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*Felicia Mora
10th Grade*

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THE ATTORNEY GENERAL

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

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

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

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

Request for Opinions

RQ-0797-GA

Requestor:

The Honorable John Whitmire

Chair, Committee on Criminal Justice

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether the section 143.023(c), Local Government Code, prohibition against certifying a person 45 years or older for a beginning posi-

tion in a police department applies to the reappointment of a police officer under section 143.0251, Local Government Code (RQ-0797-GA)

Briefs requested by June 25, 2009

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

TRD-200902051

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: May 27, 2009



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER U. ASIAN CITRUS PSYLLID QUARANTINE

4 TAC §§19.410 - 19.413

The Texas Department of Agriculture is renewing the effectiveness of the emergency adoption of the repeal of §§19.410 -

19.413, for a 45-day period. The emergency repeal of these sections was originally published in the February 13, 2009, issue of the *Texas Register* (34 TexReg 911).

Filed with the Office of the Secretary of State on May 20, 2009.

TRD-200901982

Dolores Alvarado Hibbs

General Counsel

Texas Department of Agriculture

Original Effective Date: January 30, 2009

Expiration Date: July 13, 2009

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



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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 202. INFORMATION SECURITY STANDARDS

The Texas Department of Information Resources (department) proposes amendments to 1 TAC Chapter 202, §§202.1, 202.20 - 202.26, and 202.70 - 202.76, concerning Information Security Standards.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The proposed amendments would clarify and standardize policy requirements for state agencies and institutions of higher education to help protect the State's critical information resources and the security of citizens' information.

The proposed clarifications and additions address three technical areas of security controls: firewalls, encryption, and incident response; and they reflect findings and recommendations of the State Auditor's Office (SAO) as well as improved technical standards.

The following proposed amendments are necessary to address the findings and recommendations of SAO Report No. 08-030 for the department to standardize network controls and firewall configurations and establish minimum security policies for network devices and periodically test firewall security to verify compliance with these policies. The affected security control provisions are:

§202.1(4), (5), (7), (10), (14), (15), and (20);

§202.21 and §202.71: (b), (c)(1)(D) - (F), (H), and (I); (c)(2)(B); (d)(3) and (5);

§202.23 and §202.73: (a) and (b);

§202.24 and §202.74: (a)(1)(A) - (C);

§202.25 and §202.75: (2)(A) and (B); (7)(B), (D), (G), (I), (K), (U), (X), (Z)(iii) and (iv), and (AA); (8) "Intrusion Protection System" state agency and institution of higher education; (8)(A) - (D);

§202.25(8) "Perimeter Security Controls" state agency only.

The following proposed amendments are necessary to clarify and improve the technical standards for encryption. The affected encryption standard change provisions are:

§202.1(9);

§202.25 and §202.75: (4), (4)(A) - (C); (7)(H) and (Z)(ii).

The following proposed amendments are necessary to clarify and improve the technical standards and best practices for reporting security incidents. The affected incident response-related change provisions are:

§202.1(22);

§202.25 and §202.75: (7)(J);

§202.26 and §202.76: (a) - (e).

Additionally, technical corrections in numbering, definitions, terminology, word usage, consistency, and clarifications are also included throughout the rule.

Numbering:

§202.1(7) - (29);

§202.21 and §202.71: (c)(1)(F) - (I);

§202.24 and §202.74: (a)(3) and (4);

§202.25 and §202.75: (7)(E) - (AA).

Definitions, terminology, and technical corrections:

§202.1(1) - (3), (8), (11), (12), (16) - (19), (21), (23) - (29);

§202.20 and §202.70;

§202.21 and §202.71: (c); (c)(1); (c)(1)(G); (c)(2)(A);

§202.22 and §202.72: (a); (a)(1)(B); (c);

§202.24 and §202.74: (a)(2); (b);

§202.25 and §202.75: (3)(C), (D), and (E); (5)(C); (6)(C); (7)(F);

§202.75(7).

Word usage, consistency, and clarifications:

§202.20 and §202.70: (1), (4), (5), (6), and (8);

§202.21 and §202.71: (a); (c)(2); (c)(2)(D); (d)(2);

§202.24 and §202.74: (a); (a)(4)(C) - (E);

§202.25 and §202.75: (1); (5)(A); (6)(A) and (B); (7)(Z)(i); (9)(D).

The amendments are proposed under §2054.052(a), Texas Government Code, which provides the department authority to adopt rules to implement its responsibility for information security.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

The proposed amendments to these provisions are as follows:

§202.1(1). Administrative change clarifies the definition of "Access" to more accurately reflect standard terminology.

§202.1(2). Administrative change that clarifies the definition of "Business Continuity Planning" to more consistently reflect standard terminology.

§202.1(3). Administrative change that clarifies the definition of "Confidential Information" to more accurately reflect constitutional, statutory, judicial, and legal requirements.

§202.1(4). Security control change that clarifies the definition of "Control" to more accurately reflect standard terminology.

§202.1(5). Security control change that clarifies the definition of "Custodian of an Information Resource" to more accurately include parties that may act on behalf of a state entity.

§202.1(7) - (29). Administrative change that renumbers to reflect additions and deletions to the list of applicable terms and technologies.

§202.1(7). Security control change that inserts and clarifies the definition of the term "DMZ (Demilitarized Zone)" from §202.25(8) and §202.75(8) (Perimeter Security Controls) in the list of applicable terms and technologies.

§202.1(8). Administrative change that inserts the term "Electronic Communication" in the list of applicable terms and technologies.

§202.1(9). Encryption standard change that inserts the definition of the term "Encryption" in the list of applicable terms and technologies.

§202.1(10). Security control change that inserts and updates the definition of the term "Firewall" from §202.25(8) and §202.75(8) (Perimeter Security Controls) in the list of applicable terms and technologies. The deleted definition "Owner of an Information Resource" is incorporated into the definition of "Information Owner" in §202.1(11).

§202.1(11). Administrative change that renumbers and clarifies the definition of the term "Information Owner" previously listed as "Owner of an Information Resource" at §202.1(10), to more accurately reflect standard terminology.

§202.1(12). Administrative change that renumbers and corrects the definition of the term "Information Resources" that was previously listed as §202.1(7), to accurately reflect the Texas Government Code reference; deletes the previous non-standard term, "Restricted Personal Information."

§202.1(14). Security control change that inserts and clarifies the definition of the term "Intrusion Detection System (IDS)" from §202.25(8) and §202.75(8) (Perimeter Security Controls) in the list of applicable terms and technologies.

§202.1(15). Security control change that inserts the term "Intrusion Prevention System (IPS)" in the list of applicable terms and technologies; deletes the previous non-standard term, "Security Risk Analysis."

§202.1(16). Administrative change that renumbers and clarifies the definition of "Mission Critical Information" that was previously listed as §202.1(9); deletes the previous non-standard term, "Security Risk Assessment" that is now defined as "Risk Assessment" in §202.1(18).

§202.1(17). Administrative change that renumbers the definition of the term "Platform" that was previously listed as §202.1(11); deletes the previous non-standard term, "Security Risk Management" that is now defined as "Risk Management" in §202.1(19).

§202.1(18). Administrative change that renumbers and clarifies the definition of "Risk Assessment" to replace the term "Security Risk Assessment" that was previously listed as §202.1(16).

§202.1(19). Administrative change that renumbers and clarifies the definition of "Risk Management" to replace the term "Security Risk Management" that was previously listed as §202.1(17).

§202.1(20). Security control change that inserts and updates the definition of the term "Router" from §202.25(8) and §202.75(8) (Perimeter Security Controls) in the list of applicable terms and technologies.

§202.1(21). Administrative change that renumbers and clarifies the definition of "Sanitize" that was previously listed as "Sanitized" in §202.1(13) to reflect an update to the referenced sources (U.S. Department of Defense 5220.22-M standards and NIST SP800-88).

§202.1(22). Incident response-related change that renumbers and clarifies the definition of "Security Incident" that was previously listed as §202.1(14); deletes the term "Vulnerability Report".

§202.1(23). Administrative change that inserts the term "Sensitive Personal Information" in the list of applicable terms and technologies.

§202.1(24). Administrative change that renumbers and clarifies the definition of "Storage Device" that was previously listed as §202.1(18); deletes the term "Wireless Security Guidelines."

§202.1(25). Administrative change that renumbers and clarifies the definition of "Test" that was previously listed as §202.1(19).

§202.1(26). Administrative change that inserts the term "Threat" in the list of applicable terms and technologies.

§202.1(27). Administrative change that renumbers and clarifies the definition of "User of an Information Resource" that was previously listed as §202.1(20) to more consistently reflect standard terminology.

§202.1(28). Administrative change that renumbers and clarifies the definition of "Vulnerability Assessment" that was previously listed as §202.1(21) to more consistently reflect Texas Government Code terminology.

§202.1(29). Administrative change that renumbers and updates the definition of "Wireless Access" that was previously listed as §202.1(23); includes the associated references in §202.1(28)(C) that were previously listed in §202.1(24), "Wireless Security Guidelines."

§202.20 and §202.70. Administrative change that aligns risk management terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.20(1), (4), (5), (6), (8) and §202.70(1), (4), (5), (6), (8). Administrative change for wording consistency.

§202.21(a) and §202.71(a). Administrative change that clarifies wording regarding information ownership and associated responsibilities.

§202.21(b) and §202.71(b). Security control change that clarifies the requirement for the information resource owner to coordinate with the head of the agency/institution of higher education when classifying business functional information.

§202.21(c) and §202.71(c). Administrative change that aligns Information Owner terminology to reflect clarifications to the list of applicable terms and technologies in §202.1 and clarifies Information Security Officer functions.

§202.21(c)(1) and §202.71(c)(1). Administrative change that aligns Information Owner terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.21(c)(1)(D) and §202.71(c)(1)(D). Security control change that clarifies the responsibility and authority for data owners to specify controls that extend to services as well as to other information resources.

§202.21(c)(1)(E) and §202.71(c)(1)(E). Security control change that clarifies the responsibility for data owners to confirm that controls are in place to ensure data confidentiality as well as data accuracy, authenticity, and integrity.

§202.21(c)(1)(F) and §202.71(c)(1)(F). Security control change that deletes a redundant subparagraph that is incorporated into the previous subparagraphs.

§202.21(c)(1)(F) - (I) and §202.71(c)(1)(F) - (I). Administrative change that reletters subparagraphs to reflect additions and deletions to the list of Information Owner Responsibilities.

§202.21(c)(1)(G) and §202.71(c)(1)(G). Administrative change that aligns risk management terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.21(c)(1)(H) and §202.71(c)(1)(H). Security control change that adds and clarifies the responsibility and authority for information owners to approve, justify, document, and coordinate agency and institution of higher education exceptions to security controls.

§202.21(c)(1)(I) and §202.71(c)(1)(I). Security control change that adds and clarifies the responsibility and authority for information owners to classify business functional information.

§202.21(c)(2) and §202.71(c)(2). Administrative change that clarifies the responsibilities of information resources custodians to include third party entities.

§202.21(c)(2)(A) and §202.71(c)(2)(A). Administrative change that aligns information owner terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.21(c)(2)(B) and §202.71(c)(2)(B). Security control change that clarifies custodian responsibility to include technical safeguards for information resources.

§202.21(c)(2)(D) and §202.71(c)(2)(D). Administrative change for word usage.

§202.21(d)(2) and §202.71(d)(2). Administrative change for wording consistency.

§202.21(d)(3). Security control change that aligns the requirement for the state agency Information Security Officer to approve security controls for major information resources projects as specified in §§2054.304 - 2054.307, Texas Government Code. This change does not apply to institutions of higher education.

§202.21(d)(5) and §202.71(d)(5). Security control change that adds and clarifies the responsibility and authority for Information Security Officers to approve, justify, document, and communicate agency and institution of higher education exceptions to information security requirements or controls as part of the security risk assessment process.

§202.22(a) and §202.72(a). Administrative change that aligns risk management terminology to reflect clarifications in the list of applicable terms and technologies in §202.1.

§202.22(a)(1)(B) and §202.72(a)(1)(B). Administrative change that aligns data classification terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.22(c) and §202.72(c). Administrative change that aligns risk management and risk assessment terminology to reflect clarifications in the list of applicable terms and technologies in §202.1 and corrects a Texas Government Code reference.

§202.23(a) and §202.73(a). Security control change that clarifies the scope of physical security management and documentation responsibilities.

§202.23(b) and §202.73(b). Security control change that clarifies the requirement for conducting a review at least annually of physical security measures for information resources as part of the risk assessment process, rather than as a separate, uncoordinated, or redundant effort.

§202.24(a) and §202.74(a). Administrative change that aligns the "shall" statement requiring the head of a state agency/institution of higher education to approve the Business Continuity Planning documentation with the requirement to maintain the plan.

§202.24(a)(1)(A) - (C) and §202.74(a)(1)(A) - (C). Security control change that updates and consolidates the elements of Business Impact Analysis for Business Continuity Planning using current best practices that were previously described in §202.24(a)(1)(A) - (H) and §202.74(a)(1)(A) - (H) as well as Recovery Strategies that were previously included in §202.24(a)(3) and §202.74(a)(3).

§202.24(a)(2) and §202.74(a)(2). Administrative change that aligns risk assessment terminology to reflect clarifications in the list of applicable terms and technologies in §202.1.

§202.24(a)(3) and §202.74(a)(3). Administrative change that renumbers previously numbered §202.24(a)(4) and §202.74(a)(4).

§202.24(a)(4) and §202.74(a)(4). Administrative change that renumbers previous §202.24(a)(5) and §202.74(a)(5) and clarifies Disaster Recovery Planning event criteria including severity and duration.

§202.24(a)(4)(C) - (E) and §202.74(a)(4)(C) - (E). Administrative changes that clarify word usage, eliminate redundant language (subparagraph (D)), and reletter §202.24(a)(4)(D) and (E) and §202.74(a)(4)(D) and (E).

§202.24(b) and §202.74(b). Administrative change that aligns mission critical information terminology to reflect clarifications in the list of applicable terms and technologies in §202.1.

§202.25 and §202.75. Security control change that aligns Information Resources Security Safeguard requirements with "shall" statements in subordinate paragraph sections. Also clarifies the process to approve, justify, and document exceptions to information security safeguards.

§202.25(1) and §202.75(1). Administrative change for word usage.

§202.25(2)(A) and §202.75(2)(A). Security control change that clarifies the scope of requirement to identify, document, and protect confidential information files or records consistent with the requirements stated in §202.20(1) and §202.70(1).

§202.25(2)(B) and §202.75(2)(B). Security control change that clarifies and updates the responsibility to protect information resources that are assigned to third parties.

§202.25(3)(C), (D) and §202.75(3)(C), (D). Administrative change that aligns risk management terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.25(3)(E) and §202.75(3)(E). Administrative change that updates the reference for digital signature guidelines.

§202.25(4)(A), (B), (C) and §202.75(4)(A), (B), (C). Encryption standard change that clarifies and updates the technical and procedural standards for encryption. Describes the need to protect portable devices, removable media, and encryption keys. Provides specific encryption requirements for transmitting and storing confidential information and provides options for protecting other data classifications.

§202.25(5)(A) and §202.75(5)(A). Administrative change for wording consistency.

§202.25(5)(C) and §202.75(5)(C). Administrative change that aligns risk assessment terminology to reflect clarifications to the list of applicable terms and technologies in §202.1.

§202.25(6)(A), (B) and §202.75(6)(A), (B). Administrative change that clarifies procedural safeguards for protecting data within test environments.

§202.25(6)(C) and §202.75(6)(C). Administrative change that aligns information owner terminology to reflect clarifications in the list of applicable terms and technologies in §202.1 and for wording consistency.

§202.75(7). Administrative change that aligns risk assessment terminology to reflect clarifications to the list of applicable terms and technologies in §202.1. This change does not apply to §202.25(7).

§202.25(7)(B) and §202.75(7)(B). Security control change that clarifies and updates applicable "Account Management" policy requirements to include user identity and monitoring user access, as well as administering user accounts.

§202.25(7)(D) and §202.75(7)(D). Security control change that adds the recommendation for creating, distributing, and implementing an "Application Security" policy based on applicable risk management decisions and business functions.

§202.25(7)(E) - (AA) and §202.75(7)(E) - (AA). Administrative changes that reletter subparagraphs to reflect updates and additional entries.

§202.25(7)(F) and §202.75(7)(F). Administrative change that reletters and updates "Change Management" to include "Configuration Management" term to reflect standard security terminology.

§202.25(7)(G) and §202.75(7)(G). Security control change that reletters, clarifies and updates applicable "Email" with "Electronic Communication" policy requirements to include electronic messages in addition to email.

§202.25(7)(H) and §202.75(7)(H). Encryption standard change that adds the recommendation for creating, distributing, and implementing an "Encryption" policy based on applicable risk management decisions and business functions.

§202.25(7)(I) and §202.75(7)(I). Security control change that adds the recommendation for creating, distributing, and implementing a "Firewall" management policy based on applicable risk management decisions and business functions. Clauses

(i) - (vi) provide suggested topic areas that the firewall policy should address.

§202.25(7)(J) and §202.75(7)(J). Incident response-related change that clarifies and updates "Incident Management" policy requirements to reflect reporting consistency with §202.26 and §202.76.

§202.25(7)(K) and §202.75(7)(K). Security control change that updates and replaces the previous "Password/Authentication" policy recommendation in §202.25(7)(L) and §202.75(7)(L) with "Identification/Authentication" policy requirements for granting access to resources in an information system based on applicable risk management decisions and business functions.

§202.25(7)(U) and §202.75(7)(U). Security control change that reletters, updates, and clarifies the previous "Platform Hardening" term in §202.25(7)(R) and §202.75(7)(R) with applicable "Platform Management" policy requirements to include configuration, patching and monitoring in addition to installing and maintaining the platform.

§202.25(7)(X) and §202.75(7)(X). Security control change that reletters, clarifies, and updates the previous "Vendor Access" policy in §202.25(7)(U) and §202.75(7)(U) with applicable "Third Party Access" policy requirements to include contractors, vendors, and other outside parties that have access to information resources, support services, and responsibilities for protecting state information.

§202.25(7)(Z)(i) and §202.75(7)(Z)(i). Administrative change that reletters, and clarifies word usage the previous §202.25(7)(W)(i) and §202.75(7)(W)(i).

§202.25(7)(Z)(ii) and §202.75(7)(Z)(ii). Encryption standard change that reletters, clarifies and updates the previous "Wireless Access" policy requirements in §202.25(7)(W)(ii) and §202.75(7)(W)(ii) to reflect revised technical encryption standards for transmitting confidential information.

§202.25(7)(Z)(iii), (iv) and §202.75(7)(Z)(iii), (iv). Security control change that reletters the previous §202.25(7)(W)(iii) and (iv) and §202.75(7)(W)(iii) and (iv), and replaces redundant "Wireless Access" in clause (iii) with information storage and transmission policy standards now contained in §202.25(4)(A), (B) and (C) and §202.75(4)(A), (B) and (C). Also clarifies and updates applicable "Wireless Access" policy requirements to include the requirement to periodically monitor compliance.

§202.25(7)(AA) and §202.75(7)(AA). Security control change that reletters, clarifies, and updates the previous §202.25(7)(X) and §202.75(7)(X) with applicable "Vulnerability Assessment" policy requirements to reflect the various types of assessments that can be performed and eliminate redundancy with other sections regarding risk assessments.

§202.25(8). Security control change that clarifies and updates the "Perimeter Security Controls" safeguard to include the department's requirement to provide related external security services for state agencies pursuant to Chapters 2054 and 2059, Texas Government Code. This change does not apply to institutions of higher education.

§202.25(8) and §202.75(8). Security control change that adds Intrusion Protection System (IPS) to the list of components that may be included as part of perimeter security controls; the IPS description is included at §202.1(14).

§202.25(8)(A), (B), (C), (D) and §202.75(8)(A), (B), (C), (D). Security control change that moves and updates the perimeter

security component descriptions and definitions (DMZ, Firewall, IDS, Router) in the list of applicable terms and technologies (§202.1(7), (10), (13), and (19)).

§202.25(9)(D) and §202.75(9)(D). Administrative change that clarifies the requirement for system Logon Banners to specify that the no expectation of privacy statement applies to system users.

§202.26(a) and §202.76(a). Incident response-related change that clarifies and updates agency and institution of higher education reporting requirements for security incidents based on the business and technical impact of the incident. Also defines the types of security incidents that require timely reporting to department.

§202.26(b) and §202.76(b). Incident response-related change that clarifies and updates requirements for responding to security incidents in ways that comply with law enforcement notification and evidence handling requirements.

§202.26(c) and §202.76(c). Incident response-related change that clarifies and streamlines incident reporting requirements. Also clarifies the security incident reporting responsibilities of vendors and other third parties with respect to the agencies and institutions of higher education that they support.

§202.26(d) and §202.76(d). Incident response-related change that clarifies the monthly summary reporting requirements for state agencies, institutions of higher education, and supporting third parties.

§202.26(e) and §202.76(e). Incident response-related change that incorporates this requirement that Department of Information Resources provide additional reporting instructions into §202.26(c) and (d) and §202.76(c) and (d).

PART III. IMPACT STATEMENTS, PUBLIC BENEFITS AND COSTS

William A. Perez, State of Texas Chief Information Security Officer, has determined that for the first five-year period the rules are in effect there will be minimal fiscal implications for state government. There is no impact on local government as a result of enforcing or administering the rules. The fiscal implication of each provision is discussed below.

Mr. Perez has also determined that for each year of the first five year period the rules are in effect, the public benefit anticipated will be improved protection of confidential information, including sensitive personal information, by state agencies, including institutions of higher education; improved clarity in state agency and institution of higher education firewall policy and clear security standards for all state agency and institution of higher education employees to observe. Other than the positive impact of improved security of citizen information held by state agencies and institutions of higher education, there will be no effect on small businesses, micro-businesses or individuals and no taking of private property for public use.

A. Standardize network controls including firewall configurations.

The following provisions are affected: §§2054.051, 2054.052 and 2054.121, Texas Government Code.

There are no costs to state agencies and institutions of higher education when implementing standard best practices for the recommended provisions for security controls including firewall management using existing IT, security, and management staff.

Annual risk assessments are required internal functions for state agencies and institutions of higher education as addressed in §202.23(b) and §202.73(b). To assist in this effort, the department has funded the licensing for a web-based risk assessment tool that Texas A&M University developed for state agency and institution of higher education compliance with these rules and other risk assessment best practices. The annual cost to the department for user licenses, annual upgrades, and maintenance of the Information Security Awareness Assessment compliance (ISAAC) tool is \$75,000. There is no additional cost to state agencies or institutions of higher education that elect to use the available licenses and web-based training.

Although each state agency and institution of higher education can implement testing and verification controls using manual and other no-cost, automated tools, the department provides annual controlled penetration tests that assess external security controls at no cost to state agencies. In fiscal 2008, the department delivered a total of 163 technical network vulnerability security assessments. Of this total, 112 assessments were complex controlled penetration tests and two were wireless network assessments for eligible state entities. The department also offers these services to institutions of higher education at nominal cost based on proportionate usage (no more than \$15,000 per engagement) to the extent approved by the Information Technology Council for Higher Education and as required by §2059.052 and §2059.151, Texas Government Code. These costs are not applicable to state agencies and are optional expenditures for institutions of higher education.

B. Encryption.

The following provisions are affected: §§2054.051, 2054.052 and 2054.121, Texas Government Code.

There are no costs when agencies and institutions of higher education develop policies that prohibit the storing or transmission of confidential information on certain media or devices. For those state entities that must store and transmit confidential information on portable devices, via wireless networks or via Internet, the proposed provisions provide reasonable assurance that this information will be protected from unauthorized exposure. The cost of encryption installed on portable devices will vary depending on the type of encryption employed. Some encryption can be installed without cost.

In a FY 2006 assessment of twenty-eight of the State's largest agencies, the department found that twelve had wireless implementations with a total of 826 wireless users. This number has continued to grow through the implementation of additional wireless technologies and business continuity contingency planning for remote computing. The ongoing emphasis on mobility and collaboration has made encryption a top priority to protect data. When properly prioritized and implemented, encryption investments can not only meet legislative mandates and compliance-driven regulations, they reinforce customer confidence in e-government services.

Between January 2005 and December 2008, thirty-four of the ninety-two incidents reported for Texas-based organizations were attributed to state government entities (Identity Theft Resource Center, "2008 Breach List" and Privacy Rights Clearing House, "Chronology of Data Breaches," 2008). The number of individual records exposed totaled over 3 million, which is over twelve percent of the state's population. The estimated cost of this type of security breach is at an all-time high of \$202 per

record exposed (Ponemon Institute "Cost of a Data Breach" for the year 2008).

To assist state entities with their data protection efforts and to avoid the costs cited above, particularly for confidential data on mobile devices, the department issued a Buyers' Alert for a Whole Disk Encryption product in the fourth quarter of FY 2008 that was subsequently extended into FY 2009. This encryption solution satisfies all current and proposed state and federal data encryption compliance requirements. As a result of this offering, State entities increased their acquisition of Whole Disk Encryption licenses from 500 in FY 2007 to almost 60,000 in 2008. Department-managed "Go Direct" contracts for these types of products increased from \$87,000 in FY 2007 to over \$730,000 FY 2008 and the first quarter of FY 2009. This type of enhanced security for confidential information stored on mobile devices is available at low, commodity pricing (approximately \$11.50 per license) via multiple vendors on department-managed contracts. State entities can also avoid the risk to confidential information and the associated direct and indirect costs by adopting mobile computing and other information security policies that do not place confidential information at high risk of unauthorized disclosure.

C. Incident Reporting

The following provisions are affected: §§2054.051, 2054.052 and 2054.121, Texas Government Code.

There are no costs when agencies and institutions of higher education provide security incident reporting to the department using existing IT, security, and management staff. The department received a \$250,000 allocation of State Homeland Security Program (SHSP) funds in fiscal year 2008 through the Texas State Administrative Agency (SAA) and the Governor's Division of Emergency Management (GDEM) to develop a sustainable Texas Computer Security Incident Response Team (CSIRT) program. The CSIRT development, training, and certification program is conducted in partnership with Carnegie Mellon University. To be effective, the department and agency CSIRT members need to receive timely reporting of significant security incidents as well as comprehensive monthly summary reports. The first two CSIRT training phases were completed in FY 2008. The third phase for the first class has been completed and a new training cycle will begin in the fourth quarter of FY 2009. The department sponsors CSIRT activities at no cost to state agencies.

For monthly summary reporting, the department provides a web-based Security Incident Reporting System (SIRS) for the use of all state entities that are required to provide monthly summary reports of security events. The department maintains, updates and provides training for the SIRS reporting tool at no cost to state agencies and institutions of higher education. Additionally, the department coordinates with supporting vendors to provide compatible security incident reporting using automated network security monitoring tools to ease the work load of state security personnel at no cost to state agencies and institutions of higher education.

D. Technical corrections in numbering, definitions, terminology, word usage, consistency, and clarifications

The following provisions are affected: §§2054.051, 2054.052 and 2054.121, Texas Government Code.

There are no costs for agencies and institutions of higher education to implement these administrative changes.

PART IV. COMMENTS; AGENCY CERTIFICATION

Comments on the proposed rule changes may be submitted to Renee Mauzy, General Counsel, 300 West 15th Street, Suite 1300, Austin, Texas 78701, or to renee.mauzy@dir.state.tx.us. Comments will be accepted for 30 days after publication in the *Texas Register*.

SUBCHAPTER A. DEFINITIONS

1 TAC §202.1

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§202.1. *Applicable Terms and Technologies for Information Security.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access--~~The physical or logical capability to [To approach,] interact with, or otherwise make use of information resources.~~

(2) Business Continuity Planning--The process of identifying mission critical data systems and business functions, analyzing the risks and probabilities of service disruptions and developing procedures to restore those systems and functions.

(3) Confidential Information--Information that must be protected from unauthorized disclosure or public release based on state or federal law (e.g. the Texas Public Information Act, and other constitutional, statutory, judicial, and legal agreement requirements). [~~Information that is excepted from disclosure requirements under the provisions of applicable state or federal law, e.g. the Texas Public Information Act.~~]

(4) Control--A safeguard or protective action, device, policy, procedure, technique, or other measure prescribed to meet security requirements (i.e., confidentiality, integrity, and availability) that may be specified for a set of information resources. Safeguards may include security features, management constraints, personnel security, and security of physical structures, areas, and devices. [~~Any action, device, policy, procedure, technique, or other measure that improves security.~~]

(5) Custodian of an Information Resource--A person responsible for implementing the information owner-defined controls and access to an information resource. Custodians may include state employees, vendors, and any third party acting as an agent of, or otherwise on behalf of the state entity.

(6) Department--The Department of Information Resources.

(7) DMZ--A network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and other hosts. A DMZ usually includes devices that are accessible to Internet traffic.

(8) Electronic Communication--A process used to convey a message or exchange information via electronic media. It includes the use of electronic mail (email), Internet access, Instant Messaging (IM), Short Message Service (SMS), facsimile transmission, and other paperless means of communication.

(9) Encryption (encrypt, encipher, or encode)--The conversion of plaintext information into a code or cipher text using a variable, called a "key" and processing those items through a fixed algorithm to create the encrypted text that conceals the data's original meaning.

(10) Firewall--A software or hardware device or system that filters communications between networks that have different se-

curity domains based on a defined set of rules. A firewall may be configured to deny, permit, encrypt, decrypt, or serve as an intermediary (proxy) for network traffic.

(11) Information Owner--A person with statutory or operational authority for specified information (e.g., supporting a specific business function) and responsibility for establishing the controls for its generation, collection, processing, access, dissemination, and disposal. The Information Owner may also be responsible for other information resources including personnel, equipment, and information technology that support the Information Owner's business function.

(12) ~~[(7)]~~ Information Resources--Is defined in §2054.003(7), Government Code and/or other applicable state or federal legislation.

(13) ~~[(8)]~~ Information Security Program--The elements, structure, objectives, and resources that establish an information resources security function within an institution of higher education, or state agency.

(14) Intrusion Detection System (IDS)--Hardware or a software application that can be installed on network devices or host operating systems to monitor network traffic and host log entries for signs of known and likely methods of intruder activity and attacks. Suspicious activities trigger administrator alarms and other configurable responses.

(15) Intrusion Prevention System (IPS)--Hardware or a software application that can be installed on a network or host operating system to monitor network and/or system activities for malicious or unwanted behavior and can automatically block or prevent those activities. (Firewalls, routers, IDS devices, and anti-virus gateways all may have IPS capabilities). IPS can make access control decisions based on application content.

(16) ~~[(9)]~~ Mission Critical Information--Information that ~~[is confidential or]~~ is defined by the institution of higher education, or state agency to be essential to the institution of higher education, or state agency function(s).

~~[(10) Owner of an Information Resource--A person responsible:]~~

~~[(A) For a business function; and]~~

~~[(B) For determining controls and access to information resources supporting that business function.]~~

(17) ~~[(11)]~~ Platform--The foundation technology of a computer system. The hardware and systems software that together provide support for an application program. (Ref: Practices for Protecting Information Resources Assets.)

(18) Risk Assessment--The process of identifying, evaluating, and documenting the level of impact that may result from the operation of an information system on an organization's mission, functions, image, reputation, assets, or individuals. Risk assessment incorporates threat and vulnerability analyses and considers mitigations provided by planned or in-place security controls.

(19) Risk Management--Decisions to accept risk exposures or to reduce vulnerabilities and to align information resources risk exposure with the organization's risk tolerance.

(20) Router--A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which

it is connected. A router is located at any intersection where one network meets another.

(21) Sanitize--A Process to remove information from media such that data recovery is not possible. It includes removing all confidential labels, markings, and activity logs as specified in applicable National Institute of Standards and Technology Special Publication (NIST SP) 800-88 or U.S. Department of Defense 5220.22-M guidelines and standards for media sanitization.

~~[(12) Restricted Personal Information--Includes an individual's social security number, or data protected under state or federal law (e.g., financial, medical or student data).]~~

~~[(13) Sanitized--Overwriting data using software tools and procedures to comply with the U.S. Department of Defense 5220.22-M standard for disk sanitization. For specific types storage media see Department of Defense 5220.22-M §8-500. Software and Data, Table 4 Clearing and Sanitization Data Storage]~~

(22) ~~[(14)]~~ Security Incident--An event which results in accidental or deliberate unauthorized access, loss, disclosure, modification, disruption, or destruction of information resources ~~[whether accidental or deliberate].~~

(23) Sensitive Personal Information--A category of personal identity information as defined by §521.002(a)(2), Business and Commerce Code.

~~[(15) Security Risk Analysis--The process of identifying and documenting vulnerabilities and applicable threats to information resources.]~~

~~[(16) Security Risk Assessment--The process of evaluating the results of the risk analysis by projecting losses, assigning levels of risk, and recommending appropriate measures to protect information resources.]~~

~~[(17) Security Risk Management--Decisions to accept exposures or to reduce vulnerabilities.]~~

(24) ~~[(18)]~~ Storage Device--Any fixed or removable device that contains data and maintains the data after power is removed from the device, such as a DVD/CD-ROM, external or internal hard drive, Universal Serial Bus (USB) flash drive, memory card, or media player.

(25) ~~[(19)]~~ Test--A simulated or, otherwise documented event ~~["real-live" incident]~~ for which results and records are kept ~~[of the incident].~~

(26) Threat--Any circumstance or event with the potential to adversely impact organizational operations (including mission, functions, image, or reputation), organizational assets, or individuals through an information system via unauthorized access, destruction, disclosure, modification of information, and/or denial of service.

(27) ~~[(20)]~~ User of an Information Resource--An individual or automated application authorized to access an information resource in accordance with the information owner-defined controls and access rules.

(28) ~~[(21)]~~ Vulnerability Assessment--A documented evaluation containing information described in §2054.077(b), Government Code ~~[measurement of vulnerability]~~ which includes the susceptibility of a particular system to a specific attack ~~[and the opportunities available to a threat agent to mount that attack].~~

~~[(22) Vulnerability Report--A computer related report containing information described in §2054.077(b), Government Code, as that section may be amended from time to time.]~~

(29) ~~[(23)]~~ Wireless Access--Using one or more of the following technologies to access the information resources systems of a state agency or institution of higher education:

(A) Wireless Local Area Networks--Based on the IEEE 802.11 family of standards.

(B) Wireless Personal Area Networks--Based on the Bluetooth and/or InfraRed (IR) technologies.

(C) Wireless Handheld Devices--Includes text-messaging devices, Personal Digital Assistant (PDAs), and smart phones. NIST SP 800-48 provides an overview of Wireless Network Security 802.11 technologies and provides guidelines to reduce the risks associated Bluetooth and Handheld Devices.

~~[(24) Wireless Security Guidelines--The National Institute of Standards and Technology Special Publication 800-48, Wireless Network Security 802.11, Bluetooth and Handheld Devices.]~~

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 May 21, 2009.

TRD-200901999

Renee Mauzy

General Counsel

Department of Information Resources

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 475-4750



SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

1 TAC §§202.20 - 202.26

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§202.20. Security Standards Policy.

The following are policies of the State of Texas that apply to all state agencies. Each state agency should apply the Security Standards Policy based on documented [security] risk management decisions:

(1) Information resources residing in the various state agencies of state government are strategic and vital assets belonging to the people of Texas. These assets shall [must] be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against unauthorized access, disclosure, modification or destruction, whether accidental or deliberate, as well as to assure the availability, integrity, utility, authenticity, and confidentiality of information. Access to state information resources shall [must] be appropriately managed.

(2) All state agencies are required to have an information resources security program consistent with these standards, and the state agency's head is responsible for the protection of information resources.

(3) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for

intended purposes as defined by the state agency and consistent with applicable laws.

(4) Risks to information resources shall [must] be managed. The expense of security safeguards shall [must] be commensurate with the value of the assets being protected.

(5) The integrity of data, its source, its destination, and processes applied to it shall [must] be assured. Changes to data shall [must] be made only in an authorized manner.

(6) Information resources shall [must] be available when needed. Continuity of information resources supporting critical governmental services must be ensured in the event of a disaster or business disruption.

(7) Security requirements shall be identified, documented, and addressed in all phases of development or acquisition of information resources.

(8) State agencies shall [must] ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

§202.21. Management and Staff Responsibilities.

(a) The state agency head or his or her designated representative(s) shall review and approve information ownership and associated responsibilities to include personnel, equipment, or information technology hardware and software. ~~[ownership of information resources and their associated responsibilities.]~~

(b) ~~[The owner of an information resource, with the state agency head's or his or her designated representative's(s') concurrence, is responsible for classifying business functional information.]~~ State agencies are responsible for defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the appropriate controls for each.

(c) Information owners [Owners], custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the state agency. In cases where information resources are used by more than one major business function, the owners shall reach consensus and advise the information security officer [function] as to the designated owner with responsibility for the information resources. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Information Owner Responsibilities. The owner or his or her designated representative(s) [representatives(s)] are responsible for and authorized to:

(A) Approve access and formally assign custody of an information resources asset.[;]

(B) Determine the asset's value.[;]

(C) Specify data control requirements and convey them to users and custodians.[;]

(D) Specify appropriate controls, based on a risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources and services outsourced by the state agency.

(E) Confirm that controls are in place to ensure the confidentiality, integrity, and availability of data and other assigned information resources [accuracy, authenticity, and integrity of data].

~~[(F) Ensure compliance with applicable controls;]~~

(F) ~~[(G)]~~ Assign custody of information resources assets and provide appropriate authority to implement security controls and procedures.

(G) ~~[(H)]~~ Review access lists based on documented [~~security~~] risk management decisions.

(H) Approve, justify, document, and be accountable for exceptions to security controls. The information owner shall coordinate exceptions to security controls with the agency information security officer or other person(s) designated by the state agency head.

(I) The information owner, with the concurrence of the state agency head or his or her designated representative(s), is responsible for classifying business functional information.

(2) Custodian responsibilities. Custodians of information resources, including third party entities providing outsourced information resources services to state agencies shall [must]:

(A) Implement the controls specified by the information owner(s);

(B) Provide physical, technical, and procedural safeguards for the information resources;

(C) Assist owners in evaluating the cost-effectiveness of controls and monitoring; and

(D) Implement ~~the~~ monitoring techniques and procedures for detecting, reporting, and investigating incidents.

(3) User responsibilities. Users of information resources shall use the resources only for defined purposes and comply with established controls.

(d) The Information Security Officer. Each state agency head or his or her designated representative(s) shall designate an information security officer to administer the state agency information security program. The Information Security Officer shall report to executive level management.

(1) It shall be the duty and responsibility of this individual to develop and recommend policies and establish procedures and practices, in cooperation with owners and custodians, necessary to ensure the security of information resources assets against unauthorized or accidental modification, destruction, or disclosure.

(2) The Information Security Officer shall document and maintain an up-to-date information security program. The information security program shall [must] be approved by the state agency head or his or her designated representative(s).

(3) The Information Security Officer is responsible for monitoring the effectiveness of defined controls for mission critical information and shall verify that appropriate security controls are in place for all major information resources projects, including those projects being provided for a state agency, in whole or in part, by a state agency contractor, as required by §§2054.304 - 2054.307, Government Code.

(4) The Information Security Officer shall report, at least annually, to the state agency head or his or her designated representative(s) the status and effectiveness of information resources security controls.

(5) The Information Security Officer with the approval of the state agency head or his or her designated representative may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented and communicated as part of the risk assessment process.

(e) A review of the state agency's information security program for compliance with these standards will be performed at least annually, based on business risk management decisions, by individual(s) independent of the information security program and designated by the state agency head or his or her designated representative(s).

§202.22. *Managing Security Risks.*

(a) A [~~security~~] risk assessment [analysis] of information resources shall be performed and documented. The [~~security~~] risk assessment [analysis] shall be updated based on the inherent risk. The inherent risk and frequency of the [~~security~~] risk assessment [analysis] will be ranked, at a minimum, as either "High," "Medium," or "Low," based primarily on the following criteria:

(1) High Risk-annual assessment--Information resources that:~~[:]~~

(A) Involve large dollar amounts or significantly important transactions, such that business or government processes would be hindered or an impact on public health or safety would occur if the transactions were not processed timely and accurately, or

(B) Contain confidential or other [sensitive] data such that unauthorized disclosure would cause real damage to the parties involved, or

(C) Impact a large number of people or interconnected systems.

(2) Medium Risk-biennial assessment--Information resources that:~~[:]~~

(A) Transact or control a moderate or low dollar value, or

(B) Data items that could potentially embarrass or create problems for the parties involved if released, or

(C) Impact a moderate proportion of the customer base.

(3) Low Risk-biennial assessment--Information resources that:~~[:]~~

(A) Publish generally available public information, or

(B) Result in a relatively small impact on the population.

(b) A system change could cause the overall classification to move to another risk level.

(c) Risk [Security risk] assessment results, vulnerability reports, and similar information shall be documented and presented to the state agency head or his or her designated representative(s) [~~representative~~]. The state agency head or his or her designated representative(s) shall make the final [~~security~~] risk management decisions to either accept exposures or protect the data according to its value/sensitivity. The state agency head or his or her designated representative(s) shall [must] approve the security risk management plan. This information may be exempt from disclosure under §2054.077(c) [~~§2054.77(e)~~], Government Code.

§202.23. *Managing Physical Security.*

(a) The agency head or his or her designated representative(s) shall document and manage physical access to mission critical information resources facilities to ensure the protection of information resources from unlawful or unauthorized access, use, modification or destruction.

(b) The state agency head or designated representative(s) shall reviews physical security measures for information resources at least annually as part of the risk assessment process.

~~[(a) Physical access to mission critical information resources facilities shall be managed and documented by the state agency head or his or her designated representative(s).]~~

~~[(b) Reviews of physical security measures for information resources shall be conducted annually by the state agency head or designated representative(s).]~~

(c) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(d) Written emergency procedures shall be developed, updated, and tested at least annually.

(e) State agencies will refer to the State Office of Risk Management for applicable rules and guidelines.

§202.24. Business Continuity Planning.

(a) Business Continuity Planning covers all business functions of a state agency. ~~It [and it] is a business management responsibility. State agencies shall maintain written Business Continuity Plans that address information resources so that the effects of a disaster will be minimized, and the state agency will be able either to maintain or quickly resume mission-critical functions. [should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the state agency will be able to either maintain or quickly resume mission-critical functions.]~~ The state agency head or his or her designated representative(s) shall approve the plan [Plan]. The plan [Plan] shall be distributed to key personnel and a copy stored offsite. Elements of the plan [Plan] for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall identify the following elements [address maximum tolerable downtime for time-critical support services and resources including, but not limited to]:

(A) Mission Critical Information Resources (specific system resources required to perform critical functions) to include:

(i) Internal and external points of contact for personnel that provide or receive data or support interconnected systems.

(ii) Supporting infrastructure such as electric power, telecommunications connections, and environmental controls.

(B) Disruption impacts and allowable outage times to include:

(i) Effects of an outage over time to assess the maximum allowable time that a resource may be denied before it prevents or inhibits the performance of an essential function.

(ii) Effects of an outage across related resources and dependent systems to assess cascading effects on associated systems or processes.

(C) Recovery priorities that consider geographic areas, accessibility, security, environment, and cost and may include a combination of:

(i) Preventive controls and processes such as backup power, excess capacity, environmental sensors and alarms.

(ii) Recovery techniques and technologies such as backup methodologies, alternate sites, software and hardware equipment replacement, implementation roles and responsibilities.

~~[(A) Personnel;]~~

~~[(B) Facilities;]~~

~~[(C) Technology platforms (all computer systems);]~~

~~[(D) Software;]~~

~~[(E) Information resources security utilities;]~~

~~[(F) Data networks and equipment;]~~

~~[(G) Voice networks and equipment;]~~

~~[(H) Vital electronic records and/or data.]~~

(2) ~~[Security] Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.~~

~~[(3) Recovery Strategy to appraise recovery alternatives and alternative cost-estimates which shall be presented to management.]~~

(3) ~~[(4)] Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the plan [Plan].~~

(4) ~~[(5)] Disaster Recovery Plan--Each state agency shall maintain a written disaster recovery plan for major or catastrophic events that deny access to information resources for an extended period. Information learned from tests conducted since the plan was last updated will be used in updating the disaster recovery plan. The disaster recovery plan will:~~

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step implementation instructions [for implementing the Plan];

(D) Include provisions for annual testing.

~~[(D) Be maintained to ensure currency; and]~~

~~[(E) Be tested either formally or informally at least annually.]~~

(b) Mission critical information [data] shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized state agency representatives.

§202.25. Information Resources Security Safeguards.

State agencies shall apply the following Information Resources Security Safeguards based on documented risk management decisions. Any exception to the following safeguards shall be approved, justified and documented in accordance with §202.21(c)(1)(H) and (d)(5) of this chapter. [The following Information Resources Security Safeguards should apply to state agencies based on documented security risk management decisions.]

(1) Manage access [Access] to information resources [shall be managed] to ensure authorized use.

(2) Confidentiality of data and systems.

(A) Confidential information shall be accessible only to authorized users. An information file or record [Information] containing any confidential information [data] shall be identified, documented, and protected in its entirety in accordance with §202.20(1) of this chapter.

(B) Information resources assigned from one state agency to another, or from a state agency to a contractor or other third

party, shall be protected in accordance with the conditions imposed by the providing state agency.

(3) Identification/Authentication.

(A) Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(B) A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the state agency change.

(C) Information resources systems shall contain authentication controls that comply with documented state agency [security] risk management decisions.

(D) Information resources systems which use passwords shall be based on industry best practices on password usage and documented state agency [security] risk management decisions.

(E) For electronic communications where the identity of a sender or the contents of a message shall [must] be authenticated, the use of digital signatures is encouraged. Agencies should refer to guidelines and rules issued by the department for further information. (Ref. 1 TAC [F.A.C.], Chapter 203[- Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/UTA_Guideline.htm].)

(4) Encryption. Encryption requirements for information storage devices and data transmissions, as well as specific requirements for portable devices, removable media, and encryption key standards and management shall be based on documented state agency risk management decisions. [Encryption for storage and transmission of information shall be used based on documented state agency security risk management decisions.]

(A) Confidential information that is transmitted through a public network (e.g., Internet) shall be encrypted.

(B) Confidential information should not be copied to, or stored on, a portable computing device, removable media, or a non-agency owned computing device that is not encrypted.

(C) An agency may also choose to implement additional protections for other data classifications that may include encryption.

(5) Auditing.

(A) Information resources systems shall [must] provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(B) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(C) Based on the [security] risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(6) Systems development, acquisition, and testing.

(A) Test environments [functions] shall be kept either physically or logically separate from production environments [functions]. Copies of production data shall not be used for testing unless the data has been authorized for public release [declassified] or unless all custodians [state and independent contractor employees] involved in testing are otherwise authorized access to the data.

(B) Information security, security testing, and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(C) All security-related information resources changes shall be approved by the information owner through a change control [quality assurance] process. Approval shall [must] occur prior to implementation by the state agency or independent contractors.

(7) Security Policies. Each state agency head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, state agencies may elect not to implement some of the policies based on documented risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(A) Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(B) Account Management--Defines the rules for establishing user identity, administering user accounts, and establishing and monitoring user access to information resources. [Establishes the rules for administration of user accounts.]

(C) Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(D) Application Security--Establishes processes and coding practices to ensure development, deployment, and maintenance of secure applications.

(E) [(D)] Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(F) [(E)] Change or Configuration Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(G) [(F)] Electronic Communication--Establishes prudent and acceptable practices regarding the use of electronic communications for the sending, receiving, or storing of electronic messages. [Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail.] Ensures compliance with applicable statutes, regulations, and mandates. [The policy shall prohibit sending an individual's name along with any restricted personal information unless the data (individual's name and restricted personal information) is encrypted.]

(H) Encryption--Establishes encryption controls for agency-specified data classifications (e.g., confidential information), portable devices, removable media, transmission security, and encryption key standards and management.

(I) Firewall--Describes how to manage and update the handling of network traffic coming into and going out of the security domain. The firewall policy should address:

(i) Virtual and physical architecture;

(ii) Protocols and applications that are permitted through the firewall, both inbound and outbound;

(iii) Traffic monitoring rule set;

(iv) Assignment of responsibility for monitoring and enforcing the firewall policy, and approval process for updating or changing rule sets;

(v) Approval process for updating or changing rule sets; and

(vi) Auditing and testing to verify a firewall's configuration, rule set accuracy, and effectiveness.

~~(J) [(G)] Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, [and] remediation, and reporting.~~

(K) Identification/Authentication--Establishes the rules for verifying the identity of a user, process, or device, as a prerequisite for granting access to resources in an information system, e.g., something you know (password), something you have (coded identity card), or something you are (biometric information).

~~(L) [(H)] Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.~~

~~(M) [(I)] Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources.~~

~~(N) [(J)] Network Access--Establishes the rules for the access and use of the network infrastructure.~~

~~(O) [(K)] Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.~~

~~[(L) Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.]~~

~~(P) [(M)] Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.~~

~~(Q) [(N)] Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.~~

~~(R) [(O)] Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.~~

~~(S) [(P)] Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.~~

~~(T) [(Q)] Security Awareness and Training--Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.~~

~~(U) Platform Management--Establishes the requirements and the procedures for installing, configuring, maintaining, patching, and monitoring the integrity of a platform in a secure fashion.~~

~~[(R) Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.]~~

~~(V) [(S)] Authorized Software--Establishes the rules for software use on information resources.~~

~~(W) [(T)] System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.~~

~~(X) Third Party Access--Establishes the rules for contractor, vendor, and other third party access to information resources, support services and responsibilities for protection of information.~~

~~[(U) Vendor Access--Establishes the rules for vendor access to information resources, support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.), and vendor responsibilities for protection of information.]~~

~~(Y) [(V)] Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards[.]).~~

~~(Z) [(W)] Wireless Access--Establishes the requirements and security restrictions for installing or providing access to the state agency information resources systems. Using the Wireless Security Guidelines identified in §202.1(29) of this chapter [wireless security guidelines], the policy shall address the following topic [topics] areas:~~

~~(i) [(F)] Wireless Local Area Networks. Ensure[ensure] that Service Set Identifiers (SSID) values are changed from the manufacturer default setting. Some networks should not include organizational or location information in the SSID. Additional equipment configuration recommendations are included in the Wireless Security Guidelines.~~

~~(ii) Types of information that may be transmitted via wireless networks and devices with or without encryption including mission critical information or sensitive personal information. State agencies shall not transmit confidential information via a wireless connection to, or from a portable computing device unless encryption methods, such as a Virtual Private Network (VPN), Wi-Fi Protected Access, or other secure encryption protocols that meet appropriate protection or certification standards, are used to protect the information. [allow access to confidential information, mission critical information or restricted personal information unless the cryptographic keys used are larger than 80-bits (See §3.3 Security of 802.11 Wireless LANs in the Wireless Security Guidelines).]~~

~~[(iii) Types of information that may be stored on laptop computers or wireless handheld devices with or without encryption.]~~

~~(iii) [(iv)] Prohibit and periodically monitor any unauthorized installation or use [the installation] of Wireless Personal Area Networks on state agency IT systems by individuals without the approval of the state agency information resources manager.~~

~~(AA) [(X)] Vulnerability Assessment--Establishes the requirements to conduct periodic work, operating system, and application vulnerability assessments. [information vulnerability assessments and specific focus areas for the assessments based on the results of the security risk assessment.]~~

~~(8) Perimeter Security Controls. Each state agency head or his/her designated representative and information security officer shall establish a security strategy that includes perimeter protection. The department will provide security information management services to include external network monitoring, scanning, and alerting for each agency that utilizes State information resources as specified in Chapters 2054 and 2059, Government Code. Perimeter security controls may include some or all of the following components: DMZ, firewall,~~

intrusion detection or prevention system, or router. [perimeter protection strategy to include some or all of the following components:]

~~[(A) DMZ (Demilitarized Zone)—The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.]~~

~~[(B) Firewall—A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same state agency.]~~

~~[(C) Intrusion Detection System—Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Suspicious activities trigger administrator alarms and other configurable responses.]~~

~~[(D) Router—A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.]~~

(9) System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

- (A) Unauthorized use is prohibited;
- (B) Usage may be subject to security testing and monitoring;
- (C) Misuse is subject to criminal prosecution; and
- (D) Users have no [Nø] expectation of privacy except as otherwise provided by applicable privacy laws.

§202.26. Security Incidents.

(a) Each state agency shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident, e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks. Security incidents shall be promptly reported to immediate supervisors and the agency Information Security Officer. Security incidents that require timely reporting to the department include those events that are assessed to:

- (1) Propagate to other state systems;
- (2) Result in criminal violations that shall be reported to law enforcement; or
- (3) Involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(b) If the security incident is assessed to involve suspected criminal activity (e.g., violations of Chapters 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the security incident shall be investigated, reported, and

documented in a manner that restores operation promptly while meeting the legal requirements for handling of evidence.

(c) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct state agencies as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

(d) Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Agencies shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an agency shall submit such reports to the agency in the form and manner specified by the department, unless otherwise directed by the agency.

~~[(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the state agency.]~~

~~[(b) If criminal action is suspected, the state agency must contact the appropriate law enforcement and investigative authorities immediately.]~~

~~[(c) Each state agency shall provide summary reports to the department that contain information concerning violations of security policy of which the state agency has become aware. A state agency shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:]~~

~~[(1) Type of activity, including but not limited to:]~~

~~[(A) Unwanted disruption or denial of service;]~~

~~[(B) Unauthorized use of a system for the processing or storage of data; and]~~

~~[(C) Changes made to system hardware, firmware, data or software without the state agency's effective consent.]~~

~~[(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;]~~

~~[(3) Description of the state agency's response to the incident; and]~~

~~[(4) Estimated total cost incurred by the state agency in containing the security incident or restoring adversely affected functions.]~~

~~[(d) Reports must be sent to the department on a monthly basis no later than nine (9) calendar days after the end of the month. Information shall be reported in the form and manner specified by the department.]~~

~~[(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct state agencies as to the manner in which they must report such information.]~~

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

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General Counsel

Department of Information Resources

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SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

1 TAC §§202.70 - 202.76

The amendments are proposed pursuant to §2054.052(a), Texas Government Code, which authorizes the department to adopt rules as necessary to implement its responsibilities under Chapter 2054, Texas Government Code.

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

§202.70. Security Standards Policy.

The following are policies of the State of Texas that apply to all state institutions of higher education. Each institution of higher education should apply the Security Standards Policy based on documented [security] risk management decisions:

(1) Information resources residing in the various institutions of higher education of state government are strategic and vital assets belonging to the people of Texas. These assets shall [must] be available and protected commensurate with the value of the assets. Measures shall be taken to protect these assets against unauthorized access, disclosure, modification or destruction, whether accidental or deliberate, as well as to assure the availability, integrity, utility, authenticity, and confidentiality of information. Access to state information resources shall [must] be appropriately managed.

(2) All institutions of higher education are required to have an information resources security program consistent with these standards, and the institution of higher education head is responsible for the protection of information resources.

(3) All individuals are accountable for their actions relating to information resources. Information resources shall be used only for intended purposes as defined by the institution of higher education and consistent with applicable laws.

(4) Risks to information resources shall [must] be managed. The expense of security safeguards shall [must] be commensurate with the value of the assets being protected.

(5) The integrity of data, its source, its destination, and processes applied to it shall [must] be assured. Changes to data shall [must] be made only in an authorized manner.

(6) Information resources shall [must] be available when needed. Continuity of information resources supporting critical governmental services shall [must] be ensured in the event of a disaster or business disruption.

(7) Security requirements shall be identified, documented, and addressed in all phases of development or acquisition of information resources.

(8) Institutions of higher education ~~shall~~ [must] ensure adequate controls and separation of duties for tasks that are susceptible to fraudulent or other unauthorized activity.

§202.71. Management and Staff Responsibilities.

(a) The institution of higher education head or his or her designated representative(s) shall review and approve information ownership and associated responsibilities to include personnel, equipment, or information technology hardware and software [ownership of information resources and their associated responsibilities].

(b) [The owner of an information resource, with the institution of higher education head's or his or her designated representative(s) concurrence, is responsible for classifying business functional information.] Institutions of higher education are responsible for defining all information classification categories except the Confidential Information category, which is defined in Subchapter A of this chapter, and establishing the appropriate controls for each.

(c) Information owners [Owners], custodians, and users of information resources shall be identified, and their responsibilities defined and documented by the institution of higher education. In cases where information resources are used by more than one major business function, the owners shall reach consensus and advise the information security officer [function] as to the designated owner with responsibility for the information resources. The following distinctions among owner, custodian, and user responsibilities should guide determination of these roles:

(1) Information Owner Responsibilities. The owner or his or her designated representative(s) [representatives(s)] are responsible for and authorized to:

(A) Approve access and formally assign custody of an information resources asset.[;]

(B) Determine the asset's value.[;]

(C) Specify data control requirements and convey them to users and custodians.[;]

(D) Specify appropriate controls, based on a risk assessment, to protect the state's information resources from unauthorized modification, deletion, or disclosure. Controls shall extend to information resources and services outsourced by the institution of higher education.

(E) Confirm that controls are in place to ensure the confidentiality, integrity, and availability of data and other assigned information resources [accuracy, authenticity, and integrity of data].

~~[(F) Ensure compliance with applicable controls;]~~

(F) ~~[(G)]~~ Assign custody of information resources assets and provide appropriate authority to implement security controls and procedures.

(G) ~~[(H)]~~ Review access lists based on documented security risk management decisions.

(H) Approve, justify, document, and be accountable for exceptions to security controls. The information owner shall coordinate exceptions to security controls with the information security officer or other person(s) designated by the state institution of higher education head.

(I) The information owner, with the concurrence of the institution of higher education head or his or her designated representative(s), is responsible for classifying business functional information.

(2) Custodian responsibilities. Custodians of information resources, including third party entities providing outsourced informa-

tion resources services to state institutions of higher education shall ~~[must]~~:

(A) Implement the controls specified by the information owner(s);

(B) Provide physical, technical, and procedural safeguards for the information resources;

(C) Assist information owners in evaluating the cost-effectiveness of controls and monitoring; and

(D) Implement ~~[the]~~ monitoring techniques and procedures for detecting, reporting, and investigating incidents.

(3) User responsibilities. Users of information resources shall use the resources only for defined purposes and comply with established controls.

(d) The Information Security Officer. Each institution of higher education head or his or her designated representative(s) shall designate an information security officer to administer the institution of higher education information security program. The Information Security Officer shall report to executive management.

(1) It shall be the duty and responsibility of this individual to develop and recommend policies and establish procedures and practices, in cooperation with information owners and custodians, necessary to ensure the security of information resources assets against unauthorized or accidental modification, destruction, or disclosure.

(2) The Information Security Officer shall document and maintain an up-to-date information security program. The information security program shall ~~[must]~~ be approved by the institution of higher education head or his or her designated representative(s).

(3) The Information Security Officer is responsible for monitoring the effectiveness of defined controls for mission critical information.

(4) The Information Security Officer shall report, at least annually, to the institution of higher education head or his or her designated representative(s) the status and effectiveness of information resources security controls.

(5) The Information Security Officer with the approval of the institution of higher education head or his or her designated representative may issue exceptions to information security requirements or controls in this chapter. Any such exceptions shall be justified, documented, and communicated as part of the risk assessment process.

(e) A review of the institution of higher education's information security program for compliance with these standards will be performed at least biennially, based on business risk management decisions, by individual(s) independent of the information security program and designated by the institution of higher education head or his or her designated representative(s).

§202.72. *Managing Security Risks.*

(a) A ~~[security]~~ risk assessment ~~[analysis]~~ of information resources shall be performed and documented. The ~~[security]~~ risk assessment ~~[analysis]~~ shall be updated based on the inherent risk. The inherent risk and frequency of the ~~[security]~~ risk assessment ~~[analysis]~~ will be ranked, at a minimum, as either "High," "Medium," or "Low," based primarily on the following criteria:

(1) High Risk-annual assessment--Information resources that:~~[:]~~

(A) Involve large dollar amounts or significantly important transactions, such that business or government processes would be

hindered or an impact on public health or safety would occur if the transactions were not processed timely and accurately, or

(B) Contain confidential or other ~~[sensitive]~~ data such that unauthorized disclosure would cause real damage to the parties involved, or

(C) Impact a large number of people or interconnected systems.

(2) Medium Risk-biennial assessment--Information resources that:~~[:]~~

(A) Transact or control a moderate or low dollar value, or

(B) Data items that could potentially embarrass or create problems for the parties involved if released, or

(C) Impact a moderate proportion of the customer base.

(3) Low Risk-biennial assessment--Information resources that:~~[:]~~

(A) Publish generally available public information, or

(B) Result in a relatively small impact on the population.

(b) A system change could cause the overall classification to move to another risk level.

(c) Risk ~~[Security risk]~~ assessment results, vulnerability reports, and similar information shall be documented and presented to the institution of higher education head or his or her designated representative. The institution of higher education head or his or her designated representative(s) shall make the final ~~[security]~~ risk management decisions to either accept exposures or protect the data according to its value/sensitivity. The institution of higher education head or his or her designated representative(s) shall ~~[must]~~ approve the security risk management plan. This information may be exempt from disclosure under §2054.077(c) ~~[\$2054.77(e)]~~, Government Code.

§202.73. *Managing Physical Security.*

(a) The institution of higher education head or his or her designated representative(s) shall document and manage physical access to mission critical information resources facilities to ensure the protection of information resources from unlawful or unauthorized access, use, modification or destruction.

(b) The institution of higher education head or designated representative(s) shall reviews physical security measures for information resources at least annually as part of the risk assessment process.

~~{(a) Physical access to mission critical information resources facilities shall be managed and documented by the institution of higher education head or his or her designated representative(s).}~~

~~(b) Reviews of physical security measures for information resources shall be conducted annually by the institution of higher education head or designated representative(s).}~~

(c) Information resources shall be protected from environmental hazards. Designated employees shall be trained to monitor environmental control procedures and equipment and shall be trained in desired response in case of emergencies or equipment problems.

(d) Written emergency procedures shall be developed, updated, and tested at least annually.

(e) Institutions of higher education will refer to the State Office of Risk Management for applicable rules and guidelines.

§202.74. *Business Continuity Planning.*

(a) Business Continuity Planning covers all business functions of an institution of higher education. It [and it] is a business management responsibility. Institutions of higher education shall maintain written Business Continuity Plans that address information resources so that the effects of a disaster will be minimized, and the institution of higher education will be able to either maintain or quickly resume mission-critical functions. [should maintain a written Business Continuity Plan so that the effects of a disaster will be minimized, and the institution of higher education will be able to either maintain or quickly resume mission-critical functions.] The institution of higher education head or his or her designated representative(s) shall approve the plan [Plan]. The plan [Plan] shall be distributed to key personnel and a copy stored offsite. Elements of the plan [Plan] for information resources shall include:

(1) Business Impact Analysis to systematically assess the potential impacts of a loss of business functionality due to an interruption of computing and/or infrastructure support services resulting from various events or incidents. The analysis shall identify the following elements [address maximum tolerable downtime for time-critical support services and resources including, but not limited to]:

(A) Mission Critical Information Resources (specific system resources required to perform critical functions) to include:

(i) Internal and external points of contact for personnel that provide or receive data, or support interconnected systems.

(ii) Supporting infrastructure such as electric power, telecommunications connections, and environmental controls.

(B) Disruption impacts and allowable outage times to include:

(i) Effects of an outage over time to assess the maximum allowable time that a resource may be denied before it prevents or inhibits the performance of an essential function.

(ii) Effects of an outage across related resources and dependent systems to assess cascading effects on associated systems or processes.

(C) Recovery priorities that consider geographic areas, accessibility, security, environment, and cost and may include a combination of:

(i) Preventive controls and processes such as backup power, excess capacity, environmental sensors and alarms.

(ii) Recovery techniques and technologies such as backup methodologies, alternate sites, software and hardware equipment replacement, implementation roles and responsibilities.

~~[(A) Personnel;]~~

~~[(B) Facilities;]~~

~~[(C) Technology platforms (all computer systems);]~~

~~[(D) Software;]~~

~~[(E) Information resources security utilities;]~~

~~[(F) Data networks and equipment;]~~

~~[(G) Voice networks and equipment;]~~

~~[(H) Vital electronic records and/or data]~~

(2) [Security] Risk Assessment to weigh the cost of implementing preventative measures against the risk of loss from not taking action.

~~[(3) Recovery Strategy to appraise recovery alternatives and alternative cost estimates which shall be presented to management.]~~

(3) ~~[(4)]~~ Implementation, testing, and maintenance management program addressing the initial and ongoing testing and maintenance activities of the plan [Plan].

(4) ~~[(5)]~~ Disaster Recovery Plan--Each institution of higher education shall maintain a written disaster recovery plan for major or catastrophic events that deny access to information resources for an extended period. Information learned from tests conducted since the plan was last updated will be used in updating the disaster recovery plan. The disaster recovery plan will:

(A) Contain measures which address the impact and magnitude of loss or harm that will result from an interruption;

(B) Identify recovery resources and a source for each;

(C) Contain step-by-step implementation instructions; and [for implementing the Plan;]

(D) Include provisions for annual testing.

~~[(D) Be maintained to ensure currency; and]~~
~~[(E) Be tested either formally or informally at least annually.]~~

(b) Mission critical information [data] shall be backed up on a scheduled basis and stored off site in a secure, environmentally safe, locked facility accessible only to authorized institution of higher education representatives.

§202.75. Information Resources Security Safeguards.

State institutions of higher education shall apply the following Information Resources Security Safeguards based on documented risk management decisions. Any exception to the following safeguards shall be approved, justified and documented in accordance with §202.71(c)(1)(H) and (d)(5) of this chapter. [The following Information Resources Security Safeguards should apply to state institutions of higher education based on documented security risk management decisions.]

(1) Manage access [Access] to information resources [shall be managed] to ensure authorized use.

(2) Confidentiality of data and systems.

(A) Confidential information shall be accessible only to authorized users. An information file or record containing any confidential information shall be identified, documented, and protected in its entirety in accordance with §202.70(1) of this chapter. [Information containing any confidential information shall be identified, documented, and protected in accordance with TAC §202.70(1).]

(B) Information resources assigned from one institution of higher education to another, or from an institution of higher education to a contractor or other third party, shall be protected in accordance with the conditions imposed by the providing institution of higher education.

(3) Identification/Authentication.

(A) Each user of information resources shall be assigned a unique identifier except for situations where risk analysis demonstrates no need for individual accountability of users. User identification shall be authenticated before the information resources system may grant that user access.

(B) A user's access authorization shall be appropriately modified or removed when the user's employment or job responsibilities within the institution of higher education change.

(C) Information resources systems shall contain authentication controls that comply with documented institution of higher education [security] risk management decisions.

(D) Information resources systems which use passwords shall be based on industry best practices on password usage and documented institution of higher education [security] risk management decisions.

(E) For electronic communications where the identity of a sender or the contents of a message must be authenticated, the use of digital signatures is encouraged. Institutions of higher education should refer to guidelines and rules issued by the department for further information. (Ref. 1 TAC Chapter 203[- ~~Additional information and guidelines are included in PART 2: Risks Pertaining to Electronic Transactions and Signed Records in "The Guidelines for the Management of Electronic Transactions and Signed Records" that are available at http://www.dir.state.tx.us/UETA_Guideline.htm].)~~

(4) Encryption. Encryption requirements for information storage devices and data transmissions, as well as specific requirements for portable devices, removable media, and encryption key standards and management shall be based on documented institution of higher education risk management decisions. [Encryption for storage and transmission of information shall be used based on documented institution of higher education security risk management decisions.]

(A) Confidential information that is transmitted through a public network (e.g., Internet) shall be encrypted.

(B) Confidential information should not be copied to, or stored on, a portable computing device, removable media, or a non-state owned computing device that is not encrypted.

(C) An institution of higher education may also choose to implement additional protections for other data classifications that may include encryption.

(5) Auditing.

(A) Information resources systems shall [must] provide the means whereby authorized personnel have the ability to audit and establish individual accountability for any action that can potentially cause access to, generation of, modification of, or effect the release of confidential information.

(B) Appropriate audit trails shall be maintained to provide accountability for updates to mission critical information, hardware and software and for all changes to automated security or access rules.

(C) Based on the [security] risk assessment, a sufficiently complete history of transactions shall be maintained to permit an audit of the information resources system by logging and tracing the activities of individuals through the system.

(6) Systems development, acquisition, and testing.

(A) Test environments [functions] shall be kept either physically or logically separate from production environments [functions]. Copies of production data shall not be used for testing unless the data has been authorized for public release [declassified] or unless all custodians [state and independent contractor employees] involved in testing are otherwise authorized access to the data.

(B) Information security, security testing, and audit controls shall be included in all phases of the system development lifecycle or acquisition process.

(C) All security-related information resources changes shall be approved by the information owner through a change control

[quality assurance] process. Approval shall [must] occur prior to implementation by the institution of higher education or independent contractors.

(7) Security Policies. Each institution of higher education head or his/her designated representative and information security officer shall create, distribute, and implement information security policies. The following policies are recommended; however, institutions of higher education may elect not to implement some of the policies based on documented [security] risk management decisions and business functions. These policies are not all inclusive and may be combined topically.

(A) Acceptable Use--Defines scope, behavior, and practices; compliance monitoring pertaining to users of information resources.

(B) Account Management--Defines the rules for establishing user identity, administering user accounts, and establishing and monitoring user access to information resources. [Establishes the rules for administration of user accounts.]

(C) Administrator/Special Access--Establishes rules for the creation, use, monitoring, control, and removal of accounts with special access privileges.

(D) Application Security--Establishes processes and coding practices to ensure development, deployment, and maintenance of secure applications.

(E) [(D)] Backup/Recovery--Establishes the rules for the backup, storage, and recovery of electronic information.

(F) [(E)] Change or Configuration Management--Establishes the process for controlling modifications to hardware, software, firmware, and documentation to ensure the information resources are protected against improper modification before, during, and after system implementation.

(G) Electronic communication--Establishes prudent and acceptable practices regarding the use of electronic communications for the sending, receiving, or storing of electronic messages. Ensures compliance with applicable statutes, regulations, and mandates.

(H) Encryption--Establishes encryption controls for institution of higher education-specified data classifications (e.g., confidential information), portable devices, removable media, transmission security, and encryption key standards and management.

(I) Firewall--Describes how to manage network traffic coming into and going out of the security domain. The firewall policy should address:

(i) Virtual and physical architecture;

(ii) Protocols and applications that are permitted through the firewall, both inbound and outbound;

(iii) Traffic monitoring rule set;

(iv) Assignment of responsibility for monitoring and enforcing the firewall policy;

(v) Approval process for updating or changing rule sets; and

(vi) Auditing and testing to verify a firewall's configuration, rule set accuracy, and effectiveness.

[(F)] Email--Establishes prudent and acceptable practices regarding the use of email for the sending, receiving, or storing of electronic mail. Ensures compliance with applicable statutes, regula-

tions, and mandates. The policy shall prohibit sending an individual's name and restricted personal information unless the data is encrypted.]

(J) [(G)] Incident Management--Describes the requirements for dealing with computer security incidents including prevention, detection, response, [and] remediation, and reporting.

(K) Identification/Authentication--Establishes the rules for verifying the identity of a user, process, or device, as a prerequisite for granting access to resources in an information system, e.g., something you know (password), something you have (coded identity card), or something you are (biometric information).

(L) [(H)] Internet/Intranet Use--Establishes prudent and acceptable practices regarding the use of the Internet and Intranet.

(M) [(I)] Intrusion Detection--Establishes requirements for auditing, logging, and monitoring to detect attempts to bypass the security mechanisms of information resources.

(N) [(J)] Network Access--Establishes the rules for the access and use of the network infrastructure.

(O) [(K)] Network Configuration--Establishes the rules for the maintenance, expansion, and use of the network infrastructure.

[(L) Password/Authentication--Establishes the rules for the creation, use, distribution, safeguarding, termination, and recovery of user authentication mechanisms.]

(P) [(M)] Physical Access--Establishes the rules for the granting, control, monitoring, and removal of physical access to information resources.

(Q) [(N)] Portable Computing--Establishes the rules for the use of mobile computing devices and their connection to the network.

(R) [(O)] Privacy--Methodologies used to establish the limits and expectations regarding privacy for the users of information resources.

(S) [(P)] Security Monitoring--Defines a process that ensures information resources security controls are in place, are effective, and are not being bypassed.

(T) [(Q)] Security Awareness and Training--Establishes the requirements to ensure each user of information resources receives adequate training on computer security issues.

(U) Platform Management--Establishes the requirements and the procedures for installing, configuring, maintaining, patching, and monitoring the integrity of a platform in a secure fashion.

[(R) Platform Hardening--Establishes the requirements for installing and maintaining the integrity of a platform in a secure fashion.]

(V) [(S)] Authorized Software--Establishes the rules for software use on information resources.

(W) [(T)] System Development and Acquisition--Describes the security and business continuity requirements in the systems development and acquisition life cycle.

(X) Third Party Access--Establishes the rules for contractor, vendor, and other third party access to information resources, support services and responsibilities for protection of information.

[(U) Vendor Access--Establishes the rules for vendor access to information resources; support services (Air Conditioning, Universal Power Supply, Power Distribution Unit, fire suppression, etc.); and vendor responsibilities for protection of information.]

(Y) [(V)] Malicious Code--Describes the requirements for prevention, detection, response, and recovery from the effects of malicious code (including but not limited to viruses, worms, Trojan Horses, and unauthorized code used to circumvent safeguards.)

(Z) [(W)] Wireless Access--Establishes the requirements and security restrictions for installing or providing access to the institution of higher education information resources systems. Using the Wireless Security Guidelines identified in §202.1(29) of this chapter [wireless security guidelines], the policy shall address the following topic [topics] areas:

(i) [(F)] Wireless Local Area Networks. Ensure[-ensure] that Service Set Identifiers (SSID) values are changed from the manufacturer default setting. Some networks should not include organizational or location information in the SSID. Additional equipment configuration recommendations are included in the Wireless Security Guidelines.

(ii) Types of information that may be transmitted via wireless networks and devices with or without encryption including mission critical information or sensitive personal information. Institutions of higher education shall not transmit confidential information via a wireless connection to, or from a portable computing device unless encryption methods, such as a Virtual Private Network (VPN), Wi-Fi Protected Access, or other secure encryption protocols that meet appropriate protection or certification standards, are used to protect the information. [Institutions of higher education shall not allow access to confidential information, mission critical information or restricted personal information unless the cryptographic keys used are larger than 80-bits (See §3.3 Security of 802.11 Wireless LANs in the Wireless Security Guidelines).]

[(iii) Types of information that may be stored on laptop computers or wireless handheld devices with or without encryption.]

(iii) [(iv)] Prohibit and periodically monitor any unauthorized installation or use [the installation] of Wireless Personal Area Networks on institution of higher education IT systems by individuals without the approval of the institution of higher education information resources manager.

(AA) [(X)] Vulnerability Assessment--Establishes the requirements to conduct periodic network, operating system, and application vulnerability assessments. [information vulnerability assessments and specific focus areas for the assessments based on the results of the security risk assessment.]

(8) Perimeter Security Controls. Each institution of higher education head or his/her designated representative and information security officer shall establish a perimeter protection strategy to include some or all of the following components: DMZ, firewall, intrusion detection or prevention system, or router.

[(A) DMZ (Demilitarized Zone)--The DMZ is the network area created between the public Internet and internal private network(s). This neutral zone is usually delineated by some combination of routers, firewalls, and bastion hosts. Typically, the DMZ contains devices accessible to Internet traffic, such as Web (HTTP) servers, FTP servers, SMTP (email) servers, and DNS servers.]

[(B) Firewall--A system designed to prevent unauthorized access to or from a private network. Firewalls can be implemented in both hardware and software, or a combination of both and are used to prevent unauthorized Internet users from accessing private networks connected to the Internet, especially Intranets. They can also regulate traffic between networks within the same institution of higher education.]

~~[(C) Intrusion Detection System—Hardware and/or software which is installed on a network and compares network traffic and host log entries to the known and likely methods of attackers. Suspicious activities trigger administrator alarms and other configurable responses.]~~

~~[(D) Router—A device or, in some cases, software in a computer, that determines the next network point to which a packet should be forwarded toward its destination. The router is connected to at least two networks and decides which way to send each information packet based on its current understanding of the state of the networks to which it is connected. A router is located at any gateway where one network meets another.]~~

(9) System Identification/Logon Banner. System identification/logon banners shall have warning statements that include the following topics:

- (A) Unauthorized use is prohibited;
- (B) Usage may be subject to security testing and monitoring;
- (C) Misuse is subject to criminal prosecution; and
- (D) Users have no [No] expectation of privacy except as otherwise provided by applicable privacy laws.

§202.76. *Security Incidents.*

(a) Each institution of higher education shall assess the significance of a security incident based on the business impact on the affected resources and the current and potential technical effect of the incident, e.g., loss of revenue, productivity, access to services, reputation, unauthorized disclosure of confidential information, or propagation to other networks. Security incidents shall be promptly reported to immediate supervisors and the institution of higher education Information Security Officer. Security incidents that require timely reporting to the department include those events that are assessed to:

- (1) Propagate to other state systems;
- (2) Result in criminal violations that shall be reported to law enforcement; or
- (3) Involve the unauthorized disclosure or modification of confidential information, e.g., sensitive personal information as defined in §521.002(a)(2), Business and Commerce Code, and other applicable laws that may require public notification.

(b) If criminal action is suspected (e.g., violations of Chapter 33, Penal Code (Computer Crimes) or Chapter 33A, Penal Code (Telecommunications Crimes)), the institution of higher education shall contact the appropriate law enforcement and investigative authorities immediately. Such security incidents shall be investigated and documented in a manner that restores operation promptly while meeting the legal requirements for handling of evidence.

(c) Depending on the criticality of the incident, it will not always be feasible to gather all the information prior to reporting. In such cases, incident response teams should continue to report information to the department as it is collected. The department shall instruct institutions of higher education as to the manner in which they shall report such information to the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.

(d) Summary reports of security-related events shall be sent to the department on a monthly basis no later than nine calendar day

after the end of the month. Institutions of higher education shall submit summary security incident reports in the form and manner specified by the department. Supporting vendors or other third parties that report security incident information to an institution of higher education shall submit such reports to the institution of higher education in the form and manner specified by the department, unless otherwise directed by the institution of higher education.

~~[(a) Security incidents shall be promptly investigated and documented. Security incidents shall be reported to the department within twenty-four hours if the institution determines that there is a substantial likelihood that such incidents are critical in nature and could be propagated to other state systems beyond the control of the institution of higher education.]~~

~~[(b) If criminal action is suspected, the institution of higher education must contact the appropriate law enforcement and investigative authorities immediately.]~~

~~[(c) Each institution of higher education shall provide summary reports to the department that contain information concerning violations of security policy of which the institution of higher education has become aware. An institution of higher education shall not be required to report security incidents unless it reasonably believes such incidents may involve criminal activity under Texas Penal Code Chapters 33 (Computer Crimes) or 33A (Telecommunications Crimes). Reports should include:]~~

~~[(1) Type of activity, including but not limited to:]~~

~~[(A) Unwanted disruption or denial of service;]~~

~~[(B) Unauthorized use of a system for the processing or storage of data; and]~~

~~[(C) Changes made to system hardware, firmware, data or software without the institution of higher education's effective consent.]~~

~~[(2) Time elapsed between initial detection of incident and containment of the security breach or full restoration of adversely affected functions, whichever is later;]~~

~~[(3) Description of the institution of higher education's response to the incident; and]~~

~~[(4) Estimated total cost incurred by the institution of higher education in containing the security incident or restoring adversely affected functions.]~~

~~[(d) Reports must be sent to the department on a monthly basis no later than the ninth (9th) calendar day after the end of the month. Information shall be reported in the form and manner specified by the department.]~~

~~[(e) The department shall establish internal security procedures regarding the receipt and maintenance of information pertaining to security incidents. The department shall instruct institutions of higher education as to the manner in which they must report such information.]~~

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

Filed with the Office of the Secretary of State on May 21, 2009.
TRD-200902001

Renee Mauzy
General Counsel
Department of Information Resources
Earliest possible date of adoption: July 5, 2009
For further information, please call: (512) 475-4750



TITLE 10. COMMUNITY DEVELOPMENT
PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS
CHAPTER 3. COLONIA SELF-HELP CENTER PROGRAM
10 TAC §§3.1 - 3.18

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of 10 TAC Chapter 3, §§3.1 - 3.18, concerning the Colonia Self Help Center Program. The proposed repeal will allow the Department to make changes to the existing rule to ensure compliance with all statutory requirements, formalize existing policy and guidelines and include revisions of necessary policy and administrative changes to further enhance operations.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the repealed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repealed section as proposed.

Mr. Gerber has also determined that for each year of the first five years the repealed sections are in effect the public benefit anticipated as a result of enforcing the repealed sections will be enhanced compliance with all statutory requirements, formalized policy and guidelines contained, and further enhanced operations of the Colonia Self Help Center program. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the repealed sections as proposed.

The public comment period will be held June 5, 2009 to July 8, 2009 to receive input on this repeal. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY July 8, 2009.

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

The repealed sections affect no other code, article or statute.

- §3.1. *Purpose and Services.*
- §3.2. *Definitions.*
- §3.3. *Colonia Self-Help Centers Establishment.*
- §3.4. *Colonia Self-Help Centers Designation.*
- §3.5. *Colonia Residents Advisory Committee.*
- §3.6. *Duties of the Colonia Residents Advisory Committee.*
- §3.7. *Operation of Colonia Self-Help Center.*
- §3.8. *Department Liaison to Colonia Self-help Centers.*
- §3.9. *Colonia Self-Help Center Set-Aside Fund.*
- §3.10. *Allocation of Colonia Self-Help Center Funds.*
- §3.11. *Distribution of Funds and Proposal Requirements.*
- §3.12. *Colonia Self-Help Center Process of Awards.*
- §3.13. *Threshold Selection Criteria.*
- §3.14. *Expenditure Threshold Requirements.*
- §3.15. *Contract Delivery Administration.*
- §3.16. *Manufactured Homes Installed in Colonias.*
- §3.17. *Suspension.*
- §3.18. *Sanction/Deobligation.*

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 May 22, 2009.

TRD-200902011
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Earliest possible date of adoption: July 5, 2009
For further information, please call: (512) 475-3916



10 TAC §§3.1 - 3.8

The Texas Department of Housing and Community Affairs (the Department) proposes new 10 TAC Chapter 3, §§3.1 - 3.8, concerning the Colonia Self Help Center Program. The purpose of the new sections is to consolidate, clarify and simplify the rules formerly contained in Chapter 3. Contemporaneous with the proposal of the new rules, the Department is proposing the repeal of the existing Colonia Self Help Center Program rules in current 10 TAC Chapter 3.

Mr. Michael Gerber, Executive Director, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the new sections as proposed.

Mr. Gerber has also determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be more clarity and certainty in the requirements of the individual community affairs programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

The public comment period will be held June 5, 2009 to July 8, 2009 to receive input on these rules. Written comments may be submitted to Texas Department of Housing and Community

Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469-9606. ALL COMMENTS MUST BE RECEIVED BY July 8, 2009.

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

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

§3.1. Purpose and Services.

(a) The purpose of this chapter is to establish the requirements governing Colonia Self-Help Centers, created pursuant to Subchapter Z of Chapter 2306 of the Texas Government Code and its funding including the use and administration of all funds provided to the Texas Department of Housing and Community Affairs by the legislature of the annual Texas Community Development Block Grant allocation from the United States Department of Housing and Urban Development. Colonia Self-Help Centers are designed to assist individuals and families of low-income and very low-income to finance, refinance, construct, improve, or maintain a safe, suitable home in the colonias' designated service area or in another area the Department has determined is suitable.

(b) A Colonia Self-Help Center shall set a goal to improve the living conditions of residents in the colonias designated by the Department according to §2306.583 of the Texas Government Code, within a four (4) year period after a Contract is awarded.

(c) A Colonia Self-Help Center may serve individuals and families of low-income and very low-income by:

- (1) providing assistance in obtaining loans or grants to build, rehabilitate, repair or reconstruct a home;
- (2) teaching construction skills necessary to repair or build a home;
- (3) providing model home plans;
- (4) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;
- (5) helping to obtain, construct, access, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets, and utilities;
- (6) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;
- (7) providing credit and debt counseling related to home purchase and finance;
- (8) applying for grants and loans to provide housing and other needed community improvements;
- (9) providing other services that the Colonia Self-Help Center, with the approval of the Department, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;
- (10) providing assistance in obtaining loans or grants to enable an individual or a family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract;

(11) providing access to computers, the internet and computer training pursuant to the General Appropriations Act; and

(12) providing monthly programs to educate individuals and families on their rights and responsibilities as property owners.

(d) Through a Colonia Self-Help Center, a colonia resident may apply for any direct loan or grant program operated by the Department.

(e) Ineligible activities. Any type of activity not allowed by the Federal Housing and Community Development Act of 1974, (42 U.S.C. §§5301, et seq.) is ineligible for funding.

(f) A Colonia Self-Help Center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(g) For a manufactured home to be approved for installation and use as a dwelling in a colonia:

(1) the home must be a HUD-code manufactured home, as defined by §1201.003, Texas Occupations Code and in accordance to §2306.591 of the Texas Government Code;

(2) the home must be habitable, as described by §1201.453 of the Texas Occupations Code; and

(3) ownership of the home must be properly recorded with the manufactured housing division of the department.

(h) An owner of a manufactured home is not eligible to participate in a grant loan program offered by the department, including the single-family mortgage revenue bond program under §2306.142 of the Texas Government Code unless the owner complies with this section.

§3.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Common definitions used under the Community Development Block Grant (CDBG) are incorporated herein by reference.

(1) Applicant--A unit of general local government who is preparing to submit or has submitted a Proposal for Colonia Self-Help Center funds.

(2) Beneficiary--A person or family benefiting from the activities of a Self-Help Center Contract.

(3) Board--The governing board of the Texas Department of Housing and Community Affairs.

(4) C-RAC--Colonia Residents Advisory Committee. Advises the Department's Governing Board and evaluate the needs of colonia residents, review programs that are proposed or operated through the Colonia Self-Help Centers and activities that may be undertaken through the Colonia Self-Help Centers to better serve the needs of colonia residents.

(5) Colonia--A geographic area located in a county some part of which is within one hundred-fifty (150) miles of the international border of this state that consists of eleven (11) or more dwellings that are located in close proximity to each other in an area that may be described as a community or neighborhood, and that: Has a majority population composed of individuals and families of low income and very low income, based on the Federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed area under §17.921, Texas Water Code, and has the physical and economic characteristics of a colonia, as determined by the Department.

(6) Colonia Self-Help Center Provider--An organization with which the Contractor has an executed Contract to administer Colonia Self-Help Center activities.

(7) Community Action Agency--A political subdivision, combination of political subdivisions, or nonprofit organization that qualifies as an eligible entity under 42 U.S.C. §9902.

(8) Community Development Block Grant (CDBG) nonentitlement area funds--Funds awarded to the State of Texas pursuant to the Housing and Community Development Act of 1974, Title I, as amended, (42 U.S.C §§5301, et seq.) and the regulations promulgated thereunder in 24 C.F.R Part 570.

(9) Contract--A written agreement including all amendments thereto, executed by the Department and Contractor.

(10) Contract Budget--An exhibit in the Contract which specifies in detail the Contract funds by budget category, which is used in the drawdown processes. The budget also includes all other funds involved that are necessary to complete the performance statement specifics of the Contract.

(11) Contractor--A Unit of General Local Government with which the Department has executed a Contract.

(12) Department--The Texas Department of Housing and Community Affairs.

(13) HUD--The United States Department of Housing and Urban Development.

(14) Implementation Manual--A set of guidelines designed to be an implementation tool for the Contractor and Colonia Self-Help Center Providers that have been awarded Community Development Block Grant Funds and allows the Contractor to search for terms, regulations, procedures, forms and attachments.

(15) Income Eligible Families (includes both Low and Very low-income families)--

(A) Low-income families--families whose annual incomes do not exceed 80% of the median income of the area as determined by HUD and published by the Department, with adjustments for family size; and

(B) Very low-income families--families whose annual incomes do not exceed 60% of the median family income for the area, as determined by HUD and published by the Department, with adjustments for family size.

(16) Needs assessment--A demographic and characteristics study of the colonias residing in the target area and the housing needs that the Colonia Self-Help Center is designed to address, using qualitative and quantitative information and other source documentation that is required as a part of a Proposal.

(17) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 U.S.C. §5302.

(18) Nonprofit organization--A public or private organization that:

(A) Is organized under state or local laws;

(B) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;

(C) Has a current tax exemption ruling from the Internal Revenue Service (IRS) under §501(c)(3), a charitable, nonprofit corporation, or §501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as amended, as evidenced by a certifi-

cate from the IRS that is dated 1986 or later. The exemption ruling or classification as a subordinate of a central organization nonprofit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS, must be effective throughout the length of the Contract.

(19) ORCA--The Office of Rural Community Affairs.

(20) Performance Statement--An Exhibit in the Contract which specifies in detail the scope of work to be performed.

(21) Proposal--A written request for Colonia Self-Help funds in the format required by the Department.

(22) Self-Help--Housing programs which allow low and very low income families to build or rehabilitate their homes through their own labor or volunteers.

(23) Unit of General Local Government (UGLG)--A city, town, county, or other general purpose political subdivision of the state; a consortium of such subdivisions recognized by HUD in accordance with 24 CFR §92.101 and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction. A county is considered a unit of general local government under the Colonia Self-Help Center Program.

§3.3. Colonia Self-Help Centers Establishment.

(a) Pursuant to §2306.582 of the Texas Government Code, the Department has established Colonia Self-Help Centers in El Paso, Hidalgo, Starr, Webb, Cameron (also serves Willacy), Maverick and Val Verde Counties.

(b) The Department shall designate:

(1) appropriate staff in the Department to act as liaison to the Colonia Self-Help Centers to assist the centers in obtaining funding to enable the centers to carry out the center's programs;

(2) five (5) colonias in each service area to receive concentrated attention from the Colonia Self-Help Centers in consultation with the Colonia Resident Advisory Committee and the appropriate unit of local government; and

(3) a geographic area for the services provided by each Colonia Self-Help Center.

(c) The Department shall make a reasonable effort to secure:

(1) contributions, services, facilities, or operating support from the county commissioner's court of the county in which a Colonia Self-Help Centers is located which it serves to support the operation of that Colonia Self-Help Center; and

(2) an adequate level of funding to provide each Colonia Self-Help Center with funds for low interest mortgage financing, grants for self-help programs, revolving loan fund for septic tanks, a tool lending program, and other activities the Department determines are necessary.

(d) The El Paso Colonia Self-Help Center shall establish a technology center to provide internet access to colonia residents pursuant to the General Appropriations Act.

§3.4. Allocation and the Colonia Self-Help Center Proposal Requirements.

(a) The Department distributes Colonia Self-Help Center funds to Unit of General Local Governments (UGLG) from the 2.5% set-aside of the annual Community Development Block Grant (CDBG) allocation to the State of Texas.

(b) The Department shall allocate no more than \$1.2 million per Colonia Self-Help Center award except as provided by §3.6(i)(2) of this chapter (relating to Colonia Self Help Center Contract Operation and Implementation). If there are insufficient funds available from any specific program year to fund a proposal fully, the awarded Contractor may accept the amount available at that time and wait for the remaining funds to be committed upon the Department's receipt of the CDBG set-aside allocation from the next program year.

(c) With a baseline award beginning at \$700,000, the Department will add an additional \$100,000 for each expenditure threshold, as defined in §3.8 of this chapter (relating to Expenditure Thresholds and Closeout Requirements) (6-month, 18-month, 30-month, and 42-month), met on the previous Self Help Center Contract, and an additional \$100,000 for an accepted proposal submitted by the deadline. If a Contractor can demonstrate that any violation of an Expenditure Threshold was beyond the control of the Contractor, it may request of the Board that an individual violation be waived for the purpose of future funding. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the expenditure threshold requirements if the Board finds the waiver is appropriate to fulfill the purposes or policies, of the Texas Government Code, or for good cause, as determined by the Board.

(d) The Contractor shall submit its proposal no later than three (3) months before the expiration of its current Contract, or when 90% of the funds under the current Contract have been expended, which ever comes first. If this requirement is not met, the Department will apply the options outlined in subsection (c) of this section and may result in delayed funding.

(e) Proposal reviews are conducted on a first-come first-serve basis until all Self Help Center funds for the current program year and deobligated Self Help Center funds are committed. Each complete proposal will be assigned a "received date" based on the date and time it is received by the Department.

(f) In order to be accepted, each proposal must include the following:

(1) Evidence of the submission of the Contractor's current annual single audit;

(2) A comprehensive needs assessment not older than three (3) years, for each of the five (5) colonias identified to receive concentrated attention from that center;

(3) A description of the five colonias to be served. Information should present an accurate picture of the areas to be served to include the number of houses, the number of platted and unplatted lots, water and wastewater services, utilities, housing conditions and number of residents;

(4) A boundary map for each of the five colonias;

(5) A description of the scope of work. Based on the results obtained by the needs assessments, the Contractor shall develop a scope of work for each colonia based on the activities as listed in §3.1(c) of this chapter (relating to Purpose and Services). In order to provide these services, the Contractor may be required to leverage funds, coordinate with financial institutions, prepare grant applications and coordinate with their contracted partners;

(6) A description of the method of implementation. For each colonia to be served by the Colonia Self Help Center, the Contractor shall describe the services and activities to be delivered. The Proposal must identify:

(A) The percentage and scope of work that will be performed using self-help methodologies;

(B) The estimated percentage or services that will be contracted to the Colonia Self Help Center Provider; and

(C) The activities that the Contractor will be administering.

(7) Evidence that the contracted Colonia Self-Help Center provider selected by the Contractor has the capacity to administer and manage financial resources and provided documentation and auditable programmatic compliance, as evidenced by previous experience in any of the following:

(A) implementation of a CDBG contract;

(B) affordable housing, including new construction; and housing rehabilitation, reconstruction, small repair; and experience in homebuyer and down payment assistance programs;

(C) grantsmanship, project planning and development in housing and infrastructure, and project management;

(D) home ownership counseling, home loan processing and coordinating with private financial institutions;

(E) property development, including experience in processes related to surveying, platting, and recording of property records;

(F) self-help programs related to housing or infrastructure, including operation of a tool library; and

(G) managing state/federally funded projects or projects funded under private foundations and not have major outstanding monitoring or audit issues.

(8) The proposed Performance Statement. The Contractor must include the number of colonia residents to be assisted from each colonia, the activities to be performed (including all sub-activities under each budget line item), and corresponding budget;

(9) The proposed Contract Budget must address the following:

(A) The Administration line item may not exceed 15% of the total budget;

(B) The Public Service line item may not exceed more than 15% of the total budget;

(C) The proposal must identify at least 15% of the budget that will be allocated for direct Self-Help activities;

(D) The amount of leveraged funding; and

(E) Direct Delivery Costs (soft costs) for all contractual activities cannot exceed 10% of each budget line item. Direct Delivery Costs (soft costs) are costs related to and identified with a specific housing unit or public service other than construction costs. Eligible direct delivery costs include:

(i) preparation of work write-ups, work specifications, and cost estimates;

(ii) architectural, engineering, or professional services required to prepare plans, drawings or specifications directly attributable to a particular housing unit or public service;

(iii) home inspections, inspections for lead-based paint, asbestos, termites, and interim inspections; and

(iv) other costs as approved by the Department's executive director.

(10) Proposed housing guidelines (includes small repair, rehabilitation, reconstruction, new construction and all other housing activities).

- (11) Pre-agreement costs request, if applicable.
- (12) Evidence of model subdivision rules adopted by the Contractor.
- (13) Written policies and procedures for the following, as applicable:
- (A) solid waste removal;
 - (B) construction skill classes;
 - (C) homeownership classes;
 - (D) technology access;
 - (E) homeownership assistance; and/or
 - (F) tool lending library. All Colonia Self Help Centers are required to operate a tool lending library.
- (14) Authorized signatory form and accompanying UGLG resolution and direct deposit authorization.
- (15) Unit of General Local Government resolution authorizing the submission of the proposal and appointing the primary signator for all Contract documents.
- (16) Acquisition report (even if there is no acquisition activity).
- (17) Certification of exemption for HUD funded projects.
- (18) Initial disclosure report.

(g) Upon receipt of the Proposal, the Department will perform an initial review to determine whether the Proposal is complete and that each activity meets a national objective as required by §104(b)(3) of the Housing and Community Development Act of 1974 (42 U.S.C. §5304(b)(3)).

(h) The Department may reduce the funding amount requested in the proposal in accordance to subsection (c) of this section. Should this occur, the Department shall notify the appropriate Contractor within ten (10) working days before the proposal is submitted to C-RAC for review, comments and approval. The Department and the Contractor will work together to jointly agree on the performance measures and proposed funding amounts for each activity.

(i) If applicable, the Department shall coordinate with the Texas Water Development Board and ORCA to eliminate delay in water and wastewater hookups.

(j) The Department shall execute a four (4) year Contract with Contractor. No Contract extensions will be allowed. If the Contractor requirements are completed prior to the end of the four (4) year contract period, the Contractor may submit a new proposal.

(k) Decline to Fund. The Department may decline to fund any proposal if the activities do not, in the Department's sole determination, represent a prudent use of Colonia Self Help Center funds. The Department is not obligated to proceed with any action pertaining to any proposal which is received, and may decide it is in the Department's best interest to refrain from pursuing any selection process. The Department through its executive director or its designee reserves the right to negotiate individual elements of any proposal.

§3.5. Colonia Residents Advisory Committee Duties and Awarding Contracts.

(a) The Board shall appoint not fewer than five persons who are residents of colonias to serve on the Colonia Residents Advisory Committee. The members of the Colonia Residents Advisory Committee shall be selected from lists of candidates submitted to the De-

partment by local nonprofit organizations and the commissioner's court of a county in which a Colonia Self-Help Center is located.

(b) The Colonia Resident Advisory Committee members' terms will expire every four (4) years. Colonia Resident Advisory Committee members may be reappointed by the Board; however, the Board shall review and approve all members at least every four (4) years.

(c) The Board shall appoint one committee member to represent each of the counties in which a Colonia Self-Help Center is located. Each committee member:

(1) must be a resident of a colonia in the county the member represents; and

(2) may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a Contract under this chapter and cannot be in default on any Department obligation.

(3) The Department will conduct a compliance check on all members.

(d) The Department may also select to have an alternate member from the list for each county in the event that the primary member is unable to attend meetings.

(e) The Colonia Resident Advisory Committee shall advise the Board regarding:

(1) the housing needs of colonia residents;

(2) appropriate and effective programs that are proposed or are operated through the Colonia Self-Help Centers; and

(3) activities that might be undertaken through the Colonia Self-Help Centers to serve the needs of colonia residents better.

(f) The Colonia Resident Advisory Committee shall advise the colonia initiatives coordinator as provided by §775.005 of the Texas Government Code.

(g) Awarding Contracts:

(1) Upon reaching an agreement with the Contractor, the Department will set the date for the Colonia Resident Advisory Committee meeting. The Colonia Resident Advisory Committee shall meet before the 30th calendar day preceding the date on which a contract is scheduled to be awarded by the Board for the operation of a Colonia Self-Help Center and may meet at other times.

(2) The Contractor shall be present at the Colonia Resident Advisory Committee if its Proposal is being considered to answer questions that the Colonia Resident Advisory Committee may have.

(3) After the Colonia Resident Advisory Committee makes a recommendation on a proposal, the recommendation will undergo the Department's award process.

(4) The Contractor whose Proposal is being presented to the Board shall be invited to attend the Board Meeting in which the award is an agenda item.

(h) Reimbursement of Colonia Resident Advisory Committee members for their reasonable travel expenses in the manner provided by §3.6(l) of this chapter (relating to Colonia Self Help Center Contract Operation and Implementation) is allowable and shall be paid by the Contractor.

§3.6. Colonia Self Help Center Contract Operation and Implementation.

(a) The Department shall contract with a Unit of General Local Government (UGLG) for the operation of a Colonia Self-Help Center. The UGLG shall subcontract with a local nonprofit organization, local community action agency, or local housing authority that has demonstrated the ability to carry out all or part of the functions of a Colonia Self-Help Center.

(b) Upon award of Colonia Self-Help Center funds by the Board, the Department shall deliver a Contract based on the scope of work to be performed within thirty (30) days of the award date. Any activity funded under the Colonia Self Help Center Program will be governed by a written Contract that identifies the terms and conditions related to the awarded funds. The Contract will not be effective until executed by all parties to the Contract.

(c) Environmental. Contractors are required to complete their environmental reviews in accordance with 24 CFR Part 58 and receive the Authority to Use Grant Funds from the Department before:

(1) Any commitment of Community Development Block Grant (CDBG) funds (i.e., execution of a legally binding agreement and expenditure of CDBG funds) for activities other than those that are specifically exempt from environmental review.

(2) Any commitment of non-CDBG funds associated with the scope of work in the Contract that would have an adverse environmental impact (i.e. demolition, excavating, etc.) or limit the choice of alternatives (i.e. acquisition of real property, rehabilitation of buildings or structures, etc.).

(d) All housing rehabilitation, reconstruction, and new construction contractor/builders, including Self Help Center Provider(s) performing any housing activities, as defined by the Texas Residential Construction Commission, making improvements to or reconstructing an existing home at a cost exceeding \$10,000 must be registered with the Texas Residential Construction Commission.

(e) All reconstruction and new construction activities must meet the accessibility requirements pursuant to §2306.514 of the Texas Government Code.

(f) Request for Payments. The Contractor shall submit a properly completed request for reimbursement, as specified by the Department, at a minimum on a quarterly basis; however the Department reserves the right to request more frequent reimbursement requests as it deems appropriate. The Department shall determine the reasonableness of each amount requested and shall not make disbursement of any such payment request until the Department has reviewed and approved such request. Payments under the Contract are contingent upon the Contractor's full and satisfactory performance of its obligations under the Contract.

(1) \$2,500 is the minimum amount for a draw to be processed. Exceptions to this rule are as follows:

(A) The draw request exceeds 25% of a budgeted line item but less than \$2,500 and the Contractor is requesting funds only for that line item.

(B) The draw request is for the final retainage of a construction contract.

(C) The Contractor received prior approval from the Department.

(D) The request is the final draw.

(2) Draw requests will be reviewed to comply with all applicable laws, rules and regulations. The Contractor is responsible for maintaining a complete record of all costs incurred in carrying out the activities of the Contract.

(3) Draw requests for all housing activities will only be reimbursed upon satisfactory completion of types of activities (i.e., all plumbing completed, entire roof is completed, etc.), consistent with the work write-up and subsequent construction contract.

(4) The Contractor will be the principal contact responsible for reporting to the Department and submitting draw requests.

(g) Reporting. The Contractor shall submit to the Department reports on the operation and performance of the Contract on forms as prescribed by the Department. Quarterly Reports shall be due no later than the twentieth (20th) calendar day of the month after the end of each calendar quarter. The Contractor shall maintain and submit to the Department up-to-date accomplishments in quarterly reports identifying quantity and cumulative data including the expended funds, activities completed and total number of Beneficiaries.

(h) Inspections. At a minimum, inspections will be required for all housing rehabilitation (initial and final), small home repair (initial only), reconstruction (initial and final) and new construction (final only) activities and must be inspected by a professional inspector licensed by the Texas Real Estate Commission, a professional engineer licensed by the Texas Board of Engineering, an architect registered with the Texas Board of Architectural Examiners, or a third-party inspector registered with the Texas Residential Construction Commission to perform home inspections.

(1) The final inspections for housing rehabilitation must ensure that the construction on the house is complete, that the home is safe and that it meets at a minimum, Colonia Housing Standards. A copy of the final inspection report must be given to the homeowner.

(2) The final inspections for reconstruction and new construction must ensure that the construction on the home is complete, that the home is safe, and that it meets, at a minimum, International Residential Code (IRC). IRC is a comprehensive residential code which establishes minimum construction requirements with plumbing, mechanical, energy, and electrical provisions. A copy of the final inspection report must be given to the homeowner.

(3) The initial inspections for small home repair will identify and prioritize areas in need of repair. Only the area being repaired under the small home repair activity must meet, at a minimum, Colonia Housing Standards. A copy of the initial inspection report must be given to the homeowner.

(4) Homes receiving only first-time water connections are not required to meet Colonia Housing Standards or have a third-party inspection.

(5) The Department will only reimburse for two inspection reports for housing rehabilitation and reconstruction, and one inspection report for new construction and small home repair.

(6) The Contractor must ensure and verify that each 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.

(7) The Contractor 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.

(i) Amendments. Any alterations, additions, or deletions to the terms of the Contract shall be submitted in writing to the Department. Reduced Beneficiaries or activities, due to extenuating or unforeseeable circumstances, may be allowed as approved by the Department. The Department's executive director or its designee, may authorize, execute, and deliver amendments to any Contract.

(1) Contract Time Extensions beyond the four (4) year contract period will not be allowed for Self-Help Center contracts.

(2) The Department, at its discretion and in coordination with a Contractor, may increase a contract budget amount and the number of activities and beneficiaries based on the availability of Self Help Center funds, the exemplary performance in the implementation of a Contractor's current contract, and the time available in the four (4) year contract period. Upon Board approval, the cap on the maximum contract amount may be exceeded if the terms of this paragraph are met by a Contractor.

(j) If the Contractor fails to meet a Contract requirement the awarded funds related to the lack of performance may be entirely or partially deobligated at the Department's sole discretion.

(k) Waiver. The Board, in its discretion and within the limits of federal and state law, may waive any one or more of the requirements of this chapter if the Board finds that waiver is appropriate to fulfill the purposes or policies, Chapter 2306 of the Texas Government Code, or for good cause, as determined by the Board.

(l) Travel. Costs incurred by Colonia Self Help Center employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the State Comptroller's Travel Allowance Guide.

§3.7. Administrative Thresholds.

Administrative draw request. Administrative draw requests are funded out of the portion of the Contract Budget specified for administrative cost (Administration Line Item of the Contract Budget.) These costs are not directly associated with an activity. The administration line item will be disbursed as follows:

(1) Threshold 1. The initial administrative draw request allows up to 10% of the administration line item to be drawn down prior to the start of any project activity included in the Performance Statement of the Contract (provided that all pre-draw requirements, as described in the Contract, for administration have been met). Subsequent administrative funds will be reimbursed in proportion to the percentage of the work that has been completed as identified in paragraphs (2) - (8) of this section.

(2) Threshold 2. Allows up to an additional 15% (25% of the total) of the administration line item to be drawn down after a start of project activity has been demonstrated. For the purposes of this threshold, if Davis-Bacon labor standards are required for a given program activity, "start of project activity" is evidenced by the submission of a start of construction form. If labor standards are not required on a given project activity that has commenced (and for which reimbursement is being sought), the submission of a drawdown request that includes sufficient back-up documentation for expenses of non-administrative project activities evidences a start of project activity. Direct delivery/soft costs charges will not constitute a start of project activity.

(3) Threshold 3. Allows up to an additional 25% (50% of the total) of the administration line item to be drawn down after compliance with the eighteen (18) month threshold requirement has been demonstrated as described in §3.8 of this chapter (relating to Expenditure Thresholds and Closeout Requirements).

(4) Threshold 4. Allows up to an additional 25% (75% of the total) of the administration line item to be drawn down after compliance with the thirty (30) month threshold requirement has been demonstrated as described in §3.8 of this chapter.

(5) Threshold 5. Allows up to an additional 15% (90% of the total) of the administration line item to be drawn down after com-

pliance with the forty-two (42) month threshold requirement has been demonstrated as described in §3.8 of this chapter.

(6) Threshold 6. Allows an additional 5% (95% of the total) of the administration line item to be drawn down upon receipt of all required close-out documentation.

(7) Threshold 7. Allows the final 5% (100% of the total), less any administrative funds reserved for audit costs as noted on the Project Completion Report of the administration line item to be drawn down following receipt of the programmatic close-out letter issued by the Department.

(8) Threshold 8. Any funds reserved for audit costs will be released upon completion and submission of an acceptable audit. Only the portion of audit expenses reasonably attributable to the Contract are eligible.

§3.8. Expenditure Thresholds and Closeout Requirements.

(a) Contractors must meet the following expenditure threshold requirements:

(1) Six-Month Threshold. An Environmental Assessment that meets the requirements outlined in the environmental clearance requirements of the Contract must be submitted to the Department within six (6) months from the start date of the Contract;

(2) Eighteen-Month Threshold. To meet this requirement the Contractor must have expended and submitted for reimbursement to the Department at least 30% of the total Colonia Self Help Center funds awarded within eighteen (18) months from the start date of the Contract;

(3) Thirty-Month Threshold. To meet this requirement the Contractor must have expended and submitted for reimbursement to the Department at least 60% of the total Colonia Self-Help Center funds awarded within thirty (30) months from the start date of the Contract; and

(4) Forty-two-Month Threshold. To meet this requirement the Contractor must have expended and submitted for reimbursement to the Department at least 90% of the total Colonia Self-Help Center funds awarded within forty-two (42) months from the start date of the Contract.

(b) For purposes of meeting a threshold, "expended and submitted" means that a draw request was received by the Department, is complete, and all costs needed to meet a threshold are adequately supported. The Department will not be liable for a threshold violation if a draw request is not received by the threshold date.

(c) The final draw request and complete closeout documents must be submitted no later than sixty (60) days after the Contract end date. If closeout documents are late, the remaining Contract balance may be subject to deobligation as the Department's liability for such costs will have expired. If a Contractor has reserved funds in the project completion report for a final draw request, the Contractor has ninety (90) days after the Contract end date to submit the final draw request, with the exception of audit costs which may be reimbursed upon submission of the final single audit.

(d) If these thresholds are not met, the Department will apply its Administration Rules, Title 10, Part 1, Chapter 1, Texas Administrative Code.

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 May 22, 2009.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-3916



CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §5.3, §5.20

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 5, Subchapter A, §5.3 and §5.20. The proposed amendments make changes to the existing rules in response to grant guidance for implementing the American Recovery and Reinvestment Act (ARRA), the Department held four public input sessions and a public hearing in order to draft a recommendation for the Board. During the input sessions and the public hearing, staff was asked to increase the eligibility criteria for the Community Services Block Grant (CSBG) Program, the Comprehensive Energy Assistance Program (CEAP), and the Weatherization Assistance Program (WAP). The amendments to the rule increase the eligibility of all three programs from 125% to 200% of Federal poverty level which allows assistance to a broader applicant pool.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended section will be an increase in the eligible clients to be served by the programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed.

The public comment period will be held June 5, 2009 to July 8, 2009 to receive input on these amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY July 8, 2009.

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

No other code, article or statute is affected by the amended sections.

§5.3. Definitions.

(a) (No change.)

(b) The following words and terms in this chapter shall have the following meaning unless the context clearly indicates otherwise.

(1) - (31) (No change.)

(32) Low Income--Income in relation to family size which:

(A) For CEAP, WAP, and CSBG is at or below 200% [~~125%~~] of the Federal Income guidelines;

(B) - (D) (No change.)

(33) - (69) (No change.)

§5.20. Determining Income Eligibility.

(a) (No change.)

(b) The subrecipients shall establish the client eligibility level at or below 200% [~~125%~~] of the federal poverty level in effect at the time the client makes an application for services.

(c) - (d) (No change.)

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

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SUBCHAPTER B. COMMUNITY SERVICES BLOCK GRANT (CSBG)

10 TAC §5.203

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 5, Subchapter B, §5.203. The proposed amendment makes a change to the existing rules in response to grant guidance for implementing the American Recovery and Reinvestment Act (ARRA), the Department held four public input sessions and a public hearing in order to draft a recommendation for the Board. During the input sessions and the public hearing, staff was asked to increase the eligibility criteria for the Community Services Block Grant (CSBG) Program, the Comprehensive Energy Assistance Program (CEAP), and the Weatherization Assistance Program (WAP). The amendment to the rule increases the eligibility of all three programs from 125% to 200% of Federal poverty level which allows assistance to a broader applicant pool.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended section is in effect the public benefit anticipated as a result of enforcing the amended section will be an increase in the eligible clients to be served by the programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

The public comment period will be held June 5, 2009 to July 8, 2009 to receive input on this amendment. Written com-

ments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY July 8, 2009.

The amended section is proposed pursuant to the authority of the Texas Government Code, Chapter 2306, which provide the Department the authority to adopt rules governing the administration of the Department and its programs.

No other code, article or statute is affected by the amended section.

§5.203. *Distribution of CSBG Funds.*

(a) The CSBG Act requires that no less than 90% of the state's allocation be allocated to eligible entities. The Department currently utilizes a multi-factor fund distribution formula to equitably provide CSBG funds throughout the state's 254 counties to the CSBG eligible entities. The formula incorporates the most current decennial U.S. Census figures at or below 200% [425%] of poverty; a \$50,000 base; a \$150,000 floor (the minimum funding level); a 98% weighted factor for poverty population; and, a 2% weighted factor for the inverse ratio of population density.

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

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

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

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Executive Director

Texas Department of Housing and Community Affairs

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SUBCHAPTER D. COMPREHENSIVE ENERGY ASSISTANCE PROGRAM

10 TAC §5.407, §5.422

The Texas Department of Housing and Community Affairs (Department) proposes amendments to 10 TAC Chapter 5, Subchapter D, §5.407 and §5.422. The proposed amendments make changes to the existing rules in response to grant guidance for implementing the American Recovery and Reinvestment Act (ARRA), the Department held four public input sessions and a public hearing in order to draft a recommendation for the Board. During the input sessions and the public hearing, staff was asked to increase the eligibility criteria for the Community Services Block Grant (CSBG) Program, the Comprehensive Energy Assistance Program (CEAP), and the Weatherization Assistance Program (WAP). The amendments to the rule increase the eligibility of all three programs from 125% to 200% of Federal poverty level which allows assistance to a broader applicant pool.

Mr. Michael Gerber, Executive Director, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state or local governments as

a result of enforcing or administering the amended section as proposed.

Mr. Gerber has also determined that for each year of the first five-years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be an increase in the eligible clients to be served by the programs. There will be no effect on small businesses or persons. There is no anticipated economic cost to persons who are required to comply with the amended sections as proposed.

The public comment period will be held June 5, 2009 to July 8, 2009 to receive input on these amendments. Written comments may be submitted to Texas Department of Housing and Community Affairs, 2009 Rule Comments, P.O. Box 13941, Austin, Texas 78711-3941, by e-mail to the following address: tdhcarulecomments@tdhca.state.tx.us, or by fax to (512) 469.9606. ALL COMMENTS MUST BE RECEIVED BY July 8, 2009.

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

No other code, article or statute is affected by the amended sections.

§5.407. *Subrecipient Requirements for Establishing Priority for Eligible Households and Client Eligibility Criteria.*

(a) The subrecipients shall set the client income eligibility level at or below 200% [425%] of the federal poverty level in effect at the time the client makes an application for services.

(b) - (j) (No change.)

§5.422. *General Assistance and Benefit Levels.*

(a) (No change.)

(b) CEAP provides assistance to targeted beneficiaries being households with low incomes at or below 200% [425%] of the Federal Poverty Level, with priority given to the elderly, persons with disabilities, families with young children; households with the highest energy costs or needs in relation to income, and households with high energy consumption.

(c) (No change.)

(d) Sliding scale benefit for all CEAP components:

(1) (No change.)

(2) Energy assistance benefit determinations will use the following sliding scale (Except Heating and Cooling System Replacement, Repair and/or Retrofit Component):

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

(C) Households with Incomes of 76% to at or below 200% [425%] of Federal Poverty Guidelines may receive an amount needed to address their energy payment shortfall not to exceed \$1,000.

(D) (No change.)

(e) - (h) (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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TITLE 16. ECONOMIC REGULATION

**PART 3. TEXAS ALCOHOLIC
BEVERAGE COMMISSION**

CHAPTER 31. ADMINISTRATION

The Texas Alcoholic Beverage Commission (commission), proposes the repeal of §31.2, relating to Vehicle Inscription Exemption and Assignment of Vehicles, and new §31.2, relating to State-owned Motor Vehicles.

The rule was reviewed under Government Code, §2001.039, which requires that each state agency review and consider for re-adoption each rule adopted by that agency under Government Code, Chapter 2001 (Administrative Procedure Act). The commission has reviewed the rule and has determined that the reasons for adopting the rule continue to exist.

Section 721.003, of the Transportation Code requires the commission to adopt a rule to exempt state vehicles from the inscription requirements of Chapter 721 of the Transportation Code. Section 2171.1045 of the Government Code requires each state agency to adopt rules for the use and assignment of state owned vehicles.

The commission has determined that the existing section is outdated and should be repealed and a new updated section adopted to replace the repealed section.

Subsection (a) states the inscription requirements for agency owned vehicles.

Subsection (b) states how vehicles are assigned to executives and agents and the purpose of agency pool vehicles.

Charlie Kerr, Chief Financial Officer, has determined that for each year of the first five years that the section will be in effect, there will be no impact on state or local government.

Mr. Kerr has determined that there will be no fiscal or regulatory impact on small or micro-businesses, or persons regulated by the commission. There is no anticipated negative impact on local employment.

Sherry Cook, Assistant Administrator, has determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section because it provides accountability for state owned vehicles in compliance with state law.

Comments on the proposed repeal and new rule may be submitted to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711, or electronically to joan.bates@tabc.state.tx.us. Comments will be accepted for 30 days following publication of the proposed repeal and new section in the *Texas Register*.

16 TAC §31.2

(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The proposed repeal and new rule are authorized by Texas Alcoholic Beverage Code, §5.31, which grants general rulemaking authority to the commission, §721.003 of the Transportation Code, which requires the commission to adopt subsection (a) of the proposed section, §2171.1045 of the Government Code, which requires the commission to adopt subsection (b), and §2001.039 of the Government Code, which requires each agency review its rules each four years.

Cross Reference: The proposed repeal and new rule affect Texas Alcoholic Beverage Code, Chapter 5, Transportation Code, Chapter 721 and Government Code, Chapter 2001 and 2171.

§31.2. Vehicle Inscription Exemption and Assignment of Vehicles.

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 May 22, 2009.

TRD-200902015

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 206-3204

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16 TAC §31.2

The proposed repeal and new rule are authorized by Texas Alcoholic Beverage Code, §5.31, which grants general rulemaking authority to the commission, §721.003 of the Transportation Code, which requires the commission to adopt subsection (a) of the proposed section, §2171.1045 of the Government Code, which requires the commission to adopt subsection (b), and §2001.039 of the Government Code, which requires each agency review its rules each four years.

Cross Reference: The proposed repeal and new rule affect Texas Alcoholic Beverage Code, Chapter 5, Transportation Code, Chapter 721 and Government Code, Chapter 2001 and 2171.

§31.2. State-owned Motor Vehicles.

(a) Exemption from inscription requirements for state-owned vehicles.

(1) This subsection implements §721.003, Transportation Code, relating to exemption from inscription requirement for certain state-owned vehicles, which requires the commission to adopt a rule to be exempt from the inscription requirements of Chapter 721.

(2) The primary use of the state-owned vehicles for which an exemption is sought is the transportation of commission employees engaged in the prevention, detection, investigation and enforcement of criminal and regulatory violations of the Alcoholic Beverage Code.

(3) Not printing inscriptions on commission vehicles will: increase effectiveness of enforcement and compliance operations and activities; increase the safety of commission employees engaged in enforcement and compliance operations and activities; and, decrease the risk of damage to state-owned vehicles and property.

(b) Assignment of Vehicles.

(1) This subsection implements §2171.1045, Government Code, relating to the restrictions on assignment of state vehicles.

(2) Vehicles are assigned to commission executive staff whose essential agency duties and functions require them to have vehicles available on a regular or frequent basis to provide state-wide oversight, management and supervision of agency staff.

(3) Pool vehicles are maintained at headquarters to reduce the cost to the state for travel required by qualified agency staff whose essential duties and functions require regular or periodic travel by vehicle.

(4) Vehicles are assigned to field operation employees whose essential agency duties and functions require daily and extensive use of vehicles and the cost to the state of providing a state-owned vehicle is less than the cost of reimbursing employees for the use of personal vehicles.

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 May 22, 2009.

TRD-200902017

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 206-3204



CHAPTER 36. GUN REGULATION

16 TAC §36.1

The Texas Alcoholic Beverage Commission (commission) proposes to amend §36.1, relating to the possession and sale of firearms on a licensed premise.

Currently, §36.1(c), relating to On-Premise Possession of Firearms, provides that only the holder of a permit or license authorizing the on-premise consumption of alcoholic beverages may possess a firearm on the licensed premises or the firearm is disabled and possessed for ceremonial or display purposes. The current rule limits possession of the firearm to the permit or license holder.

The proposed amendment clarifies that a permit or license holder is not limited to possession of a firearm that is disabled and for ceremonial or display purposes only.

The proposed amendment also adds an additional class of persons that may possess a firearm on a licensed premise. This additional class of persons may only possess a firearm that is disabled and possessed for ceremonial or display purposes at a charitable fundraiser. While on the licensed premise, the firearm must remain in the possession, control, or supervision of a person acting on behalf of a charitable organization sponsoring the fundraiser.

Charlie Kerr, Chief Financial Officer, has determined that for each fiscal year of the first five years the amended section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the

section as proposed. There will be no fiscal impact on small or micro-businesses, or individuals as a result of the amendment.

Sherry Cook, Assistant Administrator, has determined that for each of the first five years that the amendment is in effect, it is anticipated that the public will benefit as a result of the clarifications added by the amendment.

Comments on the proposed amendment may be addressed to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed amended rule in the *Texas Register*.

The proposed amendment to §36.1 is authorized by §§5.31, 11.61(f), and 61.71 of the Texas Alcoholic Beverage Code (code). Section 5.31 provides the commission with general authority to prescribe and publish rules necessary to carry out the provisions of the code.

Cross Reference: Sections 5.31, 11.61, and 61.71 of the Alcoholic Beverage Code and Chapter 36 of the commission rules are affected by the proposed amendment.

§36.1. *Possession and Sale of Firearms on Licensed Premises.*

(a) Gun Shows. A permittee/licensee may use or allow a portion of the grounds, buildings, vehicles and appurtenances of the licensed premises for the use of gun shows if the permittee/licensee:

(1) suspends all sales, complimentary offers and consumption of all alcoholic beverages during the gun show including time required for preparation or set-up and dismantling of the gun show; and

(2) operates its licensed premises at a facility regularly used for special functions, directly or indirectly, under a lease, concession or similar agreement from a governmental entity or legally formed and duly recognized civic, religious, charitable, fraternal or veterans organization.

(b) Off-Premise Retailers and Gun Sales. The holder of a retail dealer's off-premise license, a wine and beer retail dealer's off-premise permit, a wine only package store or package store permit may allow the sale or offer for sale firearms at the licensed location if:

(1) alcoholic beverages are not being displayed or sold in any area where firearms are readily accessible or can be viewed; and

(2) the firearms are secure from the general public and are only accessible by employees of the person or entity offering the firearms for sale.

(c) On-Premise Possession of Firearms. Firearms may be possessed on premises licensed for on-premise consumption if: ~~[The holder of a permit or license allowing on-premise consumption of alcoholic beverages may possess firearms on the licensed premise if the firearms are:]~~

(1) the firearm is in the possession of the permittee/licensee; or

(2) the firearm is:

(A) possessed for ceremonial and/or display purposes;

(B) disabled from use as a firearm while on the licensed premises;

(C) is possessed on the licensed premises in connection with charitable fundraising; and

(D) remains in the possession, control or supervision of person or persons acting on behalf of the charitable organization sponsoring the fundraising activity.

~~{(1) possessed by the permittee/licensee as defined in the Texas Alcoholic Beverage Code, §1.04(11) and (16); or}~~

~~{(2) possessed for ceremonial and/or display purposes; if such firearm is disabled from use as a firearm.}~~

(d) Historical Reenactments. Pursuant to §11.61(i) of the Texas Alcoholic Beverage Code, a historical reenactment utilizing firearms may be conducted on the premises of a permit or license if:

(1) the firearms are of the type, caliber, or gauge common to the era and event being reenacted;

(2) such firearms remain in the possession of members of the cast, production company, employees of the permit holder, or others directly involved in the reenactment and are not left unattended or accessible to unauthorized persons at all times such firearms are on the licensed premises;

(3) such firearms remain unloaded at all times while on the licensed premises except that the firearms may be loaded with blank ammunition firing no projectile;

(4) such firearms shall be handled in a safe manner so as to present no threat of injury to audience members or others because of discharge or other use;

(5) persons engaged in reenactments shall maintain a minimum of 15 feet intervals between those armed with pistols and all others, and 40 feet between those armed with shotguns and all others;

(6) the permittee shall adopt safety rules to be employed during the reenactment and such rules shall be read and signed by all employees of the permit holder involved in the reenactment prior to the beginning of the event; and

(7) the permittee provides the relevant Commission District Office or outpost notice of the reenactment at least three business days before the event.

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 May 20, 2009.

TRD-200901983

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 206-3204



CHAPTER 45. MARKETING PRACTICES

SUBCHAPTER E. MISCELLANEOUS

DIVISION 1. DELINQUENT LIST

The Texas Alcoholic Beverage Commission (commission) proposes the repeal of §45.121, relating to credit law violations by retailers, wholesalers and distributors, and proposes new §45.121, which will replace the repealed section.

Section 102.32 of the Texas Alcoholic Beverage Code (Code) provides that no wholesaler may sell and no retailer may purchase liquor except for cash or on terms requiring payment on or before the 25th of the month for purchases made between the 1st and the 15th of the month and on or before the 10th day of the following month for purchases made between the 16th and

the last day of the month. The section requires records of deliveries and purchases. The section also requires a wholesale dealer to immediately report to the commission when a retailer becomes delinquent on an account and prohibits sales of any liquor to a retailer who is delinquent until the account is paid in full and cleared from the commission's records. An account becomes delinquent under subsection (d) of the statute if it is not paid as required by subsection (c). A wholesale dealer who violates the section commits an offense under the Code.

Existing §45.121 is being repealed because it is no longer necessary after the adoption of proposed new §45.121.

The proposed new section reorganizes the content of the existing rule, updates the text of the rule to a plain language standard, and equalizes the duties of sellers and retailers for avoiding credit law violations.

Proposed new subsection (a) states the purpose of the new rule section.

Proposed new subsection (b) provides definitions used in the new rule.

Proposed new subsection (c) contains the requirements for invoices. It does not contain substantive revisions, but it does provide that records may be maintained electronically or in an internet based inventory system, reflecting updated business practices.

Proposed new subsection (d) provides that it is a violation of the rule to make a delinquent payment. It also provides that a retailer whose permit is cancelled, expires, is suspended or placed in suspense while on the delinquent list may be disqualified from receiving a new license or permit until the delinquency is satisfied. This new provision is intended to discourage retailers from abusing credit restrictions by imposing adverse consequences in future licensing decisions based on past abusive practices.

Proposed new subsection (e) provides a requirement that violations and payment be reported by sellers, and makes a failure to report a violation. The existing rule provides no violation for a seller who fails to report. The subsection requires sellers to submit reports through the commission's web-based reporting system. Sellers without access to the internet must request an exception or outsource the reporting requirement.

Proposed new subsection (f) prohibits sellers from selling or delivering liquor to any retailer location for a retailer that appears on the delinquent list. It makes a sale a violation of the section. The existing rule provides no violation for a seller who sells to a retailer on the delinquent list.

Proposed new subsection (g) prohibits a retailer from purchasing or accepting the delivery of liquor while on the delinquent list. It makes a purchase a violation of the section. The existing rule provides no violation for a retailer who purchases or accepts delivery of liquor while on the delinquent list.

Proposed new subsection (h) provides an exception to a retailer who has a good faith dispute regarding whether a violation of the section occurred.

Proposed new subsection (i) provides a penalty for repeat violations of the section for both retailers and sellers.

Proposed new subsection (j) relates to the publication of the delinquent list by the commission. The time requirements are provided by §102.32 of the Code. The remainder of the subsec-

tion provides the public with where to find the list and when it is published and updated.

Charlie Kerr, Chief Financial Officer, has determined that for each year of the first five years that the proposed new rule is in effect there will be no fiscal impact on units of state or local government as a result of enforcing and administering the section as proposed. The use of technology will eliminate or substantially reduce the current paper based reporting system, resulting in increased efficiency and use of agency resources.

Mr. Kerr has determined that for each year of the first five years that the proposed new rule is in effect there will be a fiscal impact on small and micro-businesses and individuals who fail to comply with the sections. The amount of the fiscal impact cannot be determined because the number of violations cannot be established, but each violation will be at least \$300, as shown in 16 TAC Chapter 34, Schedule of Sanctions and Penalties. There will be no fiscal impact on small and micro-businesses and individuals who comply with the section. The use of technology will also provide cost savings by eliminating preparing, mailing, and maintaining paper for persons required to comply with the section.

Sherry Cook, Assistant Administrator, has determined that for each year of the first five years that new §45.121 is in effect the public will benefit from the adoption of the proposed clarifications, equalization of responsibilities of sellers and retailers, and the conformance of the rule to the intent of the statute to prevent credit violations between the wholesaler and retailer tiers. The increased use of technology will greatly reduce the use of paper and the personnel costs associated with creating, filing, and maintaining paper and the physical space required to store paper.

Comments on the proposed repeal and new rule may be addressed to Joan Carol Bates, Deputy General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711. Comments will be accepted for 30 days following publication of the proposed repeal and proposed new rule in the *Texas Register*.

16 TAC §45.121

(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 Alcoholic Beverage Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The proposed repeal of the existing rule and proposed new rule are authorized by §5.31 and §102.32 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 102.32 provides the specific authority to adopt these rules to give effect to the section.

Cross Reference: Sections 5.31 and 102.32 of the Alcoholic Beverage Code are affected by the proposed repeal of the existing rule and the proposed new rule.

§45.121. *Delinquent List.*

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 May 22, 2009.

TRD-200902006

Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 5, 2009
For further information, please call: (512) 206-3204



16 TAC §45.121

The proposed repeal of the existing rule and proposed new rule are authorized by §5.31 and §102.32 of the Alcoholic Beverage Code (Code). Section 5.31 gives the commission authority to prescribe and publish rules necessary to carry out the provisions of Code. Section 102.32 provides the specific authority to adopt these rules to give effect to the section.

Cross Reference: Sections 5.31 and 102.32 of the Alcoholic Beverage Code are affected by the proposed repeal of the existing rule and the proposed new rule.

§45.121. *Credit Restrictions and Delinquent List for Liquor.*

(a) Purpose. This rule implements §§102.32, 11.61(b)(2), and 11.66 of the Texas Alcoholic Beverage Code (Code).

(b) Definitions.

(1) Alcoholic beverage--As used in this section includes only liquor, as that term is defined in §1.04 of the Code.

(2) Delinquent payment--A financial transaction or instrument that fails to provide payment in full or is returned to the Seller as unpaid for any reason.

(3) Event--A financial transaction or instrument that fails to provide payment to a Retailer and results in a Retailer making one or more delinquent payments to one or more Sellers.

(4) Incident--A single delinquent payment.

(5) Retailer--A package store permittee, wine only package store permittee, private club permittee, private club exemption certificate permittee, mixed beverage permittee, or other retailer, and their agents, servants and employees.

(6) Seller--A wholesaler, class B wholesaler, winery, wine bottler, or local distributor and their agents, servants and employees.

(c) Invoices. A delivery of alcoholic beverages by a Seller, to a Retailer, must be accompanied by an invoice of sale showing the name and permit number of the Seller and the Retailer, a full description of the alcoholic beverages, the price and terms of sale, and the place and date of delivery.

(1) The Seller's copy of the invoice must be signed by the Retailer to verify receipt of alcoholic beverages and accuracy of invoice.

(2) The Seller and Retailer must retain invoices in compliance with the requirements of §206.01 of the Code.

(3) Invoices may be created, signed and retained in an electronic or internet based inventory system, and may be retained on or off the licensed premise.

(d) Delinquent Payment Violation. A Retailer who makes a delinquent payment to a Seller for the delivery of alcoholic beverages violates this section unless an exception applies.

(1) A Retailer who violates this section must pay a delinquent amount, and a Seller may accept payment, only in cash or cash equivalent financial transaction or instrument.

(2) A Retailer whose permit or license is cancelled for cause, voluntarily cancelled, expires, suspended or placed in suspension while on the delinquent list may be disqualified from applying for or being issued an original or renewal permit or license. For purposes of this rule, the Retailer includes all persons who were owners, officers, directors, equity interest holders, and shareholders of the Retailer at the time the delinquency occurred.

(e) Reporting Violation and Payment; Failure to Report.

(1) A report of a violation or payment must be submitted electronically on the forms provided on the commission's web based reporting system at www.tabc.state.tx.us/creditlaw/reporting.

(2) A Seller who cannot access the commission's web based reporting system must either:

(A) submit a request for exception to submit reports by paper; or

(B) contract with another seller or service provider to make electronic reports on behalf of the Seller.

(3) All reports of violations or payment under this subsection must be made to the commission within two business days from the date the violation is discovered by the Seller.

(4) A Seller who fails to report a violation or a payment as required by this subsection is in violation of this section.

(f) Prohibited Sales and Delivery.

(1) Sellers are prohibited from selling or delivering alcoholic beverages to any licensed location of a Retailer who appears on the commission's Delinquent List from the date the violation appears on the Delinquency List until the Release Date on Delinquent List, or the Retailer no longer appears on the Delinquent List.

(2) A sale or delivery of alcoholic beverages prohibited by this section is a violation of this section.

(g) Prohibited Purchase or Acceptance.

(1) A Retailer who violates subsection (d) of this section prohibited from purchasing or accepting delivery of alcoholic beverages from any source to any of Retailer's licensed locations from the date any violation occurs until all delinquent payment are paid in full.

(2) A prohibited purchase or acceptance of a delivery of alcoholic beverages is a violation of this section.

(h) Exception. A Retailer who wishes to dispute a violation of this section or inclusion on the commission's Delinquent List, based on a good faith dispute between the Retailer and the Seller may submit a detailed electronic written statement with the commission with an electronic or paper copy to the Seller explaining the basis of the dispute. The Retailer must immediately submit an electronic notice of resolution of a dispute to the commission under this subsection.

(i) Penalty for Violation. An action to cancel or suspend a permit or license may be initiated under §11.61(b)(2) of the Code for repeat violations of this section. The commission may consider whether the repeat violations are the result of an event or incident when initiating an action under this subsection.

(j) Delinquent List.

(1) The Delinquent List is published bi-monthly on the commission's public web site at <http://www.tabc.state.tx.us>. An interested person may receive the Delinquent List by electronic mail each date the Delinquent List is published by registering for this service online.

(2) The Delinquent list will be published the 26th day of the month for purchases made from the 1st to the 15th day of the month, for which payment was not made on or before the 25th day of the month. The Delinquent list will be published the 11th day of the month for purchases made between the 16th and the last day of the preceding month for which payment was not made on or before the 10th day of the month.

(3) The Delinquent List is effective at 12:01 A.M. on the date of publication.

(4) The Delinquent List is updated continuously each day the commission is open during normal business hours to reflect reports of violations and payments submitted. The Release Date is the date a payment is submitted to the Delinquent List.

(k) Calculation of Time. A due date under this section or §102.32(c) of the Code or the publication date of the Delinquent list that would otherwise fall on a Saturday, Sunday or a state or federal holiday, will be the next regular business day. A payment sent by U.S. postal service or other mail delivery service is deemed made on the date postmarked or proof of date delivered to the mail delivery service. A payment hand delivered to an individual authorized to accept payment on behalf of the Seller is deemed made when the authorized individual takes possession of the payment.

This agency hereby certifies that the 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 May 22, 2009.

TRD-200902007

Alan Steen
Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 206-3204



TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.45, 681.49, 681.72, 681.91, and 681.93, concerning the licensing and regulation of professional counselors.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 681.45, 681.49, 681.72, 681.91, and 681.93 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of professional counselors are still needed.

The proposed amendments are the result of the comprehensive rule review by the board and will ensure that the rules reflect current legal, policy, and operational considerations; improve draftsmanship; and make the rules more accessible, understandable, and usable, to the extent possible.

SECTION-BY-SECTION SUMMARY

Section 681.45(e) is added to require the licensee to report any arrests, convictions, or disciplinary actions within 30 days to the board.

Section 681.49(i) is amended to allow a licensed professional counselor who carries the supervisor status to use the designation "LPC-S."

Section 681.72(d) is amended to require a current copy of the supervisor's license to be attached to the supervisory agreement form.

Section 681.91(e) is amended to change the length of time a temporary license is issued.

Section 681.91(f) describes what happens if the required supervised experience hours needed for licensure are not met within the time period of a temporary license.

Section 681.93(c) is amended to change the supervisor renewal from one year to two years.

Section 681.93(f) is amended to allow for the board to decide if supervisory hours can count if the supervisor's status has been denied, revoked, or suspended.

Section 681.93(k) is added to require the supervisor to refund all monies paid by the intern if the supervisor status expires during the supervision and is not renewed.

Section 681.93(l) is added to allow for disciplinary action to be taken against the supervisor for allowing the supervisor status to expire.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. There will be no decrease in general revenue each year of the first five years the sections are in effect.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Alexander has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections as proposed, and an economic impact statement and regulatory flexibility analysis are not required. The rules relate to individuals who are licensed as professional counselors, and there are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of counseling in Texas, which will protect

and promote public health, safety, and welfare, and to ensure that statutory directives are carried out.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Professional Counselors, Department of State Health Services, Mail Code 1982, P.O. Box 149347, Austin, Texas 78714-9347 or by email to lpc@dshs.state.tx.us. When emailing comments, please indicate "Comments on Proposed Rules" in the email subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER C. CODE OF ETHICS

22 TAC §681.45, §681.49

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendments affect Occupations Code, Chapter 503.

§681.45. *Confidentiality and Required Reporting.*

(a) - (d) (No change.)

(e) A licensee shall make written reports to the board office within 30 days of the following:

(1) an arrest of the licensee, other than for a Class C misdemeanor traffic offense;

(2) the filing of a criminal case against the licensee;

(3) a criminal conviction of the licensee other than for a Class C misdemeanor traffic offense; or

(4) the filing of a disciplinary action or the taking of a disciplinary action against the licensee by another state licensing board, either in Texas or another state, or by a professional organization.

(f) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the board.

§681.49. *Advertising and Announcements.*

(a) - (h) (No change.)

(i) A licensed professional counselor who is a board-approved supervisor may use the designation "LPC-S" when advertising their supervisory status.

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

Filed with the Office of the Secretary of State on May 21, 2009.

TRD-200901995

Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 5, 2009

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



SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72

STATUTORY AUTHORITY

The amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendment affects Occupations Code, Chapter 503.

§681.72. Required Application Materials.

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

(d) The supervisory agreement form must be completed, signed and dated by both the supervisor and the applicant. A current copy of the supervisor's license shall be attached to the agreement form. A supervisory agreement form must be submitted for subsequent supervisors and settings, before the supervision begins under the new supervisor or in the new setting. Supervised hours earned without an approved supervisor agreement on file with the board may not be counted toward licensure.

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

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

Filed with the Office of the Secretary of State on May 21, 2009.

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Glynda Corley

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 5, 2009

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



SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §681.91, §681.93

STATUTORY AUTHORITY

The amendments are authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties. The review of the rules implements Government Code, §2001.039.

The amendments affect Occupations Code, Chapter 503.

§681.91. Temporary License.

(a) - (d) (No change.)

(e) A temporary license will expire 60 months from the date of issuance.

(f) An intern who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure. The person may obtain a new license by complying with the requirements and procedures for obtaining an original license, including examination requirements.

~~[(e) An initial temporary license will expire 36 months from the date of issuance.]~~

~~[(f) An LPC Intern who does not complete the supervised experience during the 36 months may submit a written request for an extension from the board. The LPC Intern must submit proof of successfully completing the Texas Jurisprudence Exam as a condition for renewal.]~~

(g) - (k) (No change.)

§681.93. Supervisor Requirements.

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

(c) A supervisor under this section must have met the following requirements.

(1) A licensee seeking approval to be a supervisor must meet the requirements of subsection (a) of this section, successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services as set forth below; and shall submit a \$100 processing fee. The initial supervisor approval will expire on the day the licensee's regular license next expires. Renewal of supervisor approval will begin and expire on the same dates as for the regular license. A renewal application must be filed with the board, accompanied by a \$100 processing fee. The 40 clock-hours of training shall be met through the following:

~~[(1) The supervisor shall meet the requirements stated in subsection (a) of this section; shall submit a supervisor approval application form accompanied by a \$50 supervisor approval processing fee, shall annually submit a renewal supervisor approval application form accompanied by a \$50 supervisor approval processing fee, and must successfully complete 40 clock-hours of training in the supervision of professional counseling or mental health services through one or a combination of the following:]~~

(A) a graduate course in counselor supervision taken for credit at an accredited college or university; or

(B) continuing education programs meeting the requirements of §681.142 of this title (relating to Types of Acceptable Continuing Education).

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

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

(f) A supervisor whose license expires or is revoked or suspended is no longer an approved supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension may [with] not count as acceptable hours unless approved by the board.

(g) - (j) (No change.)

(k) A supervisor whose supervisory status has expired shall refund all supervisory fees received after the expiration of the supervisory status to the intern(s) who paid the fees.

(l) Supervision of an intern without being approved as a supervisor or after expiration of the supervisor status may be grounds for disciplinary action.

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

Filed with the Office of the Secretary of State on May 21, 2009.

TRD-200901997

Glynda Corley
Chair

Texas State Board of Examiners of Professional Counselors

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 409. MENTAL HEALTH SERVICES--MEDICAID PROGRAMS

SUBCHAPTER B. ADVERSE ACTIONS

25 TAC §§409.31 - 409.35

(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, Texas.)

The Executive Commissioner of the Health and Human Services Commission (HHSC) on behalf of the Department of State Health Services (department) proposes the repeal of §§409.31 - 409.35, concerning adverse actions for the Mental Health Services Medicaid Programs.

BACKGROUND AND PURPOSE

These rules adopted by the former Texas Department of Mental Health and Mental Retardation (TDMHMR) were part of a broader set of rules that addressed fraud, abuse, and recovery of Medicaid payments, adverse actions and sanctions, and processes for requesting an administrative hearing. At the time they were adopted, these rules were necessary to fulfill the obligations of the former TDMHMR in administering the Mental Health Services Medicaid Programs. House Bill 2292, 78th Legislature, Regular Session (2003), effective September 1, 2004, resulted in the consolidation of organizational structure and functions of the health and human services agencies. As part of that consolidation, responsibility for matters relating to Medicaid program integrity, including administrative enforcement, sanctions, damages, and penalties, was made the exclusive jurisdiction of the Office of Inspector General (OIG) at HHSC. Also, at the time of the consolidation, these former TDMHMR rules were transferred to the department.

Government Code, §2001.039, requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has determined that there is no need to retain the rules in Chapter 409, Subchapter B, because they have been superseded by the OIG rules in 1 TAC Chapter 371, Subchapter G, relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity. Thus, the rules are being proposed for repeal.

SECTION-BY-SECTION SUMMARY

The rules concern the application of the rules, definitions, notice of adverse actions, request for an administrative hearing, and withholding provider agreement payments.

FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five-year period that the repeal of the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the repeal of the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Mr. Maples has also determined that there will be no adverse economic impact on small businesses or micro-businesses required to comply with the repeal of the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the repeal of the sections. Therefore, an economic impact statement and regulatory flexibility analysis for small and micro-businesses are not required.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the repeal of the sections as proposed. There is no anticipated impact on local employment.

PUBLIC BENEFIT

Mr. Maples has determined that for each year of the first five years the repeal of the sections is in effect, the public will benefit from adoption of the repeals. The public benefit anticipated as a result of repealing the sections is that the department will maintain a clear, concise set of rules and avoid the potential for confusion from retaining rules that have no effect.

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 rules the specific intent of which are to protect the environment or reduce the 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 public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the repeals would 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 proposal may be submitted in writing to Janet Fletcher, Department of State Health Services, Mail Code 2018/552, 909 West 45th Street, Austin, Texas 78751, or by e-mail to janet.fletcher@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

The repeals affect the Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§409.31. *Application.*

§409.32. *Definitions.*

§409.33. *Notice of Adverse Action.*

§409.34. *Request for an Administrative Hearing.*

§409.35. *Withholding Provider Agreement Payments.*

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 May 19, 2009.

TRD-200901948

Lisa Hernandez

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 5, 2009

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



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 210. USE OF RECLAIMED WATER SUBCHAPTER C. QUALITY CRITERIA AND SPECIFIC USES FOR RECLAIMED WATER

30 TAC §210.33

The Texas Commission on Environmental Quality (commission or agency) proposes the amendment of §210.33.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The executive director and the United States Environmental Protection Agency (EPA) reached an agreement in July 2008 regarding bacterial effluent limitations and monitoring requirements in Texas Pollution Discharge Elimination System (TPDES) domestic wastewater permits. The agreement included the commission proposing rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits.

Chapter 210, which authorizes the use of reclaimed wastewater, is being amended to allow the reclaimed water provider to select either the currently required fecal coliform or the new requirement for TPDES domestic permits, *Escherichia coli* (*E. coli*) as the indicator organism for disinfection. Both bacteria adequately demonstrate disinfection and are therefore protective of human health and the environment. This flexibility allows the provider to choose the more convenient, more cost-effective bacteria test for its facility. This rulemaking also amends 30 TAC Chapters 309 and 319 to include bacteria testing and set its frequency for TPDES domestic wastewater permits. A reclaimed water use authorization can only be issued to an entity that has a permitted method to dispose of the effluent if at any time there is not a beneficial use for it. The most typical scenario is for a domestic wastewater treatment facility to supply reclaimed water to a user for purposes of irrigation, dust suppression, cooling tower make-up water, or oil and gas drilling.

SECTION DISCUSSION

Proposed §210.33 requires the reclaimed water provider to demonstrate disinfection by measuring either fecal coliform or *E. coli* bacteria. This change is made so that reclaimed water providers that hold TPDES domestic wastewater permits with *E. coli* limits will not have to sample both *E. coli* and fecal coliform. It also allows providers with land application permits that do not require *E. coli* testing to continue to use fecal coliform testing. Both bacteria tests are adequate to demonstrate disinfection.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will have to modify operational practices and record data regarding bacteria present in reclaimed water, but the agency will use current resources to implement the proposed rule. Other units of state or local governments will not experience fiscal implications as a result of the proposed rule since they will be given the option to choose which bacterium to use to demonstrate the disinfection level of reclaimed water.

The proposed rulemaking will modify Chapters 210, 309, and 319 to implement an agreement between the agency and the EPA to include bacterial effluent limitations and monitoring requirements in TPDES domestic wastewater discharge permits. The proposed rulemaking for Chapter 210 addresses bacteria testing for reclaimed water use authorizations and allows the provider of reclaimed water to test for fecal coliform limits per current rules or for *E. coli* limits per the proposed rules in Chapter 309 and Chapter 319. This flexibility allows the reclaimed

water provider to choose the bacteria test that is most convenient and cost effective for its facility, and the proposed rule for Chapter 210 should have no significant fiscal impact on the estimated 232 governmental entities and seven private businesses that provide reclaimed water for beneficial reuse.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a flexible, cost effective approach to providing a direct measure of the effectiveness of disinfection of reclaimed water.

The proposed rule is not expected to have a fiscal impact on businesses since the proposed rule contains no new requirements. The proposed rule offers reclaimed water providers a choice of which bacterium to sample and analyze to demonstrate disinfection of the reclaimed water. Staff estimates that there may be as many as seven private businesses that provide reclaimed water for beneficial reuse.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule since the proposed rulemaking contains no new requirement but offers regulatory flexibility.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not have an adverse effect on small or micro-businesses and are required to protect the environment.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this portion of the proposed rulemaking is to allow flexibility in the indicator bacteria used to demonstrate disinfection for reclaimed water usage. The proposed rulemaking modifies the state rules to allow a choice of indicator bacteria measured for demonstration of disinfection in reclaimed water authorizations.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four ap-

plicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: (1) exceeds a standard set by federal law, unless state law specifically requires the rule; (2) exceeds an express requirement of state law, unless federal law specifically requires the rule; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMIT-TAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, 319.9, and 319.10.

Promulgation and enforcement of the proposed rule will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule includes the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rule includes 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

This rulemaking would adopt bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By

adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with those CMP goals and policies and because the rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 30, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-005-309-PR. The comment period closes July 6, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Sherry Smith, Water Quality Division, (512) 239-0571.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides

the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

This proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§210.33. Quality Standards for Using Reclaimed Water.

The following conditions apply to the types of uses of reclaimed water. At a minimum, the reclaimed water producer shall only transfer reclaimed water of the following quality as described for each type of specific use:

(1) for Type I reclaimed water uses, reclaimed water on a 30-day average shall have a quality of:

Figure: 30 TAC §210.33(1)

[Figure 1: 30 TAC §210.33(1)]

(2) for Type II reclaimed water use, reclaimed water on a 30-day average shall have a quality of:

(A) for a system other than pond system:

Figure: 30 TAC §210.33(2)(A)

[Figure 2: 30 TAC §210.33(2)(A)]

(B) for a pond system:

Figure: 30 TAC §210.33(2)(B)

[Figure 3: 30 TAC §210.33(2)(B)]

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 May 21, 2009.

TRD-200901990

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 239-2548



CHAPTER 309. DOMESTIC WASTEWATER EFFLUENT LIMITATION AND PLANT SITING

SUBCHAPTER A. EFFLUENT LIMITATIONS

30 TAC §309.3

The Texas Commission on Environmental Quality (commission or TCEQ) proposes the amendment of §309.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The TCEQ typically includes chlorine exposure time and residual concentration requirements as the bacteria control mechanism for disinfection by chlorination in Texas Pollutant Discharge Elimination System (TPDES) domestic discharge permits. Starting in February 2007, the United States Environmental Protection Agency (EPA) took a new position that bacteria limits are required. This resulted in the EPA objecting to a subset of the

commission's draft permits. As a result, the commission could not issue approximately 100 permits during this time. The executive director and EPA reached an agreement in July 2008 regarding bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater permits. The agreement included an interim approach to require bacteria limitations and/or monitoring for selected facilities that met certain criteria for discharges to bacteria impaired water bodies. The agreement also included a long term approach in which the commission would propose rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits. Conditions in the agreement stated that an adopted rule must be effective by December 31, 2009, and all TPDES domestic wastewater draft permits for which Notice of Application and Preliminary Decision is published on or after January 1, 2010 will have the new requirements as part of the permit language or EPA objections would begin again. The purpose of this rulemaking is to satisfy the agreement with the EPA.

The commission is proposing the contact recreation criterion in the Texas Surface Water Quality Standards as the bacteria limit for domestic TPDES permits. The Texas Surface Water Quality Standards program has determined that the contact recreation criterion is protective of both human health and the environment. It is also readily achievable with current technology.

SECTION DISCUSSION

The commission proposes administrative changes throughout this rulemaking to conform to Texas Register and agency guidelines. These changes include updating cross-references.

Proposed §309.3(g)(2) removes the last sentence in the paragraph that applies to renewal permits for wastewater systems constructed prior to October 8, 1990. There are no longer any active permits issued prior to this date that have not been renewed. The statement is being removed to simplify the rule.

Proposed §309.3(g)(3) replaces the fecal coliform limit with the *Escherichia coli* (*E. coli*) or *Enterococci* bacteria limitation set by §309.3(h) or (i) if applying for an alternative method of disinfection. The requirement was changed to be consistent with other bacteria requirements in this section.

Proposed §309.3(g)(4) allows a permittee to choose to test for *E. coli* or fecal coliform testing for effluent that is land applied through a subsurface area drip dispersal system in an area that has the potential for human contact. This change was made to allow flexibility in testing procedures. Both bacteria tests indicate the safety level of water for human contact. The permittee may choose the test that is more convenient or more cost effective. Subsurface area drip dispersal systems are authorized by a state-only permit and are not subject to the TPDES program, and therefore, not subject to the agreement with EPA.

Proposed §309.3(h) describes bacteria effluent limitations for domestic TPDES permits.

Proposed §309.3(h)(1) lists the bacteria required for fresh water discharges and salt water discharges. The Texas Surface Water Quality Standards and the agreement with EPA require *E. coli* testing for fresh water and *Enterococci* testing for salt water.

Proposed §309.3(h)(2) sets the monthly average bacteria limitation at the geometric mean of the contact recreation standard. The current geometric mean for contact recreation is 126 colony forming units (cfu) per 100 milliliters (ml) for *E. coli* bacteria in fresh water and 35 cfu/100 ml for *Enterococci* in salt water. The Chief Engineer's Office is currently evaluating a change to the

fresh water standard. If a change is adopted, staff will use the new the *E. coli* criterion for the most stringent contact recreation category for the bacteria limits in TPDES domestic permits issued, amended, or renewed after the date the new standards are adopted.

Proposed §309.3(h)(3) sets the maximum single grab sample bacteria limitation as the single grab sample for the contact recreation standard. Currently, the single grab sample criterion is 394 cfu/100 ml for *E. coli* in fresh water and 89 cfu/100 ml for *Enterococci* in salt water. The levels contemplated for the amended Water Quality Standards would change the grab sample criteria to 399 cfu/100 ml for *E. coli* and 104 cfu/100 ml for *Enterococci* for primary contact recreation, the most stringent contact recreation criteria. If changes are adopted, staff will use the new criterion for the most stringent contact recreation category for the bacteria limits in TPDES domestic permits issued, amended, or renewed after the date the new standards are adopted.

Proposed §309.3(i) is the former §309.3(h) with amendments. The subsection was relettered to allow for the insertion of the bacteria limits subsection. It allows the executive director to assign a more stringent parameter limit if necessary to protect human health or water quality. The bacteria limit was included in the parameters that can be adjusted by the executive director. Protection of human health was also added, consistent with the commission's mission and other regulations. The list of subsections to which it applies was changed from (a) - (g) to (a) - (h) to include the new bacteria limitations subsection.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rule. The agency will have to modify operational practices and record data regarding bacteria present in domestic wastewater discharges but will use current resources to implement the proposed rule. Other units of state or local governments will experience fiscal implications as a result of the proposed rule since they will be required to test for bacteria present in domestic wastewater discharges. However, any fiscal implications to other units of state or local governments are not expected to be significant.

The proposed rulemaking will modify 30 TAC Chapters 210, 309, and 319 to implement an agreement between the executive director and the EPA to include bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater discharge permits. The state previously controlled for bacteria in most TPDES domestic permits by requiring specific chlorine exposure times and residual chlorine concentrations. The EPA objected to TCEQ permits for the lack of bacteria limits in certain permits in February 2007, and the agency, through an interim agreement, began to require bacteria limitations and monitoring for selected facilities in order to issue TPDES permits to those facilities in July 2008. To retain EPA delegation of the TPDES permit program, the commission must establish bacteria criteria in its rules.

This proposed rulemaking will establish requirements for bacteria limitations in all TPDES domestic wastewater permits for which Notice of Application and Preliminary Decision is published on or after January 1, 2010. In the proposed rule for Chap-

ter 309, bacteria limits are added to TPDES domestic wastewater permits. In proposed rule for Chapter 319, frequency of testing for bacteria is specified. In the proposed rule for Chapter 210, flexibility is given to allow reclaimed water providers to choose the most economical bacteria test (either *E. coli* or fecal coliform bacteria) to verify disinfection. This fiscal note discusses the fiscal implications of proposed rule in Chapter 309, and fiscal implications for the proposed rule changes in Chapters 319 and 210 are discussed in separate, but related fiscal notes.

The agency estimates that there are 2,011 TPDES domestic facilities statewide. An estimated 1,395 of these are governmental entities that include state agencies, municipalities, counties, river authorities, and utility districts. The agency issues or renews TPDES domestic permits for a five-year period, and approximately 20% of these permits, or 402 statewide, are renewed annually. Of the 402 permits renewed annually, approximately 279 will be issued to governmental entities each year and 123 will be issued to private facilities.

The proposed rule for Chapter 309 uses the most stringent contact recreation criterion in the Texas Surface Water Quality Standards as the bacteria limit for domestic TPDES permits and replace the fecal coliform limit with limits for *E. coli* for fresh water discharges and *Enterococci* for salt water discharges. If effluent is land applied through a subsurface or drip dispersal system, facilities can choose to test for either *E. coli* or fecal coliform, depending on which is the more convenient or cost effective to test.

Governmental entities will see testing costs increase because the proposed rule requires bacteria testing not previously required. The impact of cost increases depends on many factors including frequency of testing required by proposed rule in Chapter 319, whether or not an outside contractor is utilized to obtain the bacteria count, the size of the wastewater system, and whether or not bacteria measurement costs can be recouped through increased user fees. However, the proposed rule is not expected to have a significant fiscal impact on governmental entities because of the testing choices available to comply with the rule requirements.

Testing for bacteria also involves sampling costs, transportation costs, and staff training costs. These costs vary greatly among both contractors and entities that choose to verify bacteria limits in house. The fiscal impact of these costs will depend on the unique operating environment of each entity and methods chosen to train staff, obtain samples, and transport samples for laboratory analysis.

Total estimated annual average costs for laboratory analysis for *E. coli* if done by a contract laboratory can be found in the following table, which shows the relationship between testing frequency proposed in Chapter 319 and effluent limitations proposed in Chapter 309. Estimated average costs for laboratory analysis for *E. coli* is approximately \$51.50 per test. Ultra violet (UV) or other chemical systems are currently required to test for fecal coliform bacteria in effluent (\$41.20 per test), and the table shows the increase in laboratory costs for those systems.

Figure: 30 TAC Chapter 309--Preamble

If governmental entities decide to do laboratory analysis in-house, they will incur initial costs for equipment purchases, for staff training, and for supplies, but those costs are expected to be lower than using a contractor to analyze bacteria counts. Staff has estimated that one time equipment costs for laboratory analysis would be approximately \$1,500, and analysis costs would be approximately \$6 per test if done in house.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be a more direct measure of the effectiveness of disinfection processes at domestic wastewater facilities discharging into state water and compliance with EPA requirements to retain delegation of the TPDES domestic wastewater permit program.

TPDES permits are held by different business types statewide. These can include investor-owned utilities, resorts, apartment complexes, camps, campgrounds, motels, hotels, and recreational vehicle parks. Staff estimates that there may be as many as 15 large businesses that have TPDES domestic wastewater permits. The largest have a discharge rate of 1.0 million gallons per day (mgd) to 5.0 mgd. If a contractor is used to do laboratory analysis, these businesses could see their costs increase by as much as \$2,678 per year if they have chlorine systems. If they have a UV or other chemical disinfection system, they could pay approximately 20% more (an estimated \$3,760 increase per year) for *E. coli* laboratory analysis instead of fecal coliform by a contractor. If a natural disinfection system is used, these businesses could see contract laboratory analysis costs increase by as much as \$8,034 per year. If testing is done in-house, costs are expected to be lower and one time equipment costs for laboratory analysis would be approximately \$1,500, and analysis costs would be approximately \$6.00 per test.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for some small or micro-businesses as a result of the proposed rule. Small systems are required to test less frequently than larger systems, and 98% of private wastewater treatment facilities (601) have a permitted flow under 0.5 mgd. Many of these small or micro-businesses rely on contractors for laboratory analyses, and annual cost increases are expected to range from \$206 to \$618 for chlorine disinfection systems to \$618 to \$1,236 for natural disinfection systems. In-house laboratory analysis could be done for approximately \$1,500 for initial set-up, and analysis costs would be approximately \$6.00 per test. The significance of the fiscal impact of the proposed rule depends on whether the small or micro-business can absorb the cost increases associated with bacteria testing or whether the customer base of the small business can absorb fee increases to cover increased costs for bacteria testing.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule is required to protect the environment and to comply with EPA requirements requiring bacteria limits in TPDES domestic wastewater permits. Small businesses with TPDES permits, 98% of which have a permitted flow under 0.5 mgd, are given flexibility under the proposed rule in the sense that they are allowed to test for bacteria less frequently than large businesses or large governmental entities. However, to retain federal delegation of TPDES, the commission is required to implement EPA requirements regarding bacteria limits in all TPDES domestic wastewater permits and more flexibility cannot be given.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not re-

quired because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rulemaking is to establish requirements for bacteria limitations in all TPDES domestic wastewater permits.

The proposed rulemaking modifies the state rules and/or procedural documents to include bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits.

Furthermore, the rulemaking is not subject to Texas Government Code §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Government Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, 319.9, and 319.10.

Promulgation and enforcement of the proposed rule will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rule in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rule includes the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rule includes 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

This rulemaking would adopt bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By adopting bacteria limits, there will be a more direct and possibly more accurate measure of the level of disinfection achieved in domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of this rulemaking will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rule is consistent with these CMP goals and policies and because these rule does not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 30, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be

submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-005-309-PR. The comment period closes July 6, 2009. Copies of the proposed rule-making can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Sherry Smith, Water Quality Division, (512) 239-0571.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC, TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The amendment is also proposed under the Texas Water Quality Control Act, which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034 as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

This proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§309.3. Application of Effluent Sets.

(a) Discharges into effluent limited segments.

(1) All discharges into effluent limited segments shall, at a minimum, achieve secondary treatment. An effluent limited segment is any segment which is presently meeting or will meet applicable water quality criteria following incorporation of secondary treatment for domestic sewage treatment plants and/or best practicable treatment for industries.

(2) New or increased discharges into effluent limited segments shall achieve that level of treatment deemed necessary by the commission, based on the assimilative capacity and uses of the receiving stream.

(b) Discharges into water quality limited segments.

(1) All discharges into water quality limited segments for which evaluations have been developed shall, at a minimum, achieve the treatment level specified in the recommendations of the evaluation

for that discharge. A water quality limited segment is a surface water segment classified by the commission as water quality limited where conventional treatment of waste discharged to the segment is not stringent enough for the segment to meet applicable water quality standards; monitoring data have shown significant violations of water quality standards; advanced waste treatment for point sources is required to protect existing exceptional water quality; or the segment is a domestic water supply reservoir used to supply drinking water.

(2) Discharges into water quality limited segments for which wasteload evaluations or total maximum daily loads have not been developed shall, at a minimum, achieve secondary treatment as provided by §309.1 of this title (relating to Scope and Applicability).

(c) Discharges into certain reservoirs. Any discharge made within five miles upstream of a reservoir or lake which is subject to on-site/private sewage facility regulation adopted under Texas Water Code, Chapter 26 or Texas Civil Statutes, Article 4477-7e, or which may be used as a source for public drinking water supply shall achieve, at a minimum, Effluent Set 2 in §309.4 of this title (relating to Table 1, Effluent Limitations for Domestic Wastewater Treatment Plants). Five miles shall be measured in stream miles from the normal conservation pool elevation. The commission may grant exceptions to this requirement where it can be demonstrated that the exception would not adversely impact water quality.

(d) Discharges from stabilization ponds. Effluent Set 3 in §309.4 of this title shall apply to stabilization pond facilities in which stabilization ponds are the primary process used for secondary treatment and in which the ponds have been designed and constructed in accordance with applicable design criteria. Effluent Set 3 in §309.4 of this title is considered equivalent to secondary treatment for stabilization pond systems.

(e) Discharge to an evaporation pond. Effluent discharged to evaporation ponds must receive, at a minimum, primary treatment, be within the pH limits of 6.0 - 9.0 standard units, and have a quality of 100 milligrams per liter five-day biochemical oxygen demand or less on a grab sample. For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(f) Land disposal of treated effluent. The commission may authorize land disposal of treated effluent when the applicant demonstrates that the quality of ground or surface waters in the state will not be adversely affected. Each project must be consistent with laws relating to water rights. The primary purpose of such a project must be to dispose of treated effluent and/or to further enhance the quality of effluent prior to discharge.

(1) When irrigation systems ultimately dispose of effluent on land to which the public has access, Effluent Set 4 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. When lands to which the public does not have access are to be used for ultimate disposal of effluent, the effluent must, at a minimum, receive primary treatment. Effluent Set 5 in §309.4 of this title shall apply and the pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions. For irrigation systems, primary treatment is the same as described in subsection (e) of this section. Effluent may be used for irrigation only when consistent with Subchapters B and C of this chapter (relating to Location Standards and Land Disposal of Sewage Effluent).

(2) When overland flow systems are utilized for effluent treatment, the public shall not have access to the treatment area. Pri-

mary treated effluent meeting Effluent Set 6 in §309.4 of this title, within the pH limits of 6.0 - 9.0 standard units may be used consistent with environmental safeguards and protection of ground and surface waters. For overland flow systems, primary treatment is the same as described in subsection (e) of this section. At a minimum, Effluent Set 1 in §309.4 of this title shall apply to discharges from overland flow facilities except where more stringent treatment levels are required to meet water quality standards.

(3) When evapotranspiration beds, low pressure dosing, or similar soil absorption systems are utilized for on-site land disposal, the effluent shall, at a minimum, receive primary treatment and meet Effluent Set 7 in §309.4 of this title. Use of these on-site systems shall be consistent with environmental safeguards and the protection of ground and surface waters. Primary treatment is the same as described in subsection (e) of this section.

(4) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the significant potential for public contact, as defined in §222.5 of this title (relating to Definitions), Effluent Set 4 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(5) When subsurface area drip dispersal systems, or similar soil absorption systems ultimately dispose of effluent on land where there is the minimal potential for public contact, as defined in §222.5 of this title, Effluent Set 5 in §309.4 of this title, at a minimum, shall apply. The pH shall be within the limits of 6.0 - 9.0 standard units unless a specific variance is provided in the permit based upon site-specific conditions.

(6) Treated effluent may be land applied only when consistent with Subchapters B and C of this chapter. Use of subsurface area drip dispersal systems shall be consistent with environmental safeguards and the protection of ground and surface waters.

(7) For the purpose of this subsection, primary treatment means solids separation which is typically accomplished by primary clarifiers, Imhoff tanks, facultative lagoons, septic tanks, and other such units.

(g) Disinfection.

(1) Except as provided in this subsection, disinfection in a manner conducive to the protection of both public health and aquatic life shall be achieved on all domestic wastewater which discharges into waters in the state. Any appropriate process may be considered and approved on a case-by-case basis.

(2) Where chlorination is utilized, any combination of detention time and chlorine residual where the product of chlorine (Cl_2 mg/l) X Time (T minutes) equals or exceeds 20 is satisfactory provided that the minimum detention time is at least 20 minutes and the minimum residual is at least 0.5 mg/l. The maximum chlorine residual in any discharge shall in no event be greater than four mg/l per grab sample, or that necessary to protect aquatic life. ~~[Where an existing system, constructed prior to October 8, 1990, has a detention time of less than 20 minutes at peak flow, the waste discharge permit will be amended at renewal by the commission to require limits for both chlorine residual and fecal coliform.]~~

(3) On a case-by-case basis, the commission will allow chlorination or disinfection alternatives to the specific criteria of time and detention described in paragraph (2) of this subsection that achieve equivalent water quality protection. These alternatives will be considered and their performance standards determined based upon supporting data submitted in an engineering report, prepared

and sealed by a registered, professional engineer. The report should include supporting data, performance data, or field tracer studies, as appropriate. The commission will establish effluent limitations as necessary to verify disinfection is adequate, including chlorine residual testing, other chemical testing, and bacteria testing as specified in subsections (h) or (i) of this section ~~[and/or fecal coliform].~~

(4) Except as provided herein, disinfection of domestic wastewater which is discharged by means of land disposal or evaporation pond shall be reviewed on a case-by-case basis to determine the need for disinfection. All effluent discharged to land to which the public has access must be disinfected and if the effluent is to be transferred to a holding pond or tank, the effluent shall be rechlorinated to a trace chlorine residual at the point of irrigation application. All effluent discharged to land via a subsurface area drip dispersal system to which there is a potential for public contact shall be disinfected and shall comply with an *Escherichia coli* (*E. coli*) bacteria effluent limitation of 126 colony forming units per 100 milliliters of water or a fecal coliform effluent limitation of 200 colony forming units per 100 milliliters water, per grab sample, in accordance with paragraph (1) of this subsection [§309.3(g)(1) of this title (relating to Application of Effluent Sets)].

(5) Unless otherwise specified in a permit, chemical disinfection is not required for stabilization ponds when the total retention time in the free-water-surface ponds (based on design flow) is at least 21 days.

(h) Effluent limitations for bacteria.

(1) To demonstrate the disinfection level in effluent discharged into water in the state by its wastewater treatment facility, a permittee shall measure the amount of bacteria in the effluent.

(A) To demonstrate disinfection, *Escherichia coli* (*E. coli*) must be the indicator bacteria measured for discharges to fresh water.

(B) To demonstrate disinfection, *Enterococci* must be the indicator bacteria measured for discharges to salt water.

(2) The monthly average bacteria effluent limitation in a Texas Pollutant Discharge Elimination System (TPDES) permit must be the applicable geometric mean for the most stringent contact recreation category as specified in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(3) The daily maximum bacteria effluent limitation in a TPDES permit must be the applicable single grab sample for the most stringent contact recreation category in Chapter 307 of this title.

(i) ~~[(h)]~~ More stringent requirements. The commission may impose more stringent requirements in permits than those specified in subsections (a) - (h) ~~[(a) - (g)]~~ of this section, on a case-by-case basis, where appropriate to maintain desired water quality levels or protect human health.

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 May 21, 2009.

TRD-200901991

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 239-2548

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CHAPTER 319. GENERAL REGULATIONS
INCORPORATED INTO PERMITS
SUBCHAPTER A. MONITORING AND
REPORTING SYSTEM

The Texas Commission on Environmental Quality (commission or TCEQ) proposes the amendment of §319.9 and the repeal of §319.10.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS
FOR THE PROPOSED RULES

The TCEQ typically includes chlorine exposure time and residual concentration requirements as the bacteria control mechanism for disinfection by chlorination in Texas Pollutant Discharge Elimination System (TPDES) domestic discharge permits. Starting in February 2007, the United States Environmental Protection Agency (EPA) took a new position that bacteria limits are required. This resulted in the EPA objecting to a subset of the commission's draft permits. As a result, the commission could not issue approximately 100 permits during this time. The executive director and EPA reached an agreement in July 2008 regarding bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater permits. The agreement included an interim approach to require bacteria limitations and/or monitoring for selected facilities that met certain criteria for discharges to bacteria impaired water bodies. The agreement also included a long term approach in which the commission would propose rulemaking to establish requirements for bacteria limitations in all TPDES domestic wastewater permits. Conditions in the agreement stated that an adopted rule must be effective by December 31, 2009, and all TPDES domestic wastewater draft permits for which Notice of Application and Preliminary Decision is published on or after January 1, 2010 will have the new requirements as part of the permit language or EPA objections would begin again. The purpose of this rulemaking is to satisfy the agreement with the EPA.

The frequency of effluent parameter measurements is addressed in Chapter 319. Different frequencies of measuring bacteria are required based on both the amount of wastewater permitted for discharge and the disinfection method. Larger flows are given more frequent measurement requirements than small flows because of the amount of potential harm to human health and the environment are proportionate to the pollutant loadings from the amount of wastewater discharged from a treatment facility.

Frequencies also vary with the disinfection method. Because facilities with chlorine disinfection systems have chlorine contact time and concentrations as another method to evaluate disinfection, those facilities are assigned a proportionately less frequent measurement schedule than facilities that use ultraviolet light, natural attenuation, or a chemical system other than chlorine. The natural attenuation, or pond, systems were given a more frequent measurement schedule than chlorine systems, but less frequent than other chemical systems or ultraviolet light systems. Although there is no other method to measure disinfection with these systems, their treatment levels change slowly. Ultraviolet light and other chemical systems are given the highest frequency of measurement because they are subject to equipment failure, and therefore, a lack of disinfection in a short time span.

SECTION BY SECTION DISCUSSION

Proposed §319.9 includes proposed Table 2, located in proposed §319.9(b), and rennumbers the current Table 2, located in existing §319.9(b) and Table 3, located in existing §319.9(c), as Table 3, located in proposed §319.9(c) and Table 4, located in proposed §319.9(d). Table 1, located in §319.9(a), is the *Frequency of Measurement* for domestic discharges. It includes measurement frequencies for flow, biochemical oxygen demand, total suspended solids, chlorine residual, and pH. The proposed Table 2, located in proposed §319.9(b), is the *Frequency of Measurement of Bacteria* for domestic discharges, the amended Table 3, located in proposed §319.9(c), is the *Frequency of Measurement* for nondomestic discharges, and the amended Table 4, located in proposed §319.9(d), is the *Required Quality Control Analyses*. For better organization and easier reading, proposed Table 2 was inserted after Table 1 rather than added after Table 4 to keep the domestic discharge tables together.

The rulemaking proposes to repeal §319.10. Bacteria limits will replace and supersede this requirement. It is being removed to simplify the rule.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency as a result of administration or enforcement of the proposed rules. The agency will have to modify operational practices and record data regarding bacteria present in domestic wastewater discharges but will use current resources to implement the proposed rules. Other units of state or local governments will experience fiscal implications as a result of the proposed rules since they will be required to test for bacteria present in domestic wastewater discharges. However, any fiscal implications to other units of state or local governments are not expected to be significant.

The proposed rules are part of a rulemaking that modifies 30 TAC Chapters 210, 309, and 319 to implement an agreement between the executive director and the EPA to include bacteria effluent limitations and monitoring requirements in TPDES domestic wastewater discharge permits. This fiscal note estimates the fiscal impact caused by the proposed changes in Chapter 319 and is closely related to proposed changes in Chapter 309 since fiscal impacts are a function of both frequency of testing and indicator bacteria levels. Fiscal impacts for Chapter 210 can be found in a separate fiscal note.

The agency estimates that there are 2,011 TPDES domestic facilities statewide. An estimated 1,395 of these are governmental entities that include state agencies, municipalities, counties, river authorities, and utility districts. The agency issues or renews TPDES domestic permits for a five-year period, and approximately 20% of these permits, or 402 statewide, are renewed annually. Of the 402 permits renewed annually, approximately 279 will be issued to governmental entities each year and 123 will be issued to private facilities.

Some governmental entities will see testing costs increase because the proposed rules require bacteria testing not previously required. The impact of cost increases depend on many factors including the proposed frequency of testing in this chapter, whether or not an outside contractor is utilized to obtain bacteria count, the size of the wastewater system, and whether or not bacteria measurement costs can be recouped through increased

user fees. However, the proposed rules for Chapter 319 and related rules proposed for Chapters 309 and 210 are not expected to have a significant fiscal impact on governmental entities because of the testing options available to comply with the rule requirements.

Testing for bacteria also involves sampling costs, transportation costs, and staff training costs. These costs vary greatly among both contractors and entities that choose to verify bacteria limits in-house. The fiscal impact of these costs will depend on the unique operating environment of each entity and methods chosen to train staff, obtain samples, and transport samples for laboratory analysis.

Total estimated annual average costs for laboratory analysis for *Escherchia coli* (*E. coli*) if done by a contract laboratory can be found in the following table, which shows the relationship between testing frequency proposed in Chapter 319 and effluent limitations proposed in changes to Chapter 309.

Figure 1: 30 TAC Chapter 319--Preamble

If governmental entities decide to do laboratory analysis in-house, they will incur initial costs for equipment purchases, for staff training, and for supplies, but those costs are expected to be lower than using a contractor to analyze bacteria counts. Staff has estimated that one time equipment costs for laboratory analysis would be approximately \$1,500, and analysis costs would be approximately \$6 per test if done in-house.

PUBLIC BENEFITS AND COSTS

Nina Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a more direct measure of the effectiveness of disinfection processes at domestic wastewater facilities discharging into state waters and compliance with EPA requirements to retain delegation of the TPDES domestic wastewater permit program.

TPDES domestic permits are held by different business types statewide. These can include investor-owned utilities, resorts, apartment complexes, camps, campgrounds, motels, hotels, and recreational vehicle parks. Staff estimates that there may be as many as 15 large businesses that have TPDES domestic wastewater permits. The largest have a discharge rate of 1.0 million gallons per day (mgd) to 5.0 mgd. If a contractor is used to do laboratory analysis, these businesses could see their costs increase by as much as \$2,678 per year if they have chlorine systems and contractors are used. If they have an ultraviolet light or other chemical disinfection system, they could pay approximately 20% more (an estimated \$3,760 increase per year) for *E. coli* laboratory analysis instead of fecal coliform by a contractor. If a natural disinfection system is used, these businesses could see contract laboratory analysis costs increase by as much as \$8,034 per year. If testing is done in-house, costs are expected to be lower and one time equipment costs for laboratory analysis would be approximately \$1,500, and analysis costs would be approximately \$6.00 per test.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for some small or micro-businesses as a result of the proposed rules. Small businesses can be expected to incur the same costs as those incurred by governmental entities. The following table summarizes the annual estimated laboratory analysis costs if a contractor is used.

Figure 2: 30 TAC Chapter 319--Preamble

Small systems are required to test less frequently than larger systems, and 98% of private wastewater treatment facilities (601 facilities) have a permitted flow under 0.5 mgd. If testing is done in-house, costs are expected to be lower and one time equipment costs for laboratory analysis would be approximately \$1,500 and analysis costs would be approximately \$6.00 per test.

However, many of these small or micro-businesses rely on contractors for laboratory analyses. The significance of the fiscal impact of the proposed rules depends on whether the small or micro-business can absorb the cost increases associated with bacteria testing or whether the customer base of the small business can absorb fee increases to cover increased costs for bacteria testing.

SMALL BUSINESS REGULATORY FLEXIBILITY ANALYSIS

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required to protect the environment and to comply with EPA requirements requiring bacteria limits in TPDES domestic wastewater permits. Small businesses with TPDES permits, 98% of which have a permitted flow under 0.5 mgd, are given flexibility under the proposed rules in the sense that they are allowed to test for bacteria less frequently than large businesses or large governmental entities. However, to retain federal delegation of the TPDES program, the commission is required to implement EPA requirements regarding bacteria limits in all TPDES domestic wastewater permits and more flexibility cannot be given.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225, because it does not meet the criteria for a "major environmental rule" as identified in that statute. Major environmental rule is defined as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of this portion of the proposed rulemaking is to establish frequency requirements for bacteria monitoring in all TPDES domestic wastewater permits. The proposed rulemaking modifies the state rules and/or procedural documents to include bacteria effluent limitations and monitoring frequencies in all TPDES domestic wastewater permits.

Furthermore, the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet any of the four applicable requirements specified in §2001.0225(a). Texas Gov-

ernment Code, §2001.0225(a) applies only to a state agency's adoption of a major environmental rule that: 1) exceeds a standard set by federal law, unless state law specifically requires the rule; 2) exceeds an express requirement of state law, unless federal law specifically requires the rule; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed rulemaking is to modify the Texas Administrative Code to reflect bacteria effluent limitations and monitoring in all TPDES domestic wastewater permits, as mandated by the EPA. This rulemaking substantially advances that stated purpose by modifying 30 TAC §§210.33, 309.3, 319.9, and 319.10.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property or reduce any property value by 25% or more beyond that which would otherwise exist in the absence of the regulations. These actions will not affect private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and values of coastal natural resource areas and ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rules include 31 TAC §501.21(b)(1) and (2), which state that discharges shall comply with water quality-based effluent limits and that discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

These rules would adopt bacteria limits for all domestic wastewater facilities that discharge into waters in the state. By adopting bacteria limits, there will be a more direct and possibly more ac-

curate measure of the level of disinfection achieved in domestic effluent discharged to both fresh and salt water in the areas of concern to the CMP.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with those CMP goals and policies and because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on June 30, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at: <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2009-005-309-PR. The comment period closes July 6, 2009. Copies of the proposed rulemaking can be obtained from the commission's Web site at http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information, please contact Sherry Smith, Water Quality Division, (512) 239-0571.

30 TAC §319.9

STATUTORY AUTHORITY

The amendment is proposed under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority provided by TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and

natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The amendment is also proposed under the Texas Water Quality Control Act which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034, as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

This proposed amendment implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§319.9. Self-Monitoring and Quality Assurance Schedules.

(a) The following table sets forth the self-monitoring schedules applicable to treated domestic sewage effluent.

Figure: 30 TAC §319.9(a)

~~[Figure: 30 TAC §319.9(a)]~~

(b) The following table sets forth the bacteria self-monitoring schedules applicable to treated domestic sewage effluent that is discharged to water in the state.

Figure: 30 TAC §319.9(b)

(c) ~~[(b)]~~ The following table sets forth the self-monitoring schedules applicable to nondomestic wastewater effluent.

Figure: 30 TAC §319.9(c)

~~[Figure: 30 TAC §319.9(b)]~~

(d) ~~[(e)]~~ The following table sets forth the quality assurance requirements for wastewater analyses.

Figure: 30 TAC §319.9(d)

~~[Figure: 30 TAC §319.9(e)]~~

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

Filed with the Office of the Secretary of State on May 21, 2009.

TRD-200901992

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 239-2548



30 TAC §319.10

(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 Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under the Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission. TWC, §5.102, which provides the commission with the authority to carry out its duties and general powers under its ju-

isdictional authority provided by TWC. TWC, §5.103, which requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state. TWC, §5.104, which states that the commission, by rule, will develop memoranda of understanding necessary to clarify and provide for its respective duties, responsibilities, or functions on any matter under the jurisdiction of the commission that is not expressly assigned to the commission. TWC, §5.105, which authorizes the commission to adopt rules and policies necessary to carry out its responsibilities as provided by the TWC. TWC, §5.120, which requires the commission to "administer the law so as to promote the judicious use and maximum conservation and protection" of the environment and natural resources of the state. TWC, §26.011, which provides the commission with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state. TWC, §26.013, which authorizes the executive director to conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under Chapter 26 of the TWC. TWC, §26.027, which authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state.

The repeal is also proposed under the Texas Water Quality Control Act which gives the TCEQ the authority to adopt rules for the approval of disposal system plans under TWC, §26.034, as well as the authority to set standards to prevent the discharge of waste that is injurious to the public health under TWC, §26.041.

The proposed repeal implements TWC, §§5.013, 5.102, 5.103, 5.104, 5.105, 5.120, 26.011, 26.013, 26.027, 26.034, and 26.041.

§319.10. Fecal Coliform Requirements.

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

Filed with the Office of the Secretary of State on May 21, 2009.

TRD-200901994

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 239-2548



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

**CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURES**

DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §§1.18, 1.22, 1.33

The Comptroller of Public Accounts proposes to amend §1.18, concerning filing of documents, §1.22, concerning oral and written submission hearings, and §1.33, concerning discovery. The amendments are to change references to the State Office of

Administrative Hearings Rules of Procedure that were renumbered in amendments effective November 26, 2008. Additionally, §1.22 is being amended to allow for more efficient resolution when a taxpayer abandons their case.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rules will be in effect, there will be no significant revenue impact on the state or units of local government. The proposed amendments would have no significant fiscal impact on small businesses.

Mr. Heleman also has determined that for each year of the first five years the rules are in effect, the proposed amendments would benefit the public by updating references in Comptroller rules. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Rick Budd, Deputy General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711-3528 or by email at rick.budd@cpa.state.tx.us.

The amendments are proposed under Tax Code, §111.002, which provides the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§111.001, 111.009, and 111.105, which provide for the collection of taxes and redetermination and refund hearings.

§1.18. *Filing of Documents.*

All documents submitted with or after the Position Letter selection form must be filed with the assistant general counsel. See §1.32 of this title (relating to Service) for the manner in which these filings may be made. Note that rules of service governing filing documents at SOAH will vary. See SOAH, Rules of Procedure, 1 TAC §155.101 [~~§155.23~~].

§1.22. *Oral and Written Submission Hearings.*

(a) It is the agency's policy to encourage resolution and early settlement of all contested matters.

(b) If, after reviewing a taxpayer's Reply to the Tax Division's Position Letter, as well as all other available evidence, and conducting any mediation requested by a taxpayer, the parties are unable to resolve or settle all contested matters, the Tax Division will, at a taxpayer's request or on its own motion, file a Request to Docket Case form with SOAH. Such Request to Docket Case form will be filed promptly following taxpayer's request, but in no case shall it be filed more than 30 days after such request, unless the parties agree otherwise.

(c) At the time the Request to Docket Case form is filed with SOAH, the agency shall file with SOAH a copy of all pleadings served on the agency by the taxpayer and on the taxpayer by the agency, including but not limited to the Statement of Grounds, Position Letter, Reply and Response along with any exhibits or attachments thereto in accordance with the provisions of SOAH Rules of Procedure, §155.53 [~~§155.9~~].

(d) If the parties are unable to resolve or settle all contested matters, and resolution requires a hearing, then, except as otherwise noted or required, the taxpayer will be given the option of selecting:

- (1) A written submission hearing before a SOAH administrative law judge, or
- (2) An oral hearing before a SOAH administrative law judge.

(e) If the taxpayer fails to make a selection, the case may be dismissed for want of prosecution without the issuance of a proposal

for decision, or may [with] be docketed as a written submission hearing, subject to subsection (f) of this section.

(f) A taxpayer may change the selection of oral or written submission hearing made in subsection (d) of this section, by filing a motion with SOAH. Such a motion would be filed according to SOAH Rules of Procedure.

(g) The Tax Division has the option of requesting an oral hearing in any case in which it has the burden of proof.

(h) All hearings held pursuant to Tax Code, §154.1142 or §155.0592, will be oral hearings.

§1.33. *Discovery.*

(a) Discovery. The APA applies to matters of discovery.

(b) Discovery at the agency will be conducted under the same guidelines as set out in SOAH Rule of Procedure, 1 TAC §155.251 [~~§155.31~~]. Discovery while a hearing is docketed at SOAH will be conducted under SOAH Rule of Procedure, 1 TAC §155.251 [~~§155.31~~].

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 May 19, 2009.

TRD-200901946

Martin Cherry

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: July 5, 2009

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

SUBCHAPTER D. PROGRAM COMPLETION

37 TAC §85.51

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

The Texas Youth Commission (TYC) proposes the repeal of §85.51, relating to definitions used in Chapter 85, Subchapter D. The repeal is necessary due to recently proposed new §85.1, which appeared in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2884). Proposed §85.1 will establish definitions used throughout Chapter 85, whereas §85.51 only defines terms used in Subchapter D. Most of the terms currently defined in §85.51 will appear in new §85.1.

Robin McKeever, Director of Administrative Services, has determined that for the first five-year period the repeal is in effect there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

Toysha Martin, General Counsel, has determined that for each year of the first five years the repeal is in effect the public benefit

anticipated as a result of enforcing the repeal will be the availability of accurate and up-to-date information concerning TYC programming and operations.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to steve.roman@tyc.state.tx.us.

The repeal is proposed under Human Resources Code §61.034, which provides the commission with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code §61.034.

§85.51. *Definitions.*

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 May 22, 2009.

TRD-200902013

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 424-6014



CHAPTER 87. TREATMENT
SUBCHAPTER B. SPECIAL NEEDS
OFFENDER PROGRAMS

37 TAC §87.55

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

The Texas Youth Commission (TYC) proposes the repeal of §87.55, concerning waivers from certain specialized treatment programs.

The repeal is necessary due to recently proposed changes to §87.51, which appeared in the May 15, 2009, issue of the *Texas Register* (34 TexReg 2904). Proposed §87.51 includes a new process for requesting and approving waivers of the requirement for certain youth to complete specialized treatment. This new process will supersede the process established by §87.55.

Robin McKeever, Director of Administrative Services, has determined that for the first five-year period the repeal is in effect there are no anticipated significant fiscal implications for state or local government as a result of enforcing or administering the repeal.

Dianne Gadow, Director of Integrated Treatment and Support, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the availability of accurate and up-to-date information concerning TYC programming and operations.

There will be no effect on small businesses or micro-businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed. No private real property rights are affected by adoption of this repeal.

Comments on the proposal may be submitted within 30 days of the publication of this notice to Steve Roman, Policy Coordinator, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, or email to steve.roman@tyc.state.tx.us.

The repeal is proposed under Human Resources Code §61.034, which provides the commission with the authority to adopt rules appropriate to the proper accomplishment of its functions.

The proposed repeal implements Human Resources Code §61.034.

§87.55. *Waivers from Certain Specialized Treatment Programs.*

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

Filed with the Office of the Secretary of State on May 22, 2009.

TRD-200902014

Cheryl K. Townsend

Executive Commissioner

Texas Youth Commission

Earliest possible date of adoption: July 5, 2009

For further information, please call: (512) 424-6014



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 16. ECONOMIC REGULATION



PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

16 TAC §45.121

CHAPTER 45. MARKETING PRACTICES

The Texas Alcoholic Beverage Commission withdraws the proposed new §45.121 which appeared in the January 30, 2009, issue of the *Texas Register* (34 TexReg 501).

SUBCHAPTER E. MISCELLANEOUS

Filed with the Office of the Secretary of State on May 20, 2009.

DIVISION 1. DELINQUENT LIST

TRD-200901985

16 TAC §45.121

Alan Steen

The Texas Alcoholic Beverage Commission withdraws the proposed repeal of §45.121 which appeared in the January 30, 2009, issue of the *Texas Register* (34 TexReg 501).

Administrator

Texas Alcoholic Beverage Commission

Effective date: May 20, 2009

For further information, please call: (512) 206-3204

Filed with the Office of the Secretary of State on May 20, 2009.



TRD-200901984

Alan Steen

Administrator

Texas Alcoholic Beverage Commission

Effective date: May 20, 2009

For further information, please call: (512) 206-3204

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 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 217. PROCUREMENT OF INFORMATION RESOURCES

The Department of Information Resources (Department) adopts new 1 TAC Chapter 217, §§217.1 - 217.3, 217.10, 217.11, 217.30 and 217.31, without changes to the proposed text as published in the February 27, 2009, issue of the *Texas Register* (34 TexReg 1317), and will not be republished. The rules are affected by the implementation of §361.965, Texas Health and Safety Code, State Procurement Requirements related to Computer Recycling Programs.

The rules are structured into three subchapters. Subchapter A, §§217.1 - 217.3, contains the definitions. Subchapter B, §217.10 and §217.11, contains the rules that apply only to state agencies. Subchapter C, §217.30 and §217.31, contains the rules that apply only to institutions of higher education.

The Department received no comments from the public, regarding the new rules, during the comment period.

SUBCHAPTER A. DEFINITIONS

1 TAC §§217.1 - 217.3

The rules are adopted pursuant to §361.965, Texas Health and Safety Code, which required the Department to establish rules related to state procurement under the Computer Recycling Program; §2054.121, Texas Government Code, which requires adoption of rules in a manner that expressly applies to institutions of higher education; and §2054.052(a), Texas Government Code, which authorizes the Department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Health and Safety Code, §361.965; and §2054.121 and §2054.052(a), Texas Government Code, are affected by this adoption.

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 May 21, 2009.

TRD-200902002

Renee Mauzy
General Counsel
Department of Information Resources
Effective date: June 10, 2009
Proposal publication date: February 27, 2009
For further information, please call: (512) 475-4750

SUBCHAPTER B. STATE AGENCY PROCUREMENTS OF COMPUTER EQUIPMENT

1 TAC §217.10, §217.11

The rules are adopted pursuant to §361.965, Texas Health and Safety Code, which required the Department to establish rules related to state procurement under the Computer Recycling Program; §2054.121, Texas Government Code, which requires adoption of rules in a manner that expressly applies to institutions of higher education; and §2054.052(a), Texas Government Code, which authorizes the Department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Health and Safety Code, §361.965; and §2054.121 and §2054.052(a), Texas Government Code, are affected by this adoption.

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 May 21, 2009.

TRD-200902003
Renee Mauzy
General Counsel
Department of Information Resources
Effective date: June 10, 2009
Proposal publication date: February 27, 2009
For further information, please call: (512) 475-4750

SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION PROCUREMENTS OF COMPUTER EQUIPMENT

1 TAC §217.30, §217.31

The rules are adopted pursuant to §361.965, Texas Health and Safety Code, which required the Department to establish rules related to state procurement under the Computer Recycling Program; §2054.121, Texas Government Code, which

requires adoption of rules in a manner that expressly applies to institutions of higher education; and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

Texas Health and Safety Code, §361.965; and §2054.121 and §2054.052(a), Texas Government Code, are affected by this adoption.

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 May 21, 2009.

TRD-200902004

Renee Mauzy

General Counsel

Department of Information Resources

Effective date: June 10, 2009

Proposal publication date: February 27, 2009

For further information, please call: (512) 475-4750



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING EDUCATION IN A JUVENILE RESIDENTIAL FACILITY

19 TAC §89.1801

The Texas Education Agency (TEA) adopts new §89.1801, concerning education in a juvenile residential facility. The new rule is adopted with changes to the proposed text as published in the January 9, 2009, issue of the *Texas Register* (34 TexReg 165). In accordance with the Texas Education Code (TEC), §37.0062, the adopted new rule establishes instructional requirements for education services provided by a school district or open-enrollment charter school in a pre-adjudication or a post-adjudication residential facility.

Juvenile detention centers are short-term, pre-adjudication or post-adjudication secure facilities. Administered by a juvenile board or a privately operated facility certified by the juvenile board, these facilities are designed for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Post-adjudication secure correctional facilities operated by the Texas Youth Commission are administered in the same way, but are intended for the treatment and rehabilitation of youth who have been adjudicated.

School districts are required to provide education to students placed in pre-adjudication or post-adjudication juvenile residential facilities, but the level of education varies across the state and in many instances there is minimal education provided to these students due to the lack of education standards.

House Bill (HB) 425, 80th Texas Legislature, 2007, amended the TEC, Chapter 37, by adding the TEC, §37.0062, giving the commissioner of education authority to adopt rules to establish the instructional requirements for education services provided by a school district or open-enrollment charter school in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility operated by a juvenile board or a post-adjudication secure correctional facility operated under contract with the Texas Youth Commission. Until 2007, instructional requirements for education services for residential facilities were not addressed under the TEC, Chapter 37.

HB 425 requires the commissioner to coordinate with the Texas Juvenile Probation Commission and the Texas Youth Commission in determining the instructional requirements in pre- and post-adjudication residential facilities to ensure that students who are detained have access to a quality education.

The adopted new 19 TAC §89.1801 implements the TEC, §37.0062, by establishing in rule educational standards for instructional requirements for pre- and post-adjudication residential facilities. As directed by statute, the adopted new rule includes provisions relating to the length of the school day, the number of days of instruction provided to students each school year, and the curriculum of the educational program to enable students to maintain progress toward completing high school graduation requirements.

In response to public comment, proposed new 19 TAC §89.1801 was modified at adoption to clarify that the ten days referenced in subsection (b)(1) is ten school days.

The adopted new rule has no procedural and reporting implications. The new rule will have locally maintained paperwork requirements. The new rule requires school districts, open-enrollment charter schools, and pre- and post-adjudication residential facilities to maintain documentation of educational services that are provided to students.

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

The public comment period on the proposal began on January 9, 2009, and ended on February 9, 2009. Following is a summary of public comments received and corresponding agency responses regarding proposed new 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter HH, Commissioner's Rules Concerning Education in a Juvenile Residential Facility, §89.1801, Instructional Requirements for Education Services Provided in a Juvenile Residential Facility.

§89.1801(b)

Comment. Smith County Juvenile Services commented that one of the key provisions of the proposed new rule, specified in subsection (b)(1), requires that the school district providing education services in a pre-adjudication secure detention facility ensure that a student is enrolled in its school district, or by local agreement, in the student's locally-assigned school district on the first school day after the student's arrival at the facility unless it is confirmed that the student will return to a different district within ten days. Smith County Juvenile Services requested clarification regarding the definition of "locally-assigned school district" and the definition of "ten days."

Agency Response. The agency agrees that clarification is needed for "ten days" and has modified subsection (b)(1) to

specify that a student is to be enrolled unless returning to a different district within ten school days. The agency disagrees that further clarification is needed for the term "locally-assigned district." This is the district in which the student would otherwise reside if not detained at a juvenile residential facility.

Comment. Smith County Juvenile Services recommended approaching pre-adjudication and post-adjudication facilities differently due to the inherent differences related to them, including, but not limited to, pre-adjudication has pending court involvement and the residents are more transient than the residents in a post-adjudication facility. The commenter also stated that pre-adjudication facilities are intended to be a continuation of educational services while juveniles are detained (a stop-gap measure) whereas post-adjudication facilities may be educational service providers.

Agency Response. The agency agrees. The rule differentiates between pre- and post-adjudication facilities, in particular in subsections (b), (d), and (e).

§89.1801(c)

Comment. Dallas County Juvenile Justice Charter School commented that proposed new subsection (c) ensures that the classroom ratio does not exceed one certified educator to 24 students and expressed concern with the qualifier, "certified." The commenter stated that certified staff are not necessarily highly-qualified staff. The commenter noted that highly-qualified status is dependent on what the teacher teaches (grade level and subject). The commenter recommended that it would be more beneficial for educational entities if the language indicated "highly qualified" educator as opposed to "certified" educator. The commenter expressed concern that certified does not necessarily mean highly qualified and that schools are mandated by the No Child Left Behind Act to have highly-qualified staff.

Agency Response. The agency disagrees. School districts are to employ only teachers who meet all certification requirements established under the TEC, Chapter 21, Subchapter B. The intent of the rule is that the students be served by certified teachers.

Comment. Victoria Regional Juvenile Justice Center requested clarification pertaining to the standards for teachers at residential facilities.

Agency Response. The agency provides the following clarification. The standards for teachers at residential facilities are equivalent to those at regular campuses requiring districts to employ only teachers who meet all certification requirements established under the TEC, Subchapter B, Chapter 21.

§89.1801(e)

Comment. Dallas County Juvenile Justice Charter School commented that proposed new subsection (e) states that the curriculum of the educational program shall provide students with the courses necessary to complete the minimum high school program. The commenter stated that providing certain subjects and courses specified in the minimum high school program such as physical education, health education, speech, technology applications, and elective courses in a secure facility may present safety, security, or logistical issues.

Agency Response. The agency disagrees. The agency has determined that subsection (e) ensures that students who are detained in a residential facility have access to a quality education that includes at least the minimum high school graduation

requirements. A student must be offered an opportunity to complete specific foundation curriculum courses, which allow a student to remain on track to complete foundation curriculum courses on the same schedule despite having been removed from the student's regular educational setting.

Comment. Victoria Regional Juvenile Justice Center requested clarification pertaining to the provision of the state minimum curriculum.

Agency Response. The agency provides the following clarification. Residential facilities will provide the state minimum curriculum of 22 credits. The agency has determined that 19 TAC §89.1801(e)(1) ensures that a student is not placed on a less demanding graduation plan. Second, a student must be offered an opportunity to complete specific foundation curriculum courses which allow a student to remain on track to complete foundation curriculum courses on the same schedule despite having been removed. A juvenile justice alternative education program may offer a student a different enrichment curriculum course, but must provide an opportunity to complete the same course in the foundation curriculum in which the student was enrolled at the time of removal.

§89.1801(e)(5)

Comment. Galveston County Juvenile Justice Department stated that although it was supportive of the current content, it recommended that this rule provide for a student who successfully tests and attains a General Educational Development Certificate to be counted as a successful educational outcome in the Public Education Information Management System (PEIMS) data of the student's locally-assigned school district. The commenter stated that the attainment of a General Educational Development Certificate is often a major accomplishment and an educational success for students assigned to post-adjudication facilities by juvenile courts and that these students should not be designated as a "drop out" in PEIMS.

Agency Response. The agency cannot address the comment. The comment addresses issues outside the scope of the current rule proposal.

§89.1801(f)

Comment. Dallas County Juvenile Justice Charter School commented that most schools award credits at the end of the semester. The commenter noted that the Dallas County Juvenile Justice Charter School uses three grading periods and the semester exam to determine the average that is used to award credits. The commenter stated that if students are not present for the entire grading period or if the school cannot get grades from the home school to account for the time, the school is not able to award credit. The commenter also explained that if students are released prior to the end of the semester, the Dallas County Juvenile Justice Charter School transfers records to the receiving school and then the receiving school gives final grades and awards credits at the end of the semester. Dallas County Juvenile Justice Charter School stated that it has students who leave in the middle of a semester. Dallas County Juvenile Justice Charter School also expressed concern that it cannot and should not award credits if the student is no longer at the school.

Agency Response. The agency disagrees in part in and agrees in part. The agency has determined that credits will be awarded by the campus where the student is enrolled at the time of course completion. Therefore, if the records from a locally-assigned dis-

trict are unavailable or insufficient, the residential facility should take appropriate steps to assess the student and determine eligibility for credit. The residential facility is also responsible for forwarding records for a student who departs and, therefore, would not award credit for a student who is no longer at the facility.

§89.1801(g)

Comment. Smith County Juvenile Services and Galveston County Juvenile Justice Department expressed concern about the provisions in subsection (g) requiring juvenile justice alternative education programs to provide a seven-hour school day that consists of at least five and one-half hours of required secondary curriculum and to operate so that at least 180 days of instruction are provided to the students. The commenters stated that the length of the school year should coincide with the local school district calendar. The commenters also stated that a seven-hour school day presents logistical problems for pre-adjudication facilities such as disruption or conflict with daily scheduled activities (visitation, court, recreation, showers, counseling services, etc.) and potential increased personnel costs for the school districts.

Agency Response. The agency disagrees. The length and number of school days specified in new 19 TAC §89.1801(g) are in alignment with the TEC, §25.081 and §28.082, and are established in rule to ensure sufficient time to provide required educational services to students in residential facilities.

Comment. Galveston County Juvenile Justice Department commented that rules found in 37 TAC Chapter 343 place numerous requirements for the provision of services on pre- and post-adjudication facilities. The commenter cited the example of 37 TAC §343.52(e)(1)-(4), which requires each resident of a post-adjudication facility to receive rehabilitative services that include individual counseling, group counseling, substance abuse prevention education, and AIDS awareness. The commenter stated that there are numerous other standards stipulating services that all make demands on a limited amount of time each day over and above routines of daily living and rehabilitative programming. The commenter asserted that a mandatory seven-hour educational day will exceed the time available for delivery of education curriculum in light of the numerous TAC requirements placed upon post-adjudication programs. The commenter also stated that many of these programs operate with very few teachers and the currently proposed operational requirements would not afford teachers the opportunity for conference periods or other preparation time in programs that often demand time-intensive individualized content delivery.

Agency Response. The agency disagrees. The seven-hour school day specified in new 19 TAC §89.1801(g) is in alignment with the TEC, §25.082, and is established in rule to ensure sufficient time to provide the required educational services.

Comment. The director of alternative education programs at Dickinson Independent School District provided an overview of programs in Galveston County. The commenter also stated that some districts obtain waivers that shorten the school calendar and recommended that the calendar for pre- and post-adjudication programs match the calendar of the host district.

Agency Response. The agency disagrees. The length and the number of school days specified in new 19 TAC §89.1801(g) are in alignment with the TEC, §25.081 and §28.082, and are established in rule to ensure sufficient time to provide required educational services to students in residential facilities.

Other

Comment. Victoria Regional Juvenile Justice Center requested clarification pertaining to the use of the teacher of record.

Agency Response. The agency provides the following clarification. The comment addresses issues outside the scope of the current rule proposal.

Comment. Victoria Regional Juvenile Justice Center requested clarification pertaining to the requirement for certified principals.

Agency Response. The agency provides the following clarification. The comment addresses issues outside the scope of the current rule proposal.

Comment. Victoria Regional Juvenile Justice Center requested clarification pertaining to the method to enforce accountability.

Agency Response. The agency provides the following clarification. The comment addresses issues outside the scope of the current rule proposal.

The new rule is adopted under the TEC, §37.0062, which authorizes the commissioner of education to adopt rules necessary to establish instructional requirements for alternative education services in juvenile residential facilities.

The adopted new rule implements the TEC, §37.0062.

§89.1801. Instructional Requirements for Education Services Provided in a Juvenile Residential Facility.

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

(1) Pre-adjudication secure detention facility--A secure facility administered by a governing board that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action.

(2) Post-adjudication secure correctional facility--A secure facility administered by a governing board or the Texas Youth Commission that includes construction and fixtures designed to physically restrict the movements and activities of the residents and is intended for the treatment and rehabilitation of youth who have been adjudicated. A post-adjudication secure correctional facility does not include any non-secure residential program operating under the authority of a juvenile board as defined by the Texas Family Code, §51.12(j).

(3) Resident--A juvenile or other individual who has been admitted into a pre-adjudication secure detention facility or a post-adjudication secure correctional facility.

(4) Residential facility--A facility as described by the Texas Education Code (TEC), §5.001(8).

(5) School district--The educational service provider in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility. For the purposes of this subchapter, the definition of school district includes open-enrollment charter school.

(b) Enrollment.

(1) The school district providing the education services in a pre-adjudication secure detention facility shall ensure that a student is enrolled in its school district or, by local agreement, in the student's locally-assigned school district on the first school day after the student's arrival at the facility unless it is confirmed that the student will return

to a different district within ten school days. The school district that maintains a student's enrollment is responsible for ensuring that appropriate education services are provided to each of its students while in the facility.

(2) The school district providing the education services in a post-adjudication secure correctional facility shall ensure that a student is enrolled in its school district or, by local agreement, in the student's locally-assigned school district on the student's first school day in the facility as a court-committed juvenile.

(3) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall coordinate with the student's previous locally-assigned campus to ensure that appropriate academic records are received within ten school days of the student's enrollment.

(c) Class size. The school district shall ensure that the classroom ratio does not exceed one certified educator to 24 students per class period.

(d) Pre-assessment. The school district shall ensure that a pre-assessment is administered to students in a post-adjudication secure correctional facility. The pre-assessment shall:

(1) be administered within ten school days from the student's first day of enrollment; and

(2) at a minimum, evaluate the student's basic reading and mathematics skills in relation to their current grade level.

(e) Curriculum of the educational program.

(1) Each school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall, at a minimum, provide students with the subjects and courses necessary to complete the minimum high school program, as specified in §74.62 of this title (relating to Minimum High School Program).

(2) Each school district in a pre-adjudication secure detention facility shall ensure that a student is provided courses that afford an opportunity of continued progress toward the completion of the minimum high school program, as specified in §74.62 of this title.

(3) Each school district in the post-adjudication secure correctional facility shall, at a minimum, provide a student curriculum that enables the student the opportunity to complete the requirements of the minimum high school program, as specified in §74.62 of this title.

(4) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall ensure that the educational services of the students consist of curriculum that is aligned with the requirements described in the TEC, §28.002, and the Texas Essential Knowledge and Skills (TEKS).

(5) The school district in a post-adjudication secure correctional facility shall provide students, ages 15-18 and identified as appropriate candidates, the opportunity and resources to prepare for the five general educational development examinations.

(f) Award of credit. The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall grant credits for coursework completed to ensure that high school credit is awarded to students for the successful completion of required courses while enrolled in educational services at the facility.

(g) Length and number of school days required.

(1) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall, at a minimum, provide a seven-hour school day that consists of at least five and one-half hours of required secondary curriculum to students in the

facility. For each school year, each school district must operate so that the facility provides for at least 180 days of instruction for students.

(2) The school district in a pre-adjudication secure detention facility or a post-adjudication secure correctional facility shall ensure that students with disabilities are provided instructional days commensurate with those provided to students without disabilities in accordance with requirements contained in §89.1075(d) of this title (relating to General Program Requirements and Local District Procedures).

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 May 22, 2009.

TRD-200902016

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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Proposal publication date: January 9, 2009

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



TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 322. PRACTICE

22 TAC §322.4

The Texas Board of Physical Therapy Examiners adopts an amendment to §322.4, Practicing in a Manner Detrimental to the Public Health and Welfare, without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1934). The amendment will clarify licensee responsibility regarding violations of the PT Practice Act.

The amendment states that a licensee who fails to report an apparent violation of the Practice Act is guilty of violating the Act.

No comments were received.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 May 18, 2009.

TRD-200901944

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: June 7, 2009

Proposal publication date: March 20, 2009

For further information, please call: (512) 305-6900



CHAPTER 341. LICENSE RENEWAL

22 TAC §341.2

The Texas Board of Physical Therapy Examiners adopts amendments to §341.2, Continuing Education Requirements, without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1935). The amendment will clarify licensee responsibility. The amendment will eliminate ambiguity regarding ethics programs that meet renewal requirements.

The amendment will clarify that only continuing education specifically approved as meeting the ethics and professional responsibility requirement meets that requirement and will delete the date the requirement was initiated.

No comments were received on this proposed amendment.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



22 TAC §341.3

The Texas Board of Physical Therapy Examiners adopts amendments to §341.3, Qualifying Continuing Education, without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1935). The amendment will clarify licensee responsibility. The amendment will incorporate changes to the Continuing Education Approval Program, and clarify other references.

The amendments will add information about the accredited provider program and other changes to the continuing education approval program, will update references to the examination offered by the Federation of State Boards of Physical Therapy that the board has approved as continuing education, and will clarify statements to be used by continuing education providers. They would also correct the terminology used to refer to a subsection of the rule.

A comment was received from an individual regarding these changes. She was disappointed that the rule changes for continued education did not include automatic approval for courses which have been approved by other state PT boards, and recommended that the board consider doing so in the future. The Board responds that it did review material regarding other states' CE approval process, and found that beyond a superficial level, the differences in the state "approval" processes made them difficult to compare. The Board made the decision

to delay consideration of reciprocity until the current changes to the approval processes have been incorporated and an effective method of comparing approval processes can be developed. Any comparison would have to ensure that the approval process of another state meets, at a minimum, all of the standards set forth in §341.3 of the rules, and would also have to verify that quality assurance and oversight measures similar to those used by this board were in place. Also, the individual believes that the non-standard terminology used in the rules to refer to a previous section is clearer than the standard terminology, and would prefer the board maintain the existing terminology. The Board replies that it has gradually been replacing non-standard references with the standard reference format and intends to continue that process as rules are amended for other reasons.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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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John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

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For further information, please call: (512) 305-6900



PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board (board) adopts an amendment to §391.3, concerning Internship Training Schedule, without changes to the proposed text as published in the March 20, 2009, issue of the *Texas Register* (34 TexReg 1937).

Section 391.3(14) is amended to update present practices from policy to rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

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 May 21, 2009.
TRD-200901987
Frank DiTucci
Executive Officer
Polygraph Examiners Board
Effective date: June 10, 2009
Proposal publication date: March 20, 2009
For further information, please call: (512) 424-2058



TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 71. CREDITABLE SERVICE

34 TAC §71.29, §71.31

The Employees Retirement System of Texas (ERS) adopts amendments to 34 TAC §71.29 and §71.31 concerning Creditable Service towards Retirement without changes to the proposed text as published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2446) and will not be republished.

An experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the ERS Board of Trustees ("Board") at the May 13, 2008 meeting. Actuarial tables and reduction factors were prepared using the new assumptions, and these tables and factors were approved by the Board at the February 24, 2009 meeting. These sections of the ERS rules are amended to update the rules for the various changes to actuarial tables and reduction factors resulting from the experience study and that have been approved by the Board.

Section 71.29 and §71.31, concerning Purchase of Additional Service Credit and Credit Purchase Option For Certain Waiting Period Service, are amended to reflect new assumptions based on the recent actuarial experience study and new actuarial tables and reduction factors calculated on these assumptions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code §815.102 and §815.105 which provide authorization for the ERS Board of Trustees to adopt mortality, service and other tables necessary for the retirement system and to adopt rules for the retirement system.

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 May 20, 2009.

TRD-200901978
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Effective date: June 9, 2009
Proposal publication date: April 17, 2009
For further information, please call: (512) 867-7416



CHAPTER 73. BENEFITS

34 TAC §73.11, §73.21

The Employees Retirement System of Texas (ERS) adopts amendments to 34 TAC §73.11 and §73.21 concerning Benefits at Death or Retirement without changes to the proposed text as published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2447) and will not be republished.

An experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the ERS Board of Trustees ("Board") at the May 13, 2008 meeting. Actuarial tables and reduction factors were prepared using the new assumptions, and these tables and factors were approved by the Board at the February 24, 2009 meeting. These sections of the ERS rules are amended to update the rules for the various changes to actuarial tables and reduction factors resulting from the experience study and that have been approved by the Board.

Section 73.11 and §73.21, concerning the Supplemental Retirement Program and the Reduction Factors for Age and Retirement Option, are amended to reflect new assumptions based on the recent actuarial experience study and new actuarial tables and reduction factors calculated on those assumptions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code §815.102 and §815.105 which provide authorization for the ERS Board of Trustees to adopt mortality, service and other tables necessary for the retirement system and to adopt rules for the retirement system.

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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Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
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For further information, please call: (512) 867-7416



CHAPTER 77. JUDICIAL RETIREMENT

34 TAC §§77.1, 77.11, 77.21

The Employees Retirement System of Texas (ERS) adopts amendments to 34 TAC §§77.1, 77.11, and 77.21, concerning the Judicial Retirement System of Texas Plan One and the Judicial Retirement System of Texas Plan Two. Section 77.1 is adopted without changes to the proposed text as published in the April 17, 2009, issue of the *Texas Register* (34 TexReg 2449) and will not be republished. Nonsubstantive changes are being made to §77.11(b) and §77.21(d). The text of the rules will be republished.

An experience study conducted by the ERS actuary for pension matters resulted in recommended changes to assumptions that were approved by the ERS Board of Trustees ("Board") at the

May 13, 2008 meeting. Actuarial tables and reduction factors were prepared using the new assumptions, and these tables and factors were approved by the Board at the February 24, 2009 meeting. These sections of the ERS rules are amended to update the rules for the various changes to actuarial tables and reduction factors resulting from the experience study and that have been approved by the Board.

Sections 77.1, 77.11 and 77.21, concerning Reduction Factors for Death before Age 65, Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II), and Purchase of Additional Service Credit, are amended to reflect new assumptions based on the recent actuarial experience study and new actuarial tables and reduction factors calculated on those assumptions.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code §§835.002, 840.002, and 840.005 which provide authorization for the ERS Board of Trustees to adopt mortality, service and other tables and factors necessary for the Judicial Retirement System of Texas Plan One and the Judicial Retirement System of Texas Plan Two and to adopt rules for such retirement systems.

§77.11. Reduction Factors for Age and Retirement Options--Judicial Retirement System of Texas Plan One (JRS-I) and Judicial Retirement System of Texas Plan Two (JRS-II).

(a) Tables for calculation of optional factors.

(1) The 1981 reduction factors for optional forms of retirement annuities are independent of the gender of the member and of the beneficiary and are based on the GA-51 male mortality table projected with Scale C to 1970 with an age set forward of one year for retiring members and an age set back of four years for beneficiaries. The interest assumption is 5.0%.

(2) The 1992 reduction factors for optional forms of retirement annuities are independent of the gender of the member and the beneficiary and are based on the 1983 group annuity mortality table. The interest rate assumption is 8.5%.

(3) The reduction factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008, for optional forms of retirement annuities are independent of the gender of the member and the beneficiary and apply to retirements effective on or after September 30, 2009. For retirements first effective prior to September 1, 2009, the previously adopted factors apply.

(4) Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207. The option tables, along with the adjustments described in this subsection are adopted by reference and made a part of this rule for all purposes.

(b) Option factors. The 2009 reduction factors for optional annuities for service retirement, disability retirement, and death benefit plans under the JRS-I and JRS-II plans apply to retirements effective on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For retirements first effective prior to September 1, 2009, the previously adopted factors apply. All option factors have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. The reduction factors are available from the executive director of the Employees Retirement System of

Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(c) Formula for JRS-II reduction factors for death before age 65.

(1) A death benefit annuity of the Judicial Retirement System of Texas Plan Two on behalf of a member dying before age 65 while not eligible for an unreduced service retirement benefit is reduced for each whole or partial calendar month that occurs during the period from the date of death to the 65th birthday, including the months that contain the dates of death and birthday. For the first 120 months (ages 55-64), the annuity is reduced by one-third of 1.0% per month. For the next 60 months (ages 50-54), the annuity is reduced by one-fourth of 1.0% per month. For the next 60 months (ages 45-49), the annuity is reduced by one-sixth of 1.0% per month. For the next 120 months (ages 35-44), the annuity is reduced by one-twelfth of 1.0% per month.

(2) A death benefit annuity on behalf of a member dying before age 65 while eligible for an unreduced service retirement benefit shall not be reduced for age.

(3) JRS-II reduction factors for death before age 65 have been developed by the actuaries and are adopted by reference subject to the limitations of this subsection. The reduction factors that apply to deaths of members prior to age 65 and that occur on or after September 1, 2009, are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For deaths occurring prior to September 1, 2009, the previously adopted factors apply. The set of reduction factors is available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(d) Reserve factors. The reserve factors for JRS-II are adopted by reference and made a part of this rule for all purposes. The reserve factors apply to periods beginning on or after September 1, 2009, and are those factors adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For periods occurring prior to September 1, 2009, the previously adopted factors apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(e) Dollar limitations for maximum annual benefit. Service retirement annuities shall conform to dollar limitations and applicable adjustments under the Internal Revenue Code of 1986, §415 (26 United States Code §415) as determined by the federal commissioner of internal revenue.

§77.21. Purchase of Additional Service Credit.

(a) The provisions of this section apply only to the Judicial Retirement System of Texas Plan Two (JRS-II).

(b) An eligible member may establish equivalent membership service credit authorized by §838.108, Texas Government Code, as provided in this section. The provisions of §77.15 of this title (relating to Payments to Establish or Reestablish Service Credit) do not apply to service credit established under this section.

(c) A member is eligible to establish service credit under this section in the membership class in which the member holds a position if the member:

(1) has 120 months of service credit for one or more periods of time during which the member held a position as a judge and the required contributions were made;

(2) is a member of the system at the time credit is established; and

(3) is not eligible to establish other credit or service.

(d) An eligible member shall deposit with the system in a lump sum a contribution in the amount determined by the system to be the actuarial present value of the benefit attributable to the credit established under this section. The tables recommended by the system's actuary and adopted by the board shall be used by the system to determine the actuarial present value. The 2009 additional service credit tables for JRS-II are adopted by reference and made a part of this rule for all purposes. The additional service credit tables apply to service purchase calculations performed on or after September 1, 2009, and are those tables adopted by the board on February 24, 2009, based on assumptions adopted by the board on May 13, 2008. For service purchase calculations performed prior to September 1, 2009, the previously adopted tables apply. Copies of these tables are available from the executive director of the Employees Retirement System of Texas at 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711-3207.

(e) Actuarial present value shall be based on:

(1) the member's age on the date of the deposit required by this subsection;

(2) the earliest date on which the member will become eligible to retire and receive a service retirement annuity after establishing credit under this section; and

(3) the future employment, compensation, investment and retirement benefit assumptions recommended by the actuaries and adopted by the board.

(f) Credit shall be established in whole year increments of credit.

(g) A member who establishes credit under this section shall certify that the member is not eligible to establish other credit or service and shall waive any and all right to establish such credit or service that the member had on the date of the deposit required by subsection (d) of this section.

(h) Credit established under this section may not be used to compute the amount of a disability retirement annuity.

(i) A member who withdraws contributions and cancels credit established under this section may not reestablish such credit under §838.102, Texas Government Code, but may again establish credit as provided in this section.

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

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Paula A. Jones

General Counsel and Chief Compliance Officer

Employees Retirement System of Texas

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For further information, please call: (512) 867-7416



TABLES & GRAPHICS

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

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

Figure: 30 TAC §210.33(1)

BOD ₅ or CBOD ₅	5 mg/l
Turbidity	3 NTU
Fecal coliform or <i>E. coli</i>	20 CFU/100 ml*
Fecal coliform or <i>E. coli</i> (not to exceed)	75 CFU/100 ml**
*geometric mean	
*single grab sample	

Figure: 30 TAC §210.33(2)(A)

BOD ₅	20 mg/l
or CBOD ₅	15 mg/l
Fecal coliform or <i>E. coli</i>	200 CFU/100 ml*
Fecal coliform or <i>E. coli</i> (not to exceed)	800 CFU/100 ml**
*geometric mean	
**single grab sample	

Figure: 30 TAC §210.33(2)(B)

BOD ₅	30 mg/l
Fecal coliform or <i>E. coli</i>	200 CFU/100 ml*
Fecal coliform or <i>E. coli</i> (not to exceed)	800 CFU/100 ml**
*geometric mean	
**single grab sample	

Figure: 30 TAC Chapter 309--Preamble

	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab
Flow (mgd)	Chlorine Systems	E. coli test \$51.50 (average cost)	UV Systems & Other Chemical Systems	Cost Increase for E. coli test \$51.50 - \$41.20 (average cost)	Natural Systems	E. coli test \$51.50 (average cost)
>10	260	\$13,390.00	365	\$3,759.50	365	\$18,797.50
5-10	156	\$8,034.00	365	\$3,759.50	260	\$13,390.00
1-5	52	\$2,678.00	365	\$3,759.50	156	\$8,034.00
0.5-1.0	24	\$1,236.00	365	\$3,759.50	52	\$2,678.00
0.1-0.5	12	\$618.00	260	\$2,678.00	24	\$1,236.00
<0.1	4	\$206.00	260	\$2,678.00	12	\$618.00

Figure 1: 30 TAC Chapter 319--Preamble

	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab
Flow (mgd)	Chlorine Systems	E. coli test \$51.50 (average cost)	UV System & Other Chemical Systems	Cost Increase for E. coli test \$51.50 - \$41.20 (average cost)	Natural Systems	E. coli test \$51.50 (average cost)
>10	260	\$13,390.00	365	\$3,759.50	365	\$18,797.50
5-10	156	\$8,034.00	365	\$3,759.50	260	\$13,390.00
1-5	52	\$2,678.00	365	\$3,759.50	156	\$8,034.00
0.5-1.0	24	\$1,236.00	365	\$3,759.50	52	\$2,678.00
0.1-0.5	12	\$618.00	260	\$2,678.00	24	\$1,236.00
<0.1	4	\$206.00	260	\$2,678.00	12	\$618.00

Figure 2: 30 TAC Chapter 319--Preamble

	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab	Tests/Year	Cost/Year Contract Lab
Flow (mgd)	Chlorine Systems	E. coli test \$51.50 (average cost)	UV Systems & Other Chemical Systems	Cost Increase for E. coli test \$51.50 - \$41.20 (average cost)	Natural Systems	E. coli test \$51.50 (average cost)
>10	260	\$13,390.00	365	\$3,759.50	365	\$18,797.50
5-10	156	\$8,034.00	365	\$3,759.50	260	\$13,390.00
1-5	52	\$2,678.00	365	\$3,759.50	156	\$8,034.00
0.5-1.0	24	\$1,236.00	365	\$3,759.50	52	\$2,678.00
0.1-0.5	12	\$618.00	260	\$2,678.00	24	\$1,236.00
<0.1	4	\$206.00	260	\$2,678.00	12	\$618.00

Figure: 30 TAC §319.9(a)

**Table 1
FREQUENCY OF MEASUREMENT**

Design Capacity MGD	Flow	BOD5	Total Suspended Solids	Chlorine Residual	pH	Collecting of Samples and Taking Measurements
0 to less than 0.10	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.50 less than 0.10 to	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.50 to less than 1.00	The daily flow measured by a totalizing meter	One each week	One each week	One each day of the week	Two each month	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on a composite sample proportioned according to flow, made up of three portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
1.00 to less than 5.00	The daily flow measured by a totalizing meter	Two each week	Two each week	One each day of the week	One each week	The laboratory test excepting the pH and chlorine residual test which are performed on grab sample or insitu shall be made on a composite sample proportioned according to flow, made up of six portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.

5.00 to less than 10.00	The daily flow measured by a totalizing meter	One each weekday (a)	One each weekday (a)	One each day of the week	One each week-day	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on (a) 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.
10.00 or greater	The daily flow measured by a totalizing meter	One each day of the week	One each day of the week	One each day of the week	One each day of the week	The laboratory test excepting the pH and the chlorine residual test which are performed on grab samples or insitu shall be made on 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.

(a) Weekday - Monday thru Friday.

(b) Where a totalizing meter is provided, the actual volume of water which has been processed each day should be determined and reported.

(c) Working Day - A day when the plant is visited for routine work.

(d) Peak loading period - That time during the calendar day when the maximum flow rate is experienced within the facility.

(e) Flow - Determined by actual measurement of effluent flow or determined by calculation based upon influent measurement unless effluent flow is specified in the permit.

NOTE: See 30 TAC §319.5(e) concerning additional measurements and documentation.

**Table 2
FREQUENCY OF BACTERIA MEASUREMENT**

Minimum Required Frequency^{1, 2, 3, 4}			
Flow (mgd)	Chlorine Systems	Ultraviolet Systems	Natural Systems
>10	5/week	Daily	Daily
5-10	3/week	Daily	5/week
1-5	1/week	Daily	3/week
0.5-1.0	2/month	Daily	1/week
0.1-0.5	1/month	5/week	2/month
<0.1	1/quarter	5/week	1/month

(1) Sampling must be spaced across the time period at approximately equal intervals, with the exceptions of the five times per week sampling schedule. Five samples per week must be taken one on each of five days during a seven day period.

(2) A permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission of its compliance and request a less frequent measurement schedule.

(a) If the commission finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. Daily will drop to 5/week, 5/week to 3/week, 3/week to 1/week, 1/week to 2/month, 2/month to 1/month, 1/month to 1/quarter, 1/quarter to 1/6 months.

(b) A violation of the bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule.

(c) A permittee that has had a violation while on a less frequent measurement schedule may not apply for another reduction in measurement frequency for at least 24 months from the last violation.

(3) A chemical system other than chlorine will be required to comply with the ultraviolet frequency schedule.

(4) The executive director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

Figure: 30 TAC §319.9(c)

Table 3
FREQUENCY OF MEASUREMENT
VOLUME OF MGD

Parameter	0 to less than 0.05	0.05 to less than 0.50	0.50 to less than 2.00	2.00 to less than 10.00	10.00 to greater
Flow	One instantaneous measurement per operating day except on sample days when 3 instantaneous measurements made concurrently with the collection of sample portions are required.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion or the reading from a totalizing flow meter.	Six instantaneous measurements per day spaced at equal intervals during the operating period or the reading from a totalizing flow meter.	Instantaneous measurements made each operating hour or the reading from a totalizing flow meter.
pH (a)	1 per day	1 per day	1 per day	1 per day	1 per day
Temperature (b)	1 per day	3 per day	3 per day	6 per day	12 per day
BOD	1 per week	2 per week	2 per week	3 per week	1 per day
COD	1 per week	2 per week	2 per week	3 per week	1 per day
TOC	1 per week	2 per week	2 per week	3 per week	1 per day
Oil & Grease (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Ammonia Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Arsenic	1 per week	2 per week	2 per week	3 per week	1 per day
Barium	1 per week	2 per week	2 per week	3 per week	1 per day
Boron	1 per week	2 per week	2 per week	3 per week	1 per day
Cadmium	1 per week	2 per week	2 per week	3 per week	1 per day
Chromium	1 per week	2 per week	2 per week	3 per week	1 per day
Copper	1 per week	2 per week	2 per week	3 per week	1 per day

Lead	1 per week	2 per week	2 per week	3 per week	1 per day
Manganese	1 per week	2 per week	2 per week	3 per week	1 per day
Mercury	1 per week	2 per week	2 per week	3 per week	1 per day
Nickel	1 per week	2 per week	2 per week	3 per week	1 per day
Selenium	1 per week	2 per week	2 per week	3 per week	1 per day
Silver	1 per week	2 per week	2 per week	3 per week	1 per day
Zinc	1 per week	2 per week	2 per week	3 per week	1 per day
TSS	1 per week	2 per week	2 per week	3 per week	1 per day
TDS	1 per week	2 per week	2 per week	3 per week	1 per day
Chloride	1 per week	2 per week	2 per week	3 per week	1 per day
Sulphate	1 per week	2 per week	2 per week	3 per week	1 per day
Nitrate Nitrogen	1 per week	2 per week	2 per week	3 per week	1 per day
Sulfide (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Phenol (c)	1 per week	2 per week	2 per week	3 per week	1 per day
Collection of Samples	Samples shall be composite samples made up of three portions, sized proportional to flow, collected to no closer together than one hour and over a span of time not exceeding 24 hours.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of six portions, sized proportional to flow, collected concurrently with the instantaneous flow measurements made during a 24 hour time span.	Samples shall be 24 hour composite samples collected in 12 or more individual portions, sized proportional to flow, equally spaced throughout the operating day.

(a) The required laboratory tests shall be made on grab samples and analyzed immediately after collection or analyzed in situ at the permit sampling point.

(b) The temperature shall be measured in situ on the water at the permit sampling point.

(c) The required laboratory tests shall be made on grab samples.

Figure: 30 TAC §319.9(d)

Table 4
REQUIRED QUALITY CONTROL ANALYSES

Parameter	Blank	Standard	Duplicate	Spike
Bacterial	A		B	
Alkalinity		A	B	
Ammonia Nitrogen	A	A	B	B
BOD	A	A	B	
BOD-carbonaceous	A	A	B	
COD	A	A	B	B
Chloride	A	A	B	B
Chlorine-Total or Free		D		
Cyanide-Total or Amenable to Chlorination	A	A	B	B
Fluoride	A	A	B	B
pH		C		
Kjeldahl Nitrogen	A	A	B	B
Metals (all)	A	A	B	B
Nitrate Nitrogen	A	A	B	B
Nitrite Nitrogen	A	A	B	B
Oil & Grease	A	D		
Orthophosphate	A	A	B	B
Oxygen (dissolved)		A	B	
Phenols	A	A	B	
Phosphorus-Total	A	A	B	B
Specific Conductance	A	A		

Sulfate	A	A	B	B
Sulfide	A	A	B	
Sulfite	A	A	B	
TOC	A	A	B	B
TSS	A		B	
TDS	A	A	B	
Organics by GC or GC/MS or other approved methods	A	A	E	E

Where:

A - Wherever specified, at least one blank and one standard shall be performed each day that samples are analyzed.

B - Wherever specified, duplicate and spike analyses shall be performed on a 10% basis each day that samples are analyzed. If one to 10 samples are analyzed on a particular day, then one duplicate and one spike analyses shall be performed.

C - For pH analysis, the meter shall be calibrated each day that samples are analyzed using a minimum of two standards which bracket the pH value(s) of the sample(s).

D - For the oil and grease analysis and chlorine-total or free analysis, standards shall be analyzed on a 10% basis. If one to 10 samples are analyzed on a particular day, then one standard shall be analyzed. Duplicates may be analyzed in lieu of standards for the oil and grease analysis and chlorine-total or free analysis.

E - For GC and GC/MS analyses, duplicate and spike analyses shall be performed on a 5% basis. If one to 20 samples are analyzed in a month, then one duplicate and one spike analyses per month shall be performed.

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Notice of Contract Award

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces under its Request for Proposals (RFP #192b) the award of the following contract:

A contract is awarded to Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701-4069. The total contract amount is a maximum of \$200,000. The term of the contract is May 18, 2009 through August 31, 2011.

The Comptroller's Request for Proposals 192b (RFP) related to this contract award was published in the March 6, 2009, issue of the *Texas Register* (34 TexReg 1731) and amended in the April 3, 2009, issue of the *Texas Register* (34 TexReg 2271).

TRD-200902005

Pamela G. Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: May 22, 2009



Notice of Request for Proposals

Pursuant to Chapters 403; 2254; Subchapter A, and Chapter 2305, §2305.038, Texas Government Code, the Comptroller of Public Accounts (Comptroller), State Energy Conservation Office (SECO) announces its Request for Proposals (RFP #194b) and invites proposals from qualified, interested engineering firms for professional engineering services for the Schools Program. The Comptroller reserves the right to award more than one contract under the RFP. If a contract award is made under the terms of this RFP, Contractor will be expected to begin performance of the contract on or about August 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, in the Issuing Office at: 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 on Friday, June 5, 2009, after 10:00 a.m. Central Zone Time (CZT) and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily (ESBD) at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. CZT on Friday, June 5, 2009.

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, June 22, 2009. Prospective proposers are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 463-3669 to ensure timely receipt. Non-mandatory Letters of Intent must be ad-

ressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. On or about Monday, June 29, 2009, the Comptroller expects to post responses to questions on the ESBD. Late Non-mandatory Letters of Intent and Questions will not be considered under any circumstances. Respondents shall be solely responsible for verifying timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel, Contracts, no later than 2:00 p.m. CZT, on Tuesday, July 7, 2009. Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for verifying time receipt of Proposals in the Issuing Office.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller will make the final decision. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 5, 2009, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - June 22, 2009, 2:00 p.m. CZT; Official Responses to Questions posted - June 29, 2009; Proposals Due - July 7, 2009, 2:00 p.m. CZT; Contract Execution - August 1, 2009, or as soon thereafter as practical; Commencement of Services - August 1, 2009.

TRD-200902053

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: May 27, 2009



Notice to Persons Interested in the 2009 International Residential Code

Pursuant to 34 TAC §19.52, this notice is provided to interested persons that the State Energy Conservation Office (SECO) is accepting written comments on the International Residential Code published March, 2009.

To achieve energy conservation in all single-family residential construction, Texas Health and Safety Code, §388.003(a) adopted the energy efficiency chapter of the International Residential Code as it existed on May 1, 2001, as the energy code for use in this state for all single-family residential construction. Texas Health and Safety Code, §388.003(b-1) authorizes SECO to adopt the new or latest published edition of the International Residential Code if it will result in residential energy efficiency and air quality that is equivalent to or better than the 2001 Code. SECO will receive a recommendation from the Energy Systems Laboratory at the Texas Engineering Experiment Station of The Texas A&M University System ("Laboratory") on the efficacy of the 2009 International Residential Code compared to the version of

that Code as it existed on May 1, 2001. Texas Health and Safety Code, §388.003(b-3) requires the Laboratory to consider the written comments of interested parties that have been submitted to SECO within 30 days of the publication of this notice.

Comments are encouraged from any persons interested in the International Residential Code, including without limitation: commercial and residential builders; architects and engineers; municipal, county, and other local government authorities; and environmental groups. Copies of both the International Residential Code as it existed on May 1, 2001 as well as the International Residential Code published in January 2009 are available for purchase through International Code Council website <http://www.iccsafe.org/e/category.html?xq=x>. Also, copies of these codes are available for viewing during regular business hours at the SECO office located at the Lyndon Baines Johnson (LBJ) State Office Building, 111 E. 17th Street, Suite 1114, Austin, Texas 78774. Written comments may be submitted in person at the SECO office, electronically through the SECO's electronic mail address specified on SECO's web site <http://www.seco.cpa.state.tx.us/>, or through the United States Postal Service at the State Energy Conservation Office, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528.

All written comments submitted no later than 30 days following the publication date of this notice will be forwarded to the Laboratory by SECO.

TRD-200901980
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: May 20, 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, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/01/09 - 06/07/09 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 06/01/09 - 06/07/09 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 05/01/09 - 05/31/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 05/01/09 - 05/31/09 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/09 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/09 - 09/30/09 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 07/01/09 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Finance Code¹ for the period of 07/01/09 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 07/01/08 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/09 - 09/30/09 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 07/01/09 - 09/30/09 is 18% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/09 - 06/30/09 is 5.00% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/09 - 06/30/09 is 5.00% 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.

⁴Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200902039
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 26, 2009

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Texas Council for Developmental Disabilities

Requests Public Input on FY 2007 - 2011 State Plan

The Texas Council for Developmental Disabilities (TCDD) recently completed an annual review of the TCDD State Plan for Texans with Developmental Disabilities for Fiscal Years 2007-2011. The plan includes Goals and Objectives that guide future grant projects and staff activities. The Council determined that no amendments are necessary for the coming year FY 2010, but wants to know what Texans who have developmental disabilities - as well as their families, friends, neighbors, service providers and other interested individuals - think about the plan. The Council will consider all input in their discussion about any amendments they may make to the State Plan in the future and in consideration of possible projects or activities to address current plan goals and objectives.

The State Plan is available on the TCDD Web site at:

http://www.txddc.state.tx.us/resources/publications/state_plan/sp2007-2011/amendspintro.asp.

Please review the TCDD State Plan and submit your comments using the online form (http://www.txddc.state.tx.us/resources/publications/state_plan/sp2007-2011/amendspininput.asp) or by e-mailing comments to Joanna.Cordry@tcdd.state.tx.us.

Comments are due by July 20, 2009.

TRD-200901993

Roger Webb
Executive Director
Texas Council for Developmental Disabilities
Filed: May 21, 2009

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Texas Education Agency

Notice of Correction: Request for Applications Concerning Target Tech in Texas (T3) Collaborative Grant--American Recovery and Reinvestment Act (ARRA) of 2009 (T3--ARRA)

The Texas Education Agency (TEA) published Request for Applications (RFA) #701-09-118 concerning Target Tech in Texas (T3) Collaborative Grant in the April 24, 2009, issue of the *Texas Register* (34 TexReg 2612) and Notice of Correction: Request for Applications Concerning Target Tech in Texas (T3) Collaborative Grant in the May 1, 2009, issue of the *Texas Register* (34 TexReg 2690).

The TEA is amending the description of eligible applicants. The corrected eligibility criteria are as follows. The TEA is requesting applications under RFA #701-09-118 from a high-need local education agency (LEA) or an eligible collaborative. Each high-need LEA may be included in only one application.

A high-need LEA is an LEA that meets both of the following criteria: (1) at least 2,500 or 22 percent of the children served by the LEA must come from families with incomes below the poverty line as identified by the 2007 U.S. Census data; and (2) the LEA must serve one or more schools that meet at least one of the following criteria: (a) the campus was identified for improvement or corrective action under the No Child Left Behind Act of 2001 (NCLB), Title I, Section 1116; and/or (b) the campus' Texas Campus STaR Chart reflects a substantial need for assistance in acquiring and using technology. Campuses identified for improvement or corrective action under NCLB, Title I, Section 1116, can be found on the TEA website at http://ritter.tea.state.tx.us/nclb/titleia/sip/2008-09/2008-09_sipB.html.

An eligible collaborative must include a high-need LEA. In addition to at least one high-need LEA, the collaborative must also include at least one of the following entities: (1) an LEA that can demonstrate that teachers in its schools are effectively integrating technology and proven teaching practices into instruction and that the integration of technology has improved classroom instruction in the core academic subjects and made students better prepared to meet challenging state academic content and student academic achievement standards; (2) an institution of higher education that is in full compliance with the reporting requirements of the Higher Education Act of 1965, Section 207(f), and that has not been identified as low-performing under Section 208 of that act; (3) a for-profit business or organization that develops, designs, manufactures, or produces technology products or services, or that has substantial expertise in the application of technology in instruction; or (4) a public or private nonprofit organization with demonstrated experience in the application of educational technology to instruction.

The collaborative may also include other educational entities such as education service centers (ESCs), libraries, and other LEAs with the resources and ability to provide technology-focused programs to the local target population.

Only an LEA or ESC may apply for T3--ARRA funding as fiscal agent of the collaborative. For-profit entities, nonprofit entities, and IHEs are not eligible to apply as fiscal agents. They may be included as members of a collaborative.

The TEA encourages LEAs to submit an application as a collaborative and will provide priority points to collaborative applicants. Three or more high-need LEAs included in the collaborative will receive ad-

ditional priority points. Collaboration encourages the development of relationships so that LEAs are not working in isolation, but instead are searching out and identifying common needs, goals, and resolutions to create broader participation within the community to help move LEAs toward 21st century classrooms.

The TEA is also amending the description of further information and deadline for receipt of applications. The corrected information is as follows.

Applicants must submit their written questions to either the program or funding contact person at the TEA no later than 5:00 p.m. (Central Time), Monday, June 22, 2009. To provide all applicants with equal opportunity to review all questions and answers prior to submitting the grant application, any questions received after Monday, June 22, 2009, will not be answered by the TEA.

All questions and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQs) at <http://burleson.tea.state.tx.us/GrantOpportunities/forms> on or before Tuesday, June 30, 2009. In the "Select Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Thursday, July 9, 2009, to be eligible to be considered for funding.

For clarifying information about the RFA, contact Rebecca Schroeder, Division of Discretionary Grants, TEA, (512) 463-9269.

TRD-200902050

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: May 27, 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 **July 6, 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 July 6, 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: ASH CORPORATION dba One Stop Shop; DOCKET NUMBER: 2009-0319-PST-E; IDENTIFIER: RN102228327; LOCATION: Garland, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 Texas Administrative Code (TAC) §115.245(2) and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment; and 30 TAC §115.242(1)(C) and THSC, §382.085(b), by failing to upgrade the Stage II equipment to on-board refueling vapor recovery compatible systems; PENALTY: \$3,535; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Barmont, LP dba Montesello Homes; DOCKET NUMBER: 2007-0919-WQ-E; IDENTIFIER: RN105222749; LOCATION: Willow Park, Parker County; TYPE OF FACILITY: empty lots; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to develop and implement a storm water pollution plan and to obtain authorization to discharge storm water associated with a large construction activity; PENALTY: \$2,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Cody M. Brite; DOCKET NUMBER: 2009-0701-WOC-E; IDENTIFIER: RN104281712; LOCATION: Del Rio, Val Verde County; TYPE OF FACILITY: water licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 707 East Carlton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(4) COMPANY: Brystar Contracting, Inc.; DOCKET NUMBER: 2009-0682-WR-E; IDENTIFIER: RN102800984; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: the Code, §11.081 and §11.121, by impounding, diverting, or using state water without a required permit; PENALTY: \$350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(5) COMPANY: Camp Olympia, Inc.; DOCKET NUMBER: 2009-0155-MWD-E; IDENTIFIER: RN101515435; LOCATION: Trinity County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014261001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with permit effluent limits for ammonia-nitrogen (NH₃N), chlorine, carbonaceous biochemical oxygen demand (CBOD), and total suspended solids (TSS); PENALTY: \$5,640; Supplemental Environmental Project (SEP) offset amount of \$5,640 applied to Texas Association of Resource Conservation and Development Areas, Inc. (RC&D) - Water or Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Steve Villatoro, (512) 239-4930; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(6) COMPANY: Exxon Mobil Corporation; DOCKET NUMBER: 2009-0073-AIR-E; IDENTIFIER: RN102579307; LOCATION:

Baytown, Harris County; TYPE OF FACILITY: refining and supply company; RULE VIOLATED: 30 TAC §116.715(a), Flexible Permit Number 18287, Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$19,875; SEP offset amount of \$7,950 applied to Houston Regional Monitoring Corporation - Houston Area Monitoring; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: H & H Iron and Metal, Inc.; DOCKET NUMBER: 2009-0683-WQ-E; IDENTIFIER: RN105710735; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: scrap and waste materials; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(8) COMPANY: Harris County Municipal Utility District Number 130; DOCKET NUMBER: 2009-0346-MWD-E; IDENTIFIER: RN102894409; LOCATION: Harris County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0012574001, Interim I Effluent Limitations and Monitoring Requirements Numbers 1 and 2, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for NH₃N, chlorine, and CBOD; PENALTY: \$5,800; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: David A. Hernandez; DOCKET NUMBER: 2009-0702-WOC-E; IDENTIFIER: RN104956032; LOCATION: Bloomington, Victoria County; TYPE OF FACILITY: wastewater licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(10) COMPANY: Nico Jaap de Boer dba Hilltop Jersey Farm; DOCKET NUMBER: 2009-0415-AGR-E; IDENTIFIER: RN103920385; LOCATION: Henderson County; TYPE OF FACILITY: dairy operation; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of process generated wastewater runoff from an animal feeding operation; PENALTY: \$950; ENFORCEMENT COORDINATOR: Lauren Smitherman, (512) 239-5223; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: JONESTOWN INVESTMENTS, INC. dba Jonestown Texaco; DOCKET NUMBER: 2009-0027-PST-E; IDENTIFIER: RN101492809; LOCATION: Jonestown, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.222(3) and THSC, §382.085(b), by failing to comply with control requirements for emission limitation anywhere in the liquid transfer or vapor balance system; 30 TAC §115.222(6) and THSC, §382.085(b), by failing to ensure that each vapor balance system vent line is equipped with a pressure-vacuum relief valve set to open at a pressure of no more than eight ounces per square inch; 30 TAC §334.50(b)(2) and the Code, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the underground storage tank system; 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to test the line leak detectors at least once per year for performance and operational reliability; 30 TAC §334.51(b)(2)(C) and the Code, §26.3475(c)(2), by failing to equip each tank with a valve or other appropriate device designed to

automatically shut off the flow of regulated substances into the tank when the liquid level in the tank reaches a preset level no higher than the 95% capacity level for the tank; and 30 TAC §334.45(c)(3)(A), by failing to install an emergency shutoff valve on each pressurized delivery or product line and ensure that it is securely anchored at the base of the dispenser; PENALTY: \$4,339; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5700, (512) 339-2929.

(12) COMPANY: KANEKA TEXAS CORPORATION dba Kaneka High Tech Materials; DOCKET NUMBER: 2008-1465-AIR-E; IDENTIFIER: RN100683291; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: polyimide film manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), Federal Operating Permit (FOP) Number O-2800, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to submit the annual permit compliance certification (ACC); PENALTY: \$5,150; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(13) COMPANY: KANEKA TEXAS CORPORATION; DOCKET NUMBER: 2008-1466-AIR-E; IDENTIFIER: RN100218841; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: polyimide film manufacturing plant; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(C), and 122.146(2), FOP Number O-01152, GTC, and THSC, §382.085(b), by failing to submit an ACC; PENALTY: \$6,350; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(14) COMPANY: Lakewood on Lake Conroe Property Owners Association, Inc.; DOCKET NUMBER: 2008-1029-PWS-E; IDENTIFIER: RN101178747; LOCATION: Montgomery County; TYPE OF FACILITY: public water supply (PWS); RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the consumer confidence report (CCR) to each bill paying customer by July 1 of each year and by failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: \$318; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(15) COMPANY: Lochinvar Golf Club; DOCKET NUMBER: 2008-0884-MWD-E; IDENTIFIER: RN101607885; LOCATION: Harris County; TYPE OF FACILITY: private golf course with a wastewater treatment plant; RULE VIOLATED: 30 TAC §305.65 and §305.125(2) and the Code, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$6,600; ENFORCEMENT COORDINATOR: Heather Brister, (254) 751-0335; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(16) COMPANY: Magellan Terminals Holdings, L.P.; DOCKET NUMBER: 2009-0211-AIR-E; IDENTIFIER: RN102180486; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: petroleum storage terminal; RULE VIOLATED: 30 TAC §101.20(2), 40 CFR §63.2386(b)(1)(i), and THSC, §382.085(b), by failing to timely submit a compliance report; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Bryan Elliott, (512) 239-6162; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(17) COMPANY: Andres Maldonado; DOCKET NUMBER: 2009-0688-WOC-E; IDENTIFIER: RN105689707; LOCATION: Maverick County; TYPE OF FACILITY: water licensing; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: \$210; ENFORCEMENT COORDINATOR: Kirk Schoppe, (512) 239-0489; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, 956-791-6611.

(18) COMPANY: Mueller Supply Company, Inc.; DOCKET NUMBER: 2009-0684-WQ-E; IDENTIFIER: RN105706683; LOCATION: Ballinger, Runnels County; TYPE OF FACILITY: metal doors; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: \$700; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(19) COMPANY: City of Pearland; DOCKET NUMBER: 2009-0237-MWD-E; IDENTIFIER: RN101609196; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010134007, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limitations for NH₃N, TSS, fecal coliform bacterial, and CBOD; PENALTY: \$16,950; SEP offset amount of \$13,560 applied to Brazoria County - Wastewater Treatment Assistance For Low-Income Homeowners; ENFORCEMENT COORDINATOR: Tom Jecha, (512) 239-2576; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(20) COMPANY: TOTAL PETROCHEMICALS USA, INC.; DOCKET NUMBER: 2009-0413-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Numbers 20381, 54026, 56409, 49136, and 9194A, SC Number 1, General Condition Number 8, FOP Numbers 1267 and 2222, Special Terms and Conditions (STC) Number 27, SC Numbers 14, 26, and 27, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a) and §122.143(4), FOP Number 1267, SC 2(F), and THSC, §382.085(b), by failing to properly report an emissions event; PENALTY: \$41,432; SEP offset amount of \$16,573 applied to RC&D - Clean School Buses; ENFORCEMENT COORDINATOR: Raymond Marlow, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(21) COMPANY: Town of Flower Mound; DOCKET NUMBER: 2008-1725-MWD-E; IDENTIFIER: RN102074663; LOCATION: Flower Mound, Denton County; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0011321001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted limits for NH₃N, TSS, and dissolved oxygen; PENALTY: \$19,100; SEP offset amount of \$15,280 applied to the respondent performing an erosion control project in a creek to reduce siltation in a tributary of the Trinity River; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(22) COMPANY: XTO Energy, Inc.; DOCKET NUMBER: 2009-0450-AIR-E; IDENTIFIER: RN105701593; LOCATION: Teague, Freestone County; TYPE OF FACILITY: gas well; RULE VIOLATED: 30 TAC §106.352 and §116.110(a) and THSC, §382.0518(a) and §382.085(b), by failing to obtain a permit or satisfy the conditions of a permit by rule; PENALTY: \$900; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE:

6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200902038

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 26, 2009



Notice of a Public Hearing on Proposed Revisions to 30 TAC Chapters 210, 309, and 319

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 TAC Chapters 210, Use of Reclaimed Water; 309, Domestic Wastewater Effluent Limitation and Plant Siting; and 319, General Regulations Incorporated Into Permits.

The proposed rulemaking would add bacteria limits to Texas Pollutant Discharge Elimination System domestic permits, specify the bacteria, set the frequency for testing, and allow flexibility for other bacteria testing.

A public hearing on this proposal will be held in Austin on June 30, 2009, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments. Registration begins 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. A time limit may be established to assure enough time is allowed for every interested person to speak. There will be no open discussion during the hearing; however, commission staff members will be available for discussion 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Michael Parrish, Office of Legal Services at (512) 239-2548. Requests should be made as far in advance as possible.

Comments may be submitted to Michael Parrish, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments>. File size restrictions may apply to comments submitted through the eComments system. All comments should reference Rule Project Number 2009-005-309-PR. The comment period closes July 6, 2009. To view rules, please visit http://www.tceq.state.tx.us/nav/rules/propose_adapt.html. For further information or questions concerning this proposal, please contact Sherry Smith, Water Quality Division, (512) 239-0571.

TRD-200901989

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 21, 2009



Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission

may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 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.

Copies of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 6, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Cha, Inc. dba Milo's One Stop; DOCKET NUMBER: 2007-1246-PST-E; TCEQ ID NUMBER: RN101752574; LOCATION: 700 East Davis Street, Conroe, Montgomery County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and (d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the underground storage tanks (UST) system which contained regulated substances including tanks, piping, and other ancillary equipment; 30 TAC §115.248(1) and Texas Health and Safety Code (THSC), §382.085(b), by failing to ensure that at least one station representative received training in the operation and maintenance of the Stage II vapor recovery system and each current employee receives in-house Stage II vapor recovery training regarding the purpose and operation of the vapor recovery system; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifold and dynamic back pressure at least once every 36 months or upon major system replacement or modification, whichever occurs first; and 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the commission for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition; PENALTY: \$6,230; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(2) COMPANY: Dennie Shelton; DOCKET NUMBER: 2008-0241-MSW-E; TCEQ ID NUMBER: RN105196703; LOCATION: 301 Wolf Street, Brady, McCullough County; TYPE OF FACILITY: property; RULES VIOLATED: 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; and 30 TAC §324.4(1) and 40 Code of Federal Regulation (CFR) §279.54(g), by failing to prevent the discharge of used oil and by failing to stop, contain, and clean-up the used oil upon detection of the release; PENALTY: \$3,125; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: San An-

gelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(3) COMPANY: Douglas Adcock dba McDonald's; DOCKET NUMBER: 2007-1796-MWD-E; TCEQ ID NUMBER: RN102186806; LOCATION: 16002 Hempstead Highway and United States Highway 290, Jersey Village, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: 30 TAC §305.65 and §305.125(2) and TWC, §26.121(a), by failing to maintain authorization for the discharge of wastewater; PENALTY: \$11,520; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(4) COMPANY: James J. Flanagan Shipping Corporation dba James J. Flanagan Stevedores; DOCKET NUMBER: 2007-0978-PST-E; TCEQ ID NUMBER: RN101880219; LOCATION: 1111 East Navigation Boulevard, Houston, Harris County; TYPE OF FACILITY: shipping corporation; RULES VIOLATED: 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.10(b), by failing to have the UST records maintained, readily accessible, and make them immediately available for inspection upon request by agency personnel; 30 TAC §334.8(c)(4)(A)(vi) and §334.7(d)(3), by failing to submit the required UST registration and self-certification form to the agency; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: \$8,000; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

(5) COMPANY: K.L. Comfort Park, Ltd.; DOCKET NUMBER: 2007-0789-PWS-E; TCEQ ID NUMBER: RN101223600; LOCATION: 1712 North General Bruce Drive, Temple, Bell County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to issue a customer service inspection certificate prior to providing continuous water service; 30 TAC §290.46(e)(3)(A) and THSC, §341.033(a), by failing to ensure that the public water supply operation is under the direct supervision of a water works operator who holds a minimum of a Class "D" license; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite disinfectant for use when making repairs, setting meters, and disinfecting new lines prior to placing them in service; 30 TAC §290.46(f)(2), by failing to maintain records of water works operations; and 30 TAC §290.42(l), by failing to compile a thorough plant operations manual and keep it up-to-date for operator review and reference; PENALTY: \$1,102; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(6) COMPANY: Leading Edge Aviation Services Amarillo, Inc.; DOCKET NUMBER: 2007-0516-IHW-E; TCEQ ID NUMBER: RN100611201; LOCATION: 10801 Baker Street, Amarillo, Potter County; TYPE OF FACILITY: aircraft painting shop; RULES VIOLATED: 30 TAC §335.262(c)(2)(B), 40 CFR §265.171, and TCEQ AO Docket Number 2004-0444-IHW-E, Ordering Provisions Number 2.a.i., by failing to ensure that containers are structurally sound and compatible with the waste; 30 TAC §335.262(c)(2)(A),

40 CFR §265.173(a) and (b), and TCEQ AO Docket Number 2004-0444-IHW-E, Ordering Provisions Number 2.a.ii., by failing to keep waste containers closed, except when adding or removing waste; 30 TAC §335.262(c)(2)(F), 40 CFR §273.34, and TCEQ AO Docket Number 2004-0444-IHW-E, Ordering Provisions Number 2.a.iii., by failing to label waste containers with the words to identify contents; 30 TAC §335.262(c)(1), 40 CFR §273.35(a), and TCEQ AO Docket Number 2004-0444-IHW-E, Ordering Provisions Number 2.a.iv., by failing to ship universal waste for disposal within one year of the date of accumulation; 30 TAC §335.13(k)(1) and (2), by failing to submit an exception report to the TCEQ within 45 days of not receiving a signed copy of the manifest from the disposal facility; 30 TAC §335.69(a)(4)(A), by failing to provide annual hazardous waste management procedures training to personnel; and 30 TAC §335.262(b) and (d), by failing to conduct a hazardous waste determination on the facility's universal paint waste stream; PENALTY: \$41,250; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Amarillo Regional Office, 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(7) COMPANY: Roofing Supply, L.L.C.; DOCKET NUMBER: 2007-1494-PWS-E; TCEQ ID NUMBER: RN101210458; LOCATION: 2600 West Mount Houston Road, Houston, Harris County; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to secure a sanitary control easement covering land within 150 feet of the well; and 30 TAC §290.39(e), by failing to submit as-built water system plans and specifications prepared by a licensed, professional engineer to the commission for review and approval; PENALTY: \$157; STAFF ATTORNEY: Rudy Calderon, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023, (713) 767-3500.

TRD-200902037

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 26, 2009

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **July 6, 2009**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory author-

ity. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

Copies of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 6, 2009**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Bosque Basin Water Supply Corporation; DOCKET NUMBER: 2008-1593-PWS-E; TCEQ ID NUMBER: RN101213544; LOCATION: 352 Oak Street, China Spring, McLennan County; TYPE OF FACILITY: public water supply facility; RULES VIOLATED: 30 TAC §290.41(c)(1)(F) and TCEQ Agreed Order Docket Number 2006-0075-MLM-E, Ordering Provision 2.a.iii, by failing to keep on file and make available for commission review documentation of a sanitary control easement for Well Number 1; 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block that extends at least three feet in all directions from the well casing; 30 TAC §290.43(c)(4), by failing to provide a pressure gauge calibrated in feet of water for the ground storage tanks; 30 TAC §290.46(f)(2) and (3)(A)(iv), by failing to provide facility records to commission personnel at the time of the investigation; 30 TAC §290.44(h)(1)(A), by failing to install a backflow prevention assembly or an air gap at all residences and establishments where an actual or potential contamination hazard exists; 30 TAC §290.46(m)(1)(B), by failing to conduct an inspection of the interior of the pressure tank at least once every five years; 30 TAC §290.42(l), by failing to maintain an up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class "D" or higher license; 30 TAC §290.46(s)(1), by failing to calibrate the facility's two well meters at least once every three years; and 30 TAC §290.46(n)(3), by failing to provide copies of well completion data; PENALTY: \$1,573; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Chalico Concrete Materials, Inc.; DOCKET NUMBER: 2008-0202-AIR-E; TCEQ ID NUMBER: RN104802061; LOCATION: 2000 Port Road, Port Isabel, Cameron County; TYPE OF FACILITY: concrete batch plant; RULES VIOLATED: 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Standard Permit Number 77534, Special Condition Number 6(C), by failing to pave all entry and exit roads and main traffic routes associated with the operation of a concrete batch plant (including batch truck and material delivery truck roads); 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Standard Permit Number 77534, Special Condition Number 6(D)(iii), by failing to locate stationary equipment, stockpiles, or vehicles for facilities with production rates less than or equal to 200 cubic yards per hour at least 25 feet from any property lines; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization for a source of air emissions; 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to control the discharge of air contaminants in such a concentration and duration as to adversely affect human health or welfare, property or as to interfere with the normal use and enjoyment of property; PENALTY: \$5,350; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE:

Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(3) COMPANY: Elegant Craftworks, Inc. dba Allan Products; DOCKET NUMBER: 2007-1480-AIR-E; TCEQ ID NUMBER: RN100215342; LOCATION: 825 Shepherd Drive, Garland, Dallas County; TYPE OF FACILITY: wood product manufacturing plant; RULES VIOLATED: THSC, §382.085(b) and 30 TAC §122.46(1) and (2), by failing to submit the required annual compliance certifications for the periods of April 1, 2005 - March 31, 2006, and April 1, 2006 - March 31, 2007; and TWC, §5.702 and 30 TAC §101.27(c)(1), by failing to pay outstanding Air Emission fees for Financial Administration Account Number 21006231; PENALTY: \$5,250; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Farhan Memon dba Peachtree; DOCKET NUMBER: 2008-1564-PST-E; TCEQ ID NUMBER: RN102223435; LOCATION: 11111 Walnut Hill Lane, Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.246(7)(A) and THSC, §382.085(b), by failing to maintain Stage II records at the station and by failing to make them immediately available for review upon request; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months and the Stage II vapor space manifolding and dynamic back pressure at least once every 36 months or upon major system replacement or modification; whichever occurs first; PENALTY: \$5,046; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division; MC R-12, (713) 422-8914; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Nelco Distributing Company dba Nelco Corner; DOCKET NUMBER: 2005-1223-PST-E; TCEQ ID NUMBER: RN104557921; LOCATION: 1045 South State Highway 359, Mathis, San Patricio County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of underground storage tanks (UST) systems; and 30 TAC §334.22(a) and §334.128(a) and TWC, §5.702, by failing to pay UST fees for Fiscal Years 2001 - 2005, and aboveground storage tank fees for 2003 - 2005; PENALTY: \$4,200; STAFF ATTORNEY: Barham A. Richard, Litigation Division, MC 175, (512) 239-0107; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(6) COMPANY: Shawn Horvath dba Aero Valley Water Service; DOCKET NUMBER: 2008-0962-PWS-E; TCEQ ID NUMBER: RN101198331; LOCATION: east of Interstate 35 West, 1/2 mile south of Farm-to-Market Road 1171 on Cleveland Gibbs Road at Northwest Regional Airport; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and THSC, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of July 2007 - December 2007, and by failing to provide public notification of the failure to sample for the months of July 2007 - December 2007; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat samples within 24 hours of being notified of a total coliform-positive sample result and by failing to provide public notification of the failure to collect repeat water samples for the month of March 2008; 30 TAC §290.271(b) and §290.274(a) and (b), by failing to mail or deliver one copy of the Consumer Customer Report (CCR) to each bill paying customer by July 1st of each year and by

failing to submit a copy of the annual CCR and certification that the CCR has been distributed to the customers of the water system and that the information in the CCR is correct and consistent with compliance monitoring data to the TCEQ by July 1st of each year; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay all annual and late Public Health Service Fees for TCEQ Financial Administration Account Number 90610243 for Fiscal Years 2003 - 2008 to the TCEQ in a timely manner; PENALTY: \$5,133; STAFF ATTORNEY: Tommy Tucker Henson II, Litigation Division, MC 175, (512) 239-0946; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: Sixto Nava Alvarado dba Alvarado's Lawn and Maintenance Service; DOCKET NUMBER: 2007-1797-LII-E; TCEQ ID NUMBER: RN105300594; LOCATION: 1919 Walnut Plaza, Apartment 236, Carrollton, Dallas County; TYPE OF FACILITY: landscape irrigation business; RULES VIOLATED: TWC, §37.003, Texas Occupations Code, §1903.251, and 30 TAC §30.5(b), by failing to refrain from advertising or representing himself to the public as a person who can perform services for which a license or registration is required when not possessing a current license or registration; PENALTY: \$750; STAFF ATTORNEY: Anna Cox, Litigation Division, MC 175, (512) 239-0974; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Sue Goins dba 67 Bait Shop; DOCKET NUMBER: 2008-0109-PST-E; TCEQ ID NUMBER: RN102014289; LOCATION: 610 United States Highway 67 East, Naples, Morris County; TYPE OF FACILITY: facility that formerly included two USTs; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended UST registration to the TCEQ for any change or additional information regarding USTs within 30 days from the date of occurrence of the change; 30 TAC §334.6(b)(1)(A), by failing to properly notify the agency of the initiation of any proposed major UST activity between 24 and 72 hours prior to the commencement of the construction activity; 30 TAC §334.55(a)(6)(B)(ii), by failing to conduct a site assessment in response to the permanent removal from service of an UST system; and 30 TAC §334.401(a), by failing to utilize a licensed on-site supervisor to perform and supervise the UST removal activity; PENALTY: \$9,900; STAFF ATTORNEY: Gary Shiu, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: To Nguyen and Quang Huynh, aka Quinn Huynh, dba Discount Grocery Store; DOCKET NUMBER: 2008-0527-PST-E; TCEQ ID NUMBER: RN102226750; LOCATION: 4244 Wilbarger, Fort Worth, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.244(1) and (3) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II vapor recovery system for the petroleum storage tanks; 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II vapor recovery system by completing a training course approved by the executive director and by failing to ensure that current employees are aware of the purposes and correct operating procedures of the Stage II system; 30 TAC §115.242(1)(C), (3)(A), and (E), and THSC, §382.085(b), by failing to ensure that the Stage II vapor recovery system is onboard refueling vapor recovery compatible, by failing to replace missing vapor guards on pump nozzles number 1 Regular Unleaded, number 3 Plus and Super Unleaded and number 4 Plus and Super Unleaded, and by failing to replace damaged vapor guards on pump nozzles number 2 Plus and Super Unleaded, thereby failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California

Air Resources Board Executive Order; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees and associated late fees for TCEQ Financial Assurance Account Number 0056738U for Fiscal Years 2006 - 2007; 30 TAC §334.7(d)(3), §334.8(c)(4)(A)(vii) and (5)(B)(ii); by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition, and by failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for the UST system; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii) and (iii)(I), and TWC, §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), by failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and by failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; PENALTY: \$15,783; STAFF ATTORNEY: Tammy Mitchell, Litigation Division, MC 175, (512) 0736; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200902036

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 26, 2009



Notice of Water Quality Applications

The following notices were issued during the period of May 4, 2009 through May 22, 2009.

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

SOUTHWESTERN PUBLIC SERVICE COMPANY which operates the Clifford B. Jones Steam Electric Station (SES), has applied for a renewal of TCEQ Permit No. WQ0001312000, which authorizes the disposal of cooling tower blowdown, low volume wastes, metal cleaning waste, and storm water at a daily average flow not exceed 4.82 million gallons per day (MGD) via irrigation of 1080 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located approximately two miles east of the intersection of U.S. Highway 84 and State Highway 331, southeast of the City of Lubbock, Lubbock County, Texas.

POSSUM KINGDOM WATER SUPPLY CORPORATION which operates, the George N. Bailey, Jr. Water Treatment Plant (WTP) a potable water treatment facility, has applied for a renewal of TPDES

Permit No. WQ0004325000, which authorizes the discharge of backwash water, process sampling water, and reverse osmosis concentrate at a daily average flow not to exceed 220,000 gallons per day via Outfall 001. The facility is located at 300 Lago Vista Road, approximately 0.5 miles south of intersection of Farm-to-Market Road 2951 and Harris Drive, and approximately 16 miles west of the Town of Graford, Palo Pinto County, Texas.

CITY OF COLLEGE STATION has applied for a renewal of TPDES Permit No. WQ0010024006, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,500,000 gallons per day. The current permit also authorizes distribution and marketing of sewage sludge. The facility is located adjacent to the west side of Carters Creek, approximately 0.75 mile east of State Highway 6, and approximately 1,800 feet east and 8,000 feet north of the intersection of State Highway 6 East and Texas Avenue in Brazos County, Texas.

DSM NUTRITIONAL PRODUCTS INC which operates a facility that manufactures beta-carotene, has applied for a renewal of TPDES Permit No. WQ0002216000, which authorizes a discharge of process wastewater, utility wastewater, water treatment waste, domestic wastewater, and storm water runoff at a daily average flow not to exceed 190,000 gallons per day via Outfall 001. The facility is located at 1000 County Road 227, immediately south of Oyster Creek and north of Farm-to-Market Road 332, north of the City of Freeport, Brazoria County, Texas.

VALLEY MUNICIPAL UTILITY DISTRICT NO 2 which operates Rancho Viejo RO WTP, a reverse osmosis potable water treatment plant, has applied for a major amendment to TPDES Permit No. WQ0003936000 to authorize a reduction in effluent monitoring frequency at Outfall 001 from once per day to once every two weeks, and the change of the effluent monitoring location for Outfall 001 from "at Outfall 001, at the end of the 8-inch pipe prior to discharge to San Martin Drainage Ditch No. SM-01-13 (of Cameron County Drainage District (CCDD) No. 1)", to "following the Reverse Osmosis unit and prior to commingling with any other waste streams." The current permit authorizes treatment and discharge wastes from Rancho Viejo RO WTP, a reverse osmosis potable water treatment plant, at a daily average flow not to exceed 500,000 gallons per day. The facility is located at 100 Hidalgo, on the west side of State Highway 83, approximately 1.25 miles north of the intersection of State Highway 83 and Farm-to-Market Road 511, and approximately 3.5 miles south of the intersection of State Highway 83 and State Highway 100, in the City of Rancho Viejo, Cameron 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.

VILLAGE FARMS LP which operates Village Farms of Marfa Plant, a hydroponic greenhouse industry that produces and markets tomatoes, cucumbers, and peppers, has applied for a major amendment to TCEQ Permit No. WQ0004769000 requesting authorization for: (1) direct ruminant grazing of the land with the option to harvest forage crops, if needed, (2) increasing the irrigation area from 205 acres to 245 acres, and (3) increasing the allowable volume discharged from the green house into the irrigation pond from 198,000 gallons per day to 250,000 gallons per day. The current permit authorizes the disposal of process wastewater at an annual average flow not to exceed 198,000 gallons per day via irrigation of 205 acres of Bermuda and native grasses. This permit will not authorize a discharge of pollutants into water in the State. TCEQ received this application on June 16, 2008. The facility and the land application area are located four miles north of the inter-

section of U.S. Highway 90 and 67 in Presidio County, Texas. The facility and the land application area are located in the drainage basin of Rio Grande Above Amistad Reservoir in Segment No. 2306 of the Rio Grande River Basin.

CITY OF HALLETTSVILLE has applied for a renewal of TPDES Permit No. WQ0010013001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located on the bank of the Lavaca River, approximately 1,000 feet downstream from the U.S. Highways 90-A and 77 bridge across the Lavaca River in the City of Hallettsville in Lavaca County, Texas 77964.

CITY OF SILSBEE has applied for a renewal of TPDES Permit No. WQ0010282002 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 1700 feet north and 300 feet west of the intersection of Farm-to-Market Road 418 and Roosevelt Drive extension in Hardin County, Texas.

CITY OF GIDDINGS has applied for a renewal of TPDES Permit No. WQ0010456002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 464,000 gallons per day. The facility is located on south sewer plant road approximately 2,200 feet southeast of Farm-to-Market Road 448, and 4,000 feet southwest of U.S. Highway 77 in Lee County, Texas.

CZECH CATHOLIC HOME FOR THE AGED has applied for a renewal of TPDES Permit No. WQ0010935001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 6,000 gallons per day. The facility is located approximately 1,000 feet northwest of the intersection of U.S. Highway 59 and Farm-to-Market Road 441 (adjacent to Farm-to-Market Road 441) in Wharton County, Texas.

CITY OF LIPAN has applied for a renewal of TPDES Permit No. WQ0013590001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 99,000 gallons per day. The facility is located north of the City of Lipan, approximately 1.5 miles northeast of the intersection of Farm-to-Market Road 4 and Farm-to-Market Road 1189 in Hood County, Texas.

KOPPERL INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0013982001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located at 101 Fifth Street, approximately 1,800 feet east-northeast of the intersection of Farm-to-Market Road 56 and the Burlington Northern/Sante Fe Railroad in Bosque County, Texas.

TOWN OF BUCKHOLTS has applied for a renewal of TPDES Permit No. WQ0011875001, 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 on the north side of the Town of Buckholts, approximately 1,600 feet northeast of U.S. Highway 190 and approximately 1,000 feet east of Farm-to-Market Road 1915 in Milam County, Texas.

DRIPPING SPRINGS APARTMENTS LP has applied for a renewal of Permit No. WQ0014146001 which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via subsurface drip irrigation system on 3.57 acres of non-public access land. This permit will not authorized a discharge of pollutants into the Waters of the State. The wastewater treatment facility and disposal site are located on the north side of U.S. Route 290, approximately 13,000 feet west along U.S. Route 290 from its intersection with State Route 12 in Hays County, Texas.

SIENNA PLANTATION MUNICIPAL UTILITY DISTRICT NO 1 has applied for a renewal of proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014611001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 250 feet north of Sienna Ranch Road and approximately 500 feet east-northeast of Cow Bayou in Fort Bend County, Texas

1977 KINDRED II LP has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014920001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility was previously permitted under TPDES Permit No. WQ0011923001 which expired May 1, 2008. The facility is located at 1977 Kindred Street, located in the southwest corner of an industrial park on Clark-Williams Road, 600 feet south of U.S. Highway 90, approximately 0.5 mile west of South Lake Houston Parkway, and approximately 4.5 miles north-east of the intersection of U.S. Highway 90 and Interstate 610 in Harris 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-200902046
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 27, 2009



Texas Facilities Commission

Request for Proposals #303-9-11105-A

The Texas Facilities Commission (TFC), on behalf of the Health and Human Services Commission (HHSC), announces the issuance of Request for Proposals (RFP) #303-9-11105-A. TFC seeks a five (5) or ten (10) year lease of approximately 4,409 square feet of office space in Laredo, Webb County, Texas.

The deadline for questions is June 16, 2009 and the deadline for proposals is June 23, 2009 at 3:00 p.m. The award date is August 19, 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 an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting 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=82638.

TRD-200902047
Kay Molina
General Counsel
Texas Facilities Commission
Filed: May 27, 2009



Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rate

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 24, 2009, at 1:30 p.m. to receive public comment on the proposed Medicaid payment rates for Tuberculosis (TB) Clinic services. The public hearing will be held in the Lone Star Conference Room of HHSC, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. The hearing will be held in compliance with Human Resources Code §32.082 and 1 Texas Administrative Code (TAC), §355.201(e) - (f), which require public hearings on proposed Medicaid reimbursements.

Proposal. The proposed tuberculosis clinic procedure codes payment rates are proposed to be effective September 1, 2009.

Methodology and justification. The proposed updated payment rates are calculated in accordance with 1 TAC §355.8341, which addresses the reimbursement methodology for tuberculosis clinic services.

Briefing Package. A briefing package describing the proposed payment rates will be available on or after June 10, 2009. Interested parties may obtain a copy of the briefing package prior to the hearing by contacting Rate Analysis by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Meisha.Scott@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of or in addition to oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of HHSC, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Rate Analysis at (512) 491-1998; or by e-mail to Meisha.Scott@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to HHSC, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

Persons with disabilities who wish to attend the hearing and require auxiliary aids should contact Rate Analysis at (512) 491-1445 at least 72 hours in advance, so appropriate arrangements can be made.

TRD-200901986
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 20, 2009



Public Notice

The Texas Health and Human Services Commission announces its intent to submit amendments to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendments are effective July 1, 2009.

The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for services provided by:

- Physicians and Certain Other Practitioners
- Providers of Durable Medical Equipment (DME), Prosthetics, Orthotics and Supplies
- Providers of Clinical Laboratory Services
- Providers of Molecular Laboratory Services
- Providers of Vision Services

The proposed amendments are estimated to result in an additional annual aggregate expenditure of \$2,454,516 for federal fiscal year (FFY) 2009, with approximately \$1,687,725 in federal funds and \$766,791 in

State General Revenue (GR). For FFY 2010, the estimated additional aggregate expenditure is \$12,425,129, with approximately \$8,678,953 in federal funds and \$3,746,176 in GR. For FFY 2011, the estimated additional aggregate expenditure is \$13,335,873, with approximately \$8,225,566 in federal funds and \$5,110,307 in GR.

Interested parties may obtain copies of the proposed amendments by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposals will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200901998

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 21, 2009



Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective December 6, 2009.

The amendment will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee changes for services provided by Physicians and Certain Other Practitioners.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of \$53,808 for federal fiscal year (FFY) 2010, with approximately \$36,998 in federal funds and \$16,810 in State General Revenue (GR). For FFY 2011, the estimated additional aggregate expenditure is \$69,157, with approximately \$48,306 in federal funds and \$20,851 in GR. For FFY 2012, the estimated additional aggregate expenditure is \$74,096, with approximately \$45,702 in federal funds and \$28,394 in GR.

Interested parties may obtain copies of the proposed amendment by contacting Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at Dan.Huggins@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-200902024

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: May 22, 2009



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
Harlingen	Valley Cancer Associates P.A.	L06225	Harlingen	00	05/04/09
Sunnyvale	Texas Regional Medical Center Ltd. dba Texas Regional Medical at Sunnyvale	L06246	Sunnyvale	00	05/04/09

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Arlington	D. Harris Consulting	L04845	Arlington	09	05/06/09
Austin	Seton Healthcare dba University Medical Center at Brackenridge	L00268	Austin	105	04/30/09
Austin	Cedra Clinical Research L.L.C.	L05723	Austin	04	05/06/09
Austin	Austin Radiological Association	L00545	Austin	153	05/15/09
Austin	ARA Imaging	L05862	Austin	43	05/15/09
Bedford	Texas Oncology dba Edwards Cancer Center	L05550	Bedford	19	05/11/09
Brownwood	Brownwood Specialty Group dba BSG Imaging	L05878	Brownwood	06	05/12/09
Burnet	Daughters of Charity Health Services of Austin dba Seton Highland Lakes	L03515	Burnet	38	05/01/09
Cleveland	Cleveland Regional Medical Center L.P.	L02055	Cleveland	41	04/30/09
Columbus	Columbus Community Hospital	L03508	Columbus	19	05/06/09
Conroe	Sadler Clinic/Montgomery County Management Company	L04899	Conroe	28	05/15/09
Corpus Christi	Christus Health System dba Christus Spohn Hospital Corpus Christi Memorial	L00265	Corpus Christi	87	04/27/09
Cypress	N. Cypress Medical Center Operating Company L.L.C. dba North Cypress Medical Center	L06020	Cypress	14	05/14/09
Dallas	Mallinckrodt Inc.	L03580	Dallas	63	04/30/09
Dallas	Texas Instruments Incorporated	L05048	Dallas	11	05/06/09
Dallas	JRJ Paving Inc.	L05307	Dallas	08	04/30/09
Dallas	Texas Hematology/Oncology Center P.A. dba Patients Comprehensive Cancer Center	L05397	Dallas	17	05/06/09
Dallas	Baylor Radiosurgery Center dba Baylor University Medical Center	L05842	Dallas	12	05/01/09
Dallas	Medi Physics Inc. dba G.E. Healthcare	L05529	Dallas	26	05/13/09
El Paso	Desert Imaging	L05626	El Paso	10	05/07/09
El Paso	Raba-Kistner Consultants (SW) Inc.	L02337	El Paso	24	05/12/09
Fort Worth	Fort Worth Medical Plaza Inc. dba Columbia Plaza Medical Center of Fort Worth	L02171	Fort Worth	54	05/05/09
Fort Worth	Naresh H. Patel M.D., P.A. dba Texas Cardiology Clinic	L05520	Fort Worth	07	04/28/09
Fort Worth	Maxum Health Services Corporation dba Insight Diagnostic Center-Eighth Avenue	L05887	Fort Worth	07	04/30/09
Fort Worth	Oncology Hematology Consultants P.A. dba The Center for Cancer and Blood Disorders	L05919	Forth Worth	09	05/15/09
Garland	Bonded Inspections Inc.	L00693	Garland	81	05/06/09

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Houston	Rice University	L00104	Houston	20	05/06/09
Houston	Varco L.P. FKA Tuboscope Vetco Intl. Inc.	L00287	Houston	125	05/06/09
Houston	Memorial Hermann Hospital System dba Memorial Hospital Southwest	L00439	Houston	142	05/01/09
Houston	Medical Clinic of Houston L.L.P.	L01315	Houston	35	05/01/09
Houston	James A. Smelley, M.D. dba Northwest Eye Associates	L01413	Houston	13	05/01/09
Houston	University of Houston Environmental Health and Risk Management	L01886	Houston	59	05/01/09
Houston	Sheldon Rubinfeld, M.D.	L04410	Houston	10	05/11/09
Houston	Proportional Technologies Inc.	L04747	Houston	24	05/05/09
Houston	Medi Physics Inc. dba G.E. Healthcare	L05517	Houston	18	05/11/09
Houston	Mukarram Ali Baig, M.D., P.A. dba Heart Care Center of Northwest Houston	L05539	Houston	11	05/11/09
Houston	NIS Holdings Inc. dba Nuclear Imaging Services	L05775	Houston	49	05/11/09
Houston	Nuclear Imaging Services L.P.	L05791	Houston	09	05/01/09
Houston	Memorial Hermann Hospital System dba River Oaks Imaging and Diagnostic	L06181	Houston	05	04/30/09
Houston	El Paso Corporation dba Tennessee Gas Pipeline	L00180	Houston	25	05/12/09
Irving	Baylor Medical Center at Irving dba Irving Healthcare System	L02444	Irving	77	05/07/09
Laredo	Metabolic Imaging of Laredo L.L.P.	L05890	Laredo	04	05/06/09
Lubbock	Rosa of the South Plains L.L.P. dba Rosa of the South Plains	L05484	Lubbock	14	04/30/09
Mesquite	Southwest Cardiac Associates	L05589	Mesquite	07	05/01/09
Midland	Midland County Hospital District dba Midland Memorial Hospital	L00728	Midland	93	05/08/09
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	45	05/08/09
Orange	Baptist Hospitals of Southeast Texas dba Memorial Hermann Baptist Orange Hospital	L01597	Orange	32	05/06/09
Perryton	Ochiltree County Hospital District dba Ochiltree General Hospital	L06006	Perryton	03	05/07/09
San Angelo	Regional Employee Assistance Program dba Community Medical Associates	L06172	San Angelo	01	05/11/09
San Antonio	Arias and Associates Inc.	L04964	San Antonio	36	05/05/09
Stafford	Burzynski Research Institute Inc.	L02948	Stafford	26	05/01/09
Stephenville	Stephenville Medical and Surgical Clinic	L05309	Stephenville	15	05/01/09
Sulphur Springs	Medical Surgical Clinic of Sulphur Springs dba Sulphur Springs Family Health Care Associates	L05701	Sulphur Springs	14	05/06/09
Temple	Scott and White Memorial Hospital	L00331	Temple	83	05/01/09
Throughout Tx	ECSS - Texas L.L.P.	L05384	Addison	06	05/07/09
Throughout Tx	Applied Standards Inspection Inc.	L03072	Beaumont	110	05/06/09
Throughout Tx	Weld Spec Inc.	L05426	Beaumont	84	05/13/09
Throughout Tx	E. D. Baker Company Ltd.	L04872	Borger	08	05/05/09
Throughout Tx	PCI Services	L04596	Corpus Christi	10	04/22/09
Throughout Tx	National Inspection Services L.L.C.	L05930	Crowley	23	05/04/09
Throughout Tx	National Inspection Services L.L.C.	L05930	Crowley	24	05/14/09
Throughout Tx	Abacus Environment Inc.	L05882	Dallas	02	05/12/09
Throughout Tx	Irisndt Inc.	L04769	Deer Park	72	04/29/09
Throughout Tx	Irisndt Inc.	L04769	Deer Park	73	05/06/09
Throughout Tx	Licon Engineering Company Inc.	L05530	El Paso	06	05/13/09

AMENDMENTS TO EXISTING LICENSES ISSUED (Continued):

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	City of Forth Worth Dept. of Engineering	L01928	Fort Worth	21	05/13/09
Throughout Tx	General Inspection Services Inc.	L02319	Hempstead	44	04/29/09
Throughout Tx	Stork Testing and Metallurgical Consulting Inc.	L00299	Houston	134	05/07/09
Throughout Tx	Wood Group Logging Services Inc.	L05262	Houston	34	05/01/09
Throughout Tx	Material Inspection Technology Inc.	L05672	Houston	32	04/29/09
Throughout Tx	Stearns Conrad and Schmidt Consulting Engineers Inc.	L06209	Houston	03	05/06/09
Throughout Tx	Goolsby Testing Laboratories Inc.	L03115	Humble	95	05/13/09
Throughout Tx	Marco Inspection Services L.L.C.	L06072	Kilgore	22	04/27/09
Throughout Tx	Acuren Inspection Inc.	L01774	La Porte	255	05/14/09
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	138	04/28/09
Throughout Tx	Howland Geoscience Inc.	L05543	Laredo	05	05/13/09
Throughout Tx	Master Industries Inc.	L05872	Liberty	22	05/13/09
Throughout Tx	Hi-Tech Testing Service Inc.	L05021	Longview	76	05/07/09
Throughout Tx	Conam Inspection and Engineering Inc.	L05010	Pasadena	167	05/07/09
Throughout Tx	Texas Gamma Ray L.L.C.	L05561	Pasadena	89	05/04/09
Throughout Tx	Coastal Wireline Services Inc. dba Gulf Coast Well Analysis	L04239	Pearland	13	04/28/09
Throughout Tx	Raba-Kistner Consultants Inc.	L01571	San Antonio	63	05/05/09
Throughout Tx	Southwest Research Institute	L00775	San Antonio	79	05/14/09
Throughout Tx	Production Logging Inc.	L02698	Snyder	24	05/01/09
Throughout Tx	Schlumberger Technology	L00109	Sugarland	57	05/11/09
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugarland	153	05/12/09
Tyler	Delek Refining Ltd.	L02289	Tyler	21	04/28/09
Vernon	Wilbarger General Hospital	L03047	Vernon	19	05/15/09
Waco	Texas State Technical College Waco	L01926	Waco	38	05/12/09

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fort Worth	Heart Center of North Texas P.A.	L05338	Fort Worth	113	05/06/09
Graham	City of Graham dba Graham Regional Medical Center	L03271	Graham	22	05/06/09

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Cresson	Diamondback Energy Service dba Diamondback Pumping Services L.P.	L06016	Cresson	07	05/07/09
San Antonio	City of San Antonio Aviation Department	L05052	San Antonio	04	05/12/09

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - MC 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-200901988
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: May 21, 2009

◆ ◆ ◆

Texas Department of Housing and Community Affairs

American Recovery and Reinvestment Act of 2009 Texas Weatherization Assistance Program - Notice of Funding Availability

I. Summary.

The Texas Department of Housing and Community Affairs (TDHCA or the Department) announces this Notice of Funding Availability (NOFA) of approximately \$297,507,285 in federal funding through the Weatherization Assistance Program (WAP), which the U.S. Department of Energy (DOE) is providing to the State of Texas from the American Recovery and Reinvestment Act (ARRA) of 2009.

The funds are proposed to be made available in the form of contracts to qualified Community Action Agencies, units of local government and non-profit entities (Subrecipients) to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential expenditures, and improve their health and safety, especially low income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with young children, high residential energy users, and households with high energy burden.

The type of weatherization measures that a household may receive is contingent upon a household's income eligibility, a comprehensive assessment of the household's energy use, and the availability of weatherization funds.

II. Allocation of WAP Funds.

The WAP funds will be made available to Subrecipients through the application process, beginning June 1, 2009.

III. Eligible Activities and Applicants.

Applicants responding to this NOFA must meet the qualifications and threshold as stated in the NOFA.

IV. Maximum Amount of Request.

The maximum amount that can be requested is described in the NOFA.

V. Application Acceptance.

The application acceptance period will begin June 15, 2009 for all Subrecipients.

Application Acceptance for the existing Subrecipient network Closes: Tuesday, June 23, 2009 by 5:00 p.m. CST regardless of the method of delivery

Application Acceptance for the all other applicants Closes: Tuesday, June 26, 2009 by 5:00 p.m. CST regardless of the method of delivery

To view the complete NOFA please visit: <http://www.tdhca.state.tx.us/wap/index.htm>.

Mailing Address:

Energy Assistance Section
Texas Department of Housing and Community Affairs

P.O. Box 13941
Austin TX 78711-3941
(All U.S. Postal Service including Express)

Courier Delivery:

Energy Assistance Section
Texas Department of Housing and Community Affairs
221 East 11th Street, 1st Floor
Austin, TX 78701
(FedEx, UPS, Overnight, etc.)

Questions. Questions pertaining to the content of the WAP NOFA, Contact Michael De Young at (512) 475-2125 or by email at michael.deyoung@tdhca.state.tx.us.

TRD-200902045
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2009

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Notice of Public Hearing

Residential Mortgage Revenue and Refunding Bonds

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the Department or TDHCA) at 221 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on July 6, 2009, with respect to an issue of tax-exempt residential mortgage revenue bonds to be issued in one or more series in an aggregate principal amount of not more than \$85,000,000 (the New Money Bonds) and an issue of tax-exempt residential mortgage revenue refunding bonds to be issued in one or more series in an aggregate principal amount of not more than \$70,000,000 (the Refunding Bonds and together with the New Money Bonds, collectively, the Bonds). The Bonds will be issued under §143 of the Internal Revenue Code of 1986, as amended (the Code).

A portion of the proceeds of the New Money Bonds will be used directly to make single family residential mortgage loans in an aggregate estimated amount of \$85,000,000. All of such single family residential mortgage loans will be made to eligible very low, low and moderate income homebuyers for the purchase of homes located within the State of Texas. A portion of the proceeds of the Refunding Bonds will be used to refund all or a portion of the Department's outstanding Residential Mortgage Revenue Bonds, Series 1998A, Residential Mortgage Revenue Refunding Bonds, Series 1998B, Residential Mortgage Revenue Refunding Bonds, Series 1999A, Residential Mortgage Revenue Bonds, Series 1999B, Residential Mortgage Revenue Refunding Bonds, Series 1999C and Residential Mortgage Revenue Refunding Bonds, Series 1999D, the proceeds of which were used directly or indirectly to provide single family residential mortgage loans.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed, (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income, and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income, who have not owned a principal residence during the preceding three years (except in certain cases permitted under applicable provisions of the Code). Further, residences financed with loans under the programs generally will be subject to certain other limitations, including limits on the purchase

prices of the residences being acquired. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to changes in applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Heather Hodnett at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; telephone (512) 475-1899.

Persons who intend to appear at the hearing and express their views are invited to contact Heather Hodnett in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Heather Hodnett prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two (2) days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Heather Hodnett at (512) 475-1899 at least three (3) days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and §147(f) of the Code regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Bonds.

TRD-200902028
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2009



Request for Proposal for Master Servicer

SUMMARY

The Texas Department of Housing and Community Affairs (TDHCA) has issued a Request for Proposal (RFP) for Master Servicer. TDHCA anticipates the need for a Master Servicer relating to its Single Family Mortgage Revenue Bond Programs. The Master Servicer must demonstrate qualifications and experience in one or more areas that are listed in the RFP.

Proposals must be received at TDHCA no later than 4:00 p.m. on July 1, 2009.

The RFP will be made available in TDHCA's Web site, which can be accessed at <http://www.tdhca.state.tx.us/homeownership/index.htm> and in the Texas Marketplace, at www.marketplace.state.tx.us. Any questions regarding this RFP should be directed to Julie Dumbeck by e-mail at julie.dumbeck@tdhca.state.tx.us or by phone at (512) 475-3991.

TRD-200902027
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 26, 2009

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Request for Proposals for Disaster Temporary Emergency Housing Program Contingency Contract

SUMMARY. The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") announces a Request for Proposals (RFP) for Disaster Temporary Emergency Housing Program Contingency Contract.

DEADLINE FOR SUBMISSION. The deadline for submission in response to the RFP is 4:30 p.m., Central Daylight Saving Time, Friday, June 26, 2009. No proposal received after the deadline will be considered. No incomplete, unsigned, or late proposals will be accepted after the proposal deadline, unless the Department determines, in its sole discretion, that it is in the best interest of the Department to do so.

The Department reserves the right to accept or reject any (or all) proposals submitted. The information contained in this RFP is intended to serve only as a general description of the services desired by TDHCA, and the Department intends to use responses as a basis for further negotiation of specific project details with offerors. This RFP does not commit the Department to pay for any costs incurred prior to the execution of a contract and is subject to availability of funds. Issuance of this RFP in no way obligates the Department to award a contract or to pay any costs incurred in the preparation of a response.

Individuals or firms interested in submitting a proposal should visit our website at <http://www.tdhca.state.tx.us/cdbg/index.htm>, for a complete copy of the RFP. Throughout the procurement process, all questions relating to this RFP must be submitted to TDHCA in writing to Julie Dumbeck (Julie.dumbeck@tdhca.state.tx.us).

Place and Method of Proposal Delivery. Proposals shall be delivered to:

Texas Department of Housing and Community Affairs
Physical Address for Overnight Carriers
221 East 11th Street
Austin, Texas 78701-2410
Mailing Address:
P.O. Box 13941
Austin, TX 78711-3941

(512) 475-3800
TRD-200902044
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2009



State Administered CDBG Hurricane Dolly and Ike Multifamily Rental Programs Notice of Funding Availability

I. Summary.

The Texas Department of Housing and Community Affairs (the "Department" or "TDHCA") announces this Draft Notice of Funding Availability ("NOFA") of approximately \$58,894,225 in federal funding from the Community Development Block Grant ("CDBG") Disaster Recovery Fund (the "Funds") to be used within only those Impacted Counties specified in §1(b) for an Affordable Rental Housing Stock Restoration Program in response to Hurricanes Dolly and Ike.

These funds are proposed to be made available in the form of grants or loans to the owners of affordable rental properties in any of the thirty-seven (37) Hurricane Dolly or Ike "Impacted Counties" covered under the Action Plan (Angelina, Austin, Brazoria, Cameron, Chambers, Cherokee, Fort Bend, Galveston, Gregg, Grimes, Hardin, Harris, Harrison, Hidalgo, Houston, Jasper, Jefferson, Liberty, Madison, Matagorda, Montgomery, Nacogdoches, Newton, Orange, Polk, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Trinity, Tyler, Walker, Waller, Washington, and Willacy) that sustained documented loss of or damage to affordable housing rental stock as a direct result of either Hurricane Ike or Hurricane Dolly. A minimum of 51% of the total units in each property are to be used for affordable rental housing for low/moderate-income Texans earning 80% or less of the Area Median Family Income (AMFI).

II. Allocation of CDBG Funds.

The CDBG funds will be made available to Impacted Counties through a first come, first serve application process, beginning June 1, 2009.

III. Eligible Activities and Applicants.

Applicants responding to this NOFA must meet the qualifications and threshold as stated in the NOFA.

IV. Site and Development Restrictions.

All developments must meet the size and code requirements as outlined in the NOFA.

V. Maximum Amount of Request.

The maximum amount that can be requested is \$5,000,000 per development.

VI. Application Acceptance.

The application acceptance period will begin June 1, 2009 for developments with 36 units or less. For developments greater than 36 units, applications will be accepted beginning July 20, 2009.

Application Acceptance Closes: Friday, August 14, 2009 by 5:00 p.m. CST

To view the complete NOFA, please visit: <http://www.td-hca.state.tx.us/cdbg/index.htm>.

Mailing Address:

Disaster Recovery Division
Texas Department of Housing and Community Affairs
P.O. Box 13941
Austin TX 78711-3941
(All U.S. Postal Service including Express)

Courier Delivery:

Disaster Recovery Division
Texas Department of Housing and Community Affairs
221 East 11th Street, 1st Floor
Austin, TX 78701
(FedEx, UPS, Overnight, etc.)

Questions. Questions pertaining to the content of the CDBG Hurricane Dolly and Ike Multifamily Rental Program NOFA, Contact

Teresa Morales at (512) 475-3344 or by email at teresa.morales@td-hca.state.tx.us.

TRD-200902043
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 27, 2009

Texas Department of Insurance

Company Licensing

Application for incorporation in the State of Texas by ALPHA SURETY AND INSURANCE COMPANY, a domestic fire and casualty company. The home office is in Fort Worth, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200902052
Brenda Caldwell
Assistant General Counsel
Texas Department of Insurance
Filed: May 27, 2009

Texas Lottery Commission

Instant Game Number 1203 "Lucky 13"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1203 is "LUCKY 13". The play style is "key number match with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1203 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 1203.

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, 14, 15, 16, 17, 18, 19, 20, 13 SYMBOL, \$2.00, \$4.00, \$5.00, \$10.00, \$13.00, \$20.00, \$50.00, \$130, \$1,300 and \$13,000.

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. 1203 - 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
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
13 SYMBOL	TRN
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$13.00	THRTEEN
\$20.00	TWENTY
\$50.00	FIFTY
\$130	ONE THY
\$1,300	13 HUND
\$13,000	13 THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00 or \$13.00.

G. Mid-Tier Prize - A prize of \$26.00, 50.00, \$100 or \$130.

H. High-Tier Prize - A prize of \$1,300 or \$13,000.

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 (1203), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 1203-0000001-001.

K. Pack - A pack of "LUCKY 13" 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 "LUCKY 13" Instant Game No. 1203 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 "LUCKY 13" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either of the LUCKY NUMBERS play symbol, the player wins the PRIZE shown for that number. If a player reveals a "13" play symbol, the player wins DOUBLE the PRIZE shown for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets in a pack will not have identical play data, spot for spot.

B. The "13" (doubler) play symbol will only appear on intended winning tickets and only as dictated by the prize structure.

C. No duplicate LUCKY NUMBERS play symbols on a ticket.

D. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

E. No more than two (2) matching non-winning prize symbols will appear 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. 5 and \$5).

H. The top prize symbol will appear on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "LUCKY 13" Instant Game prize of \$2.00, \$4.00, \$5.00, \$13.00, \$26.00, \$50.00, \$100 or \$130, 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 \$26.00, \$50.00, \$100 or \$130 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 "LUCKY 13" Instant Game prize of \$1,300 or \$13,000, 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 "LUCKY 13" 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 "LUCKY 13" 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 "LUCKY 13" 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. 1203. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1203 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	403,200	12.50
\$4	463,680	10.87
\$5	60,480	83.33
\$13	120,960	41.67
\$26	14,700	342.86
\$50	24,318	207.25
\$100	840	6,000.00
\$130	1,680	3,000.00
\$1,300	40	126,000.00
\$13,000	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 4.62. 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. 1203 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. 1203, 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-200902048
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: May 27, 2009



Instant Game Number 1205 "Cash Bounty"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1205 is "CASH BOUNTY". The play style is "key symbol match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1205 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 1205.

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: HOSS SYMBOL, PATCH SYMBOL, SKEETER SYMBOL, COLONEL SYMBOL, BANDIT SYMBOL, PAPPY SYMBOL, SNAKE SYMBOL, SPUR SYMBOL, KID SYMBOL, DUSTY SYMBOL, KITTY SYMBOL, BADGE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00, \$100 and \$1,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1205 - 1.2D

PLAY SYMBOL	CAPTION
HOSS SYMBOL	
PATCH SYMBOL	
SKEETER SYMBOL	
COLONEL SYMBOL	
BANDIT SYMBOL	
PAPPY SYMBOL	
SNAKE SYMBOL	
SPUR SYMBOL	
KID SYMBOL	
DUSTY SYMBOL	
KITTY SYMBOL	
BADGE SYMBOL	BADGE
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$100	ONE HUND
\$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$40.00 or \$100.

H. High-Tier Prize - A prize of \$1,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) bar code which will include a four (4) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1205), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1205-0000001-001.

K. Pack - A pack of "CASH BOUNTY" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CASH BOUNTY" Instant Game No. 1205 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 "CASH BOUNTY" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If the player matches the WANTED GUY play symbol to any of the BAD GUYS play symbols, the player wins the CASH BOUNTY shown. If the player reveals a "BADGE" symbol, the player wins the CASH BOUNTY for that symbol instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 9 (nine) 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
 17. Each of the 9 (nine) 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 un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

- A. Consecutive non-winning tickets will not have identical play data, spot for spot.
- B. No duplicate non-winning prize symbols.
- C. Non-winning prize symbols will never be the same as the winning prize symbol(s).
- D. No duplicate non-winning BAD GUY play symbols.
- E. The BADGE (auto win) play symbol will never appear more than once on a ticket.
- F. The top prize symbol will appear once on every ticket unless otherwise restricted.

2.3 Procedure for Claiming Prizes.

A. To claim a "CASH BOUNTY" Instant Game prize of \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$40.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a \$40.00 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CASH BOUNTY" Instant Game prize of \$1,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "CASH BOUNTY" 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 "CASH BOUNTY" 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 "CASH BOUNTY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1205. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1205 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	604,800	16.67
\$2	1,008,000	10.00
\$4	252,000	40.00
\$5	67,200	150.00
\$10	67,200	150.00
\$20	29,400	342.86
\$40	16,380	615.38
\$100	840	12,000.00
\$1,000	84	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.93. 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. 1205 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. 1205, 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-200902049
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 27, 2009



Instant Game Number 1260 "Wild 10's"

A. The name of Instant Game No. 1260 is "WILD 10'S". The play style is "key number match with multiplier".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1260 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 1260.

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, 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, 10X SYMBOL, \$10.00, \$15.00, \$20.00, \$25.00, \$40.00, \$50.00, \$75.00, \$100, \$150, \$300, \$500, \$1,000, and \$110,000.

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. 1260 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
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
10X SYMBOL	WINX10
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$40.00	FORTY
\$50.00	FIFTY
\$75.00	SVY FIV

\$100	ONE HUND
\$150	ONE FTY
\$300	THR HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$110,000	110 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 \$10.00, \$15.00 or \$20.00.

G. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100, \$150, \$250, or \$500.

H. High-Tier Prize - A prize of \$5,000 or \$110,000.

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 (1260), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 1260-0000001-001.

K. Pack - A pack of "WILD 10'S" Instant Game tickets contains 050 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 001 and 050 will both be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WILD 10'S" Instant Game No. 1260 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 "WILD 10'S" Instant Game is determined once the latex on the ticket is scratched off to expose 45 (forty-five) Play Symbols. If the player matches any of YOUR NUMBERS play symbols to any of the WILD NUMBERS play symbols, the player wins the PRIZE shown for that number. If the player reveals a "10X" play symbol, the player wins the 10 TIMES 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:

1. Exactly 45 (forty-five) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 45 (forty-five) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-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 will not have identical play data, spot for spot.

B. No five or more matching non-winning prize symbols on a ticket.

C. The 10X (win x 10) play symbol will only appear on intended winning tickets as dictated by the prize structure.

D. No duplicate WILD NUMBER 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. The top prize will appear on every ticket unless otherwise restricted.

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 10 and \$10).

2.3 Procedure for Claiming Prizes.

A. To claim a "WILD 10'S" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$150, \$250, 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, \$75.00, \$100, \$150, \$250, 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 "WILD 10'S" Instant Game prize of \$5,000 or \$110,000, 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 "WILD 10'S" 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 of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of 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 "WILD 10'S" 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 "WILD 10'S" 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. 1260. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1260 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	403,200	12.50
\$15	504,000	10.00
\$20	227,200	18.18
\$25	126,000	40.00
\$50	100,800	50.00
\$75	65,478	76.97
\$100	23,310	216.22
\$150	1,302	3,870.97
\$250	2,394	2,105.26
\$500	1,680	3,000.00
\$5,000	84	60,000.00
\$110,000	6	840,000.00

*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 3.35. 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. 1260 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. 1260, 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-200902025
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: May 26, 2009

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on May 22, 2009, 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 Charter Communications VI, L.L.C. d/b/a Charter Communications for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 37027 before the Public Utility Commission of Texas.

The requested amendment is to expand the service area footprint to include the City of Carthage, 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 37027.

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Public Utility Commission of Texas

TRD-200902034
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 18, 2009, Charter Fiberlink TX-CCO, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60726. Applicant intends to reflect a change in corporate restructuring.

The Application: Application of Charter Fiberlink TX-CCO, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 37005.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 10, 2009. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 37005.

TRD-200902018
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2009



Notice of Application for Approval of Increased Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 20, 2009, for approval of an increased depreciation rate pursuant to Public Utility Regulatory Act §52.252 and §53.056, Texas Utilities Code Annotated (Vernon 2007 & Supp. 2008). A summary of the application follows.

Docket Title and Number: Application of Blossom Telephone Company, Inc. for Approval of an Increased Depreciation Rate for Buried Metallic Cable Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 37013.

The Application: Blossom Telephone Company, Inc. (Blossom) filed an application for approval of an increased depreciation rate for Account 2423.0000 - Buried Metallic Cable. Blossom seeks approval to replace substantially all of its current outside plant (mainly buried metallic cable) with fiber cable over the course of the next four years. Blossom received a \$6,000,000 Rural Utilities Services loan for this purpose. Blossom stated that the project will enable deployment of high speed broadband to all customers as well as other potential services requiring broadband. Blossom proposed an effective date of January 1, 2009.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, 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. All correspondence should refer to Docket Number 37013.

TRD-200902019
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on May 18, 2009, 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 Abacus Resources Energy, LLC for Retail Electric Provider Certification, Docket Number 37002 before the Public Utility Commission of Texas.

Applicant's requested service area includes the geographic area of the Electric Reliability Council of Texas.

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 (888) 782-8477 no later than June 12, 2009. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 37002.

TRD-200902035
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 20, 2009, 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 Nova Power, LLC for Retail Electric Provider Certification, Docket Number 37016 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

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 June 12, 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 37016.

TRD-200902029
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 20, 2009, 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 TPS Power Holdings, LLC for Retail Electric Provider Certification, Docket Number 37017 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

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 June 12, 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 37017.

TRD-200902030
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 20, 2009, 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 Endless Power, LLC for Retail Electric Provider Certification, Docket Number 37018 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

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 June 12, 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 37018.

TRD-200902031
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 20, 2009, 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 Texas Solaro Energy, LLC for Retail Electric Provider Certification, Docket Number 37019 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

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 June 12, 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 37019.

TRD-200902032
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 21, 2009, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Talk Right Now, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 37021 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by the Dallas Local Access and Transport Area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 10, 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 37021.

TRD-200902033
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 26, 2009



Texas Department of Transportation

Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Tuesday, June 30, 2009 at 10:00 a.m. at the Texas Department of Transportation, 200 East Riverside Drive, Room 1A-2, Austin, Texas to receive public comments on the June Out-of-Cycle 2009 Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2008-2011. The STIP reflects the federally funded transportation projects in the FY 2008-2011 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP as a condition to

securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.).

Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected transportation operators, to provide an opportunity for interested parties to participate in the development of the program, and further requires the TIP to be updated at least once every four years and approved by the MPO and the Governor or Governor's designee. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

In accordance with 43 TAC §15.8(d), a copy of the proposed June Out-of-Cycle 2009 Revisions to the FY 2008-2011 STIP will be available for review, at the time the notice of hearing is published, at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, and on the department's website at:

www.txdot.gov

Persons wishing to review the June Out-of-Cycle 2009 Revisions to the FY 2008-2011 STIP may do so online or contact the Transportation Planning and Programming Division at (512) 486-5033.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Monday, June 29, 2009, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate their needs.

Further information on the FY 2008-2011 STIP may be obtained from Lori Morel, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704, (512) 486-5033. Interested parties who are unable to attend the hearing may submit comments to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by Monday, July 20, 2009 at 4:00 p.m.

TRD-200902042

Joanne Wright

Deputy General Counsel

Texas Department of Transportation

Filed: May 26, 2009

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University of North Texas System

Notice of Request for Information for Outside Legal Services Related to Immigration Matters

The University of North Texas System (UNT System) requests information from law firms interested in providing legal services on certain immigration law matters for the University of North Texas (UNT). This Request for Information (RFI) is issued for the purpose of establishing a referral list from which UNT, by and through the UNT System Office of General Counsel, will select counsel for representation on specific immigration matters as the need arises, including labor certification for employees petitioning for permanent residency status. The duration of the agreement is September 1, 2009 to August 31, 2010, with the possibility of a one-year extension.

Description. The UNT System is comprised of one health institution and two academic institutions located in three cities in Texas. Legal services will be provided primarily for employees at the University of North Texas, which is located in Denton, Texas. UNT is a major research university that employs faculty and staff from around the world in its College of Arts & Sciences, College of Business Administration, College of Education, College of Engineering, College of Music, College of Public Affairs and Community Service, School of Library and Information Sciences, School of Merchandising and Hospitality Management, College of Visual Arts and Design, College of Journalism and in other academic and administrative units. Subject to approval by the Texas Attorney General, the UNT System will engage outside legal counsel to provide legal services and advice to UNT on immigration law matters pertaining to the hiring and employment of foreign nationals and related immigration law matters. Legal services may include, but not be limited to, the following areas: petitioning for nonimmigrant visas and employer-sponsored permanent residency; representation before the Department of Labor including labor condition applications; labor certifications Program Electronic Review Management (PERM); complying with SEVIS requirements; and providing counsel on the impact of homeland security issues on immigration law. Additionally, services may include interaction with and representation before appropriate federal agencies, including the Department of Homeland Security and the Department of Labor, and interaction with attorneys in the UNT System Office of General Counsel and UNT administrators. Attorneys providing legal services should be admitted to practice before United States District Courts in the State of Texas.

The UNT System invites responses to this RFI from qualified attorneys and firms for the provision of such legal services under the direction and coordination of the UNT System Office of General Counsel.

Responses. Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services set out above, including the firm's prior experience in handling such immigration issues specific to hiring foreign faculty and staff at a research university and permanent residency, the names and experience of the attorneys who will be assigned to work on such matters, the availability of the lead attorney and others assigned to the project, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of legal services; (2) fee information (either in the form of hourly rates for each attorney and paralegal/legal assistant who may be assigned to perform services in relation to UNT's immigration law matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (3) a comprehensive description of the procedures to be used by the firm to supervise the provision of legal services in a timely and cost-effective manner; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT or to the State of Texas, or any of

its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNT and the Attorney General of the State of Texas. Responses should provide specific information concerning the law firm's willingness to provide legal services for labor certification on a flat-fee basis, including the flat fee it will charge.

Process and Basis of Award. Responses will be reviewed by the UNT System Office of General Counsel and select UNT administrators. After review, selected persons/firms who have responded to the RFI may be requested to elaborate on their responses. Selection of counsel will be based upon its demonstrated competence and qualifications as well as familiarity with the UNT System and University of North Texas immigration practices and processes.

After identification of the most qualified respondent, the System will attempt to negotiate a flat-fee contract at a fair and reasonable price. If a contract cannot be negotiated, the System will enter into negotiations with the next most qualified respondent and this process will continue until a final selection is made or the RFI process is ended. All respondents to this RFI will be notified of the System's decision.

The System reserves the right to negotiate individual elements of a response, to employ one or more firms to act as outside immigration counsel and to reject any and all responses. Any award(s) will be contingent on the successful negotiation of a contract and final approval of the contract by the Office of the Attorney General.

Format and Person to Contact. Responses should be sent by mail, facsimile, or electronic mail, marked "Response to Request for Information - Immigration Matters" and addressed to The University of North Texas System, Office of General Counsel, ATTN: Cheryl Finley, 1155 Union Circle, #310907, Denton, Texas 76203 or cheryl.finley@unt.edu if sent electronically. If responding by mail, two copies of the response are requested. The response should be typed, preferably double-spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. Questions may be directed to Ms. Finley via email or by telephone at (940) 565-2717.

Deadline for Submission of Response. All responses must be received by the UNT System Office of General Counsel at the address set forth above not later than 5:00 p.m., July 6, 2009.

TRD-200902020
Carrie Stoeckert
Assistant Director of PPS
University of North Texas System
Filed: May 22, 2009

Texas Water Development Board

Request for Proposals for the Analysis of Groundwater Quality Samples in Fiscal Year 2010

SECTION I - GENERAL

1.1 SCOPE. The State of Texas, by and through the Texas Water Development Board (TWDB), seeks Groundwater Quality Analysis Services (Services) in accordance with the specifications contained in this Request for Proposals. In particular, the Services requested herein and to be provided under any contract(s) awarded as a result of this Request for Proposals are for Services during the State of Texas Fiscal Year (FY) beginning September 1, 2009, and ending August 31, 2010 (FY 2010).

1.2 CONTRACT TERM. The Services requested shall be provided for a period of one year, beginning September 1, 2009, and ending Au-

gust 31, 2010 (FY 2010). The contract for Services may be renewed for up to one (1) more year (September 1, 2010, and ending August 31, 2011), provided all existing terms and conditions remain in full force and upon mutual agreement of both parties. The renewal, if exercised, is to be executed in the form of a contract amendment to be issued by TWDB no sooner than ninety (90) days prior to the expiration date of the initial contract, nor later than the final day of the contract period. Refusal by either party not to exercise the renewal will cause the Services to expire on the original or mutually agreed upon date. The total period for the Services, including any renewals, will not exceed a maximum combined period of two (2) years.

1.3 COMPENSATION. Not to exceed \$384,000 for FY 2010.

1.4 DEFINITIONS. For purposes of this Request for Proposals, the following definitions apply:

(a) **Contract** - The contract awarded as a result of this Request for Proposals and all exhibits thereto. This Request for Proposals, any Addendum issued in conjunction with this Request for Proposals, the successful Respondent's Proposal, any Best And Final Offer (BAFO), and subsequent submission by Respondent, shall all be fully incorporated therein as exhibits; and

(b) **Contractor** - Respondent whose Proposal results in a contract with TWDB.

SECTION II - STATEMENT OF WORK

2.1 SERVICE REQUIREMENTS. Services shall include, but are not limited to, the requirements contained in this Request for Proposals. Services set forth that contain the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that contain the words "may" or "can" allow Respondents to offer alternatives to the manner in which the Services are provided. The requested Services and corresponding deliverables are as follows:

(a) **Scope:** The TWDB intends to award an annual contract for the analysis of constituents listed in Attachments 1a and 1b of up to 1,000 samples during a one (1) year period. All Services provided must be tested in conformance with the United States Environmental Protection Agency (EPA) methodology.

(b) **Standards:** The Respondent will perform Services on the parameters requested and will complete all analyses according to the procedures set forth in "Standard Methods for the Examination of Water and Wastewater", current edition, or in "Methods for Chemical Analysis of Water and Wastewater", current edition. If a standard method is not available, the analytical method used must be a method approved by the TWDB's representative.

(c) **Provision of Sampling Materials:** The Contractor must, at no additional cost, provide and ship all packing materials, sample bottles, and sample bottles with pre-measured preservation acids of appropriate concentration as necessary to the TWDB and their cooperating sampling entities upon request. The Contractor must retain the samples for 30 days after the Final Analytical Report has been submitted to the TWDB in the event that the TWDB requests re-testing.

(d) **Re-testing:** The TWDB may request re-testing of any questionable analytical results. The re-test must be performed in compliance with the holding time of the sample whenever possible. The cost of the re-test will be absorbed by the Contractor if the re-test produces different results, or whenever a cation/anion imbalance of greater than five percent (>5%) occurs. If the results of the re-test are the same, the TWDB will pay for the cost of re-testing.

(e) **Sample logging:** For samples that require both major ions and isotope analyses, the Contractor must assign one work order number for

routine (in-house) samples and a separate work order number for subcontracted analyses.

(f) Lab Analysis of Major Ions and Trace Elements: The Contractor will analyze all constituents listed in Attachment 1a within one month from the receipt of date shown on the chain of custody. The TWDB may add or remove, at its discretion, additional analytes to this list during the period of the contract.

(g) Lab Analysis of Isotopes and Radiogenic Constituents: The contractor will subcontract the analysis of all constituents listed in Attachment 1b to the labs as listed. The Contractor may subcontract with other laboratories after consulting with the labs and upon prior approval by the TWDB. The TWDB may add or remove, at its discretion, individual analytes during the period of this contract.

(h) Delivery of Samples: The Contractor must be able to receive the samples in Austin, Texas, Monday through Friday, 8:00 a.m. to 6:00 p.m., Central Standard Time.

(i) Delivery of Results: The Contractor must submit the final analytical reports for analyses run in-house in paper copy and electronically (PDF and EDD (electronic data deliverable) in the format specified in Attachment 1c) to the TWDB within one (1) week of completion of analysis. The Contractor must return the original chain of custody records to TWDB within the same time frame. The final paper copy and PDF report must include the laboratory identification number, the state well number, the client identification number, the sample collection date, the analytical results, the methods used, the units of measure, the practical quantitative limits, the date analyzed, the analyst of record, and the STORET code for each analyte. The results of isotopic analyses must be mailed to TWDB's attention upon immediate completion by the subcontracting lab. On the first day of the month, the contractor must update TWDB on the progress of the subcontracted lab analyses.

(j) Online Posting of Results: The Contractor must post a copy in PDF and EDD formats of the final results as "provisional data" on the Contractor's website, to be accessed by the public by state well number. The Contractor will also provide a link to any previous analyses for the sampled well that exist in the TWDB groundwater database through linking to the TWDB's Water Information Integration and Dissemination (WIID) online mapping application.

(k) Inspections: The Contractor will allow inspection of its laboratory facilities and its analytical processes prior to award of a contract as well as during the term of the contract by TWDB.

(l) Invoicing: The contractor will provide TWDB an invoice upon completion of analysis and after lab results have been provided in PDF and EDD formats and mail these to TWDB together with the individual invoices for payment. Each invoice will include the individual analytes processed and the cost per analyte, number of samples analyzed, the total cost of the samples, and the dates of service; the contractor will also attach hard copies of the analytical results associated with the invoiced amounts as appropriate.

(m) Billing Errors: Billing errors discovered by either party will be reported and corrected at any time after invoice submittal, including after the contract period has ended.

2.2 SUBCONTRACTORS. Subcontractors providing Services under the Contract shall meet the same requirements and level of experience as required of Contractor. No subcontractor shall relieve the Contractor's responsibility for ensuring the requested services are provided. Contractors planning to subcontract all or a portion of the work to be performed for the analysis of constituents listed in Attachment 1b shall identify the proposed subcontractors with the understanding, as indicated in 2.1 (g), that the subcontractors are subject to TWDB approval.

2.3 PERFORMANCE TRACKING. TWDB will monitor the performance of the Contract issued under this Request for Proposals. All Services under the Contract shall be performed on the parameters requested and all analyses will be completed according to the procedures set forth in "Standard Methods for the Examination of Water and Wastewater", current edition, or in "Methods for Chemical Analysis of Water and Wastewater", current edition. If a standard method is not available, the analytical method used must be a method approved by the TWDB's representative. TWDB specifications for analytical methods to be used are listed in Attachments 1a and 1b.

SECTION III - GENERAL INFORMATION

3.1 SCHEDULE OF EVENTS. The solicitation process for this Request for Proposals will proceed according to the following schedule:

EVENT DATE (Central Standard Time)

Issue Request for Proposals: May 27, 2009

Deadline for Submission of Request for Proposals: 12:00 p.m. - June 19, 2009

Expected Award of Contract: August 28, 2009

Expected Contract Start Date: September 1, 2009

3.2 REVISIONS TO SCHEDULE. TWDB reserves the right to change the dates in the schedule of events above upon written notification to prospective Respondents as an addendum posted on the Electronic State Business Daily.

3.3 PROPOSAL REQUIREMENTS

(a) Submissions: Respondents shall submit one (1) original Proposal along with ten (10) double-sided copies according to item (d) below. Proposal pages should be numbered and contain an organized, paginated table of contents corresponding to the section and pages of the Proposal.

(b) Costs: Respondents are responsible for all costs in the preparation and delivery of this Proposal to TWDB.

(c) Copyrights: TWDB will not consider any Proposal that bears a copyright. Proposals will be subject to the Texas Public Information Act, Texas Government Code, Chapter 552, and may be disclosed to the public upon request. Subject to the Act, Respondents may protect trade and confidential information from public release. Trade secrets or other confidential information submitted as part of a Proposal shall be clearly marked at each page it appears. Such marking(s) shall be in boldface type in at least 14 point font.

(d) Contents: Submit all information listed below for the cover sheet and five (or six) exhibits in the order given, separated by labeled and tabbed sheets, in response to this Request for Proposals. The application will only be considered if all items are submitted. Submit only the information listed this section: 3.3 Proposal Requirements, (d) Contents, unless required to submit other information as described within this Request for Proposals (such as in section 4.5 (h) or 4.7). TWDB reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors that serve in the best interest of the state.

Cover sheet: Include Respondent information in (1) through (5) on cover sheet of the proposal.

(1) Name, title, address, telephone number, facsimile number, and email address of Respondent's primary contact.

(2) Formal name and all assumed names used by the business entity; structure of business entity (i.e., sole proprietorship, partnership, corporation).

(3) State in which business entity was formed or incorporated.

(4) Whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes.

(5) Physical address and mailing address; principal place of business.

Exhibit A - Proposed Analytical Services:

Provide the information below on one spreadsheet for the analytes listed in Attachment 1a and on a second spreadsheet for the analytes listed in Attachment 1b.

(1) **Methodology, Quality Control Limits, and Detection Limits** for all analytes.

(2) **Total price** for analysis of each constituent.

Exhibit B - References, Experience, and Qualifications:

(1) Briefly describe services and the scope of activities for five firms for which your organization has provided services in the past five (5) years that demonstrate your capability to carry out similar services described within this Request for Proposals. Highlight any experience in providing similar services to public entities. Include the names, addresses, email contacts, and phone numbers of these five firms and specify the names of company representatives who may be contacted for references and performance history.

(2) Supply credentials of the employee(s) doing the actual services including, but not limited to, the Analyst/Chemist of Record, the Project Manager, and the Sample Custodian. Include resumes for all personnel who will be responsible for the management and day-to-day operations of the services solicited in the Request for Proposals. The TWDB may use other references to determine a Respondent's performance history. A single negative reference, in the TWDB's sole discretion, will be cause for disqualification of the Respondent's entire proposal.

(3) Include copies of all accreditations, approvals, and certification(s) described in section 3.8.3.

Exhibit C - Examples of Administrative Forms and Technical Documents:

(1) **Chain of Custody:** Include an example of the chain of custody form.

(2) **Final Analytical Report:** Include an example of the Final Analytical Report package; the electronic data file format; an archive schedule for samples, data, and final reports; and a copy of the laboratory's Quality Manual.

(3) A copy of the laboratory's **Quality Management Plan**.

(4) An archive schedule for samples, data, and final reports.

Exhibit D - Historically Underutilized Businesses (HUB) Subcontracting Plan:

(1) Include all subcontractors on the Historically Underutilized Business Subcontracting Plan (Plan) and state whether each subcontractor is certified as an Historically Underutilized Business by the State of Texas.

(2) If certified as an Historically Underutilized Business, provide the most recent date of certification. Complete and sign the remainder of the Plan forms as directed. Failure to complete and return the Plan with the submitted Proposal will result in rejection and disqualification of the Proposal.

Exhibit E - Proposal:

Sign and return the Execution of Proposal with the submitted Proposal.

Exhibit F - Business Ownership:

Pursuant to §231.006(c), Texas Family Code, bid must include Names and Social Security Numbers of each person with at least 25 percent ownership of the business entity submitting the bid. If any of the applicant's business owners control at least 25 percent, the information in Exhibit F must be provided to the contract award.

3.4 INQUIRIES.

(1) All inquiries shall be submitted in writing to Ms. Tina Newstrom at facsimile (512) 475-3009 or by e-mail to tina.newstrom@twdb.state.tx.us.

(2) Except as otherwise provided in this section, upon issuance of this Request for Proposals, other employees and representatives of TWDB will not answer questions or otherwise discuss the contents of the Request for Proposals with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent Request for Proposals. This restriction does not preclude discussions unrelated to this Request for Proposals.

3.5 PROPOSAL SUBMISSION.

(1) All Proposals must be received and time stamped at TWDB by the date specified in the Schedule of Events above, section 3.1. TWDB reserves the right to reject late submittals.

(2) Proposals should be placed in a separate envelope or package and correctly identified with the Request for Proposals number and submittal deadline/Request for Proposals opening date and time. It is the Respondent's responsibility to appropriately mark and deliver the Proposals to TWDB by the specified date.

(3) Telephone, facsimile or emailed Proposals will not be accepted.

(4) Receipt of all addenda, if applicable, to this Request for Proposals should be acknowledged by returning a signed copy of each addendum with the submitted Proposals.

3.6 DELIVERY OF PROPOSALS. Proposals may be submitted to TWDB by one of the following methods:

U.S. Postal Service, Overnight/Express Mail, Hand Delivery

Texas Water Development Board - Purchasing, P.O. Box 13231, Austin, TX 78711-3231

Texas Water Development Board - Purchasing, 1700 North Congress Avenue, Room 533, Austin, TX 78701, Hours - 8:00 a.m. to 5:00 p.m.

3.7 PROPOSAL OPENING. Proposals will be opened at 1700 North Congress, Room 533, Austin, Texas.

(1) All submitted Proposals become the property of TWDB after the submittal deadline/opening date.

(2) Proposals submitted shall constitute an offer for a period of ninety (90) days or until selection is made by TWDB, whichever occurs earlier.

3.8 PROPOSAL EVALUATION AND AWARD.

(1) TWDB shall award a contract to a Respondent whose Proposal is considered to provide the best value to the State of Texas, as defined by Texas Government Code, Title 10, §2155.074.

(2) A committee will be established by TWDB and will include TWDB employees to evaluate the Proposals.

(3) The evaluation committee will determine best value by applying the following criteria:

Points available:

90: Price for routine analytes in Attachment 1a and 1b

5 years = 5 or 10 years or more = 10: Certification that Respondent has a minimum of five (5) years experience as an analytical laboratory performing all of the routine analytes requested in Attachment 1a of this bid.

Partial compliance = 0 or Total compliance = 10: Conformance with U.S. Environmental Protection Agency (U.S. EPA) methodology for analytes in Attachment 1a.

Yes = 10; No = 0: Accredited in accordance with The National Environmental Laboratory Accreditation Program (NELAP) standards.

0 - 10: Ability, capacity, and skill to perform the contract or provide the service required, including efficient invoicing and billing.

0 - 20: Ability to take over post collection sample processing, including packing, icing, and shipping, if necessary.

0 - 10: Sufficiency of the Respondent's financial resources and ability to perform the contract or provide the service.

0 - 10: History of performance.

0 - 10: Character, responsibility, integrity, and reputation.

Total Possible: 180

(4) The evaluation committee will determine if Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. TWDB may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of TWDB and will be extended in writing.

(5) In evaluating Proposals to determine the best value for the State, TWDB may consider information related to past contract performance of a Respondent including, but not limited to, the Texas Building and Procurement Commission (TBPC) Contractor Performance Tracking System (available at <http://www.tbpc.state.tx.us/stpurch/ven-vpts.html>).

SECTION IV - GENERAL TERMS AND CONDITIONS

4.1 Any Contract awarded as a result of this Request for Proposals will contain the general terms and conditions such as those listed in the SAMPLE CONTRACT in Attachment B. Subcontractors are also obliged to comply with these provisions.

4.2 The Contract shall be governed, construed, and interpreted under the laws of the State of Texas. The factors listed in Texas Government Code, Title 10, Subtitle D, §§2155.074, 2155.144, 2156.007, 2157.003 shall also be considered in making an award when specified. Any legal actions must be filed in Travis County, Texas.

4.3 PATENTS OR COPYRIGHTS. The Contractor agrees to protect the State and TWDB from claims involving infringement of patents or copyrights.

4.4 CONTRACTOR ASSIGNMENTS. The Contractor hereby assigns to TWDB any and all claims for overcharges associated with this contract arising under the antitrust laws of the United States 15 U.S.C.A. §§1, et seq. (1973), and the antitrust laws of the State of Texas, Texas Business and Commerce Code Annotated §§15.01, et seq. (1967).

4.5 RESPONDENT'S AFFIRMATION. Signing the Execution of Proposal (Exhibit E) with a false statement is a material breach of contract and shall void the submitted Proposal or any resulting contracts, and the Respondent shall be removed from all bid lists. By signature hereon affixed on Exhibit E the Respondent hereby certifies that:

(a) The Respondent has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment,

gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted bid.

(b) Neither the Respondent nor the firm, corporation, partnership, or institution represented by the Respondent, or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State or the Federal Antitrust Laws (see section 4.4 above), nor communicated directly or indirectly the Request for Proposals made to any competitor or any other person engaged in such line of business.

(c) Pursuant to §2155.004, Texas Government Code, the Respondent has not received compensation for participation in the preparation of the specifications for this Proposal.

(d) Pursuant to §231.006(d), Texas Family Code, re: child support, the Respondent certifies that the individual or business entity named in this bid is not ineligible to receive the specified payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

(e) Under §2155.004, Texas Government Code, the Respondent certifies that the individual or business entity named in this Proposal or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

(f) The Contractor shall defend, indemnify, and hold harmless the State of Texas, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of this contract.

(g) The Respondent agrees that any payments due under this contract will be applied towards any debt, including but not limited to delinquent taxes and child support, that is owed to the State of Texas.

(h) The Respondent certifies that they are in compliance with §669.003 of the Texas Government Code, relating to contracting with the executive head of a State agency. If §669.003 applies, the Respondent will complete the following information in order for the bid to be evaluated:

Name of Former Executive:

Name of State Agency:

Date of Separation from State Agency:

Position with Respondent:

Date of Employment with Respondent:

(i) The Respondent agrees to comply with Texas Government Code §2155.4441, pertaining to service contract use of products produced in the State of Texas.

(j) The Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. The Contractor further agrees to cooperate fully with the State Auditor's Office or its successor in the conducting of the audit or investigation, including providing all records requested. The Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards.

4.6 The Texas Water Development Board (TWDB) is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing - Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, effective September 24, 2001, and any subsequent changes made to it via cross-referencing

Respondents/Contractors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list.

4.7 Pursuant to §231.006(c), Texas Family Code, bid must include Names and Social Security Numbers of each person with at least 25 percent ownership of the business entity submitting the bid. Enter each person's Name and Social Security Number. This information must be provided prior to the contract award. (see Exhibit F)

4.8 Any terms and conditions attached to a Proposal will not be considered unless specifically referred to in this Request for Proposals form and may result in disqualification of the bid.

4.9 The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used by the TWDB and the Contractor to attempt to resolve all disputes arising under this contract.

4.10 NON-APPROPRIATION OF FUNDS. The State's funds are contingent on the availability of lawful appropriations by the Texas Legislature. If the Texas Legislature fails to continue funding for the payments due under an order referencing this Contract, the order will terminate as of the date that the funding expires, and the State will have no further obligation to make any payments.

4.11 Information, documentation, and other material in connection with this solicitation or any resulting contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Any part of the solicitation response that is of a confidential or proprietary nature must be clearly and prominently marked as such by the Respondent.

4.12 TECHNOLOGY ACCESS CLAUSE. The Contractor expressly acknowledges that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Contractor represents and warrants to the qualified ordering entity that the technology provided to the qualified ordering entity for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of:

- (1) providing equivalent access for effective use by both visual and nonvisual means;
- (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and
- (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired.

For purposes of this clause, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the Federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays and customizable display appearance.

4.13 Exemption Declaration. Pursuant to the provisions of the Texas Government Code, §2157.005(d), this requirement is for the purchase of a wireless communication device to be used by peace officers, firefighters, and other emergency response personnel to respond to a public safety emergency. The provisions of the Technology Access Clause do not apply.

4.14 Any individual who interacts with public purchasers in any capacity is required to adhere to the guidelines established in the Texas Administrative Code, §111.4. The rule outlines the ethical standards required of public purchasers, employees, and Contractors who interact with public purchasers in the conduct of state business.

4.15 Specifically, a TWDB employee may not have an interest in, or in any manner be connected with, a contract or bid for a purchase of goods or services by an agency of the state; or in any manner, including by rebate or gift, accept or receive from a person to whom a contract may be awarded, directly or indirectly, anything of value or a promise, obligation, or contract for future reward or compensation. Entities who are interested in seeking business opportunities with the state must be mindful of these restrictions when interacting with public purchasers of TWDB or purchasers of other state agencies.

4.16 Respondents understand that the TWDB does not tolerate any type of fraud. The agency's policy is to promote consistent, legal, and ethical organizational behavior by assigning responsibilities and providing guidelines to enforce controls. Any violations of law, agency policies, or standards of ethical conduct will be investigated and appropriate actions will be taken. Providers are expected to report any possible fraudulent or dishonest acts, waste, or abuse to the agency's Internal Audit Director at (512) 463-7978 or Shari.Daffern@twdb.state.tx.us.

ATTACHMENT 1A

List of Routine Analytes (to be analyzed with specified methodology or instrument, if applicable) and Cation/Anion Balance

Alkalinity, Total
Alkalinity, Phenol
Bromide
Chloride
Fluoride
Nitrate, nitrite/nitrate, Automated Flow Analysis (AFA)
Silica
Sulfate
Aluminum, dissolved, Inductively Coupled Plasma Mass Spectrometer (ICPMS)
Antimony, dissolved, ICPMS
Arsenic, dissolved, ICPMS
Barium, dissolved, ICPMS
Beryllium, dissolved, ICPMS
Boron, dissolved
Cobalt, dissolved, ICPMS
Copper, dissolved, ICPMS
Iron, dissolved
Lead, dissolved, ICPMS
Lithium, dissolved, ICPMS
Manganese, dissolved, ICPMS
Molybdenum dissolved, ICPMS
Selenium, dissolved, ICPMS
Strontium, dissolved
Thallium, dissolved, ICPMS

Vanadium, dissolved, ICPMS
Zinc, dissolved, ICPMS
Calcium, dissolved
Magnesium, dissolved
Phosphorus, dissolved
Potassium, dissolved
Sodium, dissolved
Cadmium, dissolved, ICPMS
Chromium, dissolved, ICPMS
Uranium, dissolved, ICPMS

Cation/Anion Balance

ATTACHMENT 1B

List of Isotopic and Radiogenic Analytes (to be analyzed with lab(s) as listed and methodology or instrument, if applicable)

Tritium (secondary enrichment) (4)
Tritium-Helium (1, 5)
Carbon-14 with carbon-13 correction, Accelerator Mass Spectrometry Technique (AMS Technique) (2, 8)
Oxygen-18 (1, 3, 6)
Deuterium (1, 3, 6)
Sulfur-34 and oxygen-18 on sulfates (1, 3, 6)
Sulfur Hexafluoride (1, 5)
Chlorofluorocarbon (1, 5)
Chlorine-36 (8)
Strontium-87/Strontium-86 (7)
Iodide (9, 11)
Gross Alpha, total (9, 10)
Uranium-series (U-234, U-235, U-238) (8, 9)
Radium (226/228) (9, 10)

List of Isotope Laboratories

- (1) U.S. Geological Survey Isotope Laboratory, 431 National Center, 12201 Sunrise Valley Drive, Reston, VA 20191, <http://isotopes.usgs.gov/>, Contact: (703) 648-5859
- (2) BETA Analytic, 4985 S.W. 74th Court, Miami, FL 33155, <http://www.radiocarbon.com/>, Email: info@radiocarbon.com, Contact: (305) 667-5167
- (3) Isotech Lab., Inc., 1308 Parkland Court, Champaign, IL 61821, <http://www.isotechlabs.com/>, E-mail: steve@isotechlabs.com, Contact: (877) 362-4190
- (4) Tritium Laboratory, University of Miami Rosenstiel School of Marine and Atmospheric Sciences, 4600 Rickenbacker Causeway, Miami, FL 33149-1098, <http://www.rsmas.miami.edu/groups/tritium/>, E-mail: tritium@rsmas.miami.edu, Contact: (305) 421-4100
- (5) Noble Gas Isotope Laboratory, Rosenstiel School of Marine and Atmospheric Sciences, 4600 Rickenbacker Causeway, Miami, FL 33149-1098, <http://www.rsmas.miami.edu/groups/noble-gas/contact.php>, Contact: Dr. James Happell, (305) 421-4111

(6) ZYMAX Forensics, 600 Andreasen Drive, Suite B, Escondido, CA 92029, <http://www.dpra.com/index.cfm/m/149>, Contact: alan.jeffrey@dpra.com, (760) 781-3338

(7) Purdue Rare Isotope Measurement Laboratory, Purdue University, 525 Northwestern Avenue, West Lafayette, IN 47907-2036, <http://www.physics.purdue.edu/primelab/>, Contact: (765) 494-5381

(8) Department of Earth, Atmospheric and Planetary Sciences, MIT, Building 54-1126, Cambridge, MA 02139, <http://www-eaps.mit.edu/research/group/IGLab/>, Contact: pbwalsh@mit.edu, (617) 253-3775

(9) Energy Laboratories, Inc., P.O. Box 3258, Casper, WY 82602, <http://www.energylab.com/>, Contact: sgarling@energylab.com, (888) 235-0515

(10) Xenco Laboratories, 842 Cantwell Lane, Corpus Christi, TX 78408, <http://www.xenco.com/index.html>, Contact: kelly.steinberg@xenco.com, (281) 638-1319

(11) Ana-Lab, 2600 Dudley Rd., Kilgore, TX 75663 <http://www.ana-lab.com/web/>, Contact: corp@ana-lab.com, (903) 984-5914

ATTACHMENT 1C

Example of electronic data format for submittal of analysis results by state well number

```
update dbo.waterqua set q00415_phen_alk = 0, q00415_flag = "<"
where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00937_potass_mgl = 7.86, q00937_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00910_calcium_mgl = 44.4, q00910_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00951_fluoride_mg = 0.60, q00951_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00410_total_alk = 216, q00410_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00940_chloride_mg = 235, q00940_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00945_sulfate_mgl = 48.0, q00945_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q01080_strontium = 1.1, q01080_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00920_magnes_mgl = 18.3, q00920_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q00929_sodium_mgl = 170, q00929_flag = "
" where state_well_number = 8455328 and mm_date = 09 and dd_date
= 24 and yydate = 2008;
```

```
update dbo.waterqua set q71850_nitrate_mgl = 0.02, q71850_flag
= "<" where state_well_number = 8455328 and mm_date = 09 and
dd_date = 24 and yydate = 2008;
```

update dbo.waterqua set q00955_silica_mgl = 28.1, q00955_flag = " " where state_well_number = 8455328 and mm_date = 09 and dd_date = 24 and yydate = 2008;

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01145",",", " 6.76",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01130",",", " 27.6",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01046",",", " 223",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01090",",", " 22.8",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01080",",", " 1100",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01005",",", " 104",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","81366", "<", " 0.1",0.1);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01095", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","00631", "<", " 0.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01085",",", " 1.55",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01060",",", " 1.57",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","22703",",", " 1.89",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","71870",",", " 1.08",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01503",",", " 7.9",4);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","71890", "<", " 0.200",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01106", "<", " 4.08",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","09511", "<", " 0.1",0.2);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01000", "<", " 2.04",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01057", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01020",",", " 628",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01049", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01056",",", " 15.2",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01040", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01035", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01030", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01025", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01010", "<", " 1.02",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","50938",",", " 2.71",null);

insert into dbo.infreqconst values (8455328,09,24,2008,"1","01075", "<", " 1.02",null);

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Kenneth L. Petersen

General Counsel

Texas Water Development Board

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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).