discovery responses within five business days from the time DPS's ALR Division receives possession of the discoverable documents. If a document is received by the defendant fewer than ten calendar days prior to the scheduled hearing, the judge shall grant a continuance on the request of a party. The judge may grant only one continuance for DPS's production of documents fewer than ten calendar days prior to the scheduled hearing.

(2) If a request for inspection, maintenance and/or repair records for the instrument used to test the defendant's specimen is made by the defendant, and those records are in the actual possession of DPS,

DPS shall supply such records to the defendant within five days of receipt of the request, provided however, that the records to be provided shall be for the period covering 30 days prior to the test date and 30 days following the test date. If DPS fails to provide the properly requested records after the defendant has paid reasonable copying charges for the records, evidence of the breath specimen shall not be admitted into evidence.

(3) Depositions, interrogatories, and requests for admission shall not be permitted in ALR proceedings.

(4) Notwithstanding paragraph (1) of this section, if a party believes evidence from a third party is relevant and probative to the case, the party may request issuance of a subpoena duces tecum pursuant to §159.103 of this title (relating to Subpoenas) to have the evidence produced at the hearing. If a person subpoenaed under this section does not appear, the judge may grant a continuance to allow for enforcement of the subpoena.

(5) Notwithstanding anything to the contrary contained in this section, DPS has the right to request non-privileged documents from the defendant. Except in cases where sanctions may be sought for abuse of discovery under §155.157 of this title (relating to Sanctioning Authority), all requests from DPS shall be made under 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.

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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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SUBCHAPTER E. HEARING AND PREHEARING

1 TAC §§159.201, 159.203, 159.205, 159.207, 159.209, 159.211, 159.213

The State Office of Administrative Hearings (SOAH) adopts new §§159.201, 159.203, 159.205, 159.207, 159.209, 159.211, and 159.213, comprising new Subchapter E. New §§159.201, 159.203, 159.205, and 159.207, and 159.213 are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5113). New §159.209 is adopted with one change regarding confirmation of the identity of a witness who testifies by telephone; new subsection (b) was added to the section and the remaining subsections were renumbered accordingly. New §159.211 is adopted with one change; the reference in §159.211(c)(3) changes the reference as proposed from §159.209(b) to §159.209(c). These adopted new rules concern the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter E, Hearing and Prehearing, includes §§159.201, Scheduling and Notice of Hearing; 159.203, Waiver

or Dismissal of Hearing; 159.205, General Request for Relief; 159.207, Continuances; 159.209, Participation by Telephone or Videoconference; 159.211, Hearings; and 159.213, Failure to Attend Hearing and Default. The new subchapter and sections are adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

Comments to the new rules were received during the comment period of July 4, 2008 through August 4, 2008, and at the public hearings conducted on September 19 and 26, 2008.

Comments: A commenter objected to §159.209(a) which allows hearings to be conducted by videoconferencing. In the commenter's opinion, it would be too expensive for DPS to participate by video, and the process is not expressly permitted by statute.

SOAH's response: SOAH notes that hearings by videoconference are allowed only upon agreement of the parties; no change is made to the proposed rule.

A commenter stated that §159.211(c)(2) should allow admission of a peace officer's report even when a subpoenaed officer does not appear for a hearing.

SOAH's response: In SOAH's view, there must be some consequence when a witness does not comply with a subpoena. SOAH makes no change to proposed rule.

A commenter asked that §159.211 be changed to address the admissibility of a peace officer's unsworn report in a case in which the defendant refused to provide a specimen of breath or blood.

SOAH's response: SOAH notes that appellate courts have addressed this issue, and the proposed section makes no change in current law.

Some commenters who represent defendants would like more time than is specified in §159.213(a) between when the notice of hearing is sent and the day of the hearing.

SOAH's response: SOAH relies on Texas Transportation Code §524.031 which provides that a hearing will be not earlier than the 11th day after the person requesting the hearing is notified.

A commenter said the period in which a party may ask for a default decision to be set aside should remain as five days, rather than ten days as allowed by §159.213.

SOAH's response: SOAH has found that ten days will be a reasonable time for filing such a request.

The new rules are adopted under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rules: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

§159.209. *Participation by Telephone or Videoconference.*

(a) Consent of the parties. The judge may, with consent of the parties and if SOAH has been notified of a telephone or videoconference hearing request at least 14 days prior to the hearing date, conduct all or part of the hearing on the merits by telephone or videoconference if each participant in the hearing has an opportunity to participate in and hear the entire proceeding. The judge may conduct all or part of

a hearing on preliminary matters by telephone or videoconference, on the judge's own motion, if each participant has an opportunity to participate in and hear the entire proceeding.

(b) Before a witness is allowed to give testimony by telephone, the judge will confirm that the witness is the person he or she has been represented to be.

(c) **Procedural Rights and Duties.** All substantive and procedural rights and duties apply to telephone or videoconference hearings, subject only to the limitations of the physical arrangement. The parties shall notify SOAH of their telephone or videoconference numbers for the purpose of their appearances at the hearing. The parties shall contact their respective witnesses to assure their availability at the hearing.

(d) **Documentary evidence.** To be offered in a telephone or videoconference hearing, copies of exhibits should be marked and must be filed with SOAH and all parties no later than two business days prior to the scheduled hearing, unless otherwise agreed by the parties. If a witness, in preparation for or during testimony, reviews any document that has not been prefiled and the opposing party requests an opportunity to review the document, the judge may go off the record and allow the witness to read the document to the opposing party.

(e) **Default.** For a telephone or videoconference hearing, the following may be considered a failure to appear and grounds for default, if the conditions exist for more than ten minutes after the scheduled time for hearing:

- (1) failure to answer the telephone or videoconference line;
- (2) failure to free the line for the proceeding; or
- (3) failure to be ready to proceed with the hearing or a pre-hearing or post-hearing conference, as scheduled.

§159.211. *Hearings.*

(a) **Procedures.**

(1) Hearings shall be conducted in accordance with the APA, Texas Government Code, Chapter 2001, when applicable, and with this chapter, provided that if there is a conflict between the APA and this chapter, this chapter shall govern. If a conflict exists between this chapter and the Texas Transportation Code, Chapters 522, 524, or 724, and these rules cannot be harmonized with those chapters, the applicable Texas Transportation Code provision controls.

(2) Once the hearing has begun, the parties may be off the record only when the judge permits. If a discussion off the record is pertinent, the judge will summarize it for the record.

(3) In the interest of justice and efficiency, the judge may question witnesses.

(4) The judge shall exclude testimony or any evidence which is irrelevant, immaterial, or unduly repetitious.

(b) **Evidence.** Pursuant to Texas Government Code §2001.081, the rules of evidence as applied in a non-jury civil case in a district court of this state shall apply in ALR proceedings.

(c) **Witnesses and affidavits.**

(1) All witnesses shall testify under oath.

(2) An officer's sworn report of relevant information shall be admissible as a public record. However, the defendant shall have the right to subpoena the officer in accordance with §159.103 of this title (relating to Subpoenas). If the defendant timely subpoenas an officer and the officer fails to appear without good cause, information obtained from that officer shall not be admissible. In the alternative,

if the party who requested the subpoena wants to seek enforcement of the subpoena, the judge may grant the party a continuance.

(3) The judge, on his or her own motion or on request of a party and with the consent of all parties, may allow the testimony of any witness to be taken by telephone or videoconference, provided that all parties have the opportunity to participate in and hear the proceeding. All substantive and procedural rights apply to the telephone or videoconference appearance of a witness, subject to the limitations of the physical arrangement as described in §159.209(c) of this title (relating to Participation by Telephone or Videoconference).

(d) **Record of hearing.**

(1) The judge shall make an accurate and complete recording of the oral proceedings of the hearing.

(2) SOAH will maintain a case file that includes the recording, pleadings, evidence, and the judge's decision.

(3) SOAH will maintain case files in accordance with the terms of its records retention schedule.

(e) **Interpreters.** When an interpreter will be needed for all or part of a proceeding, a party shall file a written request at least seven days before the hearing. SOAH shall provide and pay for:

(1) an interpreter for deaf or hearing impaired parties and subpoenaed witnesses in accordance with §2001.055 of the APA;

(2) reader services or other communication services for blind and sight-impaired parties and witnesses; and

(3) a certified language interpreter for parties and witnesses who need that service.

(f) If the defendant fails to make a timely request, the judge may provide an interpreter or may continue the hearing to secure an interpreter.

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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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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



SUBCHAPTER F. DISPOSITION OF CASE

1 TAC §§159.251, 159.253, 159.255

The State Office of Administrative Hearings (SOAH) adopts new §§159.251, 159.253, and 159.255, comprising new Subchapter F. The new rules are adopted without changes to the proposal as published in the July 4, 2008, issue of the *Texas Register* (33 TexReg 5115). These adopted new rules concern the Administrative License Suspension Hearings, commonly known as the Administrative License Revocation (ALR) Program.

New Subchapter F, Disposition of Case, includes §§159.251, Hearing Disposition; 159.253, Decision of the Judge; and

159.255, Appeal of Judge's Decision. The new subchapter and sections are adopted to replace outdated sections, update and clarify remaining sections, insert new language where appropriate, and reorganize the chapter for ease of reference and use.

No comments were received regarding these new rules during the comment period of July 4, 2008 through August 4, 2008, or at the public hearings held on September 19 and 26, 2008.

The new rules are adopted under Texas Transportation Code §§522.105, 524.002 and 724.003 which authorize SOAH to promulgate rules for the administration of Chapters 522, 524 and 724 of the Texas Transportation Code.

The following statutes are affected by the adopted new rules: Texas Transportation Code, Chapters 522, 524 and 724; Texas Government Code, Chapters 2001 and 2003; and Texas Penal Code, Chapter 49.

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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Kerry D. Sullivan

General Counsel

State Office of Administrative Hearings

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.509

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.509, Reimbursement Methodology for Residential Care, under Title 1, Part 15, Chapter 355, Subchapter E. The proposed rule is adopted without changes to the proposed text as published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8701).

Background and Justification

This rule establishes the reimbursement methodology for the Residential Care (RC) program. HHSC, under its authority and responsibility to administer and implement rates, is updating this rule to add a condition under which a provider may be excused from submitting a cost report. The adopted amendment revises §355.509(b)(3) to excuse a Residential Care provider from submitting a cost report if the provider's total number of Residential Care billable days of service is 366 or fewer in the provider's fiscal year. This new condition will mirror a condition currently included in the Community Based Alternatives Assisted Living/Residential Care (CBA AL/RC) Reimbursement Methodology rules.

Many providers hold both RC and CBA AL/RC contracts and submit their cost information on a combined RC and CBA AL/RC cost report. Currently providers of CBA AL/RC services are excused from submitting a cost report to HHSC Rate Analysis if the provider's total number of CBA AL/RC billable days serving residents is 366 or fewer in the provider's fiscal year. Providers of RC services in similar circumstances are not excused. This inconsistency causes confusion among providers holding both RC and CBA AL/RC contracts. The amendment will eliminate this confusion by standardizing cost reporting requirements across both programs.

Comments

The 30-day comment period ended November 23, 2008. During this period, HHSC received no comments regarding the proposed amendments to this rule.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 5, 2009.

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Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

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



TITLE 22. EXAMINING BOARDS

PART 9. TEXAS MEDICAL BOARD

CHAPTER 163. LICENSURE

22 TAC §163.5

The Texas Medical Board (Board) adopts an amendment to §163.5, concerning Licensure Documentation, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8867) and will not be republished.

The amendment adds additional credentialing organizations that are recognized for the purpose of an international medical school graduate to prove that the medical school was substantially equivalent to a Texas medical school at the time of attendance.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made

comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 165. MEDICAL RECORDS

22 TAC §165.1, §165.5

The Texas Medical Board (Board) adopts amendments to §165.1, concerning Medical Records, and §165.5, concerning Transfer and Disposal of Medical Records, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7955) and will not be republished.

The amendment to §165.1 clarifies that a physician must destroy medical records after the required time for maintenance in a manner that ensures continued confidentiality.

The amendment to §165.5 clarifies when a physician must notify the board of termination, retirement, or relocation of practice and clarifies that the notice to patients must offer the patient the opportunity to obtain a copy of the patient's medical records or have those medical records transferred to another physician.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 165, Medical Records.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and

bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 166. PHYSICIAN REGISTRATION

22 TAC §166.2, §166.6

The Texas Medical Board (Board) adopts amendments to §166.2, concerning Continuing Medical Education, and §166.6, concerning Exemption From Registration Fee for Retired Physician Providing Voluntary Charity Care, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8868) and will not be republished.

The amendments update the word "hours" to "credits" to comport with modern language usage.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

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CHAPTER 169. AUTHORITY OF PHYSICIANS TO SUPPLY DRUGS

22 TAC §169.7

The Texas Medical Board (Board) adopts amendments to §169.7, concerning Record Keeping, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7956) and will not be republished.

The amendments provide clarifying references to rules of the Texas Department of Public Safety.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 173. PHYSICIAN PROFILES

22 TAC §173.1

The Texas Medical Board (Board) adopts an amendment to §173.1, concerning Profile Contents, without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8870) and will not be republished.

The amendment adds required information to the physician profile, including year of birth, name as the physician requests it to be published, and mailing address.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

Texas Medical Board

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For further information, please call: (512) 305-7016



CHAPTER 178. COMPLAINTS

22 TAC §178.1

The Texas Medical Board (Board) adopts an amendment to §178.1, concerning Purpose and Scope, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7957) and will not be republished.

The amendment specifies statutory authority for the board to adopt rules regarding complaints.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 178, Complaints.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 179. INVESTIGATIONS

22 TAC §§179.1, 179.4, 179.6

The Texas Medical Board (Board) adopts amendments to §179.1, concerning Purpose and Scope, §179.4, concerning Request for Information and Records from Physicians and §179.6, concerning Time Limits, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7957) and will not be republished.

The amendment to §179.1 specifies statutory authority for the board to adopt rules regarding investigations.

The amendment to §179.4 adds a provision specifying that probable cause to obtain a licensee's medical records may be shown by actions or statements by a licensee at a hearing conducted by the Board that gives the Board reason to believe that the licensee has an impairment.

The amendment to §179.6 provides that a decision by the Quality Assurance Committee or the Disciplinary Process Review Committee that there is a necessity for additional investigation of a complaint constitutes good cause for an investigation to extend beyond 180 days.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 179, Investigations.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 180. REHABILITATION ORDERS

22 TAC §180.1

The Texas Medical Board (Board) adopts an amendment to §180.1, concerning Rehabilitation Orders, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7958) and will not be republished.

The amendment corrects a reference to this "section" instead of this "chapter."

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 180, Rehabilitation Orders.

Prior to publishing the proposed amendment, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rule at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rule.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 182. USE OF EXPERTS

22 TAC §§182.1, 182.5, 182.8

The Texas Medical Board (Board) adopts amendments to §182.1, concerning Purpose, §182.5, concerning Expert Panel and §182.8, concerning Expert Physician Reviewers, without changes to the proposed text as published in the September

19, 2008, issue of the *Texas Register* (33 TexReg 7959) and will not be republished.

The amendment to §182.1 specifies statutory authority for the board to adopt rules regarding experts.

The amendment to §182.5 specifies that members of the Expert Physician Panel may only be appointed by the board.

The amendment to §182.8 clarifies that, in determining the same or similar specialty of a physician, the practice area or specialty declared by the subject physician as his area of practice may be the specialty of the expert reviewers.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 182, Use of Experts.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 187. PROCEDURAL RULES

The Texas Medical Board (Board) adopts amendments to §187.3, concerning Computation of Time, §187.4, concerning Agreement to be in Writing, §187.13, concerning Informal Board Proceedings Relating to Licensure Eligibility, §187.14, concerning Informal Resolution of Disciplinary Issues Against a Licensee, §187.24, concerning Pleadings, §187.29, concerning Mediated Settlement Conferences, §187.59, concerning Evidence, §187.70, concerning Purposes and Construction, §187.71, concerning Hearing before a Panel of Board Representatives, §187.72, concerning Decision of the Panel and §187.73, concerning Termination of Suspension, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7959) and will not be republished.

The amendment to §187.3 clarifies that requirements regarding the computation of time may be made by statute or rule.

The amendment to §187.4 modernizes language used in the rule.

The amendment to 187.13 adds reference to Chapter 172, and updates term "Licensure with Restrictions" to "Licensure with terms and conditions".

The amendment to §187.14 deletes "Administrative" as a modifier regarding informal resolution of violations.

The amendment to §187.24 updates the name of the agency to Texas Medical Board.

The amendment to §187.29 clarifies abbreviation used in the rule.

The amendment to §187.59 adds additional language used in §2001.081 Government Code.

The amendment to §187.70 adds, as a purpose of the rule regarding suspension by operation of law, the initial conviction of certain offenses.

The amendment to §187.71 and §187.72 adds conviction of certain offenses as a basis for a panel of the board ordering suspension by operation of law.

The amendment to §187.73 requires a person who has been suspended by operation of law to show competence and safety to practice medicine as a requirement for terminating suspension.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 187, Procedural Rules.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

SUBCHAPTER A. GENERAL PROVISIONS AND DEFINITIONS

22 TAC §187.3, §187.4

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.13, §187.14

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. FORMAL BOARD PROCEEDINGS AT SOAH

22 TAC §187.24, §187.29

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. TEMPORARY SUSPENSION PROCEEDINGS

22 TAC §187.59

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER G. SUSPENSION BY OPERATION OF LAW

22 TAC §§187.70 - 187.73

The amendments are adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. INFORMAL BOARD PROCEEDINGS

22 TAC §187.18

The Texas Medical Board (Board) adopts amendments to §187.18, concerning Informal Show Compliance Proceeding and Settlement Conference Based on Personal Appearance,

without changes to the proposed text as published in the October 31, 2008, issue of the *Texas Register* (33 TexReg 8872) and will not be republished.

The amendment revises procedures for requesting and granting a postponement of an ISC; recognizes right of a complainant to make a statement in an informal show compliance and settlement conference and clarifies alternatives that an ISC Panel may consider, adding recommendation of imposition of administrative penalty.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 187, Procedural Rules.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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Mari Robinson, J.D.

Interim Executive Director

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CHAPTER 190. DISCIPLINARY GUIDELINES

The Texas Medical Board (Board) adopts amendments to §190.1, concerning Purpose and §190.14, concerning Disciplinary Sanction Guidelines, without changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7963) and will not be republished.

The amendment to §190.1 adds reference to statutory authority for the board to adopt rules regarding disciplinary guidelines.

The amendment to §190.14 updates sanction guidelines to follow sanctions approved for the imposition of administrative penalties.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 190, Disciplinary Guidelines.

Prior to publishing the proposed amendments, the Board sought stakeholder input through Stakeholder Groups, which made comments on the suggested changes to the rules at a meeting

held on October 29, 2008. The comments were incorporated into the published proposed rules.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §190.1

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. SANCTION GUIDELINES

22 TAC §190.14

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001 and §154.006, which provide authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

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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For further information, please call: (512) 305-7016



CHAPTER 192. OFFICE-BASED ANESTHESIA SERVICES

22 TAC §192.2

The Texas Medical Board (Board) adopts an amendment to §192.2, concerning Provision of Anesthesia Services in Outpatient Settings, with non-substantive changes to the proposed text as published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 7965). The text of the rule will be republished.

The amendment provides that it is not necessary to have pre-measured doses of certain drugs in the delivery of Level I anesthesia services.

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts the rule review of Chapter 192, Office Based Anesthesia Services.

The Board received no public written comments and no one appeared to testify at the public hearing held on December 12, 2008.

The amendment is adopted under the authority of the Texas Occupations Code Annotated, §153.001, which provides authority for the Texas Medical Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure.

§192.2. *Provision of Anesthesia Services in Outpatient Settings.*

(a) The purpose of these rules is to identify the roles and responsibilities of physicians providing, or overseeing by proper delegation, anesthesia services in outpatient settings and to provide the minimum acceptable standards for the provision of anesthesia services in outpatient settings.

(b) The rules promulgated under this title do not apply to physicians who practice in the following settings listed in paragraphs (1) - (8) of this subsection:

- (1) an outpatient setting in which only local anesthesia, peripheral nerve blocks, or both are used;
- (2) any setting physically located outside the State of Texas;
- (3) a licensed hospital, including an outpatient facility of the hospital that is separately located apart from the hospital;
- (4) a licensed ambulatory surgical center;
- (5) a clinic located on land recognized as tribal land by the federal government and maintained or operated by a federally recognized Indian tribe or tribal organization as listed by the United States secretary of the interior under 25 U.S.C. §479-1 or as listed under a successor federal statute or regulation;
- (6) a facility maintained or operated by a state or governmental entity;
- (7) a clinic directly maintained or operated by the United States or by any of its departments, officers, or agencies; and
- (8) an outpatient setting accredited by:
 - (A) the Joint Commission on Accreditation of Healthcare Organizations relating to ambulatory surgical centers;
 - (B) the American Association for the Accreditation of Ambulatory Surgery Facilities; or
 - (C) the Accreditation Association for Ambulatory Health Care.

(c) Standards for Anesthesia Services. The following standards are required for outpatient settings providing anesthesia services

that are administered within two hours before an out patient procedure. If personnel and equipment meet the requirements of a higher level, lower level anesthesia services may also be provided.

(1) Level I services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved BCLS; and

(B) the following age-appropriate equipment must be present:

- (i) bag mask valve;
- (ii) oxygen; and
- (iii) AED or other defibrillator; and
- (iv) epinephrine, atropine, adreno-corticoids, and antihistamines.

(2) Level II services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved ACLS or PALS, as appropriate;

(i) another person must be currently certified at least in AHA approved BCLS; and

(ii) a licensed health care provider, who may be one of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(B) a crash cart must be present containing drugs and equipment necessary to carry out ACLS protocols, including, but not limited to, the following age-appropriate equipment:

- (i) bag mask valve and appropriate airway maintenance devices;
- (ii) oxygen;
- (iii) AED or other defibrillator;
- (iv) pre-measured doses of first line cardiac medications, including epinephrine, atropine, adreno-corticoids, and antihistamines;
- (v) IV equipment;
- (vi) pulse oximeter; and
- (vii) EKG Monitor.

(3) Level III services:

(A) at least two personnel must be present, including the physician who must be currently certified at least in AHA approved ACLS or PALS, as appropriate;

(i) another person must be currently certified at least in AHA approved BCLS;

(ii) a licensed health care provider, which may be either of the two required personnel, must attend the patient, until the patient is ready for discharge; and

(iii) a person, who may be either of the two required personnel, must be responsible for monitoring the patient during the procedure; and

(B) the same equipment required for Level II.

(4) Level IV services: Physicians who practice medicine in this state and who administer anesthesia or perform a procedure for

which anesthesia services are provided in outpatient settings at Level IV shall follow current, applicable standards and guidelines as put forth by the American Society of Anesthesiologists (ASA) including, but not limited to, the following listed in subparagraphs (A) - (H) of this paragraph:

- (A) Basic Standards for Preanesthesia Care;
- (B) Standards for Basic Anesthetic Monitoring;
- (C) Standards for Postanesthesia Care;
- (D) Position on Monitored Anesthesia Care;
- (E) The ASA Physical Status Classification System;
- (F) Guidelines for Nonoperating Room Anesthetizing Locations;
- (G) Guidelines for Ambulatory Anesthesia and Surgery; and
- (H) Guidelines for Office-Based Anesthesia.

(d) A physician delegating the provision of anesthesia or anesthesia-related services to a certified registered nurse anesthetist shall be in compliance with ASA standards and guidelines when the certified registered nurse anesthetist provides a service specified in the ASA standards and guidelines to be provided by an anesthesiologist.

(e) In an outpatient setting, where a physician has delegated to a certified registered nurse anesthetist the ordering of drugs and devices necessary for the nurse anesthetist to administer an anesthetic or an anesthesia-related service ordered by a physician, a certified registered nurse anesthetist may select, obtain and administer drugs, including determination of appropriate dosages, techniques and medical devices for their administration and in maintaining the patient in sound physiologic status. This order need not be drug-specific, dosage specific, or administration-technique specific. Pursuant to a physician's order for anesthesia or an anesthesia-related service, the certified registered nurse anesthetist may order anesthesia-related medications during preanesthesia periods in the preparation for or recovery from anesthesia. In providing anesthesia or an anesthesia-related service, the certified registered nurse anesthetist shall select, order, obtain and administer drugs which fall within categories of drugs generally utilized for anesthesia or anesthesia-related services and provide the concomitant care required to maintain the patient in sound physiologic status during those experiences.

(f) The anesthesiologist or physician providing anesthesia or anesthesia-related services in an outpatient setting shall perform a pre-anesthetic evaluation, counsel the patient, and prepare the patient for anesthesia per current ASA standards. If the physician has delegated the provision of anesthesia or anesthesia-related services to a CRNA, the CRNA may perform those services within the scope of practice of the CRNA. Informed consent for the planned anesthetic intervention shall be obtained from the patient/legal guardian and maintained as part of the medical record. The consent must include explanation of the technique, expected results, and potential risks/complications. Appropriate pre-anesthesia diagnostic testing and consults shall be obtained per indications and assessment findings. Pre-anesthetic diagnostic testing and specialist consultation should be obtained as indicated by the pre-anesthetic evaluation by the anesthesiologist or suggested by the nurse anesthetist's pre-anesthetic assessment as reviewed by the surgeon. If responsibility for a patient's care is to be shared with other physicians or non-physician anesthesia providers, this arrangement should be explained to the patient.

(g) Physiologic monitoring of the patient shall be determined by the type of anesthesia and individual patient needs. Minimum moni-

toring shall include continuous monitoring of ventilation, oxygenation, and cardiovascular status. Monitors shall include, but not be limited to, pulse oximetry and EKG continuously and non-invasive blood pressure to be measured at least every five minutes. If general anesthesia is utilized, then an O2 analyzer and end-tidal CO2 analyzer must also be used. A means to measure temperature shall be readily available and utilized for continuous monitoring when indicated per current ASA standards. An audible signal alarm device capable of detecting disconnection of any component of the breathing system shall be utilized. The patient shall be monitored continuously throughout the duration of the procedure. Postoperatively, the patient shall be evaluated by continuous monitoring and clinical observation until stable by a licensed health care provider. Monitoring and observations shall be documented per current ASA standards. In the event of an electrical outage which disrupts the capability to continuously monitor all specified patient parameters, at a minimum, heart rate and breath sounds will be monitored on a continuous basis using a precordial stethoscope or similar device, and blood pressure measurements will be reestablished using a non-electrical blood pressure measuring device until electricity is restored. There should be in each location, sufficient electrical outlets to satisfy anesthesia machine and monitoring equipment requirements, including clearly labeled outlets connected to an emergency power supply. A two-way communication source not dependent on electrical current shall be available. Sites shall also have a secondary power source as appropriate for equipment in use in case of power failure.

(h) All anesthesia-related equipment and monitors shall be maintained to current operating room standards. All devices shall have regular service/maintenance checks at least annually or per manufacturer recommendations. Service/maintenance checks shall be performed by appropriately qualified biomedical personnel. Prior to the administration of anesthesia, all equipment/monitors shall be checked using the current FDA recommendations as a guideline. Records of equipment checks shall be maintained in a separate, dedicated log which must be made available upon request. Documentation of any criteria deemed to be substandard shall include a clear description of the problem and the intervention. If equipment is utilized despite the problem, documentation must clearly indicate that patient safety is not in jeopardy. All documentation relating to equipment shall be maintained for seven years or for a period of time as determined by the board.

(i) Each location must have emergency supplies immediately available. Supplies should include emergency drugs and equipment appropriate for the purpose of cardiopulmonary resuscitation. This must include a defibrillator, difficult airway equipment, and drugs and equipment necessary for the treatment of malignant hyperthermia if "triggering agents" associated with malignant hyperthermia are used or if the patient is at risk for malignant hyperthermia. Equipment shall be appropriately sized for the patient population being served. Resources for determining appropriate drug dosages shall be readily available. The emergency supplies shall be maintained and inspected by qualified personnel for presence and function of all appropriate equipment and drugs at intervals established by protocol to ensure that equipment is functional and present, drugs are not expired, and office personnel are familiar with equipment and supplies. Records of emergency supply checks shall be maintained in a separate, dedicated log and made available upon request. Records of emergency supply checks shall be maintained for seven years or for a period of time as determined by the board.

(j) The operating surgeon shall verify that the appropriate policies or procedures are in place. Policies, procedure, or protocols shall be evaluated and reviewed at least annually. Agreements with local emergency medical service (EMS) shall be in place for purposes of transfer of patients to the hospital in case of an emergency. EMS agree-

ments shall be evaluated and re-signed at least annually. Policies, procedure, and transfer agreements shall be kept on file in the setting where procedures are performed and shall be made available upon request. Policies or procedures must include, but are not limited to the following listed in paragraphs (1) - (2) of this subsection:

(1) Management of outpatient anesthesia. At a minimum, these must address:

- (A) patient selection criteria;
- (B) patients/providers with latex allergy;
- (C) pediatric drug dosage calculations, where applicable;

ble;

(D) ACLS (advanced cardiac life support) or PALS (pediatric advanced life support) algorithms;

(E) infection control;

(F) documentation and tracking use of pharmaceuticals, including controlled substances, expired drugs and wasting of drugs; and

(G) discharge criteria.

(2) Management of emergencies. At a minimum, these must include, but not be limited to:

- (A) cardiopulmonary emergencies;
- (B) fire;
- (C) bomb threat;
- (D) chemical spill; and

(E) natural disasters.

(k) Physicians, and anesthesiologists shall maintain current competency in ACLS, PALS, or a course approved by the board. In all settings under these rules, at a minimum, at least two persons, including the surgeon or anesthesiologist, shall maintain current competency in basic life support.

(l) Physicians or surgeons must notify the board in writing within 15 days if a procedure performed in any of the settings under these rules resulted in an unanticipated and unplanned transport of the patient to a hospital for observation or treatment for a period in excess of 24 hours, or a patient's death intraoperatively or within the immediate postoperative period. Immediate postoperative period is defined as 72 hours.

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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Mari Robinson, J.D.

Interim Executive Director

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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.

Adopted Rule Reviews

Texas Medical Board

Title 22, Part 9

The Texas Medical Board adopts the review of Chapter 165, Medical Records, §§165.1 - 165.6, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §165.1 and §165.5.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 165, Medical Records.

TRD-200900003

Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 178, Complaints, §§178.1 - 178.8, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §178.1.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 178, Complaints.

TRD-200900004

Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review Chapter 179, Investigations, §§179.1 - 179.8, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§179.1, 179.4, and 179.6.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 179, Investigations.

TRD-200900005

Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 180, Rehabilitation Orders, §180.1, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §180.1.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 180, Rehabilitation Orders.

TRD-200900006

Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 182, Use of Experts, §§182.1 - 182.8, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§182.1, 182.5, and 182.8.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 182, Use of Experts.

TRD-200900007
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 187, Procedural Rules, §§187.1 - 187.11, 187.13 - 187.16, 187.18 - 187.31, 187.33, 187.35 - 187.39, 187.42 - 187.45, 187.55 - 187.62, 187.70 - 187.73, and 187.75 - 187.82, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§187.3, 187.4, 187.13, 187.14, 187.18, 187.24, 187.29, 187.59, 187.70, 187.71, 187.72, and 187.73.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 187, Procedural Rules.

TRD-200900008
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 190, Disciplinary Guidelines, §§190.1, 190.2, 190.8, and 190.14 - 190.16, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §§190.1, 190.8, and 190.14.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 190, Disciplinary Guidelines.

TRD-200900009
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



The Texas Medical Board adopts the review of Chapter 192, Office-Based Anesthesia Services, §§192.1 - 192.6, pursuant to the Texas Government Code, §2001.039. The proposed rule review was published in the September 19, 2008, issue of the *Texas Register* (33 TexReg 8035).

Elsewhere in this issue of the *Texas Register*, the Texas Medical Board contemporaneously adopts amendments to §192.2.

The agency's reason for adopting the rules contained in this chapter continues to exist.

No comments were received regarding adoption of the review.

This concludes the review of Chapter 192, Office-Based Anesthesia Services.

TRD-200900010
Mari Robinson, J.D.
Interim Executive Director
Texas Medical Board
Filed: January 5, 2009



Texas Workforce Commission

Title 40, Part 20

The Texas Workforce Commission (Commission) adopts the review of Chapter 811, Choices, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9088).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 811 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 811, Choices.

TRD-200900038
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: January 6, 2009



The Texas Workforce Commission (Commission) adopts the review of Chapter 841, Workforce Investment Act, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9088).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 841 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 841, Workforce Investment Act.

TRD-200900039
Reagan Miller
Deputy Division Director, Workforce Policy and Service Delivery
Texas Workforce Commission
Filed: January 6, 2009



The Texas Workforce Commission (Commission) adopts the review of Chapter 847, Project Rio Employment Activities and Support Services, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9089).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or re-adopting the rules continue to exist. The Commission finds that the rules in Chapter 847 are needed, reflect current legal and policy considera-

tions, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 847, Project Rio Employment Activities and Support Services.

TRD-200900040

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: January 6, 2009



The Texas Workforce Commission (Commission) adopts the review of Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits, in accordance with Texas Government Code §2001.039. The proposed notice of intent to review rules was published in the November 7, 2008, issue of the *Texas Register* (33 TexReg 9089).

No comments were received on the proposed notice of intent.

The Commission has assessed whether the reasons for adopting or readopting the rules continue to exist. The Commission finds that the rules in Chapter 849 are needed, reflect current legal and policy considerations, and reflect current procedures of the Commission. The reasons for initially adopting the rules continue to exist. The Commission, therefore, readopts Chapter 849, Employment and Training Services for Dislocated Workers Eligible for Trade Benefits.

TRD-200900041

Reagan Miller

Deputy Division Director, Workforce Policy and Service Delivery

Texas Workforce Commission

Filed: January 6, 2009



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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.

Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period November 2008, as required by Tax Code, §202.058, is \$82.35 per barrel for the three-month period beginning on August 1, 2008, and ending October 31, 2008. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of November 2008, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period November 2008, as required by Tax Code, §201.059, is \$5.91 per mcf for the three-month period beginning on August 1, 2008, and ending October 31, 2008. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of November 2008, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200900037
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: January 6, 2009

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment and renewal of the overpayment recovery audit services contract with Horn & Associates, Inc., 3690 E. Ft. Union Blvd., Suite 202, Salt Lake City, Utah 84121 (Contractor). The Contractor provides overpayment recovery audit services to the Comptroller.

The term of the contract was March 13, 2006 through December 31, 2008. This renewal extends the term of the contract from January 1, 2009 through December 31, 2009.

The total amount of the contract is based on 13.5% of all funds actually recovered and reimbursed back to the State.

The notice of request for proposals (RFP #172m) was originally published in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6951). The notice of award was published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2897).

TRD-200806720
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 29, 2008

Notice of Contract Amendment

The Comptroller of Public Accounts (Comptroller) announces the amendment of the Texas College Savings Plan Management Services contract with OFI Private Investments, Inc., Two World Financial Center, 225 Liberty Street, 11th Floor, New York, New York 10281 (Contractor). The Contractor provides Texas 529 Plan management services to the Texas Prepaid Higher Education Tuition Board. The Amendment revises the fees and other provisions of Exhibit D, "Authorized Personnel; Compensation and Marketing Plan."

The term of the contract is November 6, 2007 through August 31, 2012, with option for two additional 1-year renewals.

The total amount of the contract is based on the fair market value of assets under management.

The notice of request for proposals (RFP #177c) was originally published in the April 27, 2007, issue of the *Texas Register* (32 TexReg 2389). The notice of award was published in the November 23, 2007, issue of the *Texas Register* (32 TexReg 8593).

TRD-200806721
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 29, 2008

Notice of Contract Award

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72-75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the following notice of contract awards for providing professional unclaimed property audit services.

The Notice of Request for Proposals (RFP #190c) was published in the August 29, 2008, issue of the *Texas Register* (33 TexReg 7340).

A contract was awarded to Verus Financial LLC, 500 Chase Parkway, Waterbury, Connecticut 06708.

The total amount of the contract is based on a percentage of the cash value of the net unclaimed property received by Comptroller as a result of an audit. The term of the contract is October 22, 2008 through August 31, 2009.

TRD-200806722
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 29, 2008

Notice of Request for Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapters F and H, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #191c) for Actuarial Services for the Board. The selected actuary will advise and assist the Comptroller and the Board in administering the Board's actuarial activities related to the Texas Guaranteed Tuition Fund ("TTF I") and the new Texas Tuition Promise Fund ("TTPF"), as more fully described in this RFP and the contract, if any resulting from it ("Contract"). The prepaid tuition program (TTFI) currently has approximately \$1.3 billion dollars in invested assets managed by individual investment managers and held by one custodian bank. The Texas Tuition Promise Fund is a new program, launched on September 10, 2008, and accepting new enrollments currently. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary actuary. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about June 1, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774, (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 after 10:00 a.m. on Friday, January 16, 2009, 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) after Friday, January 16, 2009, at 10:00 a.m. CZT. The ESBD address is <http://esbd.cpa.state.tx.us>

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 Monday, January 26, 2009. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. 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 before Friday, January 30, 2009, the Comptroller expects to post responses to questions as a revision to the notice on the ESBD of the issuance of this RFP, located at: <http://esbd.cpa.state.tx.us>. Non-mandatory Letters of Intent and Questions received after the deadline will not be considered; respondents are solely responsible for ensuring timely receipt of non-mandatory letters of intent and questions.

Closing Date: Proposals must be delivered to the Office of the Deputy General Counsel for Contracts, at the location specified above in Room 201 no later than 2:00 p.m. (CZT), on Friday, February 6, 2009. Proposals received after this time and date will not be considered regardless of the reason for the late delivery and receipt; all respondents are solely responsible for ensuring timely receipt of all proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not

pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - January 16, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - January 26, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - January 30, 2009; Proposals Due - February 6, 2009, 2:00 p.m. CZT; Contract Execution - June 1, 2009, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2009, or as soon thereafter as practical.

TRD-200900051

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: January 7, 2009



Notice of Request for Proposals

Pursuant to Chapter 54, Subchapters F, G, and H, Texas Education Code, the Comptroller of Public Accounts (Comptroller), as Chair and Executive Director of the Texas Prepaid Higher Education Tuition Board (Board), on behalf of the Board announces the issuance of a Request for Proposals (RFP #191d) for the purpose of obtaining professional accounting services in the form of a financial audit of the Board's prepaid tuition program, college savings plans, and new prepaid unit tuition plan (Texas Tuition Promise Fund), all of which are qualified tuition programs under Internal Revenue Code Section 529. The successful respondent, if any, will be expected to begin performance of the contract on or about June 1, 2009, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room 201, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on January 16, 2009, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the RFP available electronically on the Electronic State Business Daily (ESBD) after 10:00 a.m. (CZT) on January 16, 2009, at: (<http://esbd.cpa.state.tx.us>).

Non-Mandatory Letters of Intent and Questions: Letters of Intent are non-mandatory. All written inquiries, questions and non-mandatory Letters of Intent must be received at the above-referenced address no later than 2:00 p.m. (CZT) on Tuesday, January 27, 2009. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. Letters of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must be signed by an authorized representative of that entity. Comptroller anticipates that responses to questions received by the deadline will be posted electronically on Monday, February 2, 2009, on the ESBD at: <http://esbd.cpa.state.tx.us> Non-Mandatory Letters of Intent and Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel for Contracts' Office at the location specified above in Room 201 no later than 2:00 p.m. (CZT), on Monday, February 9, 2009. Proposals received after this time and date will not be considered; respon-

dents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

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. The Board will make the final decision. The Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - Friday, January 16, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - Tuesday, January 27, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - Monday, February 2, 2009; Proposals Due - Monday, February 9, 2009, 2:00 p.m. CZT; Contract Execution - June 1, 2009, or as soon thereafter as practical; Commencement of Contract Activities - June 1, 2009.

TRD-200900052
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: January 7, 2009

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/05/09 - 01/11/09 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/05/09 - 01/11/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200806724
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 30, 2008

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 01/12/09 - 01/18/09 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 01/12/09 - 01/18/09 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 01/01/09 - 01/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 01/01/09 - 01/31/09 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-200900033
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 5, 2009

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (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 **February 16, 2009**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on February 16, 2009**. 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: Clarkson Energy Homes, Inc. dba Sun Valley Mobile Home Park; DOCKET NUMBER: 2008-1376-PWS-E; IDENTIFIER: RN101176915; LOCATION: Erath County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 Texas Administrative Code (TAC) §290.46(b) and §290.109(c)(4)(E), by failing to conduct monthly source assessment raw water monitoring of the well; 30 TAC §290.46(f)(1), (3)(A)(i)(III) and (iv), and (B)(iii), by failing to maintain public water system operating records in an organized manner, with copies kept on file or stored electronically and made accessible for review during inspections; 30 TAC §290.46(m)(1)(B), by failing to inspect the facility's pressure tank annually; 30 TAC §290.45(b)(1)(F)(ii) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.46(n)(2), by failing to maintain an up-to-date map of the distribution system; and 30 TAC §290.45(b)(1)(F)(iii), by failing to

provide two or more service pumps having a capacity of two gallons per minute per connection; PENALTY: \$5,146; ENFORCEMENT COORDINATOR: Christopher Keffer, (512) 239-5610; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Eagle Disposal Company, Inc.; DOCKET NUMBER: 2008-1372-MSW-E; IDENTIFIER: RN105163950; LOCATION: Hearne, Robertson County; TYPE OF FACILITY: solid waste hauling business; RULE VIOLATED: 30 TAC §330.15(a) and §330.103(b), and the Code, §26.121(a)(1), by failing to dispose of waste at a facility authorized to receive the waste; PENALTY: \$3,888; ENFORCEMENT COORDINATOR: Danielle Porras, (512) 239-2602; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Frontera Generation Limited Partnership; DOCKET NUMBER: 2008-1625-AIR-E; IDENTIFIER: RN102344645; LOCATION: Mission, Hidalgo County; TYPE OF FACILITY: power station; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(B) and (C), and 122.146(1) and (2), Federal Operating Permit (FOP) Number O-01888, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to timely submit a complete permit compliance certification (PCC) and semi-annual deviation report; PENALTY: \$5,450; ENFORCEMENT COORDINATOR: Jeremy Escobar, (512) 239-1460; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(4) COMPANY: HCN MANAGEMENT, LLC; DOCKET NUMBER: 2008-1666-WQ-E; IDENTIFIER: RN105431985; LOCATION: Copperas Cove, Coryell County; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 Code of Federal Regulations §122.26(c), Texas Pollutant Discharge Elimination System General Permit Number TXR15IX45, Part III Section F.2., and the Code, §26.121(a)(1), by failing to maintain best management practices (BMPs) and structural controls in an effective operating condition to prevent the unauthorized discharge of sediment; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: KMCO, L.P.; DOCKET NUMBER: 2008-1543-AIR-E; IDENTIFIER: RN101613511; LOCATION: Crosby, Harris County; TYPE OF FACILITY: batch chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 9383, Special Condition (SC) Number 6, and THSC, §382.085(b), by failing to control unauthorized emissions during an emission event; and 30 TAC §101.201(f) and THSC, §382.085(b), by failing to provide additional information requested by the TCEQ Houston Regional Office regarding the January 24, 2008, emissions event; PENALTY: \$10,222; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(6) COMPANY: Ata Ur Rahman Khawaja dba M & R Food Market; DOCKET NUMBER: 2008-1387-PST-E; IDENTIFIER: RN102783495; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$3,097; ENFORCEMENT COORDINATOR: Michael Pace, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Merisol USA LLC; DOCKET NUMBER: 2008-1458-AIR-E; IDENTIFIER: RN100214576; LOCATION: Houston, Harris County; TYPE OF FACILITY: chemical manufacturing plant; RULE

VIOLATED: 30 TAC §122.143(4) and §122.146(2), FOP Number O-01254, GTC, and THSC, §382.085(b), by failing to submit the annual PCC; PENALTY: \$3,425; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(8) COMPANY: NEPTUNE INTERNATIONAL, INC. and PARKVIEW PROPERTIES, INC. dba Sugar Land Food Mart; DOCKET NUMBER: 2008-1438-PST-E; IDENTIFIER: RN101794782; LOCATION: Sugar Land, Fort Bend County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by timely and proper submission of a complete 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 delivery certificate; 30 TAC §115.242(9) and THSC, §382.085(b), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with Stage II equipment; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$13,846; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Permian Enterprises, Ltd.; DOCKET NUMBER: 2008-1701-AIR-E; IDENTIFIER: RN105088629; LOCATION: Odessa, Ector County; TYPE OF FACILITY: internal pipe coating company; RULE VIOLATED: 30 TAC §§106.433, 106.495, and 116.110(a), and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization prior to operating a heat cleaning and surface coating operation; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 3300 North A Street, Building 4-107, Midland, Texas 79705-5406, (432) 570-1359.

(10) COMPANY: Union Tank Car Company; DOCKET NUMBER: 2008-1023-AIR-E; IDENTIFIER: RN100224575; LOCATION: Cleveland, Liberty County; TYPE OF FACILITY: railcar refurbishing plant; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Air Permit Number 6370, SC Number 8C(2), FOP Number O-01539, SC Number 6, and THSC, §382.085(b), by failing to conduct quarterly accuracy audits; 30 TAC §116.115(c) and §122.143(4), Air Permit Number 6370B, SC Number 12D, FOP Number O-01539, SC Number 6, and THSC, §382.085(b), by failing to install a continuous flow monitor on the flare; 30 TAC §122.143(4) and §122.145(2)(B) and (C), FOP Number O-01539, GTC, and THSC, §382.085(b), by failing to submit semi-annual deviation reports; and 30 TAC §111.111(a)(4)(A)(ii) and §122.143(4), FOP Number O-1539, SC Number 3, and THSC, §382.085(b), by failing to maintain adequate records to demonstrate compliance with visible emission observations; PENALTY: \$11,530; Supplemental Environmental Project offset amount of \$4,612 applied to Houston-Galveston AERCO's Clean Cities/Clean Vehicles Program; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-200900043

Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 6, 2009

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Notice of Water Quality Applications

The following notices were issued during the period of December 9, 2008 through January 6, 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

AIR LIQUIDE LARGE INDUSTRIES US LP which operates Air Liquide Freeport Facility, has applied for a renewal of TPDES Permit No. WQ0001954000, which authorizes the discharge of cooling tower blowdown, air compressor condensate, and miscellaneous wash water at a daily average flow not to exceed 460,000 gallons per day via Outfall 001. The facility is located on the west side of Farm-to-Market Road 523, north of the intersection of Farm-to-Market Road 523 and State Highway 332, approximately two miles north of the City of Freeport, Brazoria County, Texas.

ALTURA POWER LP which operates a lignite fired steam electric generating station, has applied for a major amendment to TPDES Permit No. WQ0002877000 to increase the daily maximum flow at Outfall 002 to 3,000,000 gallons per day. The current permit authorizes the discharge of coal pile runoff and storm water from the coal facility on an intermittent and flow variable basis via Outfall 001; low volume waste, cooling tower blowdown and storm water runoff at a daily maximum dry weather flow not to exceed 1,500,000 gallons per day via Outfall 002; and storm water runoff from the ash storage area on an intermittent and flow variable basis via Outfall 003. The facility is located approximately one (1) mile east of the Town of Hammond and approximately eight (8) miles north (via State Highway 6) of the City of Calvert, Robertson County, Texas.

BROCK INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. WQ0013798002, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 2.3 acres of non-public access pastureland. The draft permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day via surface irrigation of 10 acres of non-public access pastureland. 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 6,000 feet southeast of the intersection of Farm-to-Market Road 1189 and Grindstone Road, in the Brock Community, in Parker County, Texas.

CHEVRON PHILLIPS CHEMICAL COMPANY LP which operates Chevron Phillips Chemical Company Borger Plant, a chemical manufacturing plant, has applied to amend TPDES Permit No. WQ0002484000 to authorize the replacement of Biochemical Oxygen Demand (BOD) limits via Outfalls 001 and 002 with Chemical Oxygen Demand (COD) limits; and to authorize the discharge of firewater containing reverse osmosis reject water at multiple locations. The current permit authorizes the discharge of storm water commingled with deminimus quantities of process wastewater and cooling tower blowdown at an intermittent and flow-variable basis via Outfalls 001 and 002; and the discharge of reverse osmosis reject water at a daily average flow not to exceed 72,000 gallons per day via Outfall 003. The facility is located approximately two (2) miles northeast of the City of Borger on State Highway Spur 119, Hutchinson County, Texas.

CITY OF ANDERSON has applied for a renewal of TPDES Permit No. WQ0013931001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 65,000 gallons per

day. The facility is located 0.5 mile south of the intersection of Farm-to-Market Road 1774 and State Highway 90 in Grimes County, Texas.

CITY OF ASPERMONT has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Permit No. WQ0010141001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day via surface irrigation of 46.7 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 0.75 mile west of the intersection of Vivian Avenue and North Second Street, north of the City of Aspermont in Stonewall County, Texas. The wastewater treatment facility and disposal site are located in the drainage basin of the Salt Fork Brazos River in Segment No. 1238 of the Brazos River Basin.

CITY OF BAIRD has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0010037001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located immediately east of the TP Lake dam and immediately south of the Texas-Pacific Railroad right-of-way in Callahan County, Texas

CITY OF BERTRAM has applied for a renewal of Permit No. WQ0011669001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 144,000 gallons per day via evaporation and surface irrigation of 50.8 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located west of the City of Bertram on the south side of State Highway 29, approximately 1.7 miles west of the intersection of State Highway 29 and Farm-to-Market Road 1174 North in Burnet County, Texas.

CITY OF BRECKENRIDGE has applied for a renewal of TPDES Permit No. WQ0010040001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located approximately 6,000 feet north-north-east of the intersection of U.S. Highway 180 and U.S. Highway 183, approximately 1,000 feet east of U.S. Highway 183 in Stephens County, Texas.

CITY OF COLLINSVILLE has applied for a major amendment to TPDES Permit No. WQ0010151001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 246,000 gallons per day to a daily average flow not to exceed 500,000 gallons per day. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 246,000 gallons per day. The facility is located approximately 0.5 mile southeast of the intersection of U.S. Highway 377 and Farm-to-Market Road 902 in Grayson County, Texas.

CITY OF IREDELL has applied for a renewal of TPDES Permit No. WQ0011565001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,000 gallons per day. The facility is located approximately 700 feet east of the intersection of Kidd Street and Meridian Street, approximately 1000 feet south of the North Bosque River on the east side of the City of Iredell in Bosque County, Texas.

CITY OF MARION has applied for a renewal of TPDES Permit No. WQ0010048001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 1,400 feet west of Farm-to-Market Road 465 and 1,800 feet south of Farm-to-Market Road 78 in southwest Marion in Guadalupe County, Texas.

CITY OF MERIDIAN has applied for a renewal of TPDES Permit No. WQ0010113002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located north of the North Bosque River, approximately 2900 feet east-northeast of the intersection of State Highway 6 and State Highway 22, and approximately 1800 feet south of the intersection of State Highway 22 and State Highway 144 in Bosque County, Texas.

CITY OF MOODY has applied for a renewal of TPDES Permit No. WQ0010225001, 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 501 5th Street, approximately 1,500 feet northwest of the intersection of State Highway 317 and Farm-to-Market Road 107 in the City of Moody in McLennan County, Texas.

CITY OF TOLAR has applied for a renewal of TPDES Permit No. WQ0014233001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located approximately 1/5 mile west of Farm-to-Market Road 201 (Farm-to-Market Road 56) and 1/4 mile south of U.S. Highway 377 on the south side of Squaw Creek in the City of Tolar in Hood County, Texas.

CREDIT SHELTER TRUST has applied for a Renewal of and conversion to an individual Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003322000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 990 head, of which 990 head are milking cows. The facility is located on the east side of US Highway 281, approximately 3.75 miles south of the intersection with US Highway 67 in Stephenville in Erath County, Texas.

DOWDELL PUBLIC UTILITY DISTRICT has applied for a renewal of TPDES Permit No. WQ0011404001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 950,000 gallons per day. The facility is located in the northwest quadrant of the intersection of Kuykendahl Road and Dowdell Road, approximately one mile east of Farm-to-Market Road 2920 and approximately seven miles west of Interstate Highway 45 in Harris County, Texas.

ELG METALS INC which operates a scrap metal processing facility, has applied for a renewal of TPDES Permit No. WQ0003324000, which authorizes the discharge of storm water on an intermittent and variable basis via Outfall 001. The facility is located at 15135 Jacintoport Blvd., Houston, Texas.

EVONIK DEGUSSA CORPORATION which operates Orange Carbon Black Plant, has applied for a major amendment with renewal to TPDES Permit No. WQ0000814000 to authorize the removal of boiler blowdown, cooling tower blowdown and treated domestic wastewater from the wastestream at Outfall 001; to remove effluent limitations and monitoring requirements for chemical oxygen demand, total suspended solids, fecal coliform, total residual chlorine, total cadmium and total zinc at Outfall 001; to replace existing chemical oxygen demand limitations and monitoring requirements with total organic carbon limitations and monitoring requirements at Outfall 001; and to relocate Outfall 001. The current permit authorizes the discharge of process washwater, boiler blowdown, cooling tower blowdown, treated domestic wastewater, and storm water on an intermittent and flow variable basis via Outfall 001. The proposed permit will authorize the discharge of process washwater, boiler blowdown, cooling tower blowdown, treated domestic wastewater, and storm water on an intermittent and flow variable basis via Outfall 001 (interim), storm water runoff and de minimis amounts of process washwater on an intermittent and flow variable basis via Outfall 001 (final). The facility is located ad-

acent to Farm-to-Market Road 736, approximately two miles east of the intersection of State Highway 87 and Farm-to-Market Road 3247, and three miles northeast of the City of Orange, Orange County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

GEORGE AIVAZIAN has applied for a renewal of TPDES Permit No. WQ0012427001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,000 gallons per day. TCEQ received this application on September 12, 2008. The facility is located at 1910 Highway 6 South in the City of Houston in Harris County, Texas.

GEORGE TED DEVRIES has applied for a major amendment of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0003061000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 1,250 head to a maximum capacity of 2,800 head of which 2,000 head are milking cows and increase land application acres from 273 acres to 561.5 acres. The facility is located approximately 0.8 miles east and 0.6 miles north of the intersection of Erath County Road 385 and Erath County Road 382, said intersection is located approximately 0.13 miles north of the intersection of County Road 385 and County Road 242, said intersection is approximately 1.0 mile west of the intersection of County Road 242 and County Road 378 and said intersection is approximately 0.34 miles north of US Highway 67 in Erath County, Texas.

GREIF PACKAGING LLC has applied for a renewal of TPDES Permit No. WQ0013949001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,000 gallons per day. The facility is located at 10700 Strang Road in the City of La Porte in Harris County, Texas.

GULF SULPHUR SERVICES LTD LLLP which operates Galveston Terminal, a sulphur storage and shipping facility, has applied for a major amendment to TPDES Permit No. WQ0001634000 to authorize the discharge of treated process wastewater at a daily average flow not to exceed 1,230 gallons per day from a proposed Priller Unit, via existing Outfall 001. The existing permit authorizes the discharge of utility wastewater, washwater, and storm water runoff on an intermittent and flow variable basis via Outfall 001. The facility is located in the 4500 block of Port Industrial Boulevard, one fourth of a mile west of the Galveston Island/Pelican Island Causeway, on the south side of the Galveston Ship Channel, in the City of Galveston, Galveston County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 383 has applied for a minor amendment to the Texas Pollutant Discharge Elimination System (TPDES) permit WQ0013875002 to authorize the inclusion of an additional interim discharge phase not to exceed a daily average flow of 990,000 gallons per day. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 2.3 miles northeast of the intersection of State Highway 249 and Spring Cypress Road, 1.8 miles west of the intersection of Stuebner-Airline Road and Spring Cypress Road at 9060 Gleannloch Forest in Harris County, Texas.

HERMANUS AART VAN KRANENBURG has applied for a Renewal of, and conversion to an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003185000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing Dairy facility at a maximum capacity of 750 head, of which 750 head are milking cows. The facility is located on the west side of County Road 428, approximately one mile south of its intersection with Farm-to-Market Road 219 in Erath County, Texas.

HUFFSMITH KOHRVILLE INC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014923001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0014044001 which expired February 1, 2008. The facility is located approximately 1,300 feet east of Farm-to-Market Road 149 and 3,500 feet north of the intersection of Farm-to-Market Road 149 and Spring Cypress Road in Harris County, Texas.

ISP TECHNOLOGIES INC which operates ISP Technologies Plant, has applied for a renewal of TPDES Permit No. WQ0001263000, which authorizes the discharge of utility wastewater and storm water at a daily average flow not to exceed 1,580,000 gallons per day via Outfall 001, and storm water on an intermittent and flow variable basis via Outfall 003. The facility is located south of Attwater Avenue and west of State Highway 146, across from the Galveston County Industrial Water Reservoir and extending south the Moses Bayou in the City of Texas City, Galveston County, Texas.

J B GRAND CANYON DAIRY LP has applied for a Renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0002950000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing Dairy cattle facility at a maximum capacity of 1,950 head of which 1,450 head are milking cows. The facility is located on the east side of Farm to Market Road 219, approximately 5 miles south of the intersection of Farm to Market Road 219 and Highway 1702, approximately 7 miles southeast of Dublin, in Erath County, Texas.

JACK EDWIN VANDEN BERGE has applied for a Renewal of, and conversion to an individual permit, State Registration No. WQ0003184000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing Dairy Cattle facility at a maximum capacity of 500 head, of which 500 head are milking cows. The facility is located on the north side of County Road 177, approximately 1.5 miles east of the intersection of U.S. Highway 281 and County Road 177, said intersection being 3/4 of a mile north of the intersection of U.S. Highway 281 and U.S. Highway 377 in Stephenville, in Erath County, Texas.

LAVACA NAVIDAD RIVER AUTHORITY has applied for a renewal of TPDES Permit No. WQ0012084001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located at the Brackenridge Plantation Campgrounds, approximately 3200 feet south of State Highway 111 and approximately 7.0 miles east of the City of Edna in Jackson County, Texas.

LINDE GAS NORTH AMERICA LLC which operates Linde Gas La Port Syngas Facility, has applied for a renewal of TPDES Permit No. WQ0004092000, which authorizes the discharge of cooling tower blowdown, boiler blowdown, utility wastewater (condensate, demineralizer regenerant streams, and belt press wash water), wash down water from process areas and non-process areas, sample cooler water, and storm water at a daily average flow not to exceed 1,000,000 gallons per day via Outfall 001, and storm water on a flow variable basis via Outfall 002. The facility is located on Strang Road approxi-

mately one-half mile east of the intersection of Strang Road and Miller Cut-off Road, Harris County, Texas.

NUECES COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NO 5 has applied for a renewal of TPDES Permit No. WQ0011583001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at the crossing of Banquete Creek and County Road 40, which is approximately 1.25 miles east of Farm-to-Market Road 666 and 0.5 mile south of State Highway 44 near Banquete in Nueces County, Texas.

OHMSTEDTE LTD which operates Ohmstede La Porte Plant, has applied for a major amendment to TPDES Permit No. WQ0001318000 to authorize the removal of the copper limit and to reduce the monitoring frequency for all constituents via Outfall 001. The current permit authorizes the discharge of hydrostatic test water, domestic wastewater, process wastewater, and storm water at a daily maximum flow not to exceed 45,000 gallons per day via Outfall 001. The facility is located at 12415 La Porte Road on the north side of State Highway 225, approximately 0.5 miles west of the intersection of State Highway 225 and State Highway 146, in the City of La Porte, Harris County, Texas. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

PETER WILFRIDUS DERIDDER has applied for a Major Amendment of, and conversion to an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003290000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to expand an existing dairy cattle facility from 650 head to a maximum capacity of 990 head of which 990 head are milking cows. The facility is located at the intersection of County Road 199 and County Road 202. This intersection is approximately 0.42 mile southeast of the intersection of County Road 199 and State Highway 220, which is approximately 0.48 mile southwest of the intersection of State Highway 220 and U.S. Highway 67, which is about 13.8 miles northeast of the intersection of State Highway 220 and State Highway 6 in Hico in Erath County, Texas.

PORT OF HOUSTON AUTHORITY which operates the Port of Houston Authority Municipal Separate Storm Sewer System, has applied to renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ00004421000, to authorize storm water point source discharges to surface water in the state from the Port of Houston Authority Municipal Separate Storm Sewer System. The municipal separate storm sewer system is located in the cities of Houston, Galena Park, La Porte, Morgan's Point, Pasadena and Seabrook; Harris County, Texas.

RESORT RANCH OF LAKE TRAVIS INC has applied for a renewal of Permit No. WQ0012958001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 17,000 gallons per day via surface irrigation of 19.7 acres of non-public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located four miles northeast of the intersection of State Highway 71 and Ranch Road 2322 and south of Pace Bend Park in Travis County, Texas.

SYNAGRO OF TEXAS CDR INC has applied for renewal of Permit No. WQ0004505000 to authorize the land application of wastewater treatment plant sewage sludge for beneficial use on 56.37 acres. The land application site is located one mile south of Brownsboro on County Road 3600 in Henderson County, Texas. This permit will not authorize a discharge of pollutants into waters in the State.

SYNAGRO OF TEXAS CDR INC has applied for a renewal of Permit No. WQ0004507000, which authorizes the land application of sewage sludge for beneficial use. The current permit authorizes land application of sewage sludge for beneficial use on 171.5 acres. The land application site is located approximately 3/4 mile west of the intersection of Farm-to-Market Road 2171 and Farm-to-Market Road 2172, south of the City of White House in Smith County, Texas

TEXAS DEPARTMENT OF TRANSPORTATION HOUSTON DISTRICT has applied for a renewal of TPDES Permit No. TXS001701. The draft permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004520000, would authorize storm water point source discharges to surface water in the state from the Texas Department of Transportation - Houston District (Pasadena) Municipal Separate Storm Sewer System. This permit will be reissued as TPDES Permit No. WQ0004520000 (TXS001702). The municipal separate storm sewer system is located within the corporate boundary of the City of Pasadena, Harris County, Texas.

TEXAS PARKS AND WILDLIFE DEPARTMENT has applied to the TCEQ for a renewal of TPDES Permit No. WQ0011692001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day. The draft permit authorizes the discharge of treated domestic wastewater at a reduced daily average flow not to exceed 5,000 gallons per day as requested by the applicant. The facility is located adjacent to State Highway 87, approximately 12 miles west of the intersection of Farm-to-Market Road 3322 and State Highway 87 in Jefferson County, Texas.

THE COLONY MUNICIPAL UTILITY DISTRICT NO 1A has applied for a renewal of TPDES Permit No. WQ0014427001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day. The facility is located west of Farm-to-Market Road 969, 1.15 miles northwest of the intersection of State Highway 71 and Farm-to-Market Road 969 in Bastrop County, Texas.

THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY has initiated a minor amendment of the TCEQ permit WQ0014358001 issued to Hays County Municipal Utility District No. 5, to replace Attachment A of the permit. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day via subsurface drip irrigation of 68.87 acres of public access land, which will remain the same. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 2.3 miles south of U.S. Highway 290 and approximately 6,500 feet east of Sawyer Ranch Road. The disposal sites are located throughout the Highpointe Subdivision. The entrance to the subdivision is located on the east side of Sawyer Ranch Road, approximately 1.7 miles along Sawyer Ranch Road, south of the intersection of U.S. Highway 290 and Sawyer Ranch Road. Sawyer Ranch Road is located 8.2 miles west of the intersection of U.S. Highway 290 and Texas Highway 71 (the "Y" in Oak Hill), and 5.5 miles east of Dripping Springs in Hays County, Texas.

TIMBERCREST PARTNERS LLC has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014912001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 172,000 gallons per day. The facility was previously permitted under TPDES Permit No. 13487-001 which expired March 1, 2008. The facility is located at 25903 Elmfield Drive, Spring in Harris County, Texas.

TOWN OF OPDYKE WEST has applied for a renewal of Permit No. WQ0012615001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per

day via surface irrigation of 5 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located 2.5 miles east of the intersection of State Highway 114 and Farm-to-Market Road 3261 in Hockley County, Texas.

VANDER HORST ENTERPRISES LLC AND MILKY WAY DAIRY has applied for a Renewal of, and conversion to an individual permit, Texas Pollutant Discharge Elimination System (TPDES) Registration No. WQ0003094000, for a Concentrated Animal Feeding Operation (CAFO), to authorize the applicant to operate an existing dairy cattle facility at a maximum capacity of 1,225 head of which all are milking cows. The facility is located on the north side of County Road 258 approximately six tenths (0.60) mile north of its intersection with Farm-to-Market Road 847. This intersection is located approximately three and nine tenths (3.9) miles southwest of the intersection of Farm-to-Market Road 847 and Farm-to-Market Road 914. The intersection of Farm-to-Market Road 914 and Farm-to-Market Road 847 is located approximately two and six tenths (2.6) miles south of the intersection of Farm-to-Market Road 914 and US Highway 67 in Stephenville, Erath 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-200900058

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 7, 2009



Proposal for Decision

The State Office of Administrative Hearings (SOAH) issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality (TCEQ or commission) on January 5, 2009, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. MPR Investments, L.L.C. dba Oakridge Square Mobile Home Park; SOAH Docket No. 582-08-2652; TCEQ Docket No. 2007-1935-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against MPR Investments, L.L.C. dba Oakridge Square Mobile Home Park on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-200900059

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: January 7, 2009



Texas Facilities Commission

Request for Proposals #303-9-10404-B

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission, Department of Aging and Rehabilitative Services and Department of State Health Services, announces the issuance of Request for Proposals (RFP) #303-9-10404-B. TFC seeks a ten (10) year lease of approximately 42,071 sq. ft. of office space, 2,700 sq. ft. of warehouse space and 6,000 sq. ft. of vehicle compound space for a total of 50,771 square feet in Lubbock, Lubbock County, Texas.

The deadline for questions is January 23, 2009 and the deadline for proposals is January 30, 2009 at 3:00 p.m. The anticipated award date is February 18, 2009. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TFC Purchaser Sandy Williams at (512) 475-0453. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=80458.

TRD-200900061

Kay Molina

General Counsel

Texas Facilities Commission

Filed: January 7, 2009



Office of the Governor

Notice of Implementation of Interstate Compact for Juveniles

Pursuant to Acts 2005, 79th Leg., Ch. 1007, §3.01, the Office of the Governor hereby provides notice that the Interstate Compact for Juveniles (the Compact) has been implemented. Under Article IX of the Compact, the Compact becomes effective and binding upon legislative enactment by 35 states. On August 26, 2008, the Compact was ratified by the 35th state, thereby making it effective in Texas and all other compacting states.

TRD-200806725

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: December 30, 2008



Request for Grant Applications (RFA) for the Crime Stoppers Assistance Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications to provide grants to certified Crime Stoppers organizations in Texas during the state fiscal year 2010 grant cycle.

Purpose: The purpose of the Crime Stoppers Assistance Fund is to enhance and assist the community's efforts in solving serious crimes.

Available Funding: State funding is authorized for these projects under Article 102.013, Texas Code of Criminal Procedure, which designates CJD as the funds administering agency. The source of funding is a biennial appropriation by the Texas Legislature from funds collected through court costs and fees.

Funding Levels:

- (1) Minimum grant award - \$1,500.
- (2) Maximum grant award - \$10,000.

Standards: Grantees will comply with the standards applicable to this funding source contained in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (2) attorney fees;
- (3) construction;
- (4) extended equipment services arrangements;
- (5) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
- (6) fundraising;
- (7) legal services for adult offenders;
- (8) lobbying;
- (9) membership dues for individuals;
- (10) office space rental;
- (11) overtime pay;
- (12) promotional advertisements of any kind;
- (13) promotional gifts;
- (14) proselytizing or sectarian worship;
- (15) purchase or improvement of real estate;
- (16) rewards, except for statewide projects;
- (17) subscription fees;
- (18) vehicles or equipment for government agencies that are for general agency use;
- (19) weapons, ammunition, explosives or military vehicles;
- (20) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting); and
- (21) any portion of the salary of, or any other compensation for an elected or appointed government official, except in the case of a juvenile court or drug court.

Eligible Applicants: Eligible applicants are Crime Stoppers organizations as defined by §414.001 of the Texas Government Code that are certified by the Crime Stoppers Advisory Council to receive repayments under Articles 37.073 and 42.152 of the Texas Code of Criminal Procedure, or payments from a defendant under Article 42.12 of the Texas Code of Criminal Procedure. Section 414.001 of the Texas Government Code defines a "crime stoppers organization" as follows:

- (1) a private, nonprofit organization that is operated on a local or statewide level, that accepts and expends donations for rewards to persons who report to the organization information about criminal activity and that forwards the information to the appropriate law enforcement agency; or
- (2) a public organization that is operated on a local or statewide level, that pays rewards to persons who report to the organization information about criminal activity, and that forwards the information to the appropriate law enforcement agency.

Requirements: Crime Stoppers programs must focus on reducing crime through the operation of a hotline that receives information about criminal activities and fugitives from members of the public, guarantees anonymity, forwards the information to the appropriate law enforcement agency, and pays rewards.

Project Period: Grant-funded projects must begin on or after September 1, 2009, and will expire on or before August 31, 2010.

Application Process: Applicants must access CJD's grant management website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before March 6, 2009.

Selection Process: Applications are reviewed by CJD staff members or a review group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Byron Bullock at byron.bullock@governor.state.tx.us or (512) 463-1824.

TRD-200900055

Kevin Green

Assistant General Counsel

Office of the Governor

Filed: January 7, 2009



Request for Grant Applications (RFA) for the Juvenile Justice and Delinquency Prevention (JJDP) Act Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that support juvenile justice and delinquency prevention during the state fiscal year 2010 grant cycle.

Purpose: The purpose of the JJDP Act Program is to improve the juvenile justice system and develop effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Prevention Act of 2002, Public Law 107-273, 42 U.S.C 5601 et seq. All grants awarded from this fund must comply with the requirements contained therein. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2009. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Standards: Grantees must comply with the standards applicable to this funding source contained in the *Texas Administrative Code* (1 TAC Chapter 3), and all statutes, requirements, and guidelines applicable to this funding. In addition, grantees must comply with the federal regulations at 28 C.F.R. §31.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) any portion of the salary of, or any other compensation for, an elected or appointed government official;
- (4) vehicles or equipment for government agencies that are for general agency use;
- (5) weapons, ammunition, explosives or military vehicles;

(6) admission fees or tickets to any amusement park, recreational activity or sporting event;

(7) promotional gifts;

(8) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;

(9) membership dues for individuals;

(10) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (i.e., supplanting);

(11) fundraising;

(12) construction;

(13) medical services;

(14) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;

(15) legal services for adult offenders; and

(16) overtime pay.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Independent school districts;

(4) Nonprofit corporations;

(5) Indian tribes performing law enforcement functions;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges; and

(9) Faith-based organizations. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Eligible Activities:

(1) Alternatives to Detention;

(2) Community Assessment Center;

(3) Community Assessment Center;

(4) Data Information/Sharing Systems;

(5) Delinquency Prevention;

(6) Diversion;

(7) Gangs - Juvenile;

(8) Jail Removal;

(9) Juvenile Probation;

(10) Juvenile Sex Offender Programs;

(11) Mentoring;

(12) Professional Therapy and Counseling;

(13) Reentry of Offender into the Community;

(14) Removal of Juvenile Status Offenders from Secure Facilities;

(15) School Based Delinquency Prevention;

(16) Services to Children of Incarcerated Parents;

- (17) Substance Abuse;
- (18) Training and Technology;
- (19) Youth Advocacy; and
- (20) Youth Courts/Teen Courts;

Project Period: Grant-funded projects must begin on or after September 1, 2009, and expire on or before August 31, 2010.

Application Process: Applicants must access CJD's grant management website at <https://cjdonline.governor.state.tx.us> to register and apply for funding.

Preferences: Preference will be given to those applicants that demonstrate cost effective programs focused on proven or promising approaches to services provision.

Closing Date for Receipt of Applications: All applications must be certified via CJD's eGrants website on or before March 13, 2009.

Selection Process:

- (1) For eligible local and regional projects:
 - (a) Applications will be forwarded by CJD to the appropriate regional council of governments (COG).
 - (b) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.
 - (c) CJD will accept priority listings that are approved by the COG's executive committee.
 - (d) CJD will make all final funding decisions based on approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.
- (2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Angie Martin at amartin@governor.state.tx.us or (512) 463-1919.

TRD-200900054
 Kevin Green
 Assistant General Counsel
 Office of the Governor
 Filed: January 7, 2009

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on January 30, 2009, at 10:00 a.m. to receive public comment on the proposed interim per diem Medicaid reimbursement rate for small, state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) operated by the Texas Department of Aging and Disability Services (DADS).

The hearing will be held in compliance with Human Resources Code §32.0282 and Texas Administrative Code (TAC) Title 1, §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements. The public hearing will be held in the Piney Woods Conference Room of the Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas.

Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act (ADA) accommodation or auxiliary aids or services should contact Josie Wheatfall by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, HHSC proposes the following interim daily reimbursement rate for small, state-operated ICF/MR facilities operated by DADS: \$394.49.

HHSC is proposing these interim rates so that adequate funds will be available to serve clients in these facilities. The proposed interim rate accounts for actual and projected increases in costs to operate these facilities. The proposed interim rates will be effective September 1, 2008, if approved.

Methodology and Justification. The proposed rates were determined in accordance with the rate setting methodologies codified at Texas Administrative Code (TAC) Title 1 Chapter 355, Subchapter D, §355.456(e), relating to Reimbursement determination for state-operated facilities.

Briefing Package. A briefing package describing the proposed payment rates will be available on January 16, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Josie Wheatfall by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at josie.wheatfall@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 Josie Wheatfall, Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Josie Wheatfall at (512) 491-1998; or by e-mail to Josie.Wheatfall@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Josie Wheatfall, HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-200806723
 Steve Aragón
 Chief Counsel
 Texas Health and Human Services Commission
 Filed: December 30, 2008

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Notification of Consulting Contract Renewal

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the intent to extend the existing contract, by an amendment, for consultant services to assist the State in assuring the effective performance of the Medicaid Claims/Primary Care Case Management (PCCM) Administrator vendor via Independent Verification and Validation Services (RFP #529-06-0376). The current contractor is Software Engineering Services, 112 North Central Avenue, Phoenix, Arizona 86004, for a sum not to exceed \$1,522,856. HHSC intends to amend the existing contract to add an additional year to its term and increase amount of the contract by \$740,000 unless a better offer is received.

The primary objectives for this contract are to assist HHSC in administering the Medicaid Claims/PCCM Administrator by:

- 1. Assuring the accurate, complete and timely delivery of technology services;

2. Monitoring and reporting on the Medicaid Claims/PCCM Administrator vendor performance, specifically related to quality, risk management and issues resolution on specified technology projects; and
3. Exploring opportunities to maximize efficiency and reduce costs in the administration of the affected State programs.

The RFP for the original contract 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 posted notice of the procurement on the Texas Marketplace on January 9, 2009. Parties interested in submitting alternative proposals should prepare them as described and directed in the original RFP documents.

The successful Vendor will demonstrate the ability to meet these objectives and will be evaluated, in part, by the degree to which the respondent shows how it will achieve them.

The Health and Human Services Commission's Sole Point-Of-Contact for this procurement is:

Max Mrasek, Contract Manager

Texas Health and Human Services Commission

P.O. Box 85200-5200

Austin, Texas 78708-5200

(512) 491-1316

max.mrasek@hhsc.state.tx.us

All proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on January 30, 2009. Proposals received after this time and date will not be considered.

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-200900060

David Brown

Assistant General Counsel

Texas Health and Human Services Commission

Filed: January 7, 2009

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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	Amendment #	Date of Action
Austin	Texas Oncology	L06206	Austin	00	12/19/08
Dallas	Diab Inc.	L06208	Dallas	00	12/16/08
Throughout Tx	JV Industrial Companies LTD	L06214	Freeport	00	12/18/08
Throughout Tx	Wildcat Wireline L.L.C.	L06199	Weatherford	00	12/11/08

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	Arlington Memorial Hospital dba Texas Health Arlington Memorial Hospital	L02217	Arlington	93	12/12/08
Austin	Austin Radiological Association	L00545	Austin	151	12/12/08
Austin	Columbia St. David's Healthcare System L.P. dba South Austin Hospital	L03273	Austin	83	12/16/08
Austin	Heart of Texas Cardiology P.A.	L05622	Austin	06	12/16/08
Bartlesville OK	Conocophillips Pipe Line dba Petroleum Transportation	L02083	Bartlesville OK	21	12/11/08
Baytown Tx	Bayer Materialsience L.L.C.	L01577	Baytown	64	12/29/08
Beaumont	Baptist Hospital of Southeast Texas	L00358	Beaumont	115	12/12/08
Bedford	Stearns Conrad and Schmidt Consulting Engineering Inc.	L06209	Bedford	01	12/11/08
Bryan	Texas Municipal Power Agency Gibbons Creek Stream Electric	L02913	Bryan	21	12/11/08
Bryan	St. Joseph Regional Health Center	L00573	Bryan	71	12/23/08
Cleburne	Cleburne Cancer Center	L06023	Cleburne	01	12/12/08
Dallas	Methodist Hospitals of Dallas Radiology Services	L00659	Dallas	60	12/12/08
Dallas	Baylor University Medical Center	L01290	Dallas	91	12/23/08
Dallas	Medi Physics Inc. dba G.E. Healthcare	L05529	Dallas	21	12/23/08
Deer Park	Shell Oil Products U.S. dba Deer Park Refining Limited Partnership	L04554	Deer Park	26	12/06/08
Denton	Texas Oncology P.A.	L05815	Denton	09	12/17/08
Denton	TTHR Limited Partnership dba Presbyterian Hospital of Denton	L04003	Denton	44	12/19/08
Fort Worth	NDE Inc.	L02355	Fort Worth	27	12/15/08
Glen Rose	Glen Rose Medical Foundation Inc. dba Glen Rose Medical Center	L03225	Glen Rose	24	12/12/08
Houston	Northwest Houston Cardiology P.A.	L05823	Houston	07	12/12/08
Houston	Goodyear Tire and Rubber Company	L00264	Houston	29	12/19/08
Houston	Baker Hughes Oilfield Operations Inc. dba Baker Atlas Houston Technology Center	L04452	Houston	48	12/22/08
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	76	12/12/08
Irving	Healthcare Associates of Irving L.P.	L05371	Irving	06	12/19/08
Longview	Texas Oncology P.A. dba East Texas PET Imaging	L05489	Longview	18	12/16/08
Lubbock	Texas Tech University Environmental Health and Safety	L01536	Lubbock	87	12/12/08
Lufkin	Temple Imaging Center	L05839	Lufkin	04	12/12/08
McAllen	McAllen Hospital L.P. dba McAllen Medical Center	L01713	McAllen	89	12/12/08
McAllen	Cardio Consulting L.L.C.	L05821	McAllen	03	12/17/08

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
McAllen	McAllen Hospital L.P. dba McAllen Medical Center	L01713	McAllen	89	12/12/08
Midland	Endeavor Energy Resources L.P.	L05745	Midland	09	12/12/08
Pasadena	The Dow Chemical Company Clear Lake Operations	L05829	Pasadena	08	12/18/08
Plano	Physician Reliance Network Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	13	12/17/08
Plano	Physician Reliance Network Inc. dba Texas Oncology Plano West Cancer Center	L05896	Plano	14	12/23/08
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	41	12/18/08
Port Arthur	Christus Health Southeast Texas dba Christus Hospital St. Mary	L01212	Port Arthur	95	12/12/08
Richardson Tx	Siemens Government Services Inc.	L05660	Richardson	06	12/30/08
San Angelo	Shannon Clinic	L04216	San Angelo	45	12/23/08
San Antonio	SW Diagnostic Center P.A. dba Southwest Diagnostic Imaging Center P.A.	L03763	San Antonio	10	12/12/08
San Antonio	South Texas Radiology Imaging Centers	L00325	San Antonio	169	12/16/08
Stephenville Tx	Harris Methodist Erath County	L03097	Stephenville	31	12/30/08
Sugarland	St. Lukes Sugarland Partnership L.L.P. dba St. Lukes Sugarland Hospital	L06180	Sugarland	04	12/10/08
Sugarland	St Lukes Sugarland Partnership L.L.P. dba St. Lukes Sugarland Hospital	L06180	Sugerland	03	12/05/08
Sulphur Springs	Hopkins County Memorial Hospital	L02904	Sulphur Spgs	19	12/12/08
Texas City	Sid Acharya M.D. P.A. dba Cardiovascular Specialists of Texas	L05714	Texas City	05	12/12/08
Throughout Tx	Janik Enterprises Inc.	L03319	Arlington	12	12/17/08
Throughout Tx	J-W Wireline Company	L06132	Addison	09	12/15/08
Throughout Tx	Team Industrial Services Inc.	L00087	Alvin	198	12/12/08
Throughout Tx	Lotus L.L.C.	L05147	Andrews	17	12/18/08
Throughout Tx	Industrial Asphalt Inc.	L05453	Austin	07	12/11/08
Throughout Tx	Texas Department of Transportation Construction Division Materials and Pavement Section	L00197	Austin	142	12/11/08
Throughout Tx	ECS-Texas L.L.P.	L05319	Austin	06	12/12/08
Throughout Tx	Applied Standards Inspection Inc.	L03072	Beaumont	106	12/11/08
Throughout Tx	Applied Standards Inspection Inc.	L03072	Beaumont	107	12/15/08
Throughout Tx	Patterson Tublar Services Inc.	L03148	Channelview	27	12/08/08
Throughout Tx	Patterson Tublar Services Inc.	L03148	Channelview	27	12/11/08
Throughout Tx	GME Consulting Services Inc.	L05128	Dallas	06	12/19/08
Throughout Tx	Weatherford International Inc.	L04286	Fort Worth	79	12/15/08
Throughout Tx	Probe Technology Services Inc.	L05112	Fort Worth	22	12/12/08
Throughout Tx	The Dow Chemical Company Texas Operations	L00451	Freeport	85	12/30/08
Throughout Tx	RTD Pipeline Services USA L.P.	L05985	Houston	09	12/10/08
Throughout Tx	Atser Corporation	L04741	Houston	30	12/11/08
Throughout Tx	RTD Pipeline Services USA L.P.	L05985	Houston	10	12/16/08
Throughout Tx	Wood Group Logging Services Inc.	L05262	Houston	31	12/18/08
Throughout Tx	Kenneth E. Tand and Associates Inc.	L05137	Houston	07	12/19/08
Throughout Tx	Williams Brothers Construction Company Inc.	L04823	Houston	07	12/19/08
Throughout Tx	Pathfinder Energy Services Inc.	L05236	Houston	17	12/22/08
Throughout Tx	Metco	L03018	Houston	195	12/22/08
Throughout Tx	Ground Technology Inc.	L05125	Houston	12	12/30/08
Throughout Tx	Enertech Wireline Services L.P.	L05738	Midland	13	12/11/08
Throughout Tx	Eagle X-ray Inc.	L03246	Mont Belvieu	99	12/11/08
Throughout Tx	Sonic Surveys Inc.	L02622	Mont Belvieu	23	12/19/08
Throughout Tx	Turner Industries Group L.L.C. dba Pipe Fabrication Division Texas Operations	L05237	Paris	22	12/11/08

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Tracerco, a Business Unit of Johnson Matthey Inc.	L03096	Pasadena	67	12/05/08
Throughout Tx	Petrochem Inspection Services Inc.	L04460	Pasadena	93	12/11/08
Throughout Tx	Conam Inspection and Engineering Inc.	L05010	Pasadena	160	12/11/08
Throughout Tx	Techcorr USA L.L.C.	L05972	Pasadena	56	12/12/08
Throughout Tx	Thermo Measuretech	L03524	Sugar Land	77	12/09/08
Throughout Tx	Thermo Process Instruments L.P., a subsidiary of Thermo Fisher Scientific Inc.	L03524	Sugarland	79	12/16/08
Throughout Tx	Schlumberger Technology Corporation	L00764	Sugarland	109	12/12/08
Throughout Tx	Invista Sarl	L00386	Victoria	83	12/12/08
Throughout Tx	Kleinfelder Central Inc.	L01351	Waco	63	12/11/08
Tyler	Physician Reliance Network Inc. dba Tyler Cancer Center	L04788	Tyler	14	12/12/08
Tyler	Delek Refining Ltd.	L02289	Tyler	19	12/22/08
Webster	Harvey E. Slusky M.D. P.A. dba Clear Lake Heart Center	L06031	Webster	01	12/12/08

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Pasadena	Oxy Vinyls L.P.	L02257	Pasadena	24	12/08/08
Throughout Tx	Tracerco	L03096	Pasadena	68	12/15/08

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Southwest Regional Cancer Center	L06052	Austin	2	12/19/08
Throughout Tx	Weatherford US L.P.	L05291	Fort Worth	22	12/15/08
Wichita Falls	Saint Gobain Vetrotex America Inc.	L02269	Wichita Falls	37	12/31/08

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 Title 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, PO Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200900028
 Lisa Hernandez
 General Counsel
 Department of State Health Services
 Filed: January 5, 2009



Texas Department of Housing and Community Affairs

Housing Trust Fund (HTF) 2009 Texas Veterans Housing Support Program Notice of Funding Availability (NOFA)

1) Summary.

a) The Texas Department of Housing and Community Affairs ("the Department") announces the availability of \$1,000,000 in funding from

the Housing Trust Fund (HTF) 2009 appropriation to fund housing assistance programs for veterans. Funds will be made available for Veteran Homebuyer Assistance (VHA), Veteran Homebuyer Assistance with Rehabilitation (VHAR), and Veteran Rental Assistance (VRA).

b) The availability and use of these funds is subject to the Department's Housing Trust Fund Rule at 10 TAC Chapter 51 ("HTF Program Rule") and Chapter 2306, Texas Government Code in effect at the time an application is submitted. Other regulations may also apply such as, but not limited to, 24 CFR §84.36 and §2306.5545, Texas Government Code, for conflict of interest, 24 CFR §5.609 for income qualification, 24 CFR Part 5, Subpart A for fair housing, and Chapter 2156, Texas Government Code and the Uniform Grant Management Act (Chapter 783, Texas Government Code and 1 TAC Chapter 5) for procurement. Applicants are encouraged to familiarize themselves with all of the applicable rules that govern the program.

c) Veteran--A veteran is a person who:

i) Served no fewer than ninety (90) continuous days on active duty (including active duty for training) in the Army, Navy, Air Force, Marines, Coast Guard or United States Public Health Service (unless discharged sooner by reason of a service-connected disability), or a reserve component of one of the listed branches of service, or have enlisted or received an appointment in the Texas National Guard after completing all initial active duty training requirements as a condition of enlistment or appointment, or have completed twenty (20) years in a reserve component so as to be eligible for retirement as a condition of enlistment or appointment, or, if currently an active duty member of a listed service or a full-time reservist, have completed the initial service obligation;

ii) Served after September 16, 1940 (for Texas veterans who entered the armed services before January 1, 1977, and who have been discharged from active duty less than thirty (30) years); and/or

iii) Been honorably discharged.

2) Appropriation of Housing Trust Funds.

a) Funds are made available through the Housing Trust Fund and are not subject to the Regional Allocation Formula. All funds released under this NOFA shall be used for the creation of affordable housing for Texas veterans earning 80% or less of the Area Median Family Income (AMFI) as defined by the U.S. Department of Housing and Urban Development (HUD). Priority will be given to veterans with disabilities.

b) 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 by the Department on regular business days until 5:00 p.m., Friday, May 1, 2009, regardless of method of delivery. Applicants are encouraged to review the application process cited in 10 TAC §51.8 and §51.12 and as described herein. Applications that do not meet minimum threshold criteria will not be considered for funding.

3) Limitation on Funds.

a) The Department awards Veterans Housing Support Program funds to eligible organizations. The maximum award amount may not exceed \$250,000, including project, administrative, and soft costs, per Program Activity.

b) Applicants may be eligible to receive up to 4% of project costs for funding for Administrative Costs. Administrative Costs may include:

i) Application intake and processing;

ii) Affirmative marketing and brochures;

iii) Travel costs for administration and contract training;

iv) Professional Services;

v) Construction and disbursement documentation preparation;

vi) Information services;

vii) Procurement of Contractor;

viii) Project document preparation;

ix) Schedule of values; and

x) Work write-up summary.

c) Soft costs are limited to 10% of project costs. Soft Costs may include:

i) Application intake and processing;

ii) Inspections;

iii) Procurement of Contractor;

iv) Schedule of values; and

v) Work write-up summary.

4) Activity and Applicant Eligibility.

a) Eligible and Prohibited Activities are specified in the Department's Housing Trust Fund Rule. Eligible Activities will include those permissible in 10 TAC §51.6. Prohibited Activities include those in 10 TAC §51.7.

b) Eligible Applicants are Units of General Local Government, Nonprofit Organizations, and Public Housing Agencies Authorities (PHA's). Applicants may be ineligible for funding if they meet any of the criteria listed in 10 TAC §51.8(d).

c) Applicants are encouraged to familiarize themselves with the Department's certification and debarment policies prior to application submission.

5) Affordability Requirements.

a) All Housing Trust Fund-assisted housing must follow the income qualification guidelines in 24 CFR §5.609 for VHA, VRA and VHAR and adjusted income guidelines in 24 CFR §5.611 for VRA.

b) Awarded organizations will provide the VHA and VHAR assistance to the homebuyer in the form of a loan. Each loan will be in the form of a 0% interest, 10-year deferred forgivable loan with a term based on the Households AMFI and as further described in §9 of this NOFA. All loans to assisted homebuyers must be evidenced by loan documents provided by the Department and must be payable to the Department.

c) If at any time prior to the full loan period there occurs a resale of the property, a refinance of any superior lien, a repayment of any superior lien, or if the unit ceases to be the assisted Household's principal residence, the remaining loan balance shall become due and payable.

d) Forgiveness of the loan balance is calculated based on a pro-rata annual share of the loan term. The anniversary date of the loan shall constitute completion of the year. Any partial year shall not be waived. The amount due will be based on the pro-rata share number of years of the remaining loan term.

e) In the event the home is sold (voluntary or involuntary), the assisted Household will pay the loan balance from the shared net proceeds of the sale. The shared net proceeds are the sales price minus superior loan repayment (other than Veterans Housing Support Program funds) and any closing costs. A copy of the HUD closing statement must be provided.

6) Construction Standards and Requirements.

a) Housing that is constructed or rehabilitated with HTF 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, HTF-assisted new construction or rehabilitation must meet, as applicable, the International Residential Code, the HOME Program Texas Minimum Construction Standards (TMCS) and be in compliance with the basic access standards in new construction, established by §2306.514, Texas Government Code. In addition, housing that is rehabilitated with funds awarded under this NOFA must meet all applicable energy efficiency standards established by §2306.187, Texas Government Code, and energy standards as verified by RESCHECK.

b) At the completion of the assistance, all properties must meet the International Residential Code and local building codes. If a home is reconstructed, the applicant must also ensure compliance with the universal design features in new construction, established by §2306.514, Texas Government Code, required for any applicant utilizing federal or state funds administered by Texas Department of Housing and Community Affairs in the construction of single family homes.

c) All other HTF-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 HTF funds are used for a rehabilitation development, the entire unit must be brought up to the applicable property standards.

d) Housing that is assisted with HTF funds must comply with the Lead-Based Paint Poisoning Prevention Act (42 USC §§4821 - 4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 USC §§4851 - 4856).

e) Awarded organizations must comply with the requirements of §2156.062, Texas Government Code and the rules promulgated by the Office of the Governor under the Uniform Grant Management Act, Chapter 783, Texas Government Code and 1 TAC Chapter 5 for applicable procurement laws and procedures.

f) Rental units secured through VRA must be inspected prior to occupancy and must comply with the Housing Quality Standards in 24 CFR §982.401.

g) Awarded organizations must ensure that the demolition and removal of all dilapidated units on the lot occurs prior to the Household's occupancy of the Newly Constructed or Rehabilitated housing unit.

h) Awarded organizations must ensure and verify that each building construction contractor performing activities in the amount of \$10,000 or more under the Contract is registered and maintains good standing with the Texas Residential Construction Commission in accordance with Chapters 401 and 416 of the Texas Property Code.

i) Awarded organizations must ensure and verify that each housing unit being rehabilitated in the amount of \$10,000 or more under the Contract is registered with the Texas Residential Construction Commission in accordance with §426.003 of the Texas Property Code.

j) Awarded organizations must provide building construction contractor oversight and ensure builder's risk coverage is provided.

k) Awarded organizations must ensure that the demolition of any housing unit does not occur less than six (6) months prior to the Contract end date.

l) Awarded organizations must ensure a Certificate of Construction Completion must be submitted to the Department upon completion of construction-related activities.

7) Affirmative Marketing Program Requirements.

a) Recipients of Housing Trust Funds must adopt affirmative marketing policies and procedures in furtherance of Texas' commitment to non-

discrimination and equal opportunity in housing. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability.

b) The affirmative marketing requirements and procedures adopted must include:

i) Methods for informing the public, owners, and potential tenants about Federal Fair Housing Laws and the awarded applicant's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

ii) Requirements and practices each awarded applicants must adhere to in order to carry out the Department's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

iii) Procedures to be used by awarded applicants to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

iv) Records that will be kept describing actions taken by the awarded applicants and by owners to affirmatively market units and records to assess the results of these actions; and

v) A description of how the awarded applicants will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

8) Conflict of Interest.

a) In the procurement of property and services by recipients of Housing Trust Funds, the conflict of interest provisions in 24 CFR §85.36 and §2306.5545, Texas Government Code, apply.

b) No persons who exercise or have exercised any functions or responsibilities with respect to activities assisted with HTF funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HTF-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds hereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

c) The conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient which is receiving HTF funds.

9) Veterans Homebuyer Assistance (VHA) and Homebuyer Assistance with Rehabilitation (VHAR) Program Details.

a) Funds released under this NOFA can be allocated to administer a Veterans Homebuyer Assistance Program (VHA) and Veterans Housing Assistance with Rehabilitation (VHAR), including downpayment and closing cost assistance to eligible veteran homebuyers for the acquisition, or acquisition and rehabilitation, of affordable and accessible single family housing. Eligible veteran homebuyers must not have owned a home in the three (3) years prior to the receipt of assistance.

b) Eligible veteran homebuyers may receive loans up to \$35,000 for down payment, closing costs and rehabilitation. A maximum of \$15,000 of the \$35,000 loan can be used for down payment and closing costs. The balance of the assistance can be used for needed accessibility modifications.

i) If the assisted household has an income that is less than 60% of the area median family income or if the head or co-head of the household is an income-qualified up to 80% AMFI disabled veteran, the assistance will be in the form of a 0% interest five (5) year deferred, forgivable loan creating a 2nd or 3rd lien.

ii) If the household income is below 80% of the AMFI, but more than 60% of the AMFI, then the homebuyer assistance will be in the form of a 0% interest ten (10) year deferred, forgivable loan creating a 2nd or 3rd lien.

c) The following first lien purchase loan requirements are imposed for households receiving Veteran Homebuyer Assistance:

i) No adjustable rate mortgage loans (ARMs) are allowed.

ii) No mortgages with a loan to value equal to or greater than 100% are allowed;

iii) No subprime mortgage loans are allowed;

iv) An origination fee and any other fee associated with the mortgage loan may not exceed 2% of the loan amount; and

v) The income ratio (back-end ratio) may not exceed 45%.

d) The contract term for the VHA and VHAR Program Activity shall not exceed twenty-four (24) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, 25% of funds must be committed;

ii) Twelve (12) months, 50% of funds must be committed, 25% of funds drawn;

iii) Eighteen (18) months, 75% of funds must be committed, 50% of funds drawn; and

iv) Twenty-four (24) months, 100% of funds must be committed and 100% of funds drawn.

10) VHA and VHAR Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least \$35,000 to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short-term deficits that are paid by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and the amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as childcare, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the

proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

iv) Homebuyer Counseling: It will be a threshold requirement for each applicant to submit the level of homebuyer counseling that will be provided. A minimum of eight (8) hours of homebuyer counseling must be provided. Evidence must include documentation describing the level of homebuyer counseling proposed, including post purchase counseling. Applicant must state who will provide the homebuyer counseling. A copy of the curriculum and a copy of the proposed written agreement for service provider (if the applicant is not providing the service) must also be provided.

11) Veterans Rental Assistance (VRA) Program Details.

a) Funds released under this NOFA can be allocated toward the Veterans Rental Assistance Program to provide eligible households rental subsidies, including security and utility deposits to tenants earning 80% or less of the Area Median Family Income (AMFI) as defined by HUD.

b) The contract term for VRA shall not exceed forty (40) months; however, individual household assistance is limited to thirty-six (36) months.

c) The Household must comply with the following initial eligibility requirements: participate in an approved self-sufficiency program; maintain principal residency in the rental unit for which the subsidy is being provided; be an income eligible household; reside in a rental unit that is located within the Administrator's Service Area; and meet all other eligibility requirements.

d) Through the VRA program, rental subsidy and security and utility deposit assistance is provided to tenants as a grant, in accordance with written tenant selection policies, for a period not to exceed thirty-six (36) months, which shall include among its objectives the securing of a permanent source of affordable housing on or before the expiration of the rental subsidy. Security deposits and utility deposits may be provided in conjunction with rental assistance. A security deposit cannot exceed two (2) months rent for the unit.

e) The rental standard must not exceed HUD's "Fair Market Rent for the Housing Choice Voucher Program." Rental units must be inspected prior to occupancy and annually by a qualified HQS inspector, and must comply with Housing Quality Standards established by HUD in 24 CFR §982.401.

f) The contract term for the VRA Program shall not exceed forty (40) months and performance under the contract will be evaluated according to the following benchmarks:

i) Six (6) months, application intake complete for 30% for Households to be assisted;

ii) Twelve (12) months, application intake complete for 75% for Households to be assisted;

iii) Eighteen (18) months, 100% of funds must be committed to Households to be assisted and 25% of funds drawn;

iv) Twenty-four (24) months, 100% of funds already committed and 35% of funds drawn;

v) Thirty-six (36) months, 100% of funds already committed and 50% of funds drawn; and

vi) Forty (40) months, 100% of funds already committed and 100% of funds drawn.

12) Veterans Rental Assistance (VRA) Threshold Criteria.

The following threshold criteria listed in the subsection are mandatory requirements at the time of application submission unless specifically

indicated otherwise and will be included in the written agreement, if awarded funds:

i) Cash Reserve: Each awarded applicant will be required to expend funds according to program guidelines and request funds from the Department for eligible expenses. Every Applicant must evidence the ability to administer the program and commit adequate cash reserves of at least one month of rent for the number of households proposed to serve as stated in the application to facilitate administration of the program during the Department's disbursement process. Cash reserves are not permanently invested in the project but are used for short term deficits that are reimbursed by program funds. Evidence of this commitment and the amount must be included in the Applicant's resolution and budget.

ii) Resolution: All applications submitted must include an original resolution from the Applicant's direct governing body, authorizing the submission of the Application, commitment and amount of cash reserves for use during the contract period, naming of a person and the person's title authorized to represent the organization and signature authority to execute a contract. If an Applicant that is a nonprofit organization is requesting a waiver of the grant application fee, they must do so in the resolution, and must state that the nonprofit organization offers expanded services such as child care, nutrition programs, job training assistance, health services, or human services. The resolution must be signed and dated within the six months preceding the application deadline date.

iii) Description of Demand: It will be a threshold requirement to submit a narrative that describes in detail the demand evidenced for the proposed number of units to be assisted in the proposed service area. Source data, calculations and assumptions must be included.

iv) VRA Self Sufficiency Program: It will be a threshold requirement for each Applicant to submit a proposed detailed Self Sufficiency Plan and must describe the process for the transition of households to permanent housing by the end of the thirty-six (36) month rental assistance contract term. The documentation must describe the necessary components for the overall plan proposed for transition of potential tenants. This plan, like a case management plan, should detail the need of the tenant, how these needs will be addressed including any agreements with service providers who shall assist the tenant at meeting these needs, and a proposed timeframe for completing those activities. The plan must include:

A) A sample household budget which will utilize existing sources of income such as employment, disability payments and other types of support that details how the assisted household will afford to be self-sufficient by the end of the thirty-six (36) month rental assistance.

B) If additional income is required to attain self-sufficiency, a plan for attaining the required education or training, or a job search plan must be included.

C) Specific housing goals that will be completed on or before the end of the thirty-six (36) month assistance period include: finding permanently subsidized housing, affordable market housing or other permanent housing solutions. The plan should include the required steps such as completing an application, approximate waiting time to get into the type of housing desired and the cost of the housing to the tenant.

13) Application Review Process.

a) The application review process is described in 10 TAC §51.12.

b) 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 as applicable. Applications will continue to be prioritized for funding based on their "received date." Applications will be reviewed for applicant and activity eligibility, and threshold criteria as described in this NOFA.

c) All Applicants will be processed through the Department's Application Evaluation System, and will include a previous award and past performance evaluation. Poor past performance may disqualify an Applicant for a funding recommendation or the recommendation may include conditions.

d) Applicants Must Meet or Exceed Threshold Criteria.

i) The Department will ensure review of materials required under the NOFA and Application Guide and will issue a notice of any Administrative Deficiencies within forty-five (45) days of the received date. Applications with Administrative Deficiencies not cured within five (5) business days, will be terminated and must reapply for consideration of funds. Applications that have completed this Phase will be reviewed for recommendation to the Board.

ii) 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 without being processed as an Administrative Deficiency.

e) Because Applications are processed in the order they are received by the Department, it is possible that the Department will expend all available HTF funds before an Application has been completely reviewed. 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.

f) 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 that are received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department reserves the right to negotiate individual elements of any Application.

g) Funding recommendations of eligible Applicants will be presented to the Department's Governing Board of Directors based on eligibility and limited by the total amount of funds available under this NOFA and the maximum award amount.

14) Appeals and Dispute Resolutions.

a) 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.

b) For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at 10 TAC Chapter 1, Subchapter A, §1.17 and §2306.082, Texas Government Code.

c) An Applicant may appeal decisions made by staff in accordance with 10 TAC Chapter 1, Subchapter A, §1.7.

15) Application Submission.

a) All applications submitted under this NOFA must be received on or before 5:00 p.m. on Friday, May 1, 2009, regardless of method of delivery.

b) The Department will accept applications from 8:00 a.m. to 5:00 p.m. each business day, excluding federal and state holidays from the date this NOFA is published on the Department's website until the deadline. Question regarding this NOFA should be addressed to:

Texas Department of Housing and Community Affairs

Attention: Housing Trust Fund Program Administrator

HOME and Housing Trust Fund Programs Division

221 E. 11th Street

Austin, Texas 78701

Telephone: (512) 463-8921

E-mail: HTF@tdhca.state.tx.us

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 provided on compact disc (CD-ROM or DVD-ROM).

e) All Application materials including manuals, NOFA, program guidelines, and all applicable HTF rules, will be available on the Department's website at www.tdhca.state.tx.us. Applications will be required to adhere to the Housing Trust Fund Program 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.

f) Applicants are required to remit a non-refundable Application fee payable to the Texas Department of Housing and Community Affairs in the amount of \$30 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), 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 Veterans Housing Support Program.

g) Application Workshop: the Department will present application workshops in locations throughout the State which will provide an overview of the Veterans Housing Support Program Activities eligible under this NOFA and will also provide Application preparation and submission requirements, evaluation criteria, and state and federal program information. The Application workshop schedule and registration will be posted on the Department's website at www.tdhca.state.tx.us.

h) Audit Requirements: An applicant is not eligible to apply for funds or any other assistance from the Department unless a past audit or 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). This is a threshold requirement outlined in the application, therefore applications that have outstanding

past audits will be disqualified. Staff will not recommend applications for funding to the Department's Governing Board unless all unresolved audit findings, questions or disallowed costs are resolved per 10 TAC §1.3(c).

i) Applications must be sent via overnight delivery to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attention: Housing Trust Fund Program Administrator

221 East 11th Street

Austin, Texas 78701-2410

or via the U.S. Postal Service to:

Texas Department of Housing and Community Affairs

HOME and Housing Trust Fund Programs Division

Attention: Housing Trust Fund, Program Administrator

Post Office Box 13941

Austin, Texas 78711-3941

NOTE: This NOFA does not include the text of the various applicable regulatory provisions that may be important to the particular Housing Trust Fund Program. For proper completion of the application, the Department strongly encourages potential applicants to review all applicable regulations.

TRD-200900063

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: January 7, 2009

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Texas Lottery Commission

Instant Game Number 1114 "\$500,000,000 Blockbuster"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1114 is "\$500,000,000 BLOCKBUSTER". The play style is "key number match with win all".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1114 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 1114.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STAR SYMBOL, CHIP SYMBOL, \$5.00, \$10.00, \$20.00, \$25.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$1,000, \$10,000, \$25,000, \$ONE MILL and \$2.5 MILL.

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. 1114 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STAR SYMBOL	WINX5
CHIP SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV

\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$25,000	25 THOU
\$ONE MILL	ONE MIL
\$2.5 MILL	2.5 MIL

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 \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$30.00, \$50.00, \$100, \$200 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$10,000, \$25,000, \$1,000,000 or \$2,500,000.

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 (1114), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 1114-0000001-001.

K. Pack - A pack of "\$500,000,000 BLOCKBUSTER" Instant Game tickets contains 025 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 025 while the other fold will show the back of ticket 001 and front of 025.

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 "\$500,000,000 BLOCKBUSTER" Instant Game No. 1114 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 "\$500,000,000 BLOCKBUSTER" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four) Play Symbols. If a player matches any of YOUR NUM-

BERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "star" play symbol, the player wins 5 TIMES the PRIZE shown for that symbol. If a player reveals a "chip" play symbol, the player wins all 20 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) 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 44 (forty-four) 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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) 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. The "STAR" (5 times multiplier) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. The "CHIP" (win all) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

D. When the "CHIP" (win all) play symbol appears, there will be no occurrence of any YOUR NUMBERS play symbols matching any WINNING NUMBERS play symbols.

E. No more than three matching non-winning prize symbols on a ticket.

F. No duplicate WINNING NUMBERS play symbols on a ticket.

G. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

H. Non-winning prize symbols will never be the same as the winning prize symbol(s).

I. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 20 and \$20).

J. The \$5 and \$10 prize symbols will only appear when they are used to create a win on winning tickets.

K. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$500,000,000 BLOCKBUSTER" Instant Game prize of \$20.00, \$25.00, \$30.00, \$50.00, \$100, \$200 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 \$25.00, \$30.00, \$50.00, \$100, \$200 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 "\$500,000,000 BLOCKBUSTER" Instant Game prize of \$1,000, \$10,000, \$25,000 or \$1,000,000, 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. To claim a "\$500,000,000 BLOCKBUSTER" top level prize of \$2,500,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "\$500,000,000 BLOCKBUSTER" 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.

E. 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 "\$500,000,000 BLOCKBUSTER" 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 "\$500,000,000 BLOCKBUSTER" 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 33,600,000 tickets in the Instant Game No. 1114. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1114 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	6,384,000	5.26
\$25	2,688,000	12.50
\$30	1,344,000	25.00
\$50	672,000	50.00
\$100	812,000	41.38
\$200	151,200	222.22
\$500	44,800	750.00
\$1,000	22,400	1,500.00
\$10,000	840	40,000.00
\$25,000	280	120,000.00
\$1,000,000	40	840,000.00
\$2,500,000	10	3,360,000.00

*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 2.77. 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. 1114 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. 1114, 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-200900029
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: January 5, 2009



Instant Game Number 1154 "Fast Bucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1154 is "FAST BUCKS". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1154 shall be \$3.00 per ticket.

1.2 Definitions in Instant Game No. 1154.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 4, 5, 6, 7, 8, 9, 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, 3X SYMBOL, \$3.00, \$6.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$300, \$3,000 and \$30,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1154 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
3X SYMBOL	WINX3
\$3.00	THREE\$
\$6.00	SIX\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EGHTN

\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINETY
\$300	THR HUND
\$3,000	THR THOU
\$30,000	30 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

G. Mid-Tier Prize - A prize of \$30.00, \$60.00, \$90.00 or \$300.

H. High-Tier Prize - A prize of \$3,000 or \$30,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1154), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 0125 within each pack. The format will be: 1154-0000001-001.

K. Pack - A pack of "FAST BUCKS" 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 "FAST BUCKS" Instant Game No. 1154 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 "FAST BUCKS" Instant Game is determined once the latex on the ticket is scratched off to expose 35 (thirty-five) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins PRIZE shown for that number. If a player reveals a "3X" play symbol, the player wins TRIPLE the PRIZE shown for that symbol. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

- Exactly 35 (thirty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;
- 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;
- Each of the Play Symbols must be present in its entirety and be fully legible;
- Each of the Play Symbols must be printed in black ink except for dual image games;
- The ticket shall be intact;
- The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
- The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
- The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
- The ticket must not be counterfeit in whole or in part;
- The ticket must have been issued by the Texas Lottery in an authorized manner;
- 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;
- The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
- The ticket must be complete and not miscut, and have exactly 35 (thirty-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;
- 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;
- The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
- Each of the 35 (thirty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
- Each of the 35 (thirty-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. No more than four (4) matching non-winning prize symbols will appear on a ticket.

C. The "3X" (trippler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

I. The top prizes will be approximately evenly distributed throughout the delivered game.

2.3 Procedure for Claiming Prizes.

A. To claim a "FAST BUCKS" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00 or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required to pay a \$30.00, \$60.00, \$90.00 or \$300 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 "FAST BUCKS" Instant Game prize of \$3,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FAST BUCKS" 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 "FAST BUCKS" 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 "FAST BUCKS" Instant Game, the Texas Lot-

tery 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 6,000,000 tickets in the Instant Game No. 1154. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1154 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	576,000	10.42
\$6	432,000	13.89
\$9	108,000	55.56
\$15	36,000	166.67
\$18	60,000	100.00
\$24	48,000	125.00
\$30	29,450	203.74
\$60	12,000	500.00
\$90	4,500	1,333.33
\$300	1,450	4,137.93
\$3,000	15	400,000.00
\$30,000	6	1,000,000.00

*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 4.59. 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. 1154 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. 1154, 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-200900030
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: January 5, 2009



Instant Game Number 1178 "Take 5"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1178 is "TAKE 5". The play style is "add up with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1178 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1178.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play

Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 6, 7, 8, 9, 5, STAR SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol CaptionvThe 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. 1178 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
5	FIV
STAR SYMBOL	WINALL
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

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 (1178), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1178-0000001-001.

K. Pack - A pack of "TAKE 5" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "TAKE 5" Instant Game No. 1178 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 "TAKE 5" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) Play Symbols. If a player reveals a "5" play symbol within a GAME, the player wins the PRIZE shown for that game. If a player reveals three "5" play symbols within a GAME, the player wins TRIPLE the PRIZE shown for that game. If a player reveals a "STAR" play symbol, the player WINS ALL 12 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 48 (forty eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at

the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than two (2) matching non-winning prize symbols will appear on a ticket.

C. No duplicate non-winning GAMES in the same order.

D. Only one "5" (win) play symbol will appear within a winning game that is not designated as a triple win or win all.

E. No GAME will contain only two "5" play symbols.

F. Three "5" symbol (tripler) will always appear in a single game on intended winning tickets where the prizes are tripled as dictated by the prize structure.

G. The "STAR" (win all) play symbol will never appear on a ticket that contains a "5" (win) or a "5" (tripler) play symbol.

H. The "STAR" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

I. Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "TAKE 5" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$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 \$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 "TAKE 5" Instant Game prize of \$1,000, \$5,000 or \$50,000, 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 "TAKE 5" 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 "TAKE 5" 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 "TAKE 5" 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 6,000,000 tickets in the Instant Game No. 1178. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1178 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	480,000	12.50
\$10	640,000	9.38
\$15	180,000	33.33
\$20	160,000	37.50
\$50	80,000	75.00
\$100	6,150	975.61
\$500	800	7,500.00
\$1,000	200	30,000.00
\$5,000	17	352,941.18
\$50,000	8	750,000.00

*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 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1178 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. 1178, 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-200900031
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: January 5, 2009



Instant Game Number 1180 "Blackjack Showdown"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1180 is "BLACKJACK SHOWDOWN". The play style is "poker".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1180 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 1180.

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: 16, 17, 18, 19, 20, BUSTS SYMBOL, 4 CARD SYMBOL, 5 CARD SYMBOL, 6 CARD SYMBOL, 7 CARD SYMBOL, 8 CARD SYMBOL, 9 CARD SYMBOL, 10 CARD SYMBOL, J CARD SYMBOL, Q CARD SYMBOL, K CARD SYMBOL, A CARD SYMBOL, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$100, \$500, \$1,000 and \$50,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1180 - 1.2D

PLAY SYMBOL	CAPTION
16 SYMBOL	SXTN
17 SYMBOL	SVTN
18 SYMBOL	EGTN
19 SYMBOL	NITN
20 SYMBOL	TWTY
BUSTS SYMBOL	WINALL5
4 CARD SYMBOL	FOR
5 CARD SYMBOL	FIV
6 CARD SYMBOL	SIX
7 CARD SYMBOL	SVN
8 CARD SYMBOL	EGT
9 CARD SYMBOL	NIN
10 CARD SYMBOL	TEN
J CARD SYMBOL	JCK
Q CARD SYMBOL	QUN
K CARD SYMBOL	KNG
A CARD SYMBOL	ACE
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$50,000	50 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$50.00, \$100 or \$500.

H. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

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 20 (twenty) digit number consisting of the four (4) digit game number (1180), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 1180-0000001-001.

K. Pack - A pack of "BLACKJACK SHOWDOWN" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fan-folded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BLACKJACK SHOWDOWN" Instant Game No. 1180 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 Proce-

dures, and the requirements set out on the back of each instant ticket. A prize winner in the "BLACKJACK SHOWDOWN" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) Play Symbols. For each TABLE: If the total of the cards within a HAND is higher than the DEALER'S HAND, the player wins the PRIZE shown for that hand. If the player reveals a BlackJack (21), the player wins DOUBLE the PRIZE shown for that hand. If the DEALER "Busts", the player wins all 5 PRIZES for that TABLE. 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 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 48 (forty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. No more than three (3) matching non-winning prize symbols will appear on a ticket.

C. Non-winning prize symbols will never be the same as the winning prize symbol(s).

D. No duplicate non-winning prize symbols within a TABLE.

E. No duplicate TABLES on a ticket.

F. The top prize symbol will appear on every ticket unless otherwise restricted.

G. No duplicate non-winning HANDS in the same order on a TABLE.

H. No HAND will contain two aces.

I. There will be no ties between the DEALER'S HAND total and any HAND's total on the same TABLE.

J. The "BUST" (win all) play symbol will only appear as dictated by the prize structure.

K. When the "BUST" (win all) play symbol appears, there will be no occurrence of any HAND's total on the same TABLE being "21" (doubler).

L. A HAND will total "21" (doubler) only as dictated by the prize structure.

M. HANDS 1-5 will never total less than 14.

2.3 Procedure for Claiming Prizes.

A. To claim a "BLACKJACK SHOWDOWN" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$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 \$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 "BLACKJACK SHOWDOWN" Instant Game prize of \$1,000, \$5,000 or \$50,000, 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 "BLACKJACK SHOWDOWN" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BLACKJACK SHOWDOWN" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "BLACKJACK SHOWDOWN" 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 5,040,000 tickets in the Instant Game No. 1180. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1180 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	403,200	12.50
\$10	537,600	9.38
\$15	151,200	33.33
\$20	134,400	37.50
\$50	67,200	75.00
\$100	5,796	869.57
\$500	672	7,500.00
\$1,000	168	30,000.00
\$5,000	19	265,263.16
\$50,000	5	1,008,000.00

*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 3.88. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1180 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. 1180, 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-200900032
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: January 5, 2009



Public Utility Commission of Texas

Amended Notice of Application for Designation as an Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 3, 2008, and amended on December 10, 2008, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of New Cingular Wireless PCS, LLC for Designation as an Eligible Telecommunications Carrier (ETC) in Lieu of Dobson Cellular Systems, Inc. Pursuant to 47 U.S.C. §214(e) and P.U.C. Substantive Rule §26.418. Docket Number 36346.

The Application: New Cingular Wireless PCS, LLC (AT&T Mobility) is requesting ETC designation in order to be eligible to receive fed-

eral and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. AT&T Mobility seeks ETC designation in the non-rural exchanges served by Verizon and AT&T Texas and the entire study areas of four rural incumbent local exchange carriers, Colorado Valley Telephone Cooperative, Inc., Comanche County Telephone Company, Inc., Ganado Telephone Company, Inc., and Industry Telephone Company.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by January 14, 2009. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477. All comments should reference Docket Number 36346.

TRD-200900046
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: January 6, 2009



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 29, 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 Comcast of Houston, LLC for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36540 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipalities of Hillcrest Village, Lake Jackson, and Clute, Texas, including any future annexations.

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 36540.

TRD-200900044
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 6, 2009



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 29, 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 Time Warner Cable San Antonio, L.P. for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 36541 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipalities of Terrell Hills and Floresville, 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 36541.

TRD-200900045
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 6, 2009



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on December 31, 2008, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Ambit Texas LLC for Retail Electric Provider (REP) Certification, Docket Number 36551 before the Public Utility Commission of Texas.

Applicant's requested service area is unspecified in its application.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 23, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36551.

TRD-200900056
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 7, 2009



Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing on December 23, 2008, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after January 3, 2009.

Docket Title and Number: Application of Verizon Southwest, Inc. for Approval of LRIC Study for Transparent LAN Service (Premier) 10G Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 36531.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 36531. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 36531.

TRD-200806719
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 29, 2008



San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the Traffic Signal Re-timing Study IV.

A copy of the Request for Proposals (RFP) may be requested by downloading the RFP and attachments from the MPO's website at www.sametroplan.org or calling Jeanne Geiger, Deputy Director, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CST), Friday, February 6, 2009 at the MPO office:

Isidro "Sid" Martinez

Director

San Antonio-Bexar County Metropolitan Planning Organization

825 South Saint Mary's

San Antonio, Texas 78205

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's oversight committee. The Traffic Signal Re-timing Study IV oversight committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of \$497,500, is contingent upon the availability of Federal transportation planning funds.

TRD-200900027

Jeanne Geiger

Deputy Director

San Antonio-Bexar County Metropolitan Planning Organization

Filed: January 5, 2009



The Texas A&M University System

Asbestos Consultant

Request for Proposals (RFP): RFP01 FPC-09-005

This advertisement is a revised posting. There is a new due date and additional information regarding this opportunity.

The Texas A&M University System is seeking proposals from interested Proposers to provide asbestos consulting services in conjunction with the renovation of the Memorial Student Center on the campus of Texas A&M University located in College Station, Texas.

The RFP documentation may be obtained by contacting: Don Barwick, HUB and Procurement Manager, System Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845 or e-mail at dbarwick@tamu.edu.

The A&M System finds it of utmost importance to plan and monitor the removal of any Asbestos Containing Building Materials found in the Texas A&M University's Memorial Student Center.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on January 30, 2009.

TRD-200900050

Don Barwick

HUB and Procurement Manager

The Texas A&M University System

Filed: January 7, 2009



Award of Consultant Contract Notification

Tarleton State University

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, Tarleton State University furnishes this notice of consultant contract award. A notice for request for proposals was published in the October 24, 2008, issue of the *Texas Register* (33 TexReg 8837).

1) A description of the activities that the consultant will conduct:

Perform an institutional review for the Office of the President. Minimum service requirement involve conducting an objective assessment

(institutional review) of the general condition of Tarleton State University to include, but not be limited to, the following:

Providing a list of background materials needed (which may consist of the company's standard template of requested materials).

Providing a team of three or four "experts" in the field of higher education that would conduct the institutional review. It is preferred that at least one of these experts has some working knowledge of Texas public higher education. Each team member's list of qualifications must accompany the proposal response.

Coordinating dates for the campus visit with the President's Office staff, which will include visits with various constituents at the main campus and off-campus location (i.e. Fort Worth, Thurber, Granbury, Waco, and Killeen).

Providing a preliminary interview schedule to the President's Office for review and comments.

Review and assessing campus specific areas that include: (1) academic programs; (2) technology; (3) faculty; (4) students; (5) administration; (6) budget and finance; (7) intercollegiate athletics and auxiliary services; (8) senior officers; (9) private support and outside grants; (10) public relations (including fundraising and alumni relations); (11) institutional governance; and (12) other issues and conditions presented during the course of the view. Particular emphasis will be given to institutional advancement (including alumni and public relations), general organizational structure (with a particular focus on research and enrollment management), financial aid and scholarships, continuing education, and academic programs with the best opportunities for growth.

Identifying opportunities for operational improvements.

Providing regular updates to the President's Cabinet.

Reviewing specific findings and recommendations with the President's Cabinet and provide a draft document to the Cabinet for clarification.

Completing the review and final report within 45 days of campus visit.

Providing a final document to President Dottavio.

2) The name and business address of the consultant:

MGT of America Inc.

P.O. Box 16399

Tallahassee, Florida 32317-6399

3) The total value and the beginning and ending dates of the contract:

Value: \$49,450.00

Contract dates: The Agreement shall commence on December 8, 2008 and shall terminate on February 16, 2009.

4) The dates on which documents, films, recordings, or reports that the consultant is required to present to the agency are due.

Tarleton reserves the right to request that Consultant submit documents, films, recordings, or reports at any time during the term of this Agreement. Any such documents, films, recordings, or reports compiled by Consultant under this Agreement, if any, shall be submitted no later than February 16, 2009.

TRD-200900062

Vickie Burt Spillers

Executive Secretary to the Board

The Texas A&M University System

Filed: January 7, 2009

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Research Consultant

Request for Proposals (RFP): RFP01 VCR-9-007

This advertisement is a revised posting. There is a new due date.

The Texas A&M University System is accepting proposals and intends to enter into an Agreement with a consultant to Perform the duties of assisting with coordination of the development of the Good Manufacturing Practices (GMP) facility and related programs and potential industry partners with the Texas A&M University System.

The RFP documentation may be obtained by contacting: Don Barwick, HUB and Procurement Manager, System Office of HUB and Procurement Programs, The Texas A&M University System, 200 Technology Way, Ste 1273, College Station, Texas 77845 or e-mail at dbarwick@tamu.edu.

The A&M System finds it of utmost importance to provide direction for the development and implementation of a national communications campaign to proactively promote critical research and academic projects to key stake holders in federal agencies as well as potential partners in industry and academia.

The A&M System will base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and if other considerations are equal give preference to a consultant whose principal place of business is in the state or who will manage the consulting contract wholly from an office in the state.

Proposals must be received on or before 2:00 p.m. CDT on January 20, 2009.

TRD-200900047

Don Barwick
HUB and Procurement Manager
The Texas A&M University System
Filed: January 6, 2009

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Texas State University-San Marcos

Invitation for Consultant Services Proposals

Request for Proposals (RFP) for Consultant/Consulting Firm to Provide Consulting Services Related to Establishing an Effective Center for Research Commercialization Pursuant to the provisions of Texas Government Code, Chapter 2254, Texas State University-San Marcos extends this invitation to a qualified and suitably experienced consultant/consulting firm to assist in the planning and structuring of an effective Center for Research Commercialization at Texas State University-San Marcos.

Scope of Work:

The selected consultant/consulting firm will serve as an advisor to Texas State University-San Marcos in establishing a center for research commercialization. Tasks to be addressed must include (but not limited to):

- * Develop the structure and functions of the Center for Research Commercialization;
- * Review of faculty and staff and recommend focus into areas of promising commercialization (in conjunction with new superior talent searches);

- * Identification of promising innovations for initial commercialization targets with near term results using technology from both inside and outside of Texas State;

- * Start towards one or more near-term revenue opportunities such as subcontracts with industry;

- * Identify likely funding sources from federal agencies, independent programs, grants, and industry;

- * Assist in the pursuit of funds from targeted sources using relationships to increase success rate and accelerate results; and

- * Develop IP partnerships with research institutions in selected Tech market sectors with goal of early success opportunity.

Minimum Specifications:

(1) The consultant's legal name, including type of entity (individual, partnership, corporation, etc.) and address;

(2) Background information regarding the consultant, including the number of years in business and the number of employees;

(3) Information regarding the qualifications, education, and experience of the team members proposed to conduct the requested services;

(4) The earliest date by which the consultant/consulting firm could begin providing the services;

(5) A list of five client references, including any complex institutions or systems of higher education for which the consultant/consulting firm has provided similar consulting services;

(6) A statement of the consultant/consulting firm's approach to providing the services described in this Invitation, any unique benefits the consultant/consulting firm offers Texas State University-San Marcos, and any other information the consultant/consulting firm desires Texas State University-San Marcos to consider in connection with the consultant/consulting firm's offer;

(7) Information to assist Texas State University-San Marcos in assessing whether the consultant/consulting firm will have any conflicts of interest in performing the requested services;

(8) Information to assist Texas State University-San Marcos in assessing the overall cost to Texas State University-San Marcos for the requested services to be performed; and

(9) Information to assist Texas State University-San Marcos in assessing the consultant/consulting firm's capability and financial resources to perform the requested services.

Selection Process:

The consulting services sought herein have not been requested previously.

The award for services, if made, will be based on "best value" criteria by the process indicated in the RFP. The University will (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services.

How to Respond; Submittal Deadline:

To respond to this Invitation, consultants/consulting firms must contact Texas State, as indicated below, to request a solicitation package and submit the information requested in the Specifications section of this RFP and any other relevant information, in a clear and concise written format to:

Texas State University-San Marcos

Attn: Dr. Terry Golding, Director

Center for Research Commercialization
601 University Dr., RF Mitte Bldg., RFM # 3209
San Marcos, Texas 78666

Proposals must be submitted in an envelope or other appropriate container clearly stating RFP number 09-0001 CRC "Establishing an Effective Center for Research Commercialization".

All proposals must be received at the above address no later than 3:30 p.m. CST Tuesday, February 17, 2009 (submittal deadline). Submissions received after the submittal deadline will not be considered.

Questions concerning this Invitation or the RFP should be directed in writing via fax or e-mail to:

Dr. Terry Golding

Tg17@txstate.edu and cc: cl23@txstate.edu

(512) 245-3675 fax

Texas State University-San Marcos may in its sole discretion respond in writing to questions concerning this Invitation. Only Texas State University-San Marcos responses made by formal written addenda to the RFP shall be binding. Oral or other written interpretations or clarifications shall be without legal effect.

TRD-200900034

Robert C. Moerke

Director, Contract Compliance

Texas State University-San Marcos

Filed: January 5, 2009

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Texas Department of Transportation

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of a traffic safety program to reduce the number of motor vehicle related crashes, injuries and fatalities in Texas. These goals and strategies form the basis for the Fiscal Year 2010 (FY10) Highway Safety Performance Plan (HSPP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 U.S.C. §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). Traffic Safety is an integral part of the Texas Department of Transportation and works through the department's 25 districts for

local projects. The program is administered at the state level by the department's Traffic Operations Division. The executive director of the department is the designated Governor's Highway Safety Representative.

The following are the fiscal year 2010 HSPP Program Areas for which projects may be submitted: Planning and Administration; Alcohol and Other Drug Countermeasures; Emergency Medical Services; Motorcycle Safety; Occupant Protection; Pedestrian/Bicycle Safety; Police Traffic Services; Speed Control; Traffic Records; Driver Education and Behavior; Railroad/Highway Crossing; Roadway Safety; Safe Communities; and School Bus. Eligible organizations are state and local governments, educational institutions, and non-profit organizations.

The Request for Proposals for Fiscal Year 2010, as well as the on-line eGrants proposal application system, is available on the department website at the following location:

<https://www.txdot.gov/apps/egrants/eGrantsResources/rfp.html>

Proposals for fiscal year 2010 must be completed using the eGrants system. New eGrants users will need to submit a request for access to the system through the New User link on the eGrants webpage.

Video conference training on submitting proposals through eGrants will be offered at various department district office locations across the state, as well as the Austin headquarters (Texas Department of Transportation, 200 East Riverside Drive, Room A), on January 23, 2009 from 9:00 a.m. - 4:00 p.m. and on February 4, 2009 from 9:00 a.m. - 4:00 p.m. Please contact the department Traffic Safety Specialist in your area or send a note to egrants@dot.state.tx.us to learn about locations near you.

Proposals submitted using the eGrants system must be submitted no later than **5:00 p.m., Central Standard Time, February 20, 2009**. The eGrants system will not allow proposal submission after this date and time.

If you have questions about the Request for Proposal (RFP) please contact:

TRF_RFP2010@dot.state.tx.us

TRD-200900057

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: January 7, 2009

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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 33 (2008) is cited as follows: 33 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 "33 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 33 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 (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with 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).