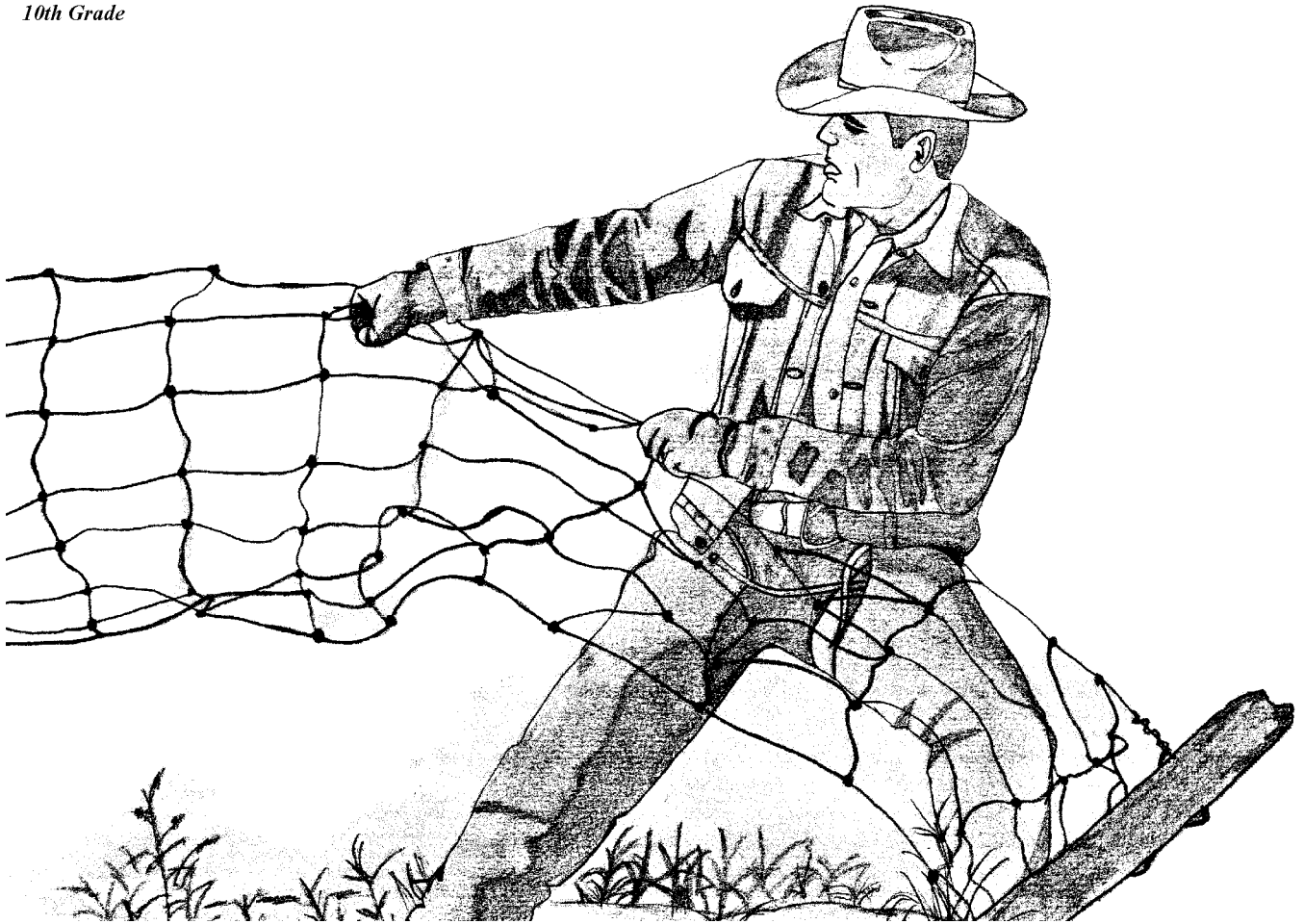

TEXAS REGISTER

Volume 30 Number 24

June 17, 2005

Pages 3481-3682

*Eduardo Carren
10th Grade*



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

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

Texas Register, (ISSN 0362-4781), is published weekly, 52 times a year. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$240. First Class mail subscriptions are available at a cost of \$300 per year. Single copies of most issues for the current year are available at \$10 per copy in printed format.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Austin, Texas and additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
<http://www.sos.state.tx.us>
subadmin@sos.state.tx.us

Secretary of State –
Roger Williams
Director - Dan Procter

Staff
Ada Aulet
Leti Benavides
Dana Blanton
Carla Carter
Kris Hogan
Roberta Knight
Jill S. Ledbetter
Juanita Ledesma
Diana Muniz
Shadrock Roberts

IN THIS ISSUE

ATTORNEY GENERAL

Request for Opinions3487

TEXAS ETHICS COMMISSION

Advisory Opinion Requests3489

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID ELIGIBILITY

1 TAC §358.4303491

TEXAS DEPARTMENT OF AGRICULTURE

TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM

4 TAC §24.113492

TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT

4 TAC §§25.3, 25.7 - 25.113493

4 TAC §§25.20 - 25.343494

TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM

4 TAC §26.123495

TEXAS AGRICULTURAL FINANCE AUTHORITY: FINANCIAL ASSISTANCE PROGRAM RULES

4 TAC §§28.2, 28.7 - 28.11, 28.153496

4 TAC §28.163498

TEXAS AGRICULTURAL FINANCE AUTHORITY: YOUNG FARMER LOAN GUARANTEE PROGRAM

4 TAC §30.123499

TEXAS ANIMAL HEALTH COMMISSION

FEVER TICKS

4 TAC §§41.1, 41.8, 41.93499

ENTRY REQUIREMENTS

4 TAC §51.83501

GENERAL PRACTICES AND PROCEDURES

4 TAC §59.113502

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

LIBRARY DEVELOPMENT

13 TAC §1.773504

TEXAS BOARD OF PROFESSIONAL ENGINEERS

ORGANIZATION AND ADMINISTRATION

22 TAC §131.1013505

22 TAC §131.1033505

LICENSING

22 TAC §133.113506

22 TAC §133.733506

22 TAC §133.873507

22 TAC §133.993508

COMPLIANCE AND PROFESSIONALISM

22 TAC §137.53508

BOARD OF NURSE EXAMINERS

FEES

22 TAC §223.13509

22 TAC §223.13509

TEXAS OPTOMETRY BOARD

EXAMINATIONS

22 TAC §271.23510

GENERAL RULES

22 TAC §273.4, §273.83511

PRACTICE AND PROCEDURE

22 TAC §277.83512

TEXAS STATE BOARD OF PHARMACY

ADMINISTRATIVE PRACTICE AND PROCEDURES

22 TAC §281.803513

PHARMACIES

22 TAC §291.263514

22 TAC §291.733515

22 TAC §291.743516

PHARMACY TECHNICIANS

22 TAC §297.33519

EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

FEES

22 TAC §§651.1 - 651.33520

TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

PROFESSIONAL COUNSELORS

22 TAC §§681.2, 681.4, 681.143521

22 TAC §§681.41, 681.45, 681.49, 681.523523

22 TAC §681.72, §681.733524

22 TAC §681.823524

22 TAC §§681.91 - 681.933524

22 TAC §§681.101 - 681.103.....	3525
22 TAC §681.104.....	3526
22 TAC §681.111.....	3526
22 TAC §§681.124 - 681.126.....	3527
22 TAC §681.141, §681.144.....	3527
22 TAC §§681.162, 681.164, 681.166, 681.167, 681.171.....	3527
22 TAC §681.163.....	3529
22 TAC §§681.181, 681.182, 681.184.....	3529
22 TAC §§681.181, 681.182, 681.184.....	3529
TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS	
TEXAS BOARD OF PROFESSIONAL	
GEOSCIENTISTS LICENSING RULES	
22 TAC §851.80.....	3530
DEPARTMENT OF STATE HEALTH SERVICES	
TEXAS BOARD OF HEALTH	
25 TAC §1.251.....	3531
NUTRITION SERVICES	
25 TAC §31.1.....	3533
MATERNAL AND INFANT HEALTH SERVICES	
25 TAC §§37.171 - 37.173.....	3534
PRIMARY HEALTH CARE SERVICES PROGRAM	
25 TAC §§39.3, 39.7, 39.8, 39.10, 39.11.....	3535
CHRONIC DISEASES	
25 TAC §§61.1, 61.2, 61.4, 61.6, 61.7, 61.9, 61.13, 61.14.....	3538
25 TAC §61.15.....	3541
HOSPITAL CERTIFICATION AND CONSULTATION	
25 TAC §121.1, §121.2.....	3541
AMBULATORY SURGICAL CENTERS	
25 TAC §§135.1 - 135.4, 135.9 - 135.11, 135.14, 135.15, 135.18 -	
135.26, 135.29.....	3543
25 TAC §§135.11, 135.15, 135.26.....	3552
25 TAC §135.41, §135.42.....	3552
25 TAC §135.52.....	3553
LOCAL MENTAL HEALTH AUTHORITY	
RESPONSIBILITIES	
25 TAC §§412.101 - 412.115.....	3555
DEPARTMENT OF FAMILY AND PROTECTIVE	
SERVICES	
CHILD PROTECTIVE SERVICES	
40 TAC §§700.1611, 700.1613, 700.1615, 700.1617, 700.1619,	
700.1621, 700.1623, 700.1625.....	3561

WITHDRAWN RULES

TEXAS BOARD OF PROFESSIONAL ENGINEERS

COMPLIANCE AND PROFESSIONALISM

22 TAC §137.17.....	3565
---------------------	------

TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

LICENSE RENEWAL

22 TAC §341.1.....	3565
22 TAC §341.20.....	3565

ADOPTED RULES

TEXAS ANIMAL HEALTH COMMISSION

EQUINE

4 TAC §49.1.....	3567
------------------	------

OFFICE OF RURAL COMMUNITY AFFAIRS

TEXAS COMMUNITY DEVELOPMENT PROGRAM

10 TAC §§255.1, 255.9, 255.16.....	3568
10 TAC §255.7.....	3568

TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

GENERAL POLICIES AND PROCEDURES

13 TAC §§2.171, 2.172, 2.175.....	3577
-----------------------------------	------

STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.17.....	3577
13 TAC §§3.1 - 3.13.....	3577

SCHOOL LIBRARY PROGRAMS

13 TAC §4.1.....	3578
------------------	------

STATE BOARD FOR EDUCATOR CERTIFICATION

PRINCIPAL CERTIFICATE

19 TAC §241.25, §241.30.....	3581
------------------------------	------

TEXAS BOARD OF PROFESSIONAL ENGINEERS

ORGANIZATION AND ADMINISTRATION

22 TAC §131.81.....	3582
---------------------	------

LICENSING

22 TAC §133.31.....	3584
22 TAC §133.53.....	3585
22 TAC §133.65.....	3585
22 TAC §133.81.....	3586

COMPLIANCE AND PROFESSIONALISM

22 TAC §137.13.....	3586
---------------------	------

TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES	
22 TAC §851.32	3587
TEXAS DEPARTMENT OF INSURANCE	
LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES	
28 TAC §§3.1601 - 3.1611	3589
28 TAC §§3.1601 - 3.1608	3589
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY	
GENERAL AIR QUALITY RULES	
30 TAC §§101.221 - 101.223	3593
TEXAS PARKS AND WILDLIFE DEPARTMENT	
WILDLIFE	
31 TAC §§65.602, 65.609 - 65.611	3595
TEXAS DEPARTMENT OF CRIMINAL JUSTICE	
SPECIAL PROGRAMS	
37 TAC §159.3	3596
DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES	
CHILD PROTECTIVE SERVICES	
40 TAC §700.1208	3597
LICENSING	
40 TAC §745.8843	3597
MINIMUM STANDARDS FOR CHILD-CARE CENTERS	
40 TAC §§746.615, 746.617, 746.619, 746.621, 746.623, 746.629	3599
40 TAC §746.1325	3600
40 TAC §746.3309	3600
40 TAC §746.3401	3601
40 TAC §746.3503, §746.3505	3601
40 TAC §746.4003	3601
40 TAC §746.4005	3602
40 TAC §746.5017	3602
40 TAC §746.5403	3602
MINIMUM STANDARDS FOR CHILD-CARE HOMES	
40 TAC §§747.107, 747.111, 747.113	3604
40 TAC §747.201, §747.207	3604
40 TAC §§747.613, 747.615, 747.617, 747.621, 747.623, 747.633	3604
40 TAC §747.1323	3605
40 TAC §747.3109	3605
40 TAC §747.3803	3605
40 TAC §747.3805	3606
40 TAC §747.4817	3606
TEXAS DEPARTMENT OF TRANSPORTATION	
PUBLIC TRANSPORTATION	
43 TAC §31.11	3615
43 TAC §31.36	3616
RULE REVIEW	
Agency Rule Review Plan	
Texas State Board of Pharmacy	3621
Adopted Rule Reviews	
Texas Animal Health Commission	3621
Texas Parks and Wildlife Department	3621
TABLES AND GRAPHICS	
.....	3623
IN ADDITION	
Department of Aging and Disability Services	
Open Solicitation for Donley County	3639
Texas Department of Agriculture	
Request for Proposals: Financial Advisor	3639
Request for Qualifications: Bond and Program Counsel	3641
Coastal Coordination Council	
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program	3643
Comptroller of Public Accounts	
Notice of Award	3643
Notice of Request for Proposals	3643
Office of Consumer Credit Commissioner	
Notice of Rate Ceilings	3644
Notice of Rate Ceilings	3644
Deep East Texas Local Workforce Development Board	
Public Notice	3645
Texas Commission on Environmental Quality	
Enforcement Orders	3645
Notice of District Petition	3650
Notice of Opportunity to Comment on Default Orders of Administra- tive Enforcement Actions	3650

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions	3651	Notice of Public Hearing	3668
Notice of Priority Groundwater Management Area Report Completion	3653	Third Party Administrator Applications	3668
Notice of Water Quality Applications.....	3654	Texas Lottery Commission	
Notice of Water Rights Application.....	3656	Instant Game Number 568 "Instant Bingo"	3668
Proposed Enforcement Orders	3657	Public Utility Commission of Texas	
General Land Office		Notice of Application for Approval of Depreciation Rate.....	3676
Notice of Renewal of Major Consulting Services	3662	Notice of Application for Approval of Special Five Year Amortization	3676
Texas Health and Human Services Commission		Notice of Application to Relinquish a Service Provider Certificate of Operating Authority	3677
Notice of Public Hearing	3662	Notice of Petition for Expanded Local Calling Service.....	3677
Department of State Health Services		Notice of Petition for Waiver of Denial of Request for NXX Code	3677
Licensing Actions for Radioactive Materials.....	3663	Texas Department of Transportation	
Notice of Agreed Order with Hill Country Health Centers, Inc., dba Dripping Springs Chiropractic Center	3666	Notice of Intent - Supplemental Environmental Impact Statement for Roadside Pest Management Program	3677
Notice of Amendment Number 35 to the Radioactive Material License of Waste Control Specialists, LLC.....	3666	Request for Proposal for Aviation Engineering Services	3678
Notice of Intent to Revoke Certificates of Registration.....	3666	Request for Proposal for Aviation Engineering Services - Lee County Airport.....	3678
Notice of Intent to Revoke Radioactive Material Licenses.....	3667	Request for Proposals from Law Firms - Transportation Law Matters.....	3679
Texas Department of Housing and Community Affairs		University of Houston	
Multifamily Housing Revenue Bonds (Providence at Marine Creek Apartments) Series 2005.....	3667	Notice of Request for Proposal	3680
Texas Department of Insurance		The University of Texas System	
Company Licensing	3668	Request for Information (RFI) - Immigration Matters	3680

THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

RQ-0346-GA

Requestor:

The Honorable Rex Emerson

Kerr County Attorney

County Courthouse, Suite BA-103

700 Main Street

Kerrville, Texas 78028

Re: Whether the nepotism statutes are applicable to a county tax assessor-collector who is married to an employee of a county appraisal district (RQ-0346-GA)

Briefs requested by July 1, 2005

RQ-0347-GA

Requestor:

The Honorable Leticia Van de Putte, R.Ph.

Chair, Committee on Veteran Affairs and Military Installations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Authority of the Texas Workforce Commission to block grant, allocate, or distribute funds relating to programs listed in section 302.062(g) of the Texas Labor Code (RQ-0347-GA)

Briefs requested by July 2, 2005

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

TRD-200502326

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: June 8, 2005



TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by the Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39. Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Requests

AOR-525 The Texas Ethics Commission has been asked to consider whether a legislative advertising disclosure, pursuant to Government Code section 305.027, is required for (1) certain segments of radio broadcasts sent to radio stations in Texas; and (2) certain articles, including an e-mail news letter, displayed on a particular website.

SP-9 The Texas Ethics Commission will consider whether the provisions of 572.0252 of the Government Code, relating to the reporting of information about referrals, are so vague as to be unenforceable.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305,

Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Capitol Station, Austin, Texas 78711-2070, (512) 463-5800.

TRD-200502324
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: June 7, 2005



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY

SUBCHAPTER D. RESOURCES

1 TAC §358.430

The Texas Health and Human Services Commission (HHSC) proposes to amend §358.430(f)(2), concerning Transfer of Assets and calculation of the penalty period, in its Medicaid Eligibility chapter. The purpose of the amendment is to implement an option available under federal law that permits the penalty period for an uncompensated transfer of assets to be calculated in terms of months and days, rather than whole months.

The proposed amendment to §358.430(f)(2) would change the current HHSC policy of disregarding fractional remainders in calculating the length of a period of ineligibility caused by a transfer of assets without compensation by an individual who applies for or receives Medicaid or by that individual's spouse. When an individual applies for Medicaid and the individual or the individual's spouse transferred an asset without compensation during the applicable "look back" period before the date of the Medicaid application (36 or 60 months), such a transfer can result in a period of ineligibility. The length of the ineligibility period is determined by dividing the amount of the uncompensated transfer by the monthly average private pay rate for nursing facility care in the state. Under current HHSC policy, fractional remainders that result from this calculation are disregarded, resulting in whole month periods of ineligibility. As a result of this proposed rule change, fractional remainders would be considered, so that the resulting period of ineligibility may be days, or months and days.

Tracy Henderson, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period is an estimated reduction in cost. However, HHSC lacks sufficient data to accurately estimate the cost savings. HHSC has not found that there would be any fiscal implications for local government as a result of enforcing or administering the sections.

Anne Heiligenstein, Deputy Executive Commissioner for Social Services, has determined that, for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the section is the preservation of limited Medicaid dollars for those truly in need or most in need of the assistance. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the sections,

because the proposed amendment relates only to a requirement for individuals to become eligible to receive Medicaid benefits. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There is no anticipated effect on local employment in geographic areas affected by these sections.

Questions about the content of this proposal may be directed to John Stockton at (512) 206-4764 with the Long Term Care Medicaid Policy section of the HHSC Office of Family Services. Written comments on the proposal may be submitted to Dee Church, P.O. Box 12668, mail code 2090, Austin, Texas 78711-2668, within 30 days of publication in the *Texas Register*.

Under Government Code, §2007.003(b), HHSC has determined that Chapter 2007 of the Government Code does not apply to these rules. The change this rule amendment makes does not implicate a recognized interest in private real property. Accordingly, HHSC is not required to complete a takings impact assessment regarding these rules.

The amendment is proposed under Government Code, §531.0055 and §531.021, which provide the Texas Health and Human Services Commission with the authority to supervise the administration and operation of the Medicaid program and to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§32.001-32.067.

§358.430. *Transfer of Assets.*

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

(f) Calculation of penalty period.

(1) There is no limit to the penalty period under OBRA 1993. The penalty period is determined by dividing the uncompensated value of all assets transferred by the average monthly cost of nursing facility care for a private pay patient.

(2) The ~~[Fractional remainders are rounded down. This]~~ penalty period calculation applies to the transfer of both income and resources.

(3) The same penalty period calculation is used for clients who apply for home/community-based waiver programs. Penalty periods continue to run if a client moves from an institutional program to a home/community-based waiver program or vice-versa.

(4) The penalty period begins the month of transfer. However, a new penalty period cannot be imposed while a previous penalty period is still in effect. Therefore, the penalty periods assessed under OBRA 1993 rules for multiple transfers that overlap run separately but consecutively.

(5) If a penalty period ends and a subsequent transfer occurs, a new penalty period is established effective the month of the

subsequent transfer. This means there may be a gap between penalty periods.

(6) When multiple transfers occur during the look-back period in such a way that the penalty periods for each overlap, the transfers are treated as a single event. The uncompensated values are lumped together and divided by the average monthly rate for a private-pay patient in a nursing facility. If multiple transfers occur in such a way that the penalty periods do not overlap, then the transfers are treated as separate events and the penalty periods are calculated separately.

(g) - (m) (No change.)

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

Filed with the Office of the Secretary of State on May 31, 2005.

TRD-200502186

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: July 17, 2005

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



TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 24. TEXAS AGRICULTURAL FINANCE AUTHORITY: FARM AND RANCH FINANCE PROGRAM

4 TAC §24.11

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes an amendment to §24.11, concerning the Authority's Farm and Ranch Finance Program. The amendment is proposed to correct information regarding where copies of the Authority's credit policy may be obtained.

Robert Wood, assistant commissioner for rural economic development, has determined that for the first five year period that the amended section is in effect there will be no anticipated fiscal implications to state or local government as a result of enforcing or administering the proposal.

Mr. Wood 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 to provide correct information to interested persons wishing to review the Authority's credit policy. There is no anticipated effect on microbusinesses or small businesses. There will be no anticipated economic costs to persons required to comply with the proposal.

Comments on the proposal may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §24.11 is proposed under the Texas Agriculture Code (the Code), §59.022, which provides the Authority's Board with the authority to adopt rules it considers necessary to administer the Farm and Ranch Finance Program.

The Texas Agriculture Code, Chapter 59 is affected by the proposed amendment.

§24.11. *Criteria for Approval of a Loan.*

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Texas Agricultural Finance Authority [and Agribusiness Development Program], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711[; ~~(512) 475-1619~~].

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502236

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 17, 2005

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



CHAPTER 25. TEXAS AGRICULTURAL FINANCE AUTHORITY: RURAL DEVELOPMENT

The Board of Directors (Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes amendments to Chapter 25, Subchapter A (Subchapter A), §25.3 and §§25.7 - 25.11, concerning the Authority's Rural Development Finance Program, and the repeal of Chapter 25, Subchapter B (Subchapter B), §§25.20 - 25.34, concerning the Authority's Private Activity Bond Financing Program. The amendments to Subchapter A are proposed to clarify eligibility requirements and requirements for the use of the program and to make the program more efficient. The amendments are also made to make Subchapter A consistent with the current operation of the program as a rural municipal finance program which provides financial assistance to city and county governments; economic development corporations; hospital districts; rail districts; utility districts; special districts; agricultural districts; and private water and wastewater corporations in rural areas to improve or assist in the economic development of the rural area.

The amendments to §25.3 change the definition of "Applicant" to delete references to business entities, change the definition of "Commitment" to make that definition consistent with the current operation of the program, and delete the definition of "Guaranteed loan amount". Section 25.7 is amended to delete paragraph (a)(6), which relates to applicants that are business entities. Section 25.8 is amended to delete language relating to the timeframe to close a commitment. Sections 25.9 and 25.10 are amended to delete language that relates to business entities, making the section consistent with the current operation of the program. Section 25.11 is amended to correct the information

regarding where copies of the Authority's credit policy may be obtained.

The repeal of all sections in Subchapter B is proposed to delete unnecessary sections. The Authority's Private Activity Bond Financing Program is no longer in operation and the rules for this program are no longer needed.

Robert Wood, assistant commissioner for rural economic development, has determined that for the first five year period that the amended sections and the repeal of Subchapter B are in effect there will be no anticipated fiscal implications to state or local government as a result of enforcing or administering the proposal.

Mr. Wood has also determined that for each year of the first five years the amended sections and the repeal are in effect, the public benefit anticipated as a result of enforcing the amended sections will be to provide a more efficient program to further create an economic benefit to rural areas of the state and to generate a greater number of eligible applicants for the Authority's Rural Development Finance Program. The public benefit anticipated as a result of enforcing the repeal of Subchapter B will be the elimination of unnecessary rules. There is no anticipated effect on microbusinesses or small businesses. There will be no anticipated economic costs to persons required to comply with the proposal.

Comments on the proposal may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER A. RURAL DEVELOPMENT FINANCE PROGRAM

4 TAC §§25.3, 25.7 - 25.11

The amendments to §§25.3 and §§25.7 - 25.11 are proposed under the Texas Agriculture Code (the Code) §58.022, which provides the Authority's Board with the authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and, the Code §58.023, which provides the Authority's Board with the authority to adopt rules to establish criteria for eligibility of applicants under the Authority's financial assistance programs

The Texas Agriculture Code, Chapter 58 is affected by the proposed amendments.

§25.3. Definitions.

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

(1) (No change.)

(2) Applicant--Any rural [person, corporation, partnership, cooperative, joint venture, sole proprietorship,] city, county, [state agency, institution of higher education,] economic development corporation, or other unit of local [public] government filing an application with the Authority for a financial commitment.

(3) - (7) (No change.)

(8) Commitment--Any form of financial assistance provided to an applicant as approved by the board, including [a guaranty,] a direct loan, a bond purchase, a participation commitment,

or a conduit issuance for a political subdivision [or any other entity] providing economic development to a rural area of the state.

(9) - (11) (No change.)

[(12) ~~Guaranteed loan amount--With respect to loans made by a lender and guaranteed by the Authority, a sum measured in terms of U.S. dollars that the Authority pays to a lender to acquire an undivided interest in any loan, or in the case of default by borrower, the Authority agrees to pay a lender, not to exceed up to 90 percent of the loan amount or \$5 million, whichever is less. The guaranty percentage approved by the board will be that stated in the guaranty agreement negotiated between the Authority and the lender. The lender is required to negotiate an agreement to sell the Authority a participation in the guaranteed loan in an amount of no more than 80 percent of the guaranteed amount. The Authority will pay the lender a servicing fee as approved by the board.~~]

(12) [(13) ~~Interest rate--The interest rate charged on a commitment approved by the Authority board for an eligible applicant.~~]

(13) [(14) ~~Lender--A lending institution, including a bank, trust company, banking association, savings bank, mortgage company, investment banker, credit union, underwriter, life insurance company, or any affiliate of those entities, and also including any other financial institution or governmental agency that customarily provides financing for rural economic development loans or mortgages, or any affiliate of such institution or agency.~~]

(14) [(15) ~~Project--An enterprise or project, which would further economic development of a rural area.~~]

(15) [(16) ~~Qualified application--A completed application, including all documents and information required by the Authority and submitted by the lender or applicant for a project, that is consistent with the purpose of rural economic development.~~]

(16) [(17) ~~Rural area--A rural area means an area which is predominately rural in character, and the board defines and considers to be a rural area.~~]

(17) [(18) ~~Staff--The staff of the Authority or staff of the department performing work for the Authority.~~]

(18) [(19) ~~State--The State of Texas.~~]

§25.7. Project Eligibility Requirements.

(a) Projects. An applicant is eligible for a commitment from the Authority if the proposed project meets the following criteria:

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

(4) the applicant is a legal entity under the laws of the United States of America and the State of Texas; and

(5) the applicant has a principal place of business in the state, [; and]

[(6) ~~if the applicant is a corporation, partnership, cooperative or joint venture, the applicant's principal owner or owners provide personal guarantees satisfactory to the Authority.~~]

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

§25.8. Filing Requirements and Consideration of Applications.

(a) - (d) (No change.)

(e) Notification of approval. Upon conditional approval of the qualified application by the board, the Authority will notify the applicant in writing identifying the terms and conditions of the commitment provided. The applicant must accept the conditions of the board within 30 days [to accept the commitment and 90 days to close the commitment, provided that the board may approve one additional extension of

the commitment for a period of no more than 60 days. The Authority will prepare the closing documents in cooperation with the Authority's legal counsel and notify borrower of the closing date established].

(f) - (i) (No change.)

§25.9. *Contents of Qualified Application.*

(a) Required information. The qualified application must set forth the information necessary for the determination of eligibility and will include the following, if applicable:

(1) (No change.)

(2) names, addresses, resumes, and references of owners, principal investors, board members, and/or management [including percentage of ownership of the business, if applicable];

(3) articles of incorporation and bylaws, a certificate of good standing with the secretary of state, or other instruments that establish or describe the legal operation or structure of the applicant and the legal authority under which the financing is being requested [and/or the business];

(4) a [business] plan which includes the following:

(A) information describing the products, services, or public works to be offered;

(B) a statement of how such products or services will help to expand, develop, or diversify the rural economy of the state; and

(C) an estimate of the number of jobs created or retained by the project. [; and]

[(D) a statement of what percentage of Texas products and suppliers will be used by the project.]

(5) three years of audited financial reports [historical balance sheets, cash flow statements, income statements, and federal and/or state tax returns];

[(6) a pro forma balance sheet, which incorporates the new financing, to be provided by the applicant and/or the lender;]

(6) [(7)] pro forma cash flows, income statements and balance sheets for at least three years, including the underlying assumptions used, to be provided by the applicant and/or the lender;

[(8) a statement of the interest rate used in the pro forma statements;]

(7) [(9)] a statement of any licensing requirements, and state or federal regulations that impact the project;

(8) [(10)] a statement that addresses the effect of the project [business] on the tax base of the area and any other positive and negative effects of the project on the area;

(9) [(11)] assurance of compliance with local zoning laws and building codes, and that the necessary public utilities are available or will be available when needed by the project; and

[(12) for construction projects, the approximate date construction will commence, completion date, and date by which the project will be fully operational; including copies of cost estimates for construction;]

[(13) documentation that the preliminary design stage has been completed;]

(10) [(14)] disclosure of any and all business and familial affiliations of the applicant, or its owners, principal investors, board members, and management with members of the board, employees of

the department, staff, and/or the lender which could present a conflict of interest. [; and]

[(15) if applicable, a personal history questionnaire and acknowledgment form for all guarantors and/or owners with more than 20% ownership.]

(b) (No change.)

§25.10. *General Terms and Conditions of the Authority's Commitment.*

(a) - (h) (No change.)

(i) Reporting requirements for a commitment provided by the Authority. The applicant shall provide to the Authority [or lender, whichever is applicable,] annual audited financial reports [statements including a balance sheet, income statement and a cash flow statement]; payment receipts of any applicable personal property taxes; and a statement of the annual employment of the applicant [applicant's business to the Authority]. Annual employment shall be expressed in terms of annual full-time equivalent positions. If necessary, the Authority may request other reports or documentation reasonably necessary for an assessment of the applicant's compliance with the program.

§25.11. *Criteria for Approval of a Commitment.*

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the review and application approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Texas Agricultural Finance Authority [and Agribusiness Development Division], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 [; (512) 475-1619].

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502237

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 17, 2005

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

◆ ◆ ◆
SUBCHAPTER B. PRIVATE ACTIVITY BOND
FINANCING PROGRAM

4 TAC §§25.20 - 25.34

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

The repeal of §§25.20 - 25.34 is proposed under the Texas Agriculture Code (the Code), §58.022, which provides the Authority's Board with the authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and, the Code §58.023, which provides the Authority's Board with the authority to adopt rules to establish criteria for eligibility of applicant and lenders under the Authority's financial assistance programs.

The Texas Agriculture Code, Chapter 58 is affected by the proposed repeals.

- §25.20. *Authority.*
- §25.21. *Purpose.*
- §25.22. *Definitions.*
- §25.23. *Examination of Records.*
- §25.24. *Written Communication with the Authority.*
- §25.25. *Project Eligibility Requirements.*
- §25.26. *Filing Requirements and Consideration of Applications.*
- §25.27. *Inducement Resolution.*
- §25.28. *Policies.*
- §25.29. *Final Approvals.*
- §25.30. *Fees.*
- §25.31. *Closing the Bonds.*
- §25.32. *Alternative Financing Options.*
- §25.33. *Administration.*
- §25.34. *Waivers.*

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502238
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 463-4075

◆ ◆ ◆

CHAPTER 26. TEXAS AGRICULTURAL FINANCE AUTHORITY: LINKED DEPOSIT PROGRAM

4 TAC §26.12

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes an amendment to §26.12, concerning the Authority's Linked Deposit Program. The amendment is proposed to correct information regarding where copies of the Authority's credit policy may be obtained.

Robert Wood, assistant commissioner for rural economic development, has determined that for the first five year period that the amended section is in effect there will be no anticipated fiscal implications to state or local government as a result of enforcing or administering the proposal.

Mr. Wood 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 to provide correct information to interested persons wishing to review the Authority's credit policy. There is no anticipated effect on microbusinesses or small businesses. There will be no anticipated economic costs to persons required to comply with the proposal.

Comments on the proposal may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §26.12 is proposed under the Texas Agriculture Code (the Code), §44.007, which provides the Authority's Board with the authority to adopt rules for the loan portion of the Linked Deposit Program; and the Code, §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs, including the Linked Deposit Program.

The Texas Agriculture Code, Chapters 44 and 58 are affected by the proposed amendments.

§26.12. *Communications with the Authority.*

All communications about the program should be directed to the Texas Agricultural Finance Authority, Linked Deposit Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711; (512) 475-1614].

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502239
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 463-4075

◆ ◆ ◆

CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY: FINANCIAL ASSISTANCE PROGRAM RULES

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes amendments to §28.2 and §§28.7 - 28.11, §28.15, and the repeal of §28.16, concerning the Authority's Financial Assistance Program. The amendments are proposed to clarify eligibility requirements and requirements for the use of loan proceeds and to make the program more efficient. More specifically, the amendments are proposed to delete language relating to new loans, and modify the sections that relate to renewals to make the sections consistent with the current operation of the financial assistance program. Under the existing program, no new loans will be made, the extension of credit is limited to renewals or extensions of existing loans. The repeal of §28.16, relating to criteria for a direct loan is proposed to delete unnecessary language. Direct loans are no longer being offered under the program.

Section 28.2 is amended to make this section consistent with current law. Section 28.7 is amended to make the section consistent with the current operation of the financial assistance program. Section 28.8 is amended to clarify that only applications for renewal of existing loans are being accepted under the program. At subsection 28.8(d), an amendment is made to make this subsection consistent with current law relating to approval of an application by the board. Section 28.9 is amended to provide that program staff has the sole discretion to determine what documents are acceptable to show information required of an applicant. Section 28.10 is amended to clarify that financial assistance is limited to a renewal of an existing obligation and to the amount of or participation in an existing obligation. Section

28.11 is amended to correct the information relating to where copies of the Authority's Credit Policy and Procedure may be obtained. Section 28.15 is amended to make this subsection consistent with current law relating to approval of an application by the board.

Robert Wood, assistant commissioner for rural economic development, has determined that for the first five year period that the amended sections are in effect there will be no anticipated fiscal implications to state or local government as a result of enforcing or administering the proposal.

Mr. Wood 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 administering and enforcing the amended sections will be to provide a more efficient program to further create an economic benefit to rural areas of the state. There is no anticipated effect on microbusinesses or small businesses, except that eligible entities that are granted financial assistance under the Authority's Financial Assistance Program will benefit from that assistance. There will be no anticipated economic costs to persons required to comply with the proposal.

Comments on the proposal may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

4 TAC §§28.2, 28.7 - 28.11, 28.15

The amendments to §28.2, §§28.7 - 28.11 and §28.15 are proposed under the Texas Agriculture Code (the Code), §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs.

The Texas Agriculture Code, Chapter 58 is affected by the proposal.

§28.2. Purpose.

The purpose of the Texas Agricultural Finance Authority (the Authority) is to provide financial assistance to eligible agricultural businesses and to other ~~agricultural-related~~ rural economic development projects that the board of the Authority considers to present a reasonable risk and have a sufficient likelihood of repayment. The Authority is mandated to support the expansion, development, and diversification of production, processing, marketing, and exporting of Texas agricultural products and to promote the development of ~~agricultural-related~~ rural economic development projects. These rules establish standards of eligibility and the application procedures for the Authority's financial assistance programs.

§28.7. Project Eligibility Requirements.

(a) Projects. An applicant is eligible for assistance from the Authority if the proposed project meets the following criteria:

(1) ~~the applicant currently has a project financed with the Authority's assistance [the project provides significant benefits for the expansion or development of diversified, innovative, or value-added production, processing, marketing, or exporting of Texas agricultural products or provides significant benefits for other agricultural-related economic development projects; provided that the board shall give priority to agricultural businesses that include producers of Texas agricultural products; provided, also, that the board will give preference to applicants, the majority ownership of which is held by citizens of the United States; and if the applicant is a corporation, the board will give preference to a corporation organized under the laws of the State of Texas with majority ownership by Texas residents; provided further,~~

~~that the board will give preference to applicants who are Texas residents doing business in the state and to applicants who can demonstrate that the financed activities will take place predominantly in the state; provided that the board will also give preference to those agricultural businesses that demonstrate a significant new technology or market opportunity for Texas producers; provided, finally, that the board may decline to assist those businesses whose primary purpose is to establish or expand conventional agricultural production];~~

~~(2) the board determines that it is in the best interest of the program to renew the existing obligation [the project will create or retain employment, directly or indirectly]; and~~

~~(3) the requested assistance amount is not more than the existing obligation, and will be used to renew or extend the existing obligation. [there is a reasonable level of equity in the project, which is determined on a case-by-case basis by the Authority and the lender; provided that the applicant must provide at least 10% of the total cost of the project for an existing business and at least 25% of the total costs of the project for a start-up;]~~

~~[(4) the applicant must be a legal entity under the laws of the United States of America;]~~

~~[(5) the applicant has its principal place of business in the state;]~~

~~[(6) the applicant's principal owner or owners provide personal guarantees for the loan satisfactory to the Authority;]~~

~~[(7) for the Loan Guaranty Program, the lender submits a preliminary letter of commitment to make the loan based on a partial guaranty from the Authority;]~~

~~[(8) for the Direct Loan Program, the lender and borrower submit a preliminary letter of commitment that the lender will service the loan based upon the approval of a direct loan by the Authority.]~~

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

§28.8. Filing Requirements and Consideration of Applications.

(a) Application forms. An applicant or lender seeking a renewal of an existing loan guaranty from the Authority may use the application forms provided by the Authority.

(b) Submission of a qualified application. Applicants are required to obtain a commitment from a lender to participate in ~~[the direct loan program or]~~ the loan guaranty program before qualified applications will be accepted by the Authority. Staff will be available prior to submission of the qualified application to assist lenders or applicants in determining project eligibility.

(c) (No change.)

(d) Board review. Staff will submit a report on each qualified application to the board, provided that the board has directed staff to present only those applications which meet those minimum underwriting standards established in the Credit Policy and Procedures, which shall include a recommendation for approval or denial. If staff determines that an application does not meet the minimum underwriting standards established in the Credit Policy and Procedures, then staff shall notify the applicant and the lender in writing to this effect, and shall advise them of which minimum underwriting standards are not met. If staff determines during the underwriting process, that the minimum standards not met are mitigated by other factors in the application, then staff can present the application to the board identifying the waivers to the Credit Policy and Procedures and the mitigating factors. If staff cannot determine mitigating factors for the waivers, then staff will notify the applicant and/or the lender that they may appeal the determination of the staff to the board, but shall have the burden

of convincing the board that the minimum standards not met should be waived. The board may, in its discretion, recommend the imposition of conditions and requirements in connection with approval of a qualified application. Approval of a qualified application will be by a majority of [a quorum of the] board members present [~~except for the approval requirements identified in §28.10(e) of this title (relating to General Terms and Conditions of the Authority's Financial Assistance)~~]. Applications submitted to the Authority for the participation program will not be considered if the eligible project does not meet the minimum underwriting standards established in the Credit Policy and Procedures established by the Authority.

(e) Notification of approval. Upon conditional approval of the qualified application by the board, the Authority will notify the lender and the applicant in writing identifying the terms and conditions of the financial assistance provided. The board may set certain time limits regarding the acceptance of loan commitments by the applicant and lender and time limits regarding the closing of loans by the applicant and lender. [~~However [however], in no event shall the time period exceed 30 days to accept the commitment and 90 days to close the loan, provided that the board may approve one additional extension of the commitment for a period of no more than 60 days. Under the loan guaranty program, the lender will prepare the written agreements and documents necessary to close the loan guaranty in accordance with the terms and conditions set forth in the notice of conditional approval. The Authority will send the lender and the applicant final notice of guaranty approval after review of the closing documents by the Authority's legal counsel. [Under the direct loan program, the Authority will prepare the closing documents in cooperation with the Authority's legal counsel and notify lender and/or borrower of the closing date established. The lender will disburse the loan according to the terms of the note and/or loan agreement.]~~]

(f) - (i) (No change.)

§28.9. Contents of Qualified Application.

(a) Required information. The qualified application must set forth the information necessary for the determination of eligibility and will include the following, if applicable (staff may determine that documents already in the Authority's files may suffice for any of the following):

- (1) applicant's name, address and telephone numbers;
- (2) names, addresses, resumes, and references of owners, principal investors, board members, and management, including percentage of ownership of the business;
- (3) articles of incorporation and bylaws, a certificate of good standing with the secretary of state, or other instruments that establish or describe the legal operation or structure of the business;
- (4) a business plan which includes the following:
 - (A) information describing the products or services to be offered; and
 - (B) how such products or services will help to expand, develop, or diversify Texas agriculture or the rural economy of the state;
 - (C) an estimate of the number of jobs created or retained by the project; and
 - (D) a statement of what percentage of Texas products and suppliers will be used by the project;
- (5) letters of commitment from other funding sources;
- (6) if available, three years of historical balance sheets, cash flow statements, income statements, and federal tax returns;

(7) a pro forma balance sheet which incorporates the new financing, to be provided by the applicant and/or the lender;

(8) pro forma cash flows, income statements, and balance sheets for at least three years, including the underlying assumptions used, to be provided by the applicant and/or the lender;

(9) a statement of the interest rate used in the pro forma statements;

(10) a statement of any licensing requirements;

(11) a statement that addresses the effect of the business on the tax base of the area and any other positive and negative effects of the project on the area;

(12) assurance of compliance with local zoning laws and building codes, and that the necessary public utilities are available or will be available when needed by the project;

(13) for construction projects, the approximate date construction will commence, completion date, and date by which the project will be fully operational; including copies of cost estimates for construction;

(14) documentation that the preliminary design stage has been completed;

(15) disclosure of any and all business and familial affiliations of the applicant, or its owners, principal investors, board members, and management with members of the board, employees of the department, staff, and/or the lender which could present a conflict of interest; and

(16) personal history questionnaire and acknowledgment form for all guarantors and/or owners with more than 20% ownership.

(b) (No change.)

§28.10. General Terms and Conditions of the Authority's Financial Assistance.

(a) Permissible use of financial assistance. The Authority's financial assistance is to be used to finance the project identified on the qualified application and must be a renewal of an existing obligation involving the Authority.

~~[(b) Minimum amount of financial assistance. The Authority shall not provide financial assistance to an applicant where the guaranteed amount of the loan is less than \$30,000.]~~

~~[(c) Maximum amount financial assistance. The Authority shall not provide a loan guaranty, or a participation purchased to an applicant, including its affiliates, that [at any one time] exceeds the current dollar amount of the existing obligation involving the Authority [\$2 million except that by a two-thirds vote of the board, the total aggregate participation purchase or loan guaranty may exceed \$2 million but may not exceed \$5 million. The assistance in the form of a loan guaranty shall not exceed 90% of the total loan. The Authority board will apply the following as a guideline when approving guaranty applications: a guaranty may not exceed 75% on guaranties of \$2 million and over; a guaranty may not exceed 80% for guaranties between \$1 million and \$1,999,999; a guaranty may not exceed 85% for guaranties between \$500,000 and \$999,999; and a guaranty may not exceed 90% for guaranties between \$30,000 and \$499,999. The financial assistance in the form of a guaranty shall never exceed 90% of the total loan or \$5 million, whichever is less. Furthermore, the Authority may make, guaranty, insure, coinsure, or reinsure a loan up to the limits described above for a single eligible business which already has an active loan and will consider the guaranty percentage under which the active loan was guaranteed; if the action is approved by a two-thirds vote of the members present. The Authority may provide financial assistance~~

to the entity designated to carry out the boll weevil eradication program in accordance with the Texas Agriculture Code, 74.1011 and to a state agency or institution of higher education for an agricultural-related business in amounts approved by the board. The maximum direct loan is \$250,000 as established in 28.16(a) of this title (relating to Criteria for a Direct Loan)].

(c) [(d)] Extent of participation in a guaranteed loan. The Authority shall participate in each and every guaranteed loan in an amount not to exceed 80% of the Loan Guaranty Amount, not to exceed the limits in subsection (b) [(e)] of this section.

(d) [(e)] Interest. The interest rate on the guaranteed loan (not including guaranty fees) shall be the rate charged by the lender and approved by the Authority, subject to the definition established in 28.3 of this title (relating to Definitions).

(e) [(f)] Maturity. The maturity of the direct loan, participation purchased, or loan guaranty approved by the Authority must not exceed the useful life of the collateral and may be negotiated between the Authority, the lender, and/or the borrower.

(f) [(g)] Security. Loans ~~should~~ ~~must~~ be secured by collateral of a type, amount, and value which, when considered with other criteria, affords reasonable assurance of repayment.

(g) [(h)] Fees. The board has adopted the following fee schedule which will be used as a guideline to calculate the fees payable by the applicant to the Authority within 10 days of the initial funding of the loan. However, the Authority may approve fees as it deems appropriate on a case-by-case basis. A nonrefundable application fee will be required with the qualified application. If the qualified application is approved, the application fee will be credited as part of the total fees charged. Any and all legal fees incurred by the board in issuing a direct loan or loan guaranty will be an obligation of the applicant.

Figure: 4 TAC §28.10(g)

(h) [(i)] Closing the financial assistance provided. The lender, the applicant, and the commissioner of agriculture or his designee may attend the verification and signing of the closing documents as prepared by staff and/or the lender.

(i) [(j)] Reporting requirements for loan guaranties and participations purchased.

(1) The lender shall report in writing to the Authority as follows:

(A) notification if the loan is placed on a watch list;

(B) quarterly monitoring reports indicating loan balance, repayment status, and any credit changes reported to lender as indicated on the prescribed form; and

(C) notification in the event of any breaches or defaults in the terms, conditions, or covenants of the note, loan agreement, or other loan documents.

(2) The applicant shall provide annual financial statements including a balance sheet, income statement and cash flow statement; payment receipts of personal property taxes; and a statement of the annual employment of the applicant's business to the lender. Annual financial statements should be audited but, if not, they must be signed by the owner of the project. Annual employment shall be expressed in terms of annual full-time equivalent positions. The lender shall submit these reports to the Authority. If necessary, the Authority may request other reports or documentation reasonably necessary for an assessment of the applicant's compliance with the program.

§28.11. *Criteria for Approval of Financial Assistance.*

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

(d) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan guaranty review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Texas Agricultural Finance Authority [and Agribusiness Development Division], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711 [; ~~(512) 475-1619~~].

§28.15. *Criteria for Approval of a Participation Purchased.*

(a) Eligibility requirements. The Authority may purchase an undivided interest in a loan made by a lender provided that:

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

(3) the undivided interest purchased by the Authority does not exceed the maximum amount as stated in §28.10(b) [28.10(e)] of this title (relating to General Terms and Conditions of the Authority's Financial Assistance); and

(4) (No change.)

(b) - (e) (No change.)

(f) Board review. Staff will submit a report on each participation to be purchased to the board, which shall include a recommendation for approval or denial. If staff determines that a participation does not meet the minimum underwriting standards established in the Credit Policy and Procedures, then staff shall notify the lender in writing to this effect, and shall advise the lender of which minimum underwriting standards are not met. The lender may resubmit the participation application for further consideration at such time as the minimum standards are met. Approval of a participation will be by a majority of [a quorum of the] board members present [; except for the approval requirements identified in Section 28.10(e)] of this title.

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502240

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: July 17, 2005

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



4 TAC §28.16

(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 Department of Agriculture or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal of §28.16 is proposed under the Texas Agriculture Code (the Code), §58.022, which provides the Authority's Board with authority to adopt rules and procedures necessary for the administration of its programs.

The Texas Agriculture Code, Chapter 58 is affected by the proposal.

§28.16. *Criteria for a Direct Loan.*

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502241
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 463-4075



CHAPTER 30. TEXAS AGRICULTURAL
FINANCE AUTHORITY: YOUNG FARMER
LOAN GUARANTEE PROGRAM
SUBCHAPTER A. GENERAL PROCEDURES
4 TAC §30.12

The Board of Directors (the Board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes an amendment to §30.12, concerning the Authority's Young Farmer Loan Guarantee Program. The amendment is proposed to correct information regarding where copies of the Authority's credit policy may be obtained.

Robert Wood, Assistant Commissioner for Rural Economic Development, has determined that for the first five year period that the amended section is in effect there will be no anticipated fiscal implications to state or local government as a result of enforcing or administering the proposal.

Mr. Wood 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 to provide correct information to interested persons wishing to review the Authority's credit policy. There is no anticipated effect on micro businesses or small businesses. There will be no anticipated economic costs to persons required to comply with the proposal.

Comments on the proposal may be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment to §30.12 is proposed under the Texas Agriculture Code, §58.022, which provides the Authority's Board with the authority to adopt rules and procedures necessary for the administration of its programs, including the Young Farmer Loan Guarantee Program.

The Texas Agriculture Code, Chapter 58 is affected by the proposed amendment.

§30.12. *Criteria for Approval of a Loan Guarantee.*

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

(c) The Authority has adopted a Credit Policy and Procedures document which contains additional criteria and guidelines used by the Authority in the loan guarantee review and approval process. The Credit Policy and Procedure document is adopted by reference herein. Copies may be obtained from the Texas Agricultural Finance Authority [and Agribusiness Division], Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711[- (512) 475-1619].

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502242
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 463-4075



PART 2. TEXAS ANIMAL HEALTH
COMMISSION

CHAPTER 41. FEVER TICKS
4 TAC §§41.1, 41.8, 41.9

The Texas Animal Health Commission proposes to amend Chapter 41, which is entitled "Fever Ticks". The proposed amendments to Chapter 41 include: (1) an amendment to §41.1, "Definition of Terms", to define treatment methods for control of fever ticks on free ranging wildlife and exotics. This proposal will provide a mechanism to ensure that deer, and other wildlife capable of carrying fever ticks, are treated for fever ticks when present in an infested pasture or when a pasture is vacated; (2) an amendment to §41.8, "Dipping and treatment of livestock", to require treatment of free ranging wildlife and exotics for control of fever ticks utilizing treatment methods approved by the commission. Native deer and some exotic species are known to be hosts for the *Boophilus tick* and natural movement of these animals from a quarantine area or quarantined premises to clean areas could promote and propagate the spread of these ticks. In order to ensure that deer or exotics do not spread the tick into a clean pasture or area this amendment will provide the authority to require and specify the mechanism for treatment, should treatment of free ranging wildlife or exotics be necessary to eliminate fever ticks from an area or premises; (3) The Commission is also adding language to §41.9, "Vacation and Inspection of a Premise," regarding the release of restrictions on infested premises that are vacated. The proposed amendments to this section clarify the starting date for the vacation period, reclassify vacated premises to check premises at the end of the vacation period, specify when the check premises restrictions will be released and provide requirements for treatment of free ranging wildlife and exotics on vacated premises. The proposed amendments to this section are necessary for the following reasons: (a) recent empirical data and field trial results indicate that fever ticks can survive longer on vacated pastures (pastures on which there are no known hosts for fever ticks) than previously thought; and (b) Deer and some exotics may continue to serve as hosts for ticks in vacated pastures.

FISCAL NOTE

Mr. Mike Jensen, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The commission does not believe the requirements create an adverse impact on a small businesses or micro-businesses because the prohibition is limited to areas where there is exposure to ticks.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will ensure, that if needed, deer and other animals capable of hosting the ticks are treated in order to eradicate the pest in an area or premise exposed to ticks, therefore there may be effects to individuals required to comply with the rules as proposed.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007. Furthermore this activity, in part, involves the movement of animals considered to be property of the state and not private property.

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

The amendments are proposed under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the commission, by rule, to define which animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that "the commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022, entitled "Quarantine of Tick Eradication Area" provides the commission authority to designate a county or part of a county for tick eradication. Section 167.023, entitled "Quarantine of Free Area" provides the commission authority to establish quarantines in the Free Area. Section 167.024, entitled "Movement In or From Quarantined Area" provides the requirement to get appropriate authorization and compliance with the requirements prior to movement. Section 167.032 provides the commission may restrict movement of commodities which are capable of carrying ticks.

The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on

the affected animals or on the affected place. That is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That is under §161.002.

Section 161.007 provides that if a veterinarian employed by the Commission determines that a communicable disease exists among livestock, domestic animals, or domestic fowl or on certain premises or that livestock, domestic animals, or domestic fowl have been exposed to the agency of transmission of a communicable disease, the exposure or infection is considered to continue until the Commission determines that the exposure or infection has been eradicated through methods prescribed by rule of the commission. Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice, signed under that authority has the same force and effect as if signed by the entire Commission.

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

§41.1. *Definition of Terms.*

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

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

(5) Dipping or treating--If the Commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. If the Commission determines that free-ranging wildlife and exotic animals, which are capable of hosting fever ticks, require treatment, they shall be treated by methods and for the duration of time approved by the Commission.

(6) - (20) (No change.)

(21) Tick--Any tick capable of transmitting bovine Babesiosis [~~Babesiosis~~] (cattle tick fever or bovine piroplasmosis).

(22) (No change.)

§41.8. *Dipping and treatment of livestock.*

(a) Dipping and treatment of livestock; general. All dipping prescribed in this section must be done under the supervision of a representative authorized by the commission. The commission will authorize for use in dipping only those dips that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick. The concentration of the dipping chemical used must be maintained in the percentage specified for official use by means of the approved vat management techniques established for the use of the agent; or, if applicable, by an officially approved vat side test or field test of the commission. The owner

or caretaker of the livestock is responsible for presenting the livestock to the dipping vat, dipping the livestock, and removing the livestock, and will provide such labor as is necessary to perform all required functions. If the Commission requires livestock to be dipped, the livestock shall be submerged in a vat. A spray-dip machine may be used in areas where a vat is not reasonably available. Careful hand spraying may be used for easily restrained horses and show cattle, and when specifically authorized, certain zoo or domestic animals. Livestock unable to go through a dipping vat because of size or physical condition may be hand sprayed. The treatment must be paint marked so that it can be identified for at least 17 days. The Commission may specifically authorize other treatment methods for free-ranging wildlife or exotic species.

(b) Required Dipping or treatment of Livestock.

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

(7) Free-ranging wildlife or exotics that are found on infested, exposed or vacated premises, and which are capable of hosting fever ticks will be treated by methods approved by the Commission and for the length of time specified by the Commission.

§41.9. Vacation and Inspection of a Premise.

(a) Vacation of premise. Upon the removal of all livestock from a premise, the premise remains classified as before for the period shown on Table I (Pasture Vacation Schedule, South of Highway 90) or Table II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The starting date is the date of the first clean dipping during which ~~when~~ 100% of the livestock on the premise have been dipped and continued on an official dipping schedule until removed from the premise. The premise will be reclassified to a Check Premise, as provided by subsection (b) of this section, upon the expiration of the time shown in Tables I (Pasture Vacation Schedule, South of Highway 90) or II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. The Check Premise restrictions will be released ~~;~~ ~~or~~ when determined by the commission that the premise has no infestation.

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

(d) Free-ranging wildlife and exotic animals that are found on vacated pastures or check premises and which are capable of hosting fever ticks shall be treated by methods approved by the Commission and for the length of time specified by the Commission.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502261

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 719-0700



CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.8

The Texas Animal Health Commission (commission) proposes amendments to Chapter 51, §51.8, regarding Cattle. The amendment is in regards to entry requirements for cattle for tuberculosis.

The commission recently adopted a new §51.8(b)(3) to require that all sexually intact dairy cattle originating from a tuberculosis free state, or area, that are 6 months of age or older need to be officially identified, and are accompanied by a certificate stating they were negative to an official tuberculosis test conducted within 60 days prior to the date of movement. The requirement also included that heifers which are less than six months of age must enter on a entry permit obtained from the Commission and be moved to a designated facility where the animals will be held until they are tested negative at the age of six months. The original intent was to require "any sexually intact animals" that enter Texas under 6 months of age (without a test), to be restricted until they receive a negative test upon reaching 6 months of age. The Commission is proposing this amendment to correct this oversight.

FISCAL NOTE

Mr. Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. The commission does not believe the requirements create an adverse impact on a small businesses or micro-businesses. The impact to individuals is limited to ensuring that the health status of these animals is known which protects the livestock industry in this state.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be clear and concise regulations which can be found in one chapter.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

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

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

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

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

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

§51.8. *Cattle.*

- (a) (No change.)
- (b) Tuberculosis requirements.
 - (1) - (2) (No change.)

(3) All sexually intact dairy cattle, that are 6 months of age or older may enter provided that they are officially identified, and are accompanied by a certificate stating that they were negative to an official tuberculosis test conducted within 60 days prior to the date of entry. All sexually intact dairy cattle [Heifers] that are less than six months of age must obtain a entry permit from the Commission, as provided in §51.3(a) of this title, to a designated facility where the animals will be held until they are tested negative at the age of six months. Animals which originate from a tuberculosis accredited herd, and/or animals moving directly to an approved slaughtering establishment are exempt from the test requirement. In addition all sexually intact dairy cattle originating from a state or area with anything less than a tuberculosis free state status shall be tested negative for tuberculosis in accordance with the appropriate requirements for states or areas with a status as provided by Title 9 of the Code of Federal Regulations, Part 77, Sections 77.10 through 77.19, for that status, prior to entry with results of the test recorded on the certificate of veterinary inspection.

- (4) - (7) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502262

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 719-0700

◆ ◆ ◆

CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.11

The Texas Animal Health Commission proposes amendments to Chapter 59, entitled General Practices and Procedures by adding a new §59.11 for issuance of a Certificate of Veterinary Inspection (CVI) and assessing a fee.

Animals being exported, or transported to locations such as livestock shows must be inspected and/or tested by an accredited veterinarian to ensure they meet the testing and certification requirements of the destination authority and that required information is recorded on a CVI. The Texas Animal Health Commission (Commission) issues CVI's to veterinarians and the veterinarians fill in the relevant information upon inspection and/or testing of the animals. Agriculture Code, §161.081(d), set the fee for a health certificate at 25 cents per certificate. HB 1363, as amended, would repeal §161.081(d) and authorize the Commission, through §161.0601, to use rulemaking to issue a certificate of veterinary inspection, as well as establish the fee for the certificate. The provisions of the bill will take effect September 1, 2005.

The Commission currently issues three types of CVIs: 1.) "Certificate of Veterinary Inspection" TAHC Form 00-10; 2.) "Equine Certificate of Veterinary Inspection" TAHC Form 99-08; and 3.) "Equine Interstate Movement Passport" TAHC Form 00-02. Currently the Commission sells the certificates in books of 25 certificates. The certificates will continue to be provided in sets of 25 certificates per book. This rule would establish a fee of five dollars (\$5.00) for each certificate.

In order to make all veterinarians aware of this change the Commission will disseminate several notices to accredited veterinarians. After the Commission meeting on May 18th, a postcard size notice will be mailed to all Texas accredited veterinarians (approximately 4,000) informing them of the proposed increase in fees. This will be followed by a second notice in July with a "Q & A" letter providing additional information about the fee increase for Large Animal, Equine, and Passport Health Certificates to be effective September 1, 2005.

In order to ensure that there is an equitable transition from utilizing the old CVI's to those issued under this rule the Commission provides the following milestones. Effective September 1, 2005 the Commission will only issue new CVI's. The Commission cannot provide new CVI's until September 1, 2005. Any checks, for new CVI's, received prior to August 31, 2005 will be returned. Those CVI's issued prior to September 1, 2005 may be used and issued by an accredited veterinarian through October 31,

2005. After that date old CVI's will be considered null and void by the Commission. CVI's completed, dated and signed by an accredited veterinarian prior to October 31, 2005 will be valid for the life of the completed document as provided by regulations of the entity receiving the animals represented on the certificate. The Equine Interstate Movement Passport those will be valid for six months from the date of the issuance. Commission staff will review and monitor incoming and outgoing health certificates to ensure compliance with the transition timeline for the new CVI's.

The Commission will refund a veterinarian for every old CVI, returned and unused to TAHC, provided it is a complete set (four sheets of the exact same number per set 3 sheets for Equine Interstate Movement Passports). The Commission will only refund for these old CVI's returned with a postmark of December 31, 2005 or earlier. The refund will be in accordance with the original amount that the practitioner paid per CVI set.

FISCAL NOTE

Mr. Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, reports that subsequent to the 78th Legislative Session, TAHC established a Fee Working Group composed of industry and veterinary representatives, and agency staff to investigate various fee schemes which could generate revenue to help offset the costs of state services and regulatory functions. Assuming that HB 1363 of the 79th Legislative Session becomes law effective September 1, 2005, the Commission proposes increasing the fee for a CVI from \$0.25 to \$5.00 per health certificate.

Based on this rate and assuming 4,400 books containing 25 health certificates each (110,000 certificates) are issued each fiscal year at \$125 per book, the agency anticipates collecting a total of approximately \$550,000 per fiscal year. The estimated net revenue from these receipts is approximately \$498,020 per fiscal year calculated as \$550,000 per fiscal year estimated revenue less \$51,980 per fiscal year estimated expense to produce and distribute the certificates and to collect the fees. There will be no effect to small or micro businesses.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will allow the TAHC to maximize its appropriation of general revenue funds by applying the net revenues collected as a cost recovery mechanism to offset the costs of state services and regulatory functions that TAHC is statutorily charged to perform. Such a cost recovery mechanism advances and supports successful program implementation efforts in support of the agency's mission of:

protecting the animal industry from, and/or mitigate the effects of domestic, foreign and emerging diseases;

increasing the marketability of Texas livestock commodities at the state, national and international level;

promoting and ensuring animal health and productivity;

protecting human health from animal diseases and conditions that are transmissible to people;

preparing for and responding to emergency situations involving animals.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the adopted rule will not impact local economies.

TAKINGS ASSESSMENT

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

REQUEST FOR COMMENT

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

STATUTORY AUTHORITY

HB 1363, as amended, would repeal §161.081(d) and establish §161.0601 which authorizes the Texas Animal Health Commission through rulemaking to issue and to set the fee for a certificate of veterinary inspection for the transport of domestic and exotic livestock and fowl. The provisions of the bill would take effect September 1, 2005. Furthermore the Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That is found in §161.054. That authority is found in §161.048.

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

§59.11. Certificate of Veterinary Inspections.

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

(b) The Commission shall assess a fee of five (\$5.00) dollars for each individual CVI. CVI's will be sold in books of twenty five (25) certificates per book.

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

accepted credit card. Phone orders may be made by calling 1-800-550-8242.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502263

Gene Snelson

General Counsel

Texas Animal Health Commission

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 719-0700



TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 1. LIBRARY DEVELOPMENT

SUBCHAPTER C. MINIMUM STANDARDS

FOR ACCREDITATION OF LIBRARIES IN THE STATE LIBRARY SYSTEM

13 TAC §1.77

The Texas State Library and Archives Commission proposes amendments to 13 TAC §1.77, regarding the level of public library local government support needed for accreditation as a member of the Texas Library System.

Deborah Littrell, Library Development Division Director, has determined that for the first five years the amendments are in effect there will be no fiscal implications for state government as a result of enforcing or administering the amended section. For the first five years the amendments are in effect there will be limited fiscal implications for local government as a result of enforcing or administering the amended section. Local governments whose public library loses accreditation could lose access to state library assistance programs including the privileges of Texas Library System membership, the Loan Star Libraries grant, and TexShare programs.

Ms. Littrell also has determined that for each year of the first five years the amendments are in effect the public benefits anticipated as a result of enforcing the amended section will be to help public libraries sustain their local government support. There are no cost implications to either small or micro-businesses or individual persons required to comply with the amended section.

Written comments on this proposal may be submitted to Deborah Littrell, Director, Library Development Division, Texas State Library and Archives Commission, Box 12927, Austin, Texas 78711-2927 or via fax to (512) 463-8800.

The amendments are proposed under the authority of Government Code §441.127, that provides the Commission authority to establish accreditation standards for system membership.

The proposed amendments affect the Government Code, §441.127.

§1.77. *Public Library: Local Government Support.*

(a) At least half of the annual local operating expenditures required to meet the minimum level of per capita support for accreditation must be from local government sources. A public library that expends at least \$13.50 [~~\$10~~] per capita is exempt from this membership criterion if it shows evidence of some library expenditures from local government sources and is open to citizens under identical conditions without charge. Local government sources are defined as money appropriated by library taxing districts, by school districts, or by city or county governments from their general revenue moneys.

(b) If a currently accredited library is closed by action of its governing body, the commission, following a public hearing, may revoke that library's current membership in the state library system. This section will not apply if only the library building is temporarily closed because of natural or man-made disasters, or building construction, renovation, or maintenance. The library may be re-accredited as a member in the state library system during the next regular accreditation process, assuming that, by July 31, the library reports data showing that it currently meets all of the appropriate minimum requirements for membership in the state library system (as listed in §1.74 of this subchapter, related to Local Operating Expenditures; §1.75 of this subchapter, related to Nondiscrimination; §1.78 of this subchapter, related to County Librarian's Certificate; §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library; §1.83 of this subchapter, related to Other Requirements; and §1.84 of this subchapter, related to Professional Librarian).

(c) If a currently accredited library suffers a funding reduction that causes the library to reduce its hours, staffing, or budget below its appropriate minimum requirements for membership in the state library system (as listed in §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library), the commission, following a public hearing, may revoke that library's current membership in the state library system. The library may be re-accredited as a member in the state library system during the next regular accreditation process, assuming that, by July 31, the library reports data showing that it currently meets all of the appropriate minimum requirements for membership in the state library system (as listed in §1.74 of this subchapter, related to Local Operating Expenditures; §1.75 of this subchapter, related to Nondiscrimination; §1.78 of this subchapter, related to County Librarian's Certificate; §1.81 of this subchapter, related to Quantitative Standards for Accreditation of Library; §1.83 of this subchapter, related to Other Requirements; and §1.84 of this subchapter, related to Professional Librarian).

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 31, 2005.

TRD-200502175

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: July 17, 2005

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



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND
ADMINISTRATION
SUBCHAPTER G. ADVISORY OPINIONS

22 TAC §131.101

The Texas Board of Professional Engineers proposes amendments to §131.101, relating to Advisory Opinions. The proposed amendment reformat and clarifies language concerning the subject of an advisory opinion.

The proposed rule change is in response to concerns that the existing rules do not meet the interpretation and intent of the statute. The original rule has been reformatted to clarify the rule language and to more accurately reflect the appropriate statutory language.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the requirements and process for Advisory Opinions.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§131.101. *Subject of an Advisory Opinion.*

(a) On its own initiative or at the request of any interested person, the Board shall prepare a written advisory opinion about:

(1) an interpretation of the Act; or

(2) the application of the Act to a person in regard to a specified existing or hypothetical factual situation.

(b) The Board shall respond to requests for opinions within 180 days unless the Board affirmatively states the Board's reason:

(1) for not responding to the request within 180 days; or

(2) for not responding to the request at all. [The Board will issue a written advisory opinion at the request of any interested person or at its own initiative regarding an interpretation or application of the Act and/or Board rules that advises how the law applies to a specified existing or hypothetical factual situation.]

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502298

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



22 TAC §131.103

The Texas Board of Professional Engineers proposes amendments to §131.103, relating to Advisory Opinions. The proposed amendment clarifies language concerning the content of an advisory opinion request.

The proposed rule change is in response to concerns that the existing rules do not meet the interpretation and intent of the statute. The original rule has been clarified to reflect the statutory language.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the requirements and process for Advisory Opinions.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§131.103. *Request for an Advisory Opinion.*

(a) A request for an advisory opinion shall include, at a minimum, sufficient information in order for [describe a specified factual situation]. The facts specified may be real or hypothetical. To permit the board to provide a complete response to the request, [s] The [the] requestor must provide the following, as applicable:

(1) requestor contact information,

(2) affected section(s) of the Act and/or board rules,

(3) description of the situation,

(4) reason engineering advisory opinion is requested,

(5) parties or stakeholders that will be affected by the opinion, if known, and

(6) any known, pending litigation involving the situation

(b) A request for an advisory opinion shall be in writing. A written request may be mailed, sent via electronic mail, hand-delivered, or faxed to the board at the agency office.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502299

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers proposes amendments to §133.11, relating to Types of Licenses. The proposed amendment clarifies language concerning the conditions under which a temporary license may be issued.

The proposed rule change eliminates the requirement that an applicant request a temporary license at the time of application.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the licensure process.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§133.11. Types of Licenses.

The board shall receive, evaluate and process all applications for licensure as a professional engineer received from individuals who assert through the application process that they meet the minimum requirements of §1001.302 of the Act. The board shall deny a license to any

applicant found not to have met all requirements of the Act and board rules.

(1) Standard License. Unless requested by the applicant or license holder, all licenses issued by the board shall be considered standard licenses. Standard licenses are fully renewable annually until such time as the board takes specific action to prevent renewal or provision of the Texas Engineering Practice Act prevents renewal.

(2) Reciprocal or Comity License: (U.S. states or territories). Pursuant to §1001.311 of the Act, the board has reviewed the licensing requirements of the jurisdictions listed in this paragraph and has found them to be substantially equivalent to the requirements in Texas. The board shall waive the application requirements of §133.21 for an applicant who is licensed in good standing with at least one of the jurisdictions listed in this paragraph and submits the documentation as required in §133.27(a) of this chapter. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a standard license. The board does not recognize any U.S. state or territory for reciprocity or comity at this time.

(3) Reciprocal or Comity License: (Canada and the United Mexican States through NAFTA). Pursuant to §1001.311 of the Act and the NAFTA Mutual Recognition Agreement, the board has reviewed the licensing requirements of Canada and the United Mexican States and has found them to be substantially equivalent to the requirements in Texas. A reciprocal or comity license issued under this paragraph has full status of and shall be issued as a temporary license. The board may waive the application requirements of §133.21 for applicants who:

(A) are currently licensed in good standing with at least one of the jurisdictions listed in this paragraph;

(B) meet the experience requirements of §133.69(a)(3)(A) or §133.69(a)(3)(B) of this chapter; and

(C) submit the documentation as required in §133.27(b) of this chapter.

(4) Temporary License. A temporary license holder shall be subject to all other rules and legal requirements to which a holder of a standard license is subject. A temporary license may only be renewed twice. The executive director shall be authorized to convert a standard license to a temporary license [at the time the standard license is issued provided a request for such has been received].

(5) Provisional. The Board does not issue provisional licenses at this time.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502300

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.73

The Texas Board of Professional Engineers proposes amendments to §133.73, relating to Examination Analysis. The proposed amendment adds language that will permit examinees to request regrading of the examination on the fundamentals of engineering.

The proposed rule change adds language that will permit examinees to request regrading of the examination on the fundamentals of engineering to match with current NCEES policy and procedures.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be increased accessibility in the examination process.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§133.73. Examination Analysis.

(a) In accordance with §1001.306(c) of the Act, the board will provide a written analysis furnished by the NCEES or by the board to anyone who has failed either the examination on the fundamentals of engineering or the examination on the principles and practice of engineering.

(b) Once the board has provided a written analysis of an examination, no further review or re-grading shall be available for the examination except as provided in subsection (c) of this section. However, the executive director may, at his or her discretion, review the administrative portions of an examination answer sheet to resolve administrative uncertainties and/or determine the manner in which an examination should be scored.

(c) An examinee may view the examination on the fundamentals of engineering or the principles and practice of engineering results or request regrading of such examination only as permitted by the uniform examination procedures set out by NCEES or by the board:

- (1) only at the date(s) and time(s) specified by the board in its letter notifying the examinee of his or her failure of the examination; and
- (2) provided that any costs associated with regrading by NCEES or by the board will be paid by the examinee.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502301

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.87

The Texas Board of Professional Engineers proposes amendments to §133.87, relating to Final Actions on Applications. The proposed amendment clarifies language concerning requirements for re-application.

The proposed rule change clarifies the requirements for re-application for licensure for an examinee that has been denied licensure based on failure to pass the principles and practice of engineering examination within the required time period.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the licensure process.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§133.87. Final Action on Applications.

(a) Upon approval of an application by the executive director, the licensing committee, or the board in a manner provided in this subchapter, the executive director shall:

- (1) approve an application subject to the applicant's taking and passing the examination on the principles and practice of engineering; or

(2) issue a license to an applicant who has passed the examination on the principles and practice of engineering or who has had that examination waived.

(b) The board shall deny an application if any of the following occurs:

(1) the application has been administratively withdrawn for a period of six months;

(2) three of the professional engineer board members or majority of the full board voted to deny an application on the basis that the applicant does not meet the requirements of §1001.302 of the Act; or

(3) the applicant did not pass the examination on the principles and practice of engineering in the prescribed time.

(c) An applicant who has been denied a license for failure to pass the examination on the principles and practice of engineering within the prescribed time may not re-apply for a license until one (1) year has passed from the date on the notification of failure to pass the examination or until the applicant has completed at least six (6) additional semester hours of formal college level classroom courses relevant to the applicant's dominant branch or discipline of experience.

(d) The board by vote shall confirm the action taken on a license at its next regularly scheduled meeting.

(e) The executive director shall advise the applicant in writing of any decision of the executive director, the licensing committee, or the board, as applicable.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502302

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



22 TAC §133.99

The Texas Board of Professional Engineers proposes new §133.99, concerning Processing of Applications with a Criminal Conviction. The Board proposes this action to clarify the process for handling applications in conjunction with Chapter 53 of the Texas Occupations Code.

The proposed new rule outlines the process the board will use in reviewing applications wherein the applicant has a criminal conviction. The rule directs the board to follow the requirements of Chapter 53 of the Texas Occupations Code in the review of the application and allows the board to deny the license application or examinations if applicable.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed new rule is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as proposed.

Mr. Kinney also has determined that for the first five years the proposed new rule is in effect the public benefit anticipated as a

result of enforcing the proposed new rule will be improved regulation of the licensure process.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no financial effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The new rule is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§133.99. Processing of Applications with a Criminal Conviction.

The Board shall follow the requirements of Chapter 53, Texas Occupations Code, regarding an applicant for a license and may deny a license or deny a request for an examination on the grounds that a person has been convicted of a felony or misdemeanor that directly relates to the duties of an engineer or the occupation of engineering.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502303

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.5

The Texas Board of Professional Engineers proposes amendments to §137.5, relating to Notification of Address and Employer Changes. The proposed amendment renames the section and clarifies language concerning requirements for reporting a criminal conviction by a license holder.

The proposed rule change clarifies the requirements for license holders to report any criminal convictions to the board.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended.

Mr. Kinney also has determined that for the first five years the proposed amendment is in effect the public benefit anticipated as

a result of enforcing the proposed amendment will be improved regulation of the licensure process.

Mr. Kinney has determined that there is no additional cost to the agency or to licensees. There is no financial effect to individuals required to comply with the rule as proposed. There is no effect to small or micro businesses.

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

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

§137.5. Notification of Address Change, Employment Change, and Criminal Convictions [Employer Changes].

(a) Each license holder shall notify the board in writing not later than 30 days after of a change in the person's personal mailing address or employment status.

(b) A notice informing the board of a change in employment status shall include, as applicable, the:

- (1) full legal trade or business name of the association or employment,
- (2) physical location and mailing address of the business,
- (3) telephone number of the business office,
- (4) type of business (corporation, assumed name, partnership, or self-employment through use of own name),
- (5) legal relationship and position of responsibility within the business,
- (6) effective date of this change; and
- (7) reason for this notification (changed employment or retired; firm went out of business or changed its name or location, etc.).

(c) Each license holder shall notify the Board in writing not later than 30 days after a misdemeanor or felony criminal conviction.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502304

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: July 17, 2005

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



PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 223. FEES

22 TAC §223.1

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

The Board of Nurse Examiners proposes the repeal of 22 Texas Administrative Code §223.1 (Fees). Effective February 1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. During the subsequent months, the fees were adjusted to consolidate the fees previously imposed by two different boards. Due to the need to rearrange the entire section, and to finalize the fees necessary to implement the budget of the 79th Legislative Session, the board proposes to repeal the existing rule and propose the adoption of a new §223.1 concurrent with this repeal.

Katherine A. Thomas, MN, RN, Executive Director, has determined that the rule repeal is necessary to cover legislative requirements and to alleviate confusion. Other than the increase in fees for registered nurses and applicants for licensure and potentially new nursing programs in the new proposed rule, there will be no fiscal implications for state or local government for the first five-year period as a result of enforcing or administering the repealed rule. Any additional costs the agency may incur as a result of implementing the fees will be absorbed by the agency.

Ms. Thomas has determined that the public benefit for the first five-year period of the proposed repeal is that the Board will be better able to fulfill its mission of protecting the public and carrying out the newly imposed statutes of the legislature. There will be no cost to small businesses but the new rule will affect all applicants for approval of nursing programs, applicants applying for initial licensure or endorsement, and all currently licensed registered nurses upon renewal of their licenses.

Written comments on the proposal may be submitted to Katherine A. Thomas, RN, MN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, 3-460, Austin, Texas 78701.

This repeal is proposed under §301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

No other rules, codes, or statutes will be affected by this proposed repeal.

§223.1. Fees.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502271

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-6823



22 TAC §223.1

The Board of Nurse Examiners proposes the adoption of 22 Texas Administrative Code §223.1 (Fees). Effective February

1, 2004, the Board of Nurse Examiners and the Board of Vocational Nurse Examiners were merged into one agency, the Board of Nurse Examiners. During the subsequent months, the fees were adjusted to consolidate the fees previously imposed by two different boards. Due to the need to rearrange the entire section, and to finalize the fees necessary to implement the budget of the 79th Legislative Session (Senate Bill 1), the board proposes to repeal the existing rule concurrently with this adoption. The legislature required criminal background checks on nurses in the 78th Legislative Session, but failed to fund such checks until the current session. The legislature also authorized additional funding for the Texas Peer Assistance Program for Nurses (TPAPN), pay raises for state employees, and a recoupment of a previous five percent reduction in the board's appropriations.

Katherine A. Thomas, MN, RN, Executive Director, has determined that the rule adoption is necessary to cover legislative requirements and to alleviate confusion. Other than the increase in fees for registered nurses and applicants for licensure and potentially new nursing programs in the new proposed rule, there will be no fiscal implications for state or local government for the first five-year period as a result of enforcing or administering the adopted rule. Any additional costs the agency may incur as a result of implementing the fees will be absorbed by the agency.

Ms. Thomas has determined that the public benefit for the first five-year period of the proposed adoption is that the Board will be better able to fulfill its mission of protecting the public and carrying out the newly imposed statutes of the legislature. There will be no cost to small businesses but the new rule will affect all applicants for approval of nursing programs, applicants applying for initial licensure or endorsement, and all currently licensed registered nurses upon renewal of their licenses.

Written comments on the proposal may be submitted to Katherine A. Thomas, RN, MN, Executive Director, Board of Nurse Examiners, 333 Guadalupe, 3-460, Austin, Texas 78701.

This adoption is proposed under §301.151 of the Texas Occupations Code which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties.

No other rules, codes, or statutes will be affected by this proposed adoption.

§223.1. Fees.

(a) The Board of Nurse Examiners has established reasonable and necessary fees for the administration of its functions.

- (1) Examination: \$100;
- (2) Endorsement: \$161;
- (3) Licensure renewal (each biennium): \$67;
- (4) reactivating from inactive status:
 - (A) less than four years--\$5 plus current renewal fee;
 - (B) more than four years--\$10 plus current renewal fee;
- (5) late fee for reactivation from delinquent status:
 - (A) less than 90 days--\$50 plus current licensure renewal fee;
 - (B) more than 90 days--\$100 plus current licensure renewal fee;
- (6) duplicate or substitute license: \$20;
- (7) duplicate or substitute permanent certificate: \$20;

- (8) issuance of a temporary permit under §301.258: \$15;
 - (9) approval of new nursing education programs: \$500;
 - (10) verification of licensure: \$5;
 - (11) verification of records: \$20;
 - (12) bad checks: \$30;
 - (13) Advanced Practice Nurse initial credentials: \$75;
 - (14) declaratory order of eligibility: \$150;
 - (15) eligibility determination: \$150;
 - (16) docketing fee in non disciplinary matters: \$600;
 - (17) Licensed Vocational Nurse, Retired, or Registered Nurse, Retired: \$10;
 - (18) Advanced Practice Nurse renewal: \$52;
 - (19) Initial Prescriptive Authority: \$25;
 - (20) outpatient anesthesia registry renewal: \$35;
 - (21) outpatient anesthesia inspection and advisory opinion: \$625;
 - (22) Federal Bureau of Investigations (FBI) and Department of Public Safety (DPS) criminal background check for licensees, initial licensure applicants and endorsement applicants: \$39; and
 - (23) Disciplinary monitoring fees as stated in a Board order.
- (b) all fees are non-refundable.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502272

Katherine Thomas

Executive Director

Board of Nurse Examiners

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-6823

◆ ◆ ◆

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 271. EXAMINATIONS

22 TAC §271.2

The Texas Optometry Board proposes amendments to §271.2 to require all applicants for license to provide a fingerprint card to the agency so that a criminal history record may be obtained from the Texas Department of Public Safety and the Federal Bureau of Investigation. Each applicant will be required by the amendments to submit the fee charged by the Texas Department of Public Safety for providing the record.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, the additional fees submitted by applicants will increase revenue by \$6,435.00 each year, although

the full amount of this fee will be remitted to the Texas Department of Public Safety and the Federal Bureau of Investigation.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be assurances that applicants will not be eligible for license with undisclosed criminal history.

The economic costs for persons who are required to comply with the amendments, includes the \$39.00 fee to be submitted to the agency and if charged, a nominal fee to the local agency taking the fingerprints. No disparate effect is foreseen on small or micro-businesses as the fee is imposed on individual professionals regardless of the size of any business. Comments are solicited if a disparate cost of compliance can be established.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.254, and Government Code §411.122. No other sections are affected by the amendment.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.254 as authorizing the agency to require applicants to submit sufficient information to establish that the applicant is of good moral character; and §411.122 authorizes the agency to obtain criminal history records from the Federal Bureau of Investigation.

§271.2. Applications.

(a) (No change).

(b) Such application shall contain references as to good moral character from at least two licensed optometrists in good standing in the state of licensure and who are actively engaged in the practice of optometry. In the event this is not possible, affidavits from two persons not related to the applicant or to each other, who have known the applicant for at least five years, attesting to the good moral character of the applicant, will be acceptable. The applicant shall report all felony and misdemeanor criminal convictions on the application. Failure of an applicant to report every criminal conviction is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the board to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also submit completed Federal Bureau of Investigation (FBI) fingerprint cards provided by the Board so the Board may obtain a criminal history record.

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

(h) The fee for taking the initial examination shall be \$150. Each applicant shall also submit an additional fee to the Board in the amount charged by the Texas Department of Public Safety for providing the criminal history record. Any applicant who is refused a license because of failure to pass the first examination shall be permitted to take a second examination on the payment of \$150, provided the second examination is taken within a period of one year.

(i) (No change).

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502197

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-8502



CHAPTER 273. GENERAL RULES

22 TAC §273.4, §273.8

The Texas Optometry Board proposes amendments to §273.4 and §273.8, concerning fees, contingent upon being required to do so by the Appropriations Bill or the passage of House Bill 1025, 79th Legislature. The amendments raise the license renewal fees by \$5.00 in order to provide funding for the appropriations made by the 79th Legislature. Amendments also change the late renewal fee to 150 percent of the renewal fee for renewals one to ninety days late, and 200 percent of the renewal amount for renewals 90 to 365 days late to correspond with amendments contained in House Bill 1025. Each new license applicant will be required by the amendments to submit a \$39.00 fee to be submitted by the Board to the Texas Department of Public Safety to obtain a criminal history record.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, there will be increased revenue of \$16,690.00 of the first year of the biennium and each year thereafter that the amended license fee amounts are in effect. Increased revenue of \$2,775.00 each year will be realized due to the modification of the late renewal amount. The additional fees submitted by applicants will increase revenue by \$6,435.00 each year, although the full amount of this fee will be remitted to the Texas Department of Public Safety and the Federal Bureau of Investigation.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be assurances that applicants will not be eligible for license with undisclosed criminal history, that late renewal fees are computed similarly, and that funding of programs authorized by the 79th Legislature including additional investigative travel, acquisition of information technology and exempt salary increase are implemented.

The economic costs for persons who are required to comply with the amendments, including small businesses, will be the same additional \$5.00 license fee for each license holder. For individuals failing to timely renew, late renewal fees will increase \$12.50 if renewal is late less than ninety days, and \$25.00 if the renewal is 90 days or more late. No disparate effect is foreseen on small or micro-businesses as the fees are imposed on individual professionals regardless of the size of any business. The additional criminal record charge is also imposed on individual applicants. Applicants may be required to submit a nominal fee to the local

agency taking the fingerprints. Comments are solicited if a separate cost of compliance can be established.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, §351.152, Government Code §411.122, and House Bill 1025, 79th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act, and §411.122 authorizing the agency to obtain criminal history records. House Bill 1025, 79th Legislature, changes the computation of the late renewal fee.

§273.4. *Fees (Not Refundable).*

(a) Examination Fee \$150.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(b) Initial Therapeutic License \$50.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$255.00

(c) Provisional License \$75.00

(d) Limited Faculty License \$50.00 Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(e) Duplicate License (lost, destroyed, or name change) \$25.00

(f) Duplicate/Amended Renewal Certificate (lost, destroyed, inactive, active) \$25.00

(g) License Renewal \$180.00 [~~\$175.00~~] plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total fees: \$381.00 [~~\$376~~] active renewal; \$181 [~~\$176~~] inactive renewal

(h) License fee for late renewal, one to 90 days late: \$270.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total license fees: \$471.00 active renewal; \$271.00 inactive renewal [~~Late fees (for all renewals, one to 90 days) \$75.00~~]

(i) License fee for late renewal, 90 days to one year late: \$360.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total license fees: \$561.00 active renewal; \$361.00 inactive renewal [~~Late fees (for all renewals, 90 days to 1 year) \$150.00~~]

(j) Late fees (for all renewals with delayed continuing education) \$175.00

(k) Therapeutic Certification Application \$80.00

(l) Duplicate Therapeutic or Optometric Glaucoma Specialist Certificate (lost, destroyed) \$25.00

(m) License Without Examination Fee \$300.00 Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(n) Optometric Glaucoma Specialist License Application \$50.00

§273.8. *Renewal of License.*

(a) Expired license.

(1) If a license is not renewed on or before January 1 of each year, it becomes expired.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the amount of one and one-half times the renewal fee. [~~the required renewal fee and a fee that is one-half of the examination fee for the license as established by §273.4; of this title (relating to Optometry Fees).~~]

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board the amount of two times the renewal fee. [~~all unpaid renewal fees and a fee that is equal to the examination fee for the license.~~]

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an initial license.

(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this title, above. [~~§273.4 of this title (relating to Optometry Fees), and a fee that is equal to the examination fee for the license.~~]

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

(b) (No change).

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502198

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-8502

◆ ◆ ◆
CHAPTER 277. PRACTICE AND PROCEDURE

22 TAC §277.8

The Texas Optometry Board proposes new rule §277.8 concerning temporary suspension or restriction of license privileges, contingent upon authority provided by the passage of House Bill 1025, 79th Legislature. The amendments establish the procedure for the temporary suspension or restriction of a license, including appointment and meeting of the committee, the requirement for an informal conference, and referral to the State Office of Administrative Hearings.

Chris Kloeris, executive director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that the agency will be able to act quickly to temporarily suspend or restrict the license of a licensee who constitutes a continuing or imminent threat to the public welfare.

The new rule, pursuant to statutory authority in House Bill 1025, allows the agency to expedite disciplinary action against persons who are required to comply with the amendment, which may accelerate costs required to defend disciplinary action taken by the agency, but will not impose any new costs. It has also been determined that the new rule will not impose any additional costs to small or micro businesses.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is thirty days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §351.151, and House Bill 1025, 79th Legislature. No other sections are affected by the amendments.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession, and House Bill 1025, 79th Legislature, as authorizing the agency to temporarily suspend or restrict a license.

§277.8. Emergency Temporary Suspension or Restriction.

(a) Annually, the chair of the Board shall appoint for approval by the Board a three-member disciplinary panel ("panel") and alternate, consisting of at least one public member, for the purpose of making a determination of whether a license should be temporarily suspended or restricted under Section 351.5015 of the Act. The chair shall name one of the members as chair of the panel. If a member of the panel is recused, or unable to participate in the panel, the alternate Board member may serve in the member's place.

(b) The panel shall meet to receive information on a complaint indicating that a licensee's continued practice of optometry or therapeutic optometry may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the panel concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the panel may restrict or suspend the license for a temporary, stated period of time.

(c) The disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(d) The panel may suspend a license under this section without notice or a hearing on the complaint, provided the Investigation-Enforcement Committee shall meet in an informal conference as soon as practical, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.

(e) Following the informal conference, the Investigation-Enforcement Committee shall take one of the following actions:

(1) Lift the temporary suspension or restriction and reinstate the license without conditions.

(2) Negotiate an agreed settlement order that will dissolve, continue or modify the suspension or restriction, or impose other sanctions as appropriate. The agreed order shall be presented to the Board at the next available Board Meeting for approval.

(3) Prepare a complaint affidavit setting out the details of the complaint and recommended sanctions, and forward the complaint affidavit to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

(f) The panel and the Investigation-Enforcement Committee may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The panel or committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502199

Chris Kloeris

Executive Director

Texas Optometry Board

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-8502



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER D. MISCELLANEOUS

22 TAC §281.80

The Texas State Board of Pharmacy proposes amendments to §291.80, concerning Grounds for Discipline for a Pharmacy Technician. The amendments, if adopted, will clarify the grounds for discipline of a pharmacy technician registration apply to an individual seeking a registration as a pharmacy technician, as well as making an application to any entity that certifies or registers pharmacy technicians.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that individuals seeking registration as pharmacy technicians provide truthful information to the Board or any entity that certifies or registers pharmacy technicians. There is no fiscal impact for small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., July 29, 2005.

The amendments are proposed under §§551.002, 554.051, and 568.003 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.003 (a) as authorizing the agency to adopt rules establishing the grounds for refusal to issue or renew a pharmacy technician registration.

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

§281.80. *Grounds for Discipline for a Pharmacy Technician.*

(a) (No change.)

(b) For the purposes of the Act, §568.003(a)(3), the terms "fraud," "deceit," or "misrepresentation" shall apply to an individual seeking a registration as a pharmacy technician, as well as making an application to any entity that certifies or registers pharmacy technicians, and shall be defined as follows:

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

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502287

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 17, 2005

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



CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.26

The Texas State Board of Pharmacy proposes amendments to §291.26, concerning Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will correct an error made to the rule when previously submitted to the Texas Register.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to include the definitions regarding sterile compounding which were inadvertently left out of the rules when previously submitted to the Texas Register.

There is no fiscal impact for small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., July 29, 2005.

The amendments are proposed under §551.002, and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §554.051(b) as authorizing the agency to make a rule concerning the operation of a licensed pharmacy located in this state applicable to a pharmacy licensed by the board that is located in another state, if the board determines the rule is necessary to protect the health and welfare of the citizens of this state

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

§291.26. *Pharmacies Compounding Sterile Pharmaceuticals.*

(a) (No change.)

(b) Definitions. In addition to the definitions for specific license classifications, the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ACPE--Accreditation Council for Pharmacy Education.

(2) Airborne particulate cleanliness class--The level of cleanliness specified by the maximum allowable number of particles per cubic meter of air as specified in the International Organization of Standardization (ISO) Classification Air Cleanliness (ISO 14644-1). For example:

(A) ISO Class 5 (formerly Class 100) is an atmospheric environment that contains less than 3,520 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100 particles 0.5 microns in diameter per cubic foot of air);

(B) ISO Class 7 (formerly Class 10,000) is an atmospheric environment that contains less than 352,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 10,000 particles 0.5 microns in diameter per cubic foot of air); and

(C) ISO Class 8 (formerly Class 100,000) is an atmospheric environment that contains less than 3,520,000 particles 0.5 microns in diameter per cubic meter of air (formerly stated as 100,000 particles 0.5 microns in diameter per cubic foot of air).

(3) Ancillary supplies--Supplies necessary for the administration of compounded sterile pharmaceuticals.

(4) Aseptic preparation--The technique involving procedures designed to preclude contamination of drugs, packaging, equipment, or supplies by microorganisms during processing.

(5) Automated compounding or counting device--An automated device that compounds, measures, counts, and/or packages a specified quantity of dosage units for a designated drug product.

(6) Batch preparation compounding--Compounding of multiple sterile-product units, in a single discrete process, by the

same individual(s), carried out during one limited time period. Batch preparation/compounding does not include the preparation of multiple sterile-product units pursuant to patient specific medication orders.

(7) Beyond-use date--The date after which a compounded preparation should not be used and is determined from the date the preparation was compounded.

(8) Biological Safety Cabinet--Containment unit suitable for the preparation of low to moderate risk agents where there is a need for protection of the product, personnel, and environment, according to the International Organization of Standardization (ISO) Specifications for testing and monitoring to prove continued compliance with ISO 14644-1 and/or ISO 14644-2.

(9) Clean room--A room in which the concentration of airborne particles is controlled, and there are one or more clean zones according to the International Organization of Standardization (ISO) Specifications for testing and monitoring to prove continued compliance with ISO 14644-1 and/or ISO 14644-2.

(10) Clean zone--A defined space in which the concentration of airborne particles is controlled to meet a specified airborne particulate cleanliness class.

(11) Component--Any ingredient intended for use in the compounding of a drug product, including those that may not appear in such product.

(12) Compounding--The preparation, mixing, assembling, packaging, or labeling of a drug or device:

(A) as the result of a practitioner's prescription drug or medication order or initiative based on the practitioner-patient pharmacist relationship in the course of professional practice;

(B) in anticipation of prescription drug or medication orders based on routine, regularly observed prescribing patterns; or

(C) for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale or dispensing.

(13) Controlled area--The area designated for preparing sterile pharmaceuticals.

(14) Critical site--Any opening providing a direct pathway between a sterile product and the environment or any surface coming in direct contact with the product and the environment.

(15) Cytotoxic--A pharmaceutical that has the capability of killing living cells.

(16) Device--An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, that is required under federal or state law to be ordered or prescribed by a practitioner.

(17) Process validation--Documented evidence providing a high degree of assurance that a specific process will consistently produce a product meeting its predetermined specifications and quality attributes.

(18) SOPs--Standard operating procedures.

(19) Quality assurance--The set of activities used to assure that the process used in the preparation of sterile drug products lead to products that meet predetermined standards of quality.

(20) Quality control--The set of testing activities used to determine that the ingredients, components (e.g., containers), and final sterile pharmaceuticals prepared meet predetermined requirements with respect to identity, purity, non-pyrogenicity, and sterility.

(21) Sterile pharmaceutical--A dosage form free from living micro-organisms.

(22) USP/NF--The current edition of the United States Pharmacopeia/National Formulary.

(c) - (e) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502289

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 17, 2005

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



SUBCHAPTER D. INSTITUTIONAL PHARMACY (CLASS C)

22 TAC §291.73

The Texas State Board of Pharmacy proposes amendments to §291.73, concerning Personnel. The amendments, if adopted, will clarify that a pharmacist-in-charge may be in charge of one facility with 101 beds or more and one facility with 100 beds or less provided the total number of beds does not exceed 150 beds.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to clarify that a pharmacist-in-charge may be in charge of one facility with 101 beds or more and one facility with 100 beds or less provided the total number of beds does not exceed 150 beds. There is no fiscal impact for small or large businesses or to other entities which are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX (512) 305-8082. Comments must be received by 5 p.m., July 29, 2005.

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

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

§291.73. *Personnel.*

(a) (No change.)

(b) Pharmacist-in-charge.

(1) General.

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

(C) A pharmacist-in-charge may be in charge of one facility with 101 beds or more and one facility with 100 beds or less provided the total number of beds does not exceed 150 beds.

(D) [(C)] The pharmacist-in-charge shall be assisted by additional pharmacists and pharmacy technicians commensurate with the scope of services provided.

(E) [(D)] If the pharmacist-in-charge is employed on a part-time or consulting basis, a written agreement shall exist between the facility and the pharmacist, and a copy of the written agreement shall be made available to the board upon request.

(2) (No change.)

(c) - (f) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502291

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 17, 2005

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



22 TAC §291.74

The Texas State Board of Pharmacy proposes amendments to §291.74 concerning Operational Standards. The amendments, if adopted, will require Class C pharmacies to be locked by key, combination, mechanical, or electronic means to prohibit access by unauthorized individuals. In addition, the amendments, if adopted, will clarify that an electronic reference library maintained by the pharmacy must be accessible by pharmacy personnel at all times.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure the security of Class C pharmacies and prevent the diversion of prescription drugs from the pharmacies.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX 512/305-8082. Comments must be received by 5 pm, July 29, 2005.

There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

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

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

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

§291.74. Operational Standards.

(a) (No change.)

(b) Environment.

(1) General requirements.

[(A) The institutional pharmacy shall be enclosed and lockable.]

(A) [(B)] The institutional pharmacy shall have adequate space necessary for the storage, compounding, labeling, dispensing, and sterile preparation of drugs prepared in the pharmacy, and additional space, depending on the size and scope of pharmaceutical services.

(B) [(C)] The institutional pharmacy shall be arranged in an orderly fashion and shall be kept clean. All required equipment shall be clean and in good operating condition.

(C) [(D)] A sink with hot and cold running water exclusive of restroom facilities shall be available to all pharmacy personnel and shall be maintained in a sanitary condition at all times.

(D) [(E)] The institutional pharmacy shall be properly lighted and ventilated.

(E) [(F)] The temperature of the institutional pharmacy shall be maintained within a range compatible with the proper storage of drugs. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration.

(F) [(G)] If the institutional pharmacy has flammable materials, the pharmacy shall have a designated area for the storage of flammable materials. Such area shall meet the requirements set by local and state fire laws.

(G) [(H)] The institutional pharmacy shall store anti-septics, other drugs for external use, and disinfectants separately from internal and injectable medications.

(2) Security requirements.

(A) The [All areas occupied by an] institutional pharmacy shall be enclosed and capable of being locked by key, [or] combination or other mechanical or electronic means, so as to prohibit [prevent] access by unauthorized individuals. [personnel by force.] Only individuals authorized by the pharmacist-in-charge shall enter the pharmacy.

(B) Each pharmacist on duty shall be responsible for the security of the institutional pharmacy, including provisions for adequate safeguards against theft or diversion of dangerous drugs, controlled substances, and records for such drugs.

(C) The institutional pharmacy shall have locked storage for Schedule II controlled substances and other drugs requiring additional security.

(c) (No change.)

(d) Library. A reference library shall be maintained that [which] includes the following in hard-copy or electronic format and that pharmacy personnel shall be capable of accessing at all times:

(1) current copies of the following:

- (A) Texas Pharmacy Act and rules;
 - (B) Texas Dangerous Drug Act and rules;
 - (C) Texas Controlled Substances Act and regulations;
- and
- (D) Federal Controlled Substances Act and regulations (or official publication describing the requirements of the Federal Controlled Substances Act and regulations);

(2) at least one current or updated reference from each of the following categories:

(A) drug interactions. A reference text on drug interactions, such as Drug Interaction Facts. A separate reference is not required if other references maintained by the pharmacy contain drug interaction information including information needed to determine severity or significance of the interaction and appropriate recommendations or actions to be taken;

(B) a general information reference text, such as:

- (i) Facts and Comparisons with current supplements;
- (ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);
- (iii) AHFS Drug Information with current supplements;
- (iv) Remington's Pharmaceutical Sciences; or
- (v) Clinical Pharmacology;

(3) a current or updated reference on injectable drug products, such as Handbook of Injectable Drugs;

(4) basic antidote information and the telephone number of the nearest regional poison control center;

(5) metric-apothecary weight and measure conversion charts.

(e) Absence of a pharmacist.

(1) Medication orders.

(A) In facilities with a full-time pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for immediate therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices. The record shall contain the following information:

- (I) name of patient;
- (II) name of device or drug, strength, and dosage form;
- (III) dose prescribed;
- (IV) quantity taken;
- (V) time and date; and
- (VI) signature (first initial and last name or full signature) or electronic signature of person making withdrawal.

(iv) The original or direct copy of the medication order may substitute for such record, providing the medication order meets all the requirements of clause (iii) of this subparagraph.

(v) The pharmacist shall verify the withdrawal and perform a drug regimen review as specified in subsection (g)(1)(B) of this section as soon as practical, but in no event more than 72 hours from the time of such withdrawal.

(B) In facilities with a part-time or consultant pharmacist, if a practitioner orders a drug for administration to a bona fide patient of the facility when the pharmacist is not on duty, or when the pharmacy is closed, the following is applicable.

(i) Prescription drugs and devices only in sufficient quantities for therapeutic needs may be removed from the institutional pharmacy.

(ii) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(iii) A record shall be made at the time of withdrawal by the authorized person removing the drugs and devices; the record shall meet the same requirements as specified in subparagraph (A)(iii) and (iv) of this paragraph.

(iv) The pharmacist shall verify the withdrawal and perform a drug regimen review as specified in subsection (g)(1)(B) of this section after a reasonable interval, but in no event may such interval exceed seven days.

(2) Floor stock. In facilities using a floor stock method of drug distribution, the following is applicable.

(A) Prescription drugs and devices may be removed from the pharmacy only in the original manufacturer's container or prepackaged container.

(B) Only a designated licensed nurse or practitioner may remove such drugs and devices.

(C) A record shall be made at the time of withdrawal by the authorized person removing the drug or device; the record shall contain the following information:

- (i) name of the drug, strength, and dosage form;
- (ii) quantity removed;
- (iii) location of floor stock;
- (iv) date and time; and
- (v) signature (first initial and last name or full signature) or electronic signature of person making the withdrawal.

(D) The pharmacist shall verify the withdrawal after a reasonable interval, but in no event may such interval exceed seven days.

(f) Drugs.

(1) Procurement, preparation and storage.

(A) The pharmacist-in-charge shall have the responsibility for the procurement and storage of drugs, but may receive input from other appropriate staff of the facility, relative to such responsibility.

(B) The pharmacist-in-charge shall have the responsibility for determining specifications of all drugs procured by the facility.

(C) Institutional pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

(i) the pharmacy is owned by a charitable organization described in the Internal Revenue Code of 1986, or by a city, state or county government;

(ii) the pharmacy is a part of a health care entity which provides health care primarily to indigent or low income patients at no or reduced cost;

(iii) the samples are for dispensing or provision at no charge to patients of such health care entity; and

(iv) the samples are possessed in compliance with the federal Prescription Drug Marketing Act of 1986.

(D) All drugs shall be stored at the proper temperatures, as defined by the following.

(i) Cold--Any temperature not exceeding 8 degrees Centigrade (46 degrees Fahrenheit). A refrigerator is a cold place in which the temperature is maintained thermostatically between 2 and 8 degrees Centigrade (36 and 46 degrees Fahrenheit). A freezer is a cold place in which the temperature is maintained thermostatically between -20 and -10 degrees Centigrade (-4 and 14 [-14] degrees Fahrenheit).

(ii) Cool--Any temperature between 8 and 15 degrees Centigrade (46 and 59 degrees Fahrenheit). An article for which storage in a cool place is directed may, alternatively, be stored in a refrigerator unless otherwise specified in the labeling.

(iii) Room temperature--The temperature prevailing in a working area. Controlled room temperature is a temperature thermostatically between 15 and 30 degrees Centigrade (59 and 86 degrees Fahrenheit).

(iv) Warm--Any temperature between 30 and 40 degrees Centigrade (86 and 104 degrees Fahrenheit).

(v) Excessive heat--Any temperature above 40 degrees Centigrade (104 degrees Fahrenheit).

(vi) Protection from freezing where, in addition to the risk of breakage of the container, freezing subjects a product to loss of strength or potency, or to destructive alteration of the dosage form, the container label bears an appropriate instruction to protect the product from freezing.

(E) Any drug bearing an expiration date may not be distributed beyond the expiration date of the drug.

(F) Outdated and other unusable drugs shall be removed from stock and shall be quarantined together until such drugs are disposed of properly.

(2) Formulary.

(A) A formulary shall be developed by the facility committee performing the pharmacy and therapeutics function for the facility.

(B) The pharmacist-in-charge or pharmacist designated by the pharmacist-in-charge shall be a full voting member of the committee performing the pharmacy and therapeutics function for the facility, when such committee is performing the pharmacy and therapeutics function.

(3) Pre-packaging of drugs.

(A) Drugs may be pre-packaged in quantities suitable for internal distribution only by a pharmacist or by supportive personnel under the direction and direct supervision of a pharmacist.

(B) The label of a pre-packaged unit shall indicate:

(i) brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(ii) facility's unique lot number;

(iii) expiration date based on currently available literature; and

(iv) quantity of the drug, if the quantity is greater than one.

(C) Records of pre-packaging shall be maintained to show:

(i) name of the drug, strength, and dosage form;

(ii) facility's unique lot number;

(iii) manufacturer or distributor;

(iv) manufacturer's lot number;

(v) expiration date;

(vi) quantity per prepackaged unit;

(vii) number of prepackaged units;

(viii) date packaged;

(ix) name, initials, or electronic signature of the preparer; and

(x) name, initials, or electronic signature of the responsible pharmacist.

(D) Stock packages, repackaged units, and control records shall be quarantined together until checked/released by the pharmacist.

(4) Sterile pharmaceuticals prepared in a location other than the pharmacy. A distinctive supplementary label shall be affixed to the container of any admixture. The label shall bear at a minimum:

(A) patient's name and location;

(B) name and amount of drug(s) added;

(C) name of the basic solution;

(D) name or identifying code of person who prepared admixture; and

(E) expiration date of solution.

(5) Distribution.

(A) Medication orders.

(i) Drugs may be given to patients in facilities only on the order of a practitioner. No change in the order for drugs may be made without the approval of a practitioner.

(ii) Drugs may be distributed only from the original or a direct copy of the practitioner's medication order.

(iii) Supportive personnel may not receive verbal medication orders.

(iv) Institutional pharmacies shall be exempt from the labeling provisions and patient notification requirements

of §562.006 and §562.009 of the Act, as respects drugs distributed pursuant to medication orders.

(B) Procedures.

(i) Written policies and procedures for a drug distribution system (best suited for the particular institutional pharmacy) shall be developed and implemented by the pharmacist-in-charge, with the advice of the committee performing the pharmacy and therapeutics function for the facility.

(ii) The written policies and procedures for the drug distribution system shall include, but not be limited to, procedures regarding the following:

- (I) pharmaceutical care services;
- (II) handling, storage and disposal of cytotoxic drugs and waste;
- (III) disposal of unusable drugs and supplies;
- (IV) security;
- (V) equipment;
- (VI) sanitation;
- (VII) reference materials;
- (VIII) drug selection and procurement;
- (IX) drug storage;
- (X) controlled substances;
- (XI) investigational drugs, including the obtaining of protocols from the principal investigator;
- (XII) prepackaging and manufacturing;
- (XIII) stop orders;
- (XIV) reporting of medication errors, adverse drug reactions/events, and drug product defects;
- (XV) physician orders;
- (XVI) floor stocks;
- (XVII) drugs brought into the facility;
- (XVIII) furlough medications;
- (XIX) self-administration;
- (XX) emergency drug supply;
- (XXI) formulary;
- (XXII) monthly inspections of nursing stations and other areas where drugs are stored, distributed, administered or dispensed;
- (XXIII) control of drug samples;
- (XXIV) outdated and other unusable drugs;
- (XXV) routine distribution of inpatient medication;
- (XXVI) preparation and distribution of sterile pharmaceuticals;
- (XXVII) handling of medication orders when a pharmacist is not on duty;
- (XXVIII) use of automated compounding or counting devices;

(XXIX) use of data processing and direct imaging systems;

(XXX) drug administration to include infusion devices, drug delivery systems, and first dose monitoring;

(XXXI) drug labeling;

(XXXII) recordkeeping;

(XXXIII) quality assurance/quality control;

(XXXIV) duties and education and training of professional and nonprofessional staff; and

(XXXV) emergency preparedness plan, to include continuity of patient therapy and public safety.

(g) - (j) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502292

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 17, 2005

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



CHAPTER 297. PHARMACY TECHNICIANS

22 TAC §297.3

The Texas State Board of Pharmacy proposes amendments to §297.3 concerning Registration Requirements. The amendments, if adopted, will clarify the length of time that an individual seeking registration as a pharmacy technician may be working to achieve a high school or equivalent diploma.

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

Ms. Dodson has determined that, for each year of the first five-year period the rule will be in effect, the public benefit anticipated as a result of enforcing the rule will be to ensure that individuals seeking registration as pharmacy technicians complete the requirements of obtaining a high school or equivalent diploma.

There is no fiscal impact for small or large businesses or to other entities who are required to comply with this section.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, FAX 512/305-8082. Comments must be received by 5 pm, July 29, 2005.

The amendments are proposed under sections 551.002, 554.051, and 568.001 of the Texas Pharmacy Act (Chapters 551-566 and 568-569, Texas Occupations Code). The Board interprets section 551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets section 554.051(a)

as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets section 568.001 as authorizing the agency to establish registration requirements for pharmacy technicians.

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

§297.3. *Registration Requirements.*

(a) (No change.)

(b) Initial registration.

(1) Each applicant for registration shall:

(A) have a high school or equivalent diploma (e.g., GED), or be working to achieve a high school or equivalent diploma. For the purpose of this clause, an applicant for registration may be working to achieve a high school or equivalent diploma for no more than two years; and

~~[(A) have a high school or equivalent diploma, e.g., GED, or be currently enrolled in a program which awards such a diploma; and]~~

(B) either have:

(i) taken and passed the Pharmacy Technician Certification Board's National Pharmacy Technician Certification Examination or other examination approved by the board and have a current certification certificate; or

(ii) been granted an exemption from certification by the board as specified in §297.7 of this title (relating to Exemption from Pharmacy Technician Certification Requirements); and

(C) complete the Texas application for registration. Any fraudulent statement made in the application is grounds for denial of the application; if such application is granted, any fraudulent statement is grounds for suspension or revocation of any registration granted by the board; and

(D) pay the registration fee specified in §297.4 of this title (relating to Fees).

(2) New pharmacy technician registrations shall be assigned an expiration date and the fee shall be prorated based on the assigned expiration date.

(3) Once an applicant has successfully completed all requirements of registration, and the board has determined there are no grounds to refuse registration, the applicant will be notified of registration as a pharmacy technician and of his or her pharmacy technician registration number.

(c) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502288

Gay Dodson, R.Ph.

Executive Director/Secretary

Texas State Board of Pharmacy

Earliest possible date of adoption: July 17, 2005

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



PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §§651.1 - 651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes amendments to §651.1, Occupational Therapy Board Fees, §651.2, Physical Therapy Board Fees and §651.3, Administrative Service Fees. The amendments will increase some fees to support the FY2006/2007 Appropriations Act.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be more efficient processing of applications and renewals and investigations of violations of the Practice Acts. There will be a minimal effect on small businesses and individuals who are required to comply with the rules as proposed.

Comments on the proposed amendments may be submitted to Jennifer Jones, Executive Assistant, Executive Council of Physical Therapy and Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: jennifer.jones@mail.capnet.state.tx.us.

The amendments are proposed under Title 3, Subtitle H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupations Code is affected by the proposed amendments.

§651.1. *Occupational Therapy Board Fees.*

(a) (No change.)

(b) Temporary License.

(1) Occupational Therapist--~~\$70~~ [\$50].

(2) Occupational Therapy Assistant--~~\$55~~ [\$35].

(c) - (h) (No change.)

(i) Registration Fees--Facilities.

(1) (No change.)

(2) Registration of Each Additional Facility--~~\$124~~ [\$114].

(j) Renewal Fees--Facilities.

(1) (No change.)

(2) Renewal of Registration of Each Additional Site--~~\$126~~ [\$106].

(k) - (l) (No change.)

§651.2. *Physical Therapy Board Fees.*

(a) Application/Permanent License.

- (1) PT--\$170 [~~\$165~~].
- (2) PTA--\$116 [~~\$111~~].
- (b) (No change.)
- (c) Temporary License.
 - (1) PT--\$80 [~~\$60~~].
 - (2) PTA--\$60 [~~\$40~~].
- (d) - (i) (No change.)
- (j) Facility Registration.
 - (1) (No change.)
 - (2) Additional site--\$119 [~~\$114~~].
- (k) Facility Renewal.
 - (1) (No change.)
 - (2) Additional site--\$126 [~~\$106~~].
- (l) - (m) (No change.)

§651.3. Administrative Services Fees.

- (a) Verification/Transfer of Licensure--\$45 [~~\$40~~].
- (b) Duplicate/Replacement License--\$30 [~~\$25~~].
- (c) Duplicate Renewal Certificate/Wallet Card--\$30 [~~\$25~~].
- (d) Duplicate of Facility Registration Certificate--\$30 [~~\$25~~].
- (e) - (g) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502258

John Maline

Executive Director

Executive Council of Physical Therapy and Occupational Therapy Examiners

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 305-6900



PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER A. THE BOARD

22 TAC §§681.2, 681.4, 681.14

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.2, 681.4, 681.14, 681.41, 681.45, 681.49, 681.52, 681.72, 681.73, 681.82, 681.91 - 681.93, 681.101 - 681.103, 681.111, 681.124 - 681.126, 681.141, 681.144, 681.162, 681.164, 681.166, 681.167, 681.171; new rules §§681.181, 681.182, and 681.184, and the repeal of §§681.104, 681.163, 681.181, 681.182, and

681.184, concerning the licensing and regulation of professional counselors.

Texas 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 681.1-681.16, 681.31, 681.41-681.52, 681.71-681.73, 681.81-681.83, 681.91-681.93, 681.101-681.104, 681.111-681.113, 681.121-681.127, 681.141-681.147, 681.161-681.171, 681.181-681.184, and 681.201-681.204 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist because rules concerning the regulation of professional counselors are necessary in order to protect public health, safety, and welfare. Sections 681.1, 681.3, 681.5-681.13, 681.15, 681.16, 681.31, 681.42-681.44, 681.46-681.48, 681.50, 681.51, 681.71, 681.81, 681.83, 681.104, 681.112, 681.113, 681.121-681.123, 681.127, 681.142-681.143, 681.145-681.147, 681.161, 681.163, 681.165, 681.168-681.170, 681.183, and 681.201-681.204 are not proposed for change, but are open for public comment. Some sections were determined to be obsolete and are proposed for repeal. Other sections are proposed for amendment in order to reflect current legal and policy considerations, to improve draftmanship, to reflect current operating procedure, to implement the national counselor examination and the Texas jurisprudence examination for Texas counselor applicants and interns, and to make corrections and clarifications. The new examinations are proposed in order to implement pending legislation resulting from the Sunset Advisory Commission's review of the board. All proposed rule changes and repeals are the result of a comprehensive rule review by the board and its staff.

In general, each section was reviewed in order to ensure appropriate subchapter, section, and paragraph organization; to ensure clarity; to ensure accuracy of legal citations; to delete repetitive, obsolete, unenforceable, or unnecessary language; and to make the rules more accessible, understandable, and usable.

Section 681.2 is proposed for amendment to clarify the definition of "counseling-related field" and to correct the name of the department.

Section 681.4(a) is proposed for amendment to clarify that a quorum of the board is a majority of the members.

Section 681.14(a)(2) is proposed for amendment to provide for flexibility as examination fees that are established and collected by third parties may change over time.

Section 681.41(e) is proposed for amendment to require that information be provided to clients prior to the provision of counseling services. Subsection (g) is proposed for amendment to eliminate the use of the term telepractice. Subsection (k)(2) is proposed for amendment to eliminate repetitive language and improve draftmanship. Subsection (u) is proposed for amendment to eliminate the use of the term flagrant.

Section 681.45(c) is proposed for amendment to clarify that Health and Safety Code, Chapter 611, also relates to confidential information.

Section 681.49(b)(4) is proposed for amendment to add additional language regarding testimonials.

Section 681.52(f) is proposed for amendment and new §681.52(g) is proposed to clarify compensation and employment of a supervisor by an intern.

New §681.72(f) is proposed to require successful completion of the National Counselors Exam and the Texas Jurisprudence Exam before applying for licensure.

Section 681.73 is proposed for amendment to eliminate unnecessary references to the examination.

Section 681.82(a) is proposed for amendment to delete an unnecessary reference to examination.

Section 681.91(a) is proposed for amendment to clarify requirements for the issuance of a temporary license. Subsections (e), (f), and (i) of the section are proposed for amendment regarding the length of time a temporary license is valid, renewal of a temporary license, and the name of the examination.

Section 681.92(e) is proposed for amendment regarding completion of required examinations prior to the beginning the internship. Subsection (m) of the section is deleted.

Section 681.93(i) is proposed for amendment to clarify compensation and employment of a supervisor by an intern.

Section 681.101 is proposed for amendment to implement the requirement of successful completion of the National Counselor Exam and the Texas Jurisprudence Exam prior to application for temporary license. The section is also proposed for amendment to implement the requirement of successful completion of the National Clinical Mental Health Counseling Exam upon completion of the post-graduate internship and prior to issuance of a regular license.

Section 681.102(b) is proposed for amendment to clarify non-electronically administered exams and the grading process.

Section 681.103 is proposed for amendment to clarify the procedures for reexamination and to clarify the name of the required examination.

Section 681.104 is proposed for repeal as unnecessary.

Section 681.111 is proposed for amendment to clarify the name of the examination and to clarify when a license shall be issued.

Section 681.124(f) is proposed for amendment to clarify that all examinations must be completed in order to reapply after a license has expired.

Section 681.125(e) is proposed for amendment to require the successful completion of Texas Jurisprudence Exam in order to return to active status.

Section 681.126(c) is proposed for amendment to require the successful completion of all required examinations in order to become licensed again after a license is retired.

New §681.141(e) is proposed to require successful completion of the Texas Jurisprudence Exam as a condition for license renewal for all license holders after January 1, 2007.

Section 681.144 is proposed for amendment to change the title and rule text from a Pre-Approved Provider to Approved Provider.

Section §681.162(e) and (f) are proposed for deletion, as the subsections are unnecessary. Section 681.163 is proposed for repeal, as the subsection is not necessary in order for the board to exercise its power to sue.

Section 681.164 is proposed for amendment to clarify guidelines regarding licensing of persons with criminal convictions.

Section 681.166 is proposed for amendment to clarify procedures for informal disposition of contested cases and to eliminate repetitive and unnecessary language.

Section 681.167(a) is proposed for amendment to clarify that a default order may be issued if a person fails to appear at an informal conference.

Section 681.171 is proposed for amendment to eliminate unnecessary language and to provide proper rule references.

Subchapter L is proposed to reorganize the subchapter. New §681.181 will ensure clarity and improve draftsmanship regarding the purpose of the subchapter.

New §681.182 is proposed to delete unnecessary definitions and set out formal hearing procedures. New §681.184 is proposed to delete unnecessary language and set out procedures relating to action after the hearing.

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 implication to state government as a result of enforcing or administering the sections as proposed. There will be no effect on local government.

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to assure that the regulation of professional counselors continues to identify competent providers, resulting in the protection and promotion of the public health, safety, and welfare. There will be no effect on small businesses and micro-businesses except for those businesses that pay license fees for their employees. There will be a cost to persons who are required to comply with the sections as proposed. Applicants will be required to pay examination fees to the third party vendor who administers the Texas Jurisprudence Exam, the National Counselor Exam, and the National Clinical Mental Health Counseling Exam. Applicants and licensees will be required to pay additional fees for processing applications and renewal applications through Texas Online and for funding the Office of Patient Protection. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658, fax (512) 834-6677. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.2. Definitions.

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

(1)-(8) (No change.)

(9) Counseling-related field--A mental health discipline utilizing human development, psychotherapeutic, and mental health principles including, but not limited to, psychology, psychiatry, social work, marriage and family therapy, and guidance and counseling. Non-counseling [related] fields include, but are not limited to, sociology, education, administration, and theology.

(10) Department--Department of State Health Services
[~~The Texas Department of Health.~~]

(11)-(16) (No change.)

§681.4. *Transaction of Official Business.*

(a) The board may transact official business only when in a legally constituted meeting with a quorum present. A quorum of the board necessary to conduct official business is a majority of the members [~~five members~~].

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

§681.14. *Licensing Fees.*

(a) Licensing fees are as follows:

(1) (No change.)

(2) examination fees as determined by the board [~~fee—\$110~~].

(3)-(11) (No change.)

(b)-(f) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502273

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER C. CODE OF ETHICS

22 TAC §§681.41, 681.45, 681.49, 681.52

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.41. *General Ethical Requirements.*

(a)-(d) (No change.)

(e) A licensee shall inform an individual in writing before services are provided [~~or at the time of the individual's initial professional counseling session with the licensee~~] of the following:

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

(f) (No change.)

(g) A licensee shall provide counseling treatment intervention only in the context of a professional relationship. Interactive [~~Telepractice (interactive)~~] long distance counseling delivery, where the client resides in one location and the counselor in another [)] may be used as part of the therapeutic counseling process. Counselors engaging in interactive long distance counseling [~~telepractice~~] must adhere to each provision of this chapter.

(h)-(j) (No change.)

(k) A licensee shall set and maintain professional boundaries. Dual relationships with clients are prohibited. A dual relationship is considered any non-counseling activity initiated by either the licensee or client for the purpose of establishing a non-therapeutic relationship.

(1) (No change.)

(2) The licensee shall not give or accept a gift from a client or a relative of a client valued at more than fifty dollars, [~~enter into barter for services,~~] or borrow or lend money or items of value to clients or relatives of clients or accept payment in the form of goods or services rendered by a client or relative of a client.

(3) (No change.)

(l)-(t) (No change.)

(u) A licensee may not persistently [~~or flagrantly~~] over treat a client.

(v)-(w) (No change.)

(x) A licensee shall comply with the requirements of Texas Health and Safety Code, Chapter 611, concerning the release of mental health records and confidential information.

(y) (No change.)

§681.45. *Confidentiality and Required Reporting.*

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

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records and confidential information.

(d) (No change.)

§681.49. *Advertising and Announcements.*

(a) (No change.)

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

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

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5)-(9) (No change.)

(c)-(h) (No change.)

§681.52. *LPC Interns.*

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

(f) A supervisor may not be employed by an LPC intern. [~~in the employ of the LPC intern. The LPC intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.~~]

(g) The LPC intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502274
Judy Powell
Chair
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §681.72, §681.73

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.72. Required Application Materials.

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

(f) Certification from the National Board of Certified Counselors verifying successful completion of the National Counselors Exam and the Texas Jurisprudence Exam. The National Counselors Exam must have been taken no more than five years prior to the date of application. The Texas Jurisprudence Exam must have been taken no more than two years prior to the date of application.

§681.73. Application for Art Therapy Specialty Designation.

(a) A person applying for [~~examination and~~] licensure with an art therapy specialty designation must:

(1) meet the requirements for a regular license set out in this Subchapter, Subchapter E [~~of this chapter~~] (relating to Academic Requirements For [~~for Examination and~~] Licensure) and Subchapter F of this chapter (relating to Experience Requirements For [~~for Examination and~~] Licensure);

(2)-(4) (No change.)

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

~~[(d) An applicant for a regular license with art therapy specialty designation must pass the licensed professional counselor examination administered by the board.]~~

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502275
Judy Powell
Chair
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER E. ACADEMIC REQUIREMENTS FOR LICENSURE

22 TAC §681.82

The amendment is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendment affects Texas Occupations Code, Chapter 503.

§681.82. Academic Requirements.

(a) Persons applying for [~~examination and~~] licensure must have:

(1) a graduate degree in counseling or related field on at least the master's level; and

(2) a planned graduate program in counseling or related field of at least 48 semester hours.

(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.

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502276
Judy Powell
Chair
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§681.91 - 681.93

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.91. Temporary License.

(a) The board may issue a temporary license to an applicant who:

(1) has filed all application forms and paid all applicable fees [~~license fee~~];

(2) has met all of the academic requirements for licensure;

(3) has entered into a supervisory agreement with a supervisor meeting the requirements of §681.93 of this title (relating to Supervisor Requirements); [~~and~~]

(4) has not completed the supervised experience described in §681.92 of this title (relating to Experience Requirements (Internship)); and

(5) has completed the required examinations.

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

(e) A temporary license is valid for 36 months [~~or until the LPC intern fails the examination twice, whichever occurs first~~].

(f) An LPC intern who does not complete the supervised experience during the 36 months may renew his/her temporary license once

for an additional 36 months by written request and payment of a fee. The LPC intern must take and pass the Texas Jurisprudence Exam as a condition for renewal.

{(f) An LPC intern who does not obtain a regular license during the 36 months and does not fail the exam twice may apply for a 36 month extension of his or her temporary license by written request and payment of a fee. The LPC intern must complete a nine-hour continuing education course in counselor ethics to receive the extension. Only one extension will be issued to an LPC intern which will be valid for 36 months or until the LPC intern fails the examination twice, whichever occurs first.}

(g)-(h) (No change.)

(i) Applicants who have completed the supervised experience and who have not passed the required National Clinical Mental Health Counseling Exam [examination] at the time of application are not eligible for an initial or an additional temporary license. Such applicants may obtain a regular license by taking and passing the required National Clinical Mental Health Counseling Exam [examination].

§681.92. *Experience Requirements (Internship).*

(a)-(d) (No change.)

(e) The internship must commence after:

(1) the completion of a graduate degree in counseling or a related field; [and]

(2) the completion of a planned graduate program in counseling of at least 48 semester hours; and [-]

(3) the completion of the examinations if required.

(f)-(l) (No change.)

{(m) A supervisor may not be in the employ of the LPC intern. The LPC intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.}

(m) [(n)] Experience received under a supervisor who is a licensee subject to a board order shall not qualify as supervised experience for licensure purposes.

§681.93. *Supervisor Requirements.*

(a)-(g) (No change.)

(h) A supervisor may not be employed by an LPC intern. [in the employ of the LPC Intern. The LPC intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.]

(i) The LPC intern may compensate the supervisor for time spent in supervision if the supervision is not part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502277

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER G. LICENSURE EXAMINATIONS

22 TAC §§681.101 - 681.103

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.101. *Examination.*

(a) Each applicant for licensure is required to take and pass the National Counselor Exam and the Texas Jurisprudence Exam prior to application.

{(a) The board shall develop a licensure examination.}

(b) After completion of the required 3,000 hours of their supervised internship and prior to the issuance of a regular license, a LPC-Intern is required to take and pass the National Clinical Mental Health Counseling Exam.

(c) [(b)] The development or administration of the examination may be contracted to a national testing company.

(d) [(c)] Examinations will be administered at testing centers located in various cities throughout the state.

(e) [(d)] The examination fee shall be paid to the board's contractor.

(e) An applicant who is an LPC intern may sit for the Licensed Professional Counselor Examination at any time during the effective dates of the applicant's temporary license.}

(f) An applicant who is approved to sit for the exam but does not hold the temporary license must take and pass the exam within one year of the approval date. If the exam has not been passed within one year the applicant must reapply by submitting a new application and fee in accordance with current board rules.}

(g) A regular license will be issued to an applicant only after completion of required supervised experience and successful completion of the licensed professional counselor examination.}

(f) [(h)] Applicants seeking accommodations for the licensure examination under the Americans with Disabilities Act shall inform the national testing company [board] of any special accommodations needed in advance and in writing. Disability accommodation requests must be accompanied by verification of the disability from a professional who has diagnosed or can attest to the disability and who recommends accommodation.

(g) [(i)] The board shall provide written notification to persons who are eligible to take the National Clinical Mental Health Counseling Exam [meet all requirements for examination].

(h) LPC Interns who applied for licensure prior to September 1, 2005, and have not completed the former Texas Licensed Counselor Exam, must successfully complete the National Counselor Exam prior to the expiration of the license.

(i) A regular license will be issued to an applicant only after completion of supervised experience and successful completion of the National Mental Health Counseling Exam.

(j) An applicant who is approved to sit for the National Mental Health Counseling Exam but does not hold the temporary license must take and pass the National Mental Health Counseling Exam within one year of the approval date. If the National Mental Health Counseling Exam has not been passed within one year of the approval date, the applicant must reapply by submitting a new application and fee in accordance with current board rules.

§681.102. *Grading.*

(a) (No change.)

(b) Non-Electronically administered [Written] examinations may be requested as an ADA accommodation [under certain circumstances]; however, grading will not be [provided] immediately available upon completion of the examination.

§681.103. *Reexamination.*

(a) An applicant who fails the National Clinical Mental Health Counseling Exam [licensure examination] may schedule another [a second] examination [by submitting a copy of a failing score report and a written request for the second examination]. The subsequent examination can be scheduled no sooner than 90 days after the prior exam.

(b) The application of a person who fails any two National Clinical Mental Health Counseling Exams [examinations] will be voided.

(c) The temporary license of a person who fails [any] two National Clinical Mental Health Counselor Exams [successive examinations] shall be voided. Reapplication for licensure [a temporary license] must be in accordance with §681.72 of this title (relating to Required Application Materials) [and §681.91(a)(5) of this title (relating to Temporary License)].

(d) A person who fails the National Clinical Mental Health Counseling Exams twice [any two successive examinations] may not make application for a [temporary license,] provisional license, or reapply for a regular license until two years have elapsed from the date of the last examination or until the person has completed nine graduate semester hours in the applicant's weakest portion of the examination [as determined by the applicant based on the applicant's analysis of the score reports]. The hours must be in counseling or counseling-related courses. After completion of the coursework or the elapsing of two years, a new [an] application for licensure must be submitted in accordance with §681.81 of this title (relating to General) and §681.82 of the title (relating to Academic 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 June 6, 2005.

TRD-200502278

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
22 TAC §681.104

(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 State Board of Examiners of Professional Counselors or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The repeal affects Texas Occupations Code, Chapter 503.

§681.104. *Notice of Results.*

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502279

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER H. LICENSING

22 TAC §681.111

The amendment is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendment affects Texas Occupations Code, Chapter 503.

§681.111. *Issuance of Licenses.*

(a) The board will issue a license to each applicant who has satisfactorily fulfilled all requirements for licensure including examination. Upon successful completion of the National Clinical Mental Health Counseling Exam [examination], an applicant must submit a copy of the examination score report form with any outstanding fees. Upon receipt of the passing score report form and fee, the board shall issue a license.

(b)-(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.

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502280

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
SUBCHAPTER I. REGULAR LICENSE
RENEWAL; INACTIVE AND RETIREMENT
STATUS

22 TAC §§681.124 - 681.126

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.124. Late Renewal.

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

(f) On or after one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for licensure including passing all required examinations [~~the licensure examination~~].

§681.125. Inactive Status.

(a)-(d) (No change.)

(e) A person must notify the board in writing to return to active status. Prior to re-instatement, a person seeking active status must take and pass the Texas Jurisprudence Examination. Active status shall begin after receipt of proof of completion of the Texas Jurisprudence Exam and [on the first day of the month following] payment of applicable fees.

(f)-(h) (No change.)

§681.126. Retired Status.

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

(c) A retired license cannot be renewed or reinstated. To be eligible for a new license to practice professional counseling, the person would be required to apply for another license by meeting requirements in effect at the time of the application, including passing all required examinations [~~the examination~~].

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502281

Judy Powell
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER J. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§681.141, §681.144

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.141. General.

(a)-(d) (No change.)

(e) Beginning January 1, 2007, a licensee must take the Texas Jurisprudence exam in order to renew the license.

§681.144. Approved Providers [Pre-approved Providers].

(a) Continuing education providers may apply for approval [~~provider pre-approval~~] to provide continuing education on forms provided by the board. Continuing education provider applicants shall submit a continuing education provider application form, accompanied by a \$50 continuing education provider processing fee and shall renew the approval [~~pre-approval~~] status annually by submission of a renewal continuing education provider application form, accompanied by a \$50 continuing education provider processing fee.

(b) (No change.)

(c) Board approvals [~~pre-approvals~~] are effective for twelve months from the date of board approval. Renewal provider applications must be submitted to the board annually, accompanied by a \$50 processing fee.

(d) Approved [~~Pre-approved~~] providers of continuing education must comply with board requirements as set out in §681.142 of this title (relating to Types of Acceptable Continuing Education) and §681.145 of this title (relating to Determination of Clock-hour Credits).

(e) Approved [~~Pre-approved~~] providers of continuing education must maintain records of all continuing education activities for a period of five years including names of all presenters, complete course descriptions and objectives, teaching methods employed, attendance sheets for each course, sample certificates of attendance, and evaluation documents from each participant for the specific experience. The provider shall provide each participant with written documentation of attendance, which includes the participant's name, the number of approved continuing education hours, the title and date(s) of the program, the provider number, and the signature of the provider.

(f) (No change.)

(g) Providers [~~Pre-approved providers~~] are subject to audit of all continuing education records upon written request by the board. Upon receipt of written notice of audit, the provider will submit all requested records of continuing education to the board within ten working days. Failure to provide documentation as requested or submission of fraudulent documents will result in termination of approval status.

(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.

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502282

Judy Powell
Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §§681.162, 681.164, 681.166, 681.167, 681.171

The amendments are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The amendments affect Texas Occupations Code, Chapter 503.

§681.162. Disciplinary Action; Notices.

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

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth working day after the notice is mailed to the last address known to the board unless another date is reported by the [reflected on a] United States Postal Service [return receipt].

~~[(e) If a hearing is requested, service of the notice of hearing may be sent by certified or registered mail, return receipt requested, to the licensee's last known address as shown by the board's records. This notice will include disclosure of the fact that upon failure of the licensee to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of the hearing may be granted by default.]~~

~~[(f) No prior notice or hearing is required to temporarily suspend a license; however, appropriate notice shall be given prior to the hearing held after temporary suspension of the license in accordance with the Act, §503.403.]~~

§681.164. Licensing of Persons with Criminal Convictions [Backgrounds].

(a) This section establishes guidelines and criteria for the eligibility of persons with criminal convictions [backgrounds] to obtain and retain licenses as professional counselors.

(b) The board shall consider the criminal [felony] conviction of a licensee or applicant as possible grounds for disciplinary action or application denial and shall review the conviction.

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

(e) Procedures for disciplinary action or application denial against persons with criminal convictions [backgrounds].

(1) (No change.)

(2) If the board takes disciplinary action or denies an application under these sections, the executive director will give the person written notice of the reasons for the decisions. [:]

~~[(A) of the reasons for the decision;]~~

~~[(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the board and its decision; and]~~

~~[(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable.]~~

§681.166. Informal Disposition.

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

(j) The board's legal counsel may [shall] attend each informal conference. The complaints committee member or executive director may call upon the attorney at any time for assistance in the informal conference.

(k) The licensee shall be afforded the opportunity to make statements that are material and relevant.

~~[(l) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information Act, Texas Government Code, Chapter 552 and the Administrative Procedure Act, Texas Government Code, Chapter 2001.]~~

~~[(m) At the discretion of the executive director or the complaints committee member, a tape recording may be made of none or all of the informal conference.]~~

~~[(l) [(#)] The complaints committee member or the executive director may [shall] exclude from the informal conference all persons except witnesses during their testimony, the licensee, the licensee's attorney, and board staff.~~

~~[(m) [(o)] [The complainant shall not be considered a party in the informal conference but shall be given the opportunity to be heard if the complainant attends.] Any written statement submitted by the complainant shall be reviewed at the conference.~~

~~[(n) [(p)] At the conclusion of the informal conference, the complaints committee member or the executive director may make recommendations for informal disposition of the complaint or contested case. The recommendations may include any disciplinary action authorized by the Act or this chapter. The complaints committee member may also conclude that the board lacks jurisdiction; conclude that a violation of the Act or this chapter has not been established; order that the investigation be closed; or refer the matter for further investigation.~~

~~[(o) [(q)] The licensee or applicant may either accept or reject the recommendations at the informal conference. If the recommendations are accepted, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order may contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 working days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the recommendations.~~

~~[(r) If the licensee or applicant rejects the proposed recommendations, the matter shall be referred to the executive director for appropriate action.]~~

~~[(p) [(s)] If the licensee or applicant signs and accepts the proposed recommendations, the agreed order shall be submitted to the complaints committee and the board for approval. Placement of the agreed order on the committee and board agendas shall constitute only a recommendation for approval by the board.~~

~~[(q) [(t)] The identity of the licensee or applicant shall not be made available to the board until after the board has reviewed and accepted the agreed order unless the licensee or applicant chooses to attend the board meeting. The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.~~

~~[(r) [(u)] Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.~~

~~[(s) [(v)] If the board does not approve a proposed agreed order, the licensee or applicant shall be so informed. The matter shall be referred to the executive director for other appropriate action.~~

~~[(t) [(w)] A proposed agreed order is not effective until the board has approved the agreed order and the order is signed by the board chair.~~

(u) [(*)] A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the Administrative Procedure Act, Texas Government Code, §2001.054(c).

(v) [(y)] If a licensee who has requested an informal conference fails to appear at the conference and fails to provide notice of the licensee's inability to attend the conference at least 24 hours in advance of the time the conference is scheduled, such action may constitute a withdrawal of the request for a formal hearing [~~an informal conference~~].

§681.167. *Default Orders.*

(a) If a right to a hearing is waived under §681.162(c) of this title (relating to Disciplinary Action; Notices) or §681.184(b) of this title (relating to Action After the Hearing), or a licensee fails to appear at an informal conference as described in §681.166(v), relating to informal disposition, the board may enter an order taking disciplinary action or an order of application denial as described in the written notice to the licensee or applicant.

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

§681.171. *Administrative Penalties.*

(a) The assessment of an administrative penalty is governed by the Act, Chapter 503, Subchapter K, [~~Texas State Board of Examiners of Professional Counselors, Occupations Code (Act), §503.500~~].

[(b) The complaints committee, with the approval of the board may impose a fine not to exceed \$250 plus costs for the first violation, and not to exceed \$1,000 plus costs for each subsequent violation of the Act, and the rules adopted under the Act, on any person or entity described in the Act. The fine may be invoked as an alternative to any other disciplinary measure, except for probation, as set forth by the committee.]

(b) [(e)] The amount of an administrative penalty shall be based on the following criteria.

(1) The seriousness of a violation shall be categorized by one of the following severity levels:

(A) Level I--violations that have or had an adverse impact on the health or safety of a client (or former client, where applicable);

(B) Level II--violations that have or had the potential to cause an adverse impact on the health or safety of a client (or former client, where applicable) but did not actually have an adverse impact; or

(C) Level III--violations that have no or minor health or safety significance.

(2)-(4) (No change.)

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502283

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



22 TAC §681.163

(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 State Board of Examiners of Professional Counselors or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The repeal affects Texas Occupations Code, Chapter 503.

§681.163. *Power to Sue.*

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502284

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER L. FORMAL HEARINGS

22 TAC §§681.181, 681.182, 681.184

(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 State Board of Examiners of Professional Counselors or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The repeals affect Texas Occupations Code, Chapter 503.

§681.181. *Purpose.*

§681.182. *Definitions.*

§681.184. *Action After the Hearing.*

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502285

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



22 TAC §§681.181, 681.182, 681.184

The new rules are authorized by Texas Occupations Code, §503.203(a), which provides the Texas State Board of Examiners of Professional Counselors with the authority to adopt rules necessary to administer the chapter.

The new rules affect Texas Occupations Code, Chapter 503.

§681.181. Purpose.

These rules cover the hearing procedures and practices that are available to persons or parties who request formal hearings. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA) and the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003).

§681.182. Formal Hearing Procedures.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or the failure to appear by telephone in accordance with the notice of hearing.

(b) Remedies available upon default. The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the commissioner.

(c) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001, and the State Office of Administrative Hearings Rules of Procedure.

(d) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(e) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

§681.184. Action After the Hearing.

(a) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board.

(b) Appeals. All appeals from final department orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502286

Judy Powell

Chair

Texas State Board of Examiners of Professional Counselors

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to 22 Texas Administrative Code Chapter 851, §851.80, concerning licensing fees. Proposed amendments to the existing rule establish a \$25 examination processing fee for all examinations administered by the Board in addition to proposed language for payment of required fees as set forth by both the National Association of State Board of Geology (ASBOG) and the Council of Soil Science Examiners (CSSE) for administration of their specific examinations. Proposed amendments also establish a \$200 one time temporary licensing fee for all geoscientists to practice in their respective field of geoscience in the State of Texas for no more than the mandated 90 day period as specified in the Geoscience Practice Act. The license renewal fee is now proposed to be \$168 and a new proposed verification of license fee will be \$15. The Fundamentals and Practice fees for Geophysics are now proposed to be \$150 each. Legislation enactment in 2001 of Senate Bill 405 Subchapter D, §4.01 granted the Board general rulemaking authority to adopt and enforce rules consistent with this act necessary for the performance of its duties and §4.02 granted authority for the Board to set reasonable and necessary fees to be charged to all applicants and license holders, including fees for applications, examinations, licensure, and renewal of a license including basing a fee for an examination in a discipline of geoscience on the costs associated with preparation, administration, and the grading of the examination. The proposed amendments to the rule provide language clarity to the fee requirement for administration of each of the agency's examinations taken relevant to the applicant's geoscience discipline(s) as well as amend the licensing fee structure through the inclusion of additional language to the existent licensing fee requirement as set by the Board in order to establish both new fee requirements and an increase to the renewal fee to allow the Board attainment of its appropriated general revenue funding level.

Michael D. Hess, Executive Director of the Texas Board of Professional Geoscientists, has determined that for the first five years that the amendments are in effect there will be no fiscal implication for state and local government as a result of enforcement and administration of this amended section.

Mr. Hess has also determined that for each year of the first five years that the amendments are in effect, the State of Texas can anticipate public benefit as a result of enforcement and enhancement of each discipline for the professional practice of geology through the requirement of an increased level of education for the geoscience licensed population to take the examinations and for the Board to have the capability through the hiring of a full time employee (FTE) in September 2005 to enforce the rule. There will not be an effect on small or micro businesses, however it is anticipated that there will be an economic cost to licensees in order to take the required licensing examinations specific to their respective geoscience discipline.

Comments on the proposal may be submitted in writing to Michael D. Hess, Executive Director, P.O. Box 13225, Austin, Texas 78701, (512) 936-4401. Comments may also be submitted electronically to geoscience@tbpg.state.tx.us or faxed to (512) 936-4409. All comments must be received 30 days after publication of the amendments in the *Texas Register*. All requests for a public hearing on the proposed amendments submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of a proposal has been published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 1002, §1002.151 and §1002.152 which authorizes the Board to adopt and enforce rules consistent with the Geoscience Practice Act and necessary for the performance of its duties.

The proposed amendments implement the Texas Occupations Code, §1002.151 and §1002.152.

§851.80. Fees.

- (a) All fees are non-refundable.
- (b) Application and License fee \$200.
- (c) Examination processing fee of \$25 for all disciplines and examination fee:
 - (1) Geology--Fundamentals and Practice as determined by ASBOG [ASBOG fundamentals \$150].
 - (2) Geophysics--Fundamentals \$150.
 - (3) Geophysics--Practice \$150.
 - (4) Soil Science--Fundamentals and Practice as determined by CSSE.
- ~~(2) Geology--ASBOG practice \$175.-}~~
- ~~(3) Geophysics--fundamentals \$150.-}~~
- ~~(4) Geophysics--practice \$175.-}~~
- ~~(5) Soil Science--fundamentals \$150.-}~~
- ~~(6) Soil Science--professional practice \$175.-}~~
- (d) Issuance of a revised or duplicate license \$25.
- (e) Renewal fee \$168 [\$150] or as prorated under §851.28(b) of this chapter.

- (f) Late Renewal fee \$50.
- (g) Fee for affidavit of licensure \$15.
- (h) Verification of licensure--\$15.
- (i) Temporary license--\$200.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502206

Michael D. Hess

Executive Director

Texas Board of Professional Geoscientists

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 936-4402

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. TEXAS BOARD OF HEALTH SUBCHAPTER S. REQUESTS FOR PROVIDING PUBLIC INFORMATION

25 TAC §1.251

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §1.251, concerning procedures for handling requests for public information.

BACKGROUND AND PURPOSE

The section implements procedures for handling public information requests under the Public Information Act, Government Code, Chapter 552.

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). Section 1.251 has been reviewed and the department has determined that reasons for adopting the section continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §1.251(a) provides clarification to the rules regarding written requests. The amendment to §1.251(d) provides clarification to the rules regarding how copyright materials may be copied by the requestor so the department does not violate any copyright restrictions. An amendment was made to §1.251(e)(5) in order to do away with the use of remittance envelopes and clarify that the requestor must return a copy of the billing statement when returning the remittance to the department. Section 1.251(e)(6) was added to clarify what the department may do regarding billings exceeding \$100 that are unpaid. Section 1.251(e)(7) and (e)(8) were renumbered due to the addition of §1.251(e)(6).

FISCAL NOTE

Cathy Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local government as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

Activities required by the amendment of the rule will be performed by existing department staff and funding.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the section is in effect, the public will benefit from adoption of the section. The public benefit anticipated as a result of enforcing or administering the section is receipt of clearly identified information concerning operational issues regarding internal processes for handling requests.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Patricia Reedy, Public Information Coordinator, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7236, extension 6958. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed amendment is 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 Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapter 1001 and Government Code, Chapter 531.

§1.251. *Procedures for Handling Requests for Public Information.*

(a) The department requires that all public information requests be in writing, to include fax and e-mail, unless there are special circumstances. Program staff may determine whether a verbal request may be accepted.

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

(d) Provision of a copy of public information in the requested medium must not violate the terms of any copyright agreement between the department and a third party. Therefore, the department will not make copies nor allow use of state equipment for copying of materials copyrighted by a person other than the department. This limitation also will apply to material copyrighted by the department when the department copyright is restricted to certain uses. The requestor may bring a portable copier, camera, or other recording device to copy the copyright material.

(e) The program handling the request for public information must have the records ready for inspection or copies duplicated promptly or within a reasonable time, but no later than 10 business days after the date the department received the request. If the program cannot produce the public information for inspection or duplication within 10 business days after the date the department received the request, the program will certify that fact in writing to the requestor and set a date and hour within a reasonable time when the information will be available for inspection or duplication.

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

(5) All charges for public information in an amount of \$100 or more must be paid to the department before the public information is actually provided to the requestor by inspection or duplication. On orders under \$100, the program staff have the option to require prepayment before providing the information or they have the option to provide the information to the requestor along with a copy of the billing statement, which must be returned with the remittance [specially encoded remittance envelope for return of their payment].

(6) If the department has previously provided public information to a requestor and billed the requestor for the information and if the billings exceed \$100 and are unpaid, the department may require a deposit for payment of the unpaid amounts owed to the department before preparing to fulfill a new request for public information from the same requestor. The department may not seek payment of those unpaid amounts through any other means.

(7) [~~6~~] If a request for information requires programming or manipulation of data pursuant to the Act, §552.231 and the department's policy established under that section, the time frame in this subsection will not apply until the requestor files the written statement described in the Act, §552.231(d)(1) or (2). Once the written statement is filed, the program handling the request shall comply with this subsection.

(8) [~~7~~] When payment is required in advance of providing the public information, failure of the requestor to pay the costs of the copies within 30 days of notification of the estimated costs, or a longer period of time, if granted by the program, will be considered a withdrawal of the request for information.

(f) - (g) (No change.)

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

Filed with the Office of the Secretary of State on June 1, 2005.
TRD-200502232
Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: July 17, 2005
For further information, please call: (512) 458-7236



CHAPTER 31. NUTRITION SERVICES

SUBCHAPTER A. REGISTER OF MOTHER-FRIENDLY BUSINESSES

25 TAC §31.1

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §31.1, concerning the register of mother-friendly businesses.

BACKGROUND AND PURPOSE

The amendment is necessary to ensure that the rule is current and reflects the recent consolidation of health and human service agencies. In addition, the proposed section authorizes signature of letters designating businesses as "Mother-Friendly" by persons in addition to the Commissioner of Health to expedite the approval notification process.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Section 31.1 has been reviewed, and the department has determined that reasons for adopting the section continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §31.1 clarifies the section and authorizes signature of the "mother-friendly business" designation letter by persons other than the Commissioner of Health in order to expedite the approval notification process.

FISCAL NOTE

Chan McDermott, Perinatal Coordinator, Title V and Health Resources Development Office, has determined that for each year of the first five-year period that the section will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed because the proposed section makes no substantive changes in the current rule.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McDermott has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. Small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section because the proposed section includes no substantive changes. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. McDermott has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing or administering the section is that through the promotion of the Mother-Friendly Business designation, more mothers who are employed may be able to breastfeed their infants and children after returning to work, thereby providing continuing health benefits for both mothers and children.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 proposed amendment does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Chan McDermott, Title V and Health Resources Development Office, Division of Family and Community Health Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243 or by e-mail to Chan.McDermott@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendment is proposed under Health and Safety Code, §165.003 and §165.033, which direct the department to maintain a list of businesses designated as Mother-Friendly and to develop recommendations supporting the practice of worksite breast-feeding; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapter 165.

§31.1. *Register of Mother-Friendly Businesses.*

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

(1) (No change.)

(2) Department--[Texas] Department of State Health Services.

(b) (No change.)

(c) Application for designation as a mother-friendly business. To apply for designation as a mother-friendly business, a business must:

(1) complete a mother-friendly application. Applications are available from the Title V and Health Resources Development Office, [Bureau of Women's Health, Texas] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 and through the department's website, and should be completed by the contact person for mother-friendly activities. Completed applications should be returned to the department's Title V and Health Resources Development Office [Bureau of Women's Health]; and

(2) submit the completed applications for review. Completed applications will be reviewed by the staff of the Title V and Health Resources Development Office [Bureau of Women's Health] for compliance with the minimum standards set forth in subsection (b) of this section. Businesses that meet the standards will receive a letter from the department [signed by the Commissioner of Health] and a certificate suitable for framing and display. Businesses that do not meet the standards will be notified by letter and will be offered technical assistance to achieve compliance.

(d) Maintaining designated status. A business designated as mother-friendly must:

(1) be listed as such by the department. The list of mother-friendly businesses will be maintained by the staff of the department's Title V and Health Resources Development Office [Bureau of Women's Health]. The department will make the list available for public inspection;

(2) keep the staff of the Title V and Health Resources Development Office [Bureau of Women's Health] informed of any changes in the company's mother-friendly policies. If its mother-friendly policies change, a business must submit an amended application; and

(3) comply with minimum standards at all times. If a business does not comply with the program's minimum standards at all times, the department may suspend or revoke the mother-friendly designation. A business may amend its nonconforming policies and may reapply for the mother-friendly designation. Employees and clients should direct complaints about the activities of a business that employs the mother-friendly designation to the department's Title V and Health Resources Development Office [Bureau of Women's 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 June 3, 2005.

TRD-200502248

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

SUBCHAPTER H. SUDDEN INFANT DEATH SYNDROME

25 TAC §§37.171 - 37.173

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§37.171 - 37.173, concerning Sudden Infant Death Syndrome (SIDS).

BACKGROUND AND PURPOSE

The amendments are necessary to ensure that the rules are current and reflect the recent consolidation of health and human service agencies. In addition, the proposed sections add the death certificate to the documents that can be submitted to support a county's claim for partial reimbursement of the cost of an autopsy. Health and Safety Code, §673.003, states that SIDS may be used as a primary cause of death on a death certificate required by Death Records, Chapter 193.

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 37.171 - 37.173 have been reviewed, and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

Amendments to §§37.171 - 37.173 provide clarification to the rules regarding the purpose of the subchapter, definitions, the time frame within which counties must submit claims for reimbursement of autopsy costs, and add the death certificate as an acceptable document to support a county's claim for reimbursement.

FISCAL NOTE

Chan McDermott, Perinatal Coordinator, Title V and Health Resources Development Office, has determined that for each year of the first five-year period that 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 sections as proposed, because the proposed sections make no substantive changes in the current rules.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. McDermott has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. Small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections, because the proposed sections include no substantive changes. 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

In addition, Ms. McDermott has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be continued assurance that reimbursement for autopsies in which the primary cause of death is SIDS will be available to counties in a timely manner, as provided by law.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 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 Chan McDermott, Title V and Health Resources Development Office, Division of Family and Community Health Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0243, or by e-mail to Chan.McDermott@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §673.002(b), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules that define Sudden Infant Death Syndrome and describe the method for obtaining reimbursement for the cost of an autopsy when the primary cause of death is Sudden Infant Death Syndrome. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapter 673.

§37.171. Purpose.

The purpose of these sections is to define sudden infant death syndrome (SIDS) and to establish a reimbursement [~~payment~~] mechanism for autopsies for who die unexpectedly and whose primary cause of death is SIDS.

§37.172. Definitions.

The following words and terms pertain explicitly to this subchapter and shall have the following meanings, unless the context clearly indicates otherwise.

(1) Autopsy--A post mortem examination of the body of a person, including X-rays, toxicology screen, and an examination of the internal organs and structures after dissection, to determine the cause of death or the nature of any pathological changes that may have contributed to the death.

(2) (No change.)

~~{(3) Parent--A natural parent, step parent, adoptive parent, legal guardian, or other legal custodian of a child.}~~

(3) [(4)] Sudden infant death syndrome (SIDS)--Death of an infant which remains unexplained after all known causes have been ruled out through a complete autopsy, death scene investigation, and medical and social history including, but not limited to, a [~~Child Protective Services~~] family history of the infant as designated by Child Protective Services.

§37.173. Reimbursement for Costs of Autopsy.

(a) The department shall reimburse the county in which an infant dies for the cost of an autopsy performed as required by Health and Safety Code, §673.002, only if the primary cause of death is SIDS.

(b) (No change.)

(c) The county judge for the county in which the infant died shall sign and submit to the Department of State Health Services a state [~~Texas Department of Health~~] purchase voucher (voucher) [~~to the Child Health and Safety Division~~] requesting reimbursement for [all] costs of the autopsy. A county's claim for reimbursement shall be submitted within 90 days following the completion of the written autopsy report, and shall [~~also~~] include a copy of the signed autopsy report.

(d) The department shall process the voucher and shall request that [~~the Comptroller of Public Accounts to issue~~] a warrant be issued for not more than \$500 payable to the county in which the infant died, if the primary cause of death stated on the autopsy report or the death certificate is SIDS.

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

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502249

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER A. TEXAS PRIMARY HEALTH CARE SERVICES ACT PROGRAM RULES

25 TAC §§39.3, 39.7, 39.8, 39.10, 39.11

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§39.3, 39.7, 39.8, 39.10, and 39.11, concerning the coordination of Medicare Part D drug benefits.

BACKGROUND AND PURPOSE

The amendments are necessary to coordinate Primary Health Care supplemental prescription drug benefits with the implementation of federal Medicare Part D benefits for eligible clients. The Primary Health Care Program (program) provides access to primary health care services for those individuals residing in Texas with incomes at or below 150% of the Federal Poverty Level who are unable to access the same care through other funding sources or programs. Although "prescription drugs and devices" are within the statutory definition of "primary health care", these services are considered supplemental and are not provided by all program contractors due to limited funding. Because the Primary Health Care Services Act and program rules state that the program shall be the payor of last resort, implementation of Medicare Part D prescription drug coverage will change the way eligible program clients access prescription drugs. To help ensure

continued access to necessary medications, the program may reimburse client co-payments for prescriptions accessed under Medicare Part D.

SECTION-BY-SECTION SUMMARY

The amendment to §39.3 clarifies that Medicare Part D eligible program clients must receive prescription drug benefits according to Medicare regulations. The amendments to §39.7 clarify the program benefits for which program recipients are eligible, and that all providers are required to determine each client's eligibility for Medicare Part D coverage. The amendment to §39.8 clarifies program eligibility periods. The amendments to §§39.10 and 39.11 allow the program, upon availability of funds, to reimburse the costs associated with co-payments for Medicare Part D drug benefits.

FISCAL NOTE

Cindy Jones, Ph.D., R.N., Manager, Preventive and Primary Care Unit, has determined that for each year of the first five fiscal years the sections will be in effect, there will be no net fiscal implications to state government as a result of administering the sections as proposed. Based on current available data, drug costs for eligible program clients who are and will become eligible for Medicare Part D under current rules are estimated at approximately \$172,883 per year for FY 2006-FY 2011. Implementation of the proposed rule changes will result in total projected expenditures of approximately \$129,768 to reimburse co-payments for clients eligible for Medicare Part D coverage for each of the next five state fiscal years. The program will redirect funds previously expended for supplemental prescription drug benefits toward the provision of other primary health care client services. There will be no fiscal implications for local governments as a result of administering the sections as proposed because local governments that contract with the program as providers are not responsible for costs that are not reimbursed by the program under the proposed sections.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Jones has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. Pharmacies that may be classified as small businesses or micro-businesses will continue to be reimbursed for prescription drugs dispensed to program clients covered by Medicare Part D, and may receive higher reimbursement for some drugs than they receive from the program under current rules. There may be economic costs to persons who are required to pay Medicare Part D premiums and annual deductible amounts, depending upon their incomes and other insurance coverage, including Medicaid. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Dr. Jones has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections as proposed will be access to prescription drug benefits for individuals eligible for Medicare Part D who are unable to pay for the benefit.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure

and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 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 Kim Roberts, Mail Code 1923, Community Health Services Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189 or by email to kim.roberts@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for July 14, 2005, at 9:00 a.m., at the Department of State Health Services, Room K-100, 1100 West 49th Street, Austin, Texas 78756. For more information, please contact Kim Roberts at (512) 458-7796.

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §31.004(a), which authorizes the Executive Commissioner of the Health and Human Services Commission to adopt rules necessary to administer Health and Safety Code, Chapter 31; Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapters 31 and 1001, and Government Code, Chapter 531.

§39.3. General Program Requirements.

(a)-(d) (No change.)

(e) Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service shall receive prescription drug benefits according to Medicare regulations and procedures. Individuals who are not eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service shall receive covered prescription drugs dispensed by pharmacy providers according to this chapter.

§39.7. Eligibility.

(a) Individuals covered under the Act are those who are not eligible for other benefits. Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service may be eligible for other program services offered by Primary Health Care, and for prescription drugs not covered by Medicare, Part D.

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

(e) All providers shall determine whether each program participant is eligible for prescription drug benefits under Medicare, Part D, according to Primary Health Care Services Program policy.

(f) [(e)] In order to conform to federal and state laws, a minor seeking treatment for communicable diseases or seeking family planning services will be deemed by the department to be emancipated for the purposes of the Act and only the financial resources of the minor will be considered in determining eligibility.

§39.8. *Determination of Eligibility.*

(a) (No change.)

(b) The individual's case is considered to be active when all criteria for eligibility have been established. Coverage continues for 12 months, as long as the eligibility criteria continue to be met. Coverage for prescription drug benefits under Medicare, Part D, shall continue as long as the individual remains eligible, according to federal regulations. Individuals who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service may be eligible for prescription drug coverage under the primary health care service program for periods of not more than 12 months if they become ineligible for Medicare, Part D.

(c)-(t) (No change.)

§39.10. *Co-payment for Primary Health Care Services.*

(a) Except as provided by subsection (b) of this section, [It is the intent of this program that] all eligible individuals receiving services shall participate in the payment for primary health care services as rendered and according to the following income guidelines.

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

(b) Upon availability of funds, the program may pay co-payments required under federal regulations for individuals receiving prescription drug benefits under Medicare, Part D, if the eligible individual resides in an area of the state served by a program provider that offers prescription drugs as a benefit under the primary health care service program.

(c) [(b)] Notwithstanding the provisions of subsection (a)(1) and (2) of this section, an eligible individual may not be denied services because of inability to pay.

(d) [(e)] Fees collected by the provider shall be retained by the provider and shall be accounted for and expended only for primary health care services in accordance with the Uniform Grant and Contract Management Standards adopted by the Governor's office in 1 TAC, §5.141-5.167, concerning Uniform Grant and Contract Management Standards.

(e) [(d)] Individuals whose family incomes exceed 150% of the Federal Poverty Income Guidelines will not be eligible for the primary health care services provided by this program.

§39.11. *Primary Health Care Services Provided.*

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

(d) Except for prescription drugs covered under Medicare, Part D, primary health care providers [Providers] will be reimbursed for services delivered on a one-time-basis. "One-time-basis" is defined as one continuing episode of care which may include several visits as determined necessary by the provider. The department will require the following specific information prior to reimbursement for services provided on a one-time-basis:

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

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502244

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
CHAPTER 61. CHRONIC DISEASES
SUBCHAPTER A. KIDNEY HEALTH CARE
PROGRAM

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§61.1, 61.2, 61.4, 61.6, 61.7, 61.9, 61.13, and 61.14, and the repeal of §61.15, concerning the Kidney Health Care Program.

BACKGROUND AND PURPOSE

These amendments are necessary to restructure access to program pharmacy benefits and to incorporate the provisions of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). The department proposes cost sharing of expenses for program recipients who are eligible for enrollment in Medicare Part D and payment of co-insurance amounts for eligible program recipients with Medicare Part B immunosuppressant drug coverage.

In addition, the department is amending the rules to conform to the changes in departmental structure and terminology, and to improve clarity and consistency in existing language.

SECTION-BY-SECTION SUMMARY

Amendments to §61.1 add definitions and improve clarity of language and conform to current terminology. Amendments to §61.2 state eligibility requirements for Medicare Part D cost sharing. Amendments to §61.4 improve consistency and clarity of language. Amendments to §61.6 provide the structure for new benefits and restate and clarify existing benefits for covered travel. Amendments to §§61.7, 61.9, 61.13, and 61.14 improve clarity of language and conform to current terminology. Section 61.15 is being repealed as redundant, because federal and state law, as well as department policy, already specifically prohibit discrimination in each of the areas addressed by §61.15.

FISCAL NOTE

Sam B. Cooper, III, Unit Manager, Purchased Health Services Unit, Specialized Health Services Section, has determined that for each fiscal year of the first five years the sections are in effect, there will be no net fiscal implications to the state as a result of administering the sections as proposed. KHC drug expenditures for FY 2006 are estimated at \$15,150,023 under the current rules, and if appropriations for drug purchases are increased by 11.1% annually to meet the projected increased cost of drugs for KHC clients, the program's drug costs for will be \$16,831,675 in FY 2007; \$18,699,991 in FY 2008; \$20,775,690 in FY 2009; \$23,081,791 in FY 2010; and \$25,643,870 in FY 2011. Implementation of the proposed rule changes will result in projected

client drug costs of \$12,162,618 for FY 2006; \$11,157,829 for FY 2007; \$12,072,162 for FY 2008; \$13,079,554 for FY 2009; \$14,190,038 for FY 2010; and \$15,414,751 for FY 2011. These projected costs are based on estimated cost sharing amounts, which will not be finalized by Centers for Medicare and Medicaid Services until the fall of 2005. Realized savings will be directed into the program to sustain overall client benefits. The program will maintain current levels of prescription drug benefits available to program recipients, and will be able to assure that program recipients are financially able to participate in the Medicare Part D program while still receiving an uninterrupted supply of the medications necessary to treat their end-stage renal disease, a chronic condition. There will be no fiscal implications for local governments as a result of administering the sections as proposed because local governments will not participate or pay any program costs under the proposed sections.

MICRO-BUSINESS AND SMALL BUSINESS IMPACT ANALYSIS

Mr. Cooper has also determined that there will be no effect on small businesses and micro-businesses required to comply with the sections as proposed. The small and micro-businesses potentially affected in this category would be pharmacies enrolled as program providers. Those pharmacies and others that may enroll in the future will continue to receive reimbursement for providing drug benefits to program recipients. The only change anticipated would be the source of funding due to the incorporation of the provisions established by the MMA. 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

Mr. Cooper has determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of these sections. The public benefit anticipated as a result of enforcing the sections will be coordination of benefits across available funding sources to maximize available benefits to program recipients while more efficiently utilizing state funding.

REGULATORY ANALYSIS

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

Department of State Health Services, Mail Code 1938, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7150 or kidneynet@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for July 14, 2005, at 9:00 a.m., at the Department of State Health Services Headquarters, 1100 West 49th Street, Room K-100, Austin, Texas 78756. For more information, contact Donna Calvery at 1-800-222-3986 or kidneynet@dshs.state.tx.us.

25 TAC §§61.1, 61.2, 61.4, 61.6, 61.7, 61.9, 61.13, 61.14

STATUTORY AUTHORITY

The amendments are proposed under Health and Safety Code, §42.003(c), which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary to provide adequate kidney care and treatment for the citizens of this state. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also 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 Chapter 1001, Health and Safety Code.

The proposed amendments affect Health and Safety Code, Chapter 42.

§61.1. *General.*

(a) (No change.)

~~[(b) Delegation of Authority. Under the Texas Health and Safety Code, Chapter 11, §11.013, the Board of Health (board) delegates to the Commissioner of Health (commissioner), or to the person acting as commissioner in the commissioner's absence, the authority to administer KHC, exclusive of rulemaking authority.]~~

(b) ~~[(e)]~~ Definitions. The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Access surgery--The surgical procedure which creates or maintains the access site necessary to perform dialysis.

(2) Action--A denial, termination, suspension or reduction of KHC-covered services or eligibility.

(3) Allowable amount--The maximum amount that KHC will pay or reimburse for a covered benefit or service.

(4) Applicant--An individual who has submitted an application for KHC benefits through a participating outpatient dialysis facility or hospital and has not received a final determination of eligibility.

~~[(5) Board--The Texas Board of Health or its successor.]~~

~~[(6)]~~ Claim--A request for payment or reimbursement of services.

~~[(7)]~~ CMS--The Centers for Medicare and Medicaid Services, formerly known as the Health Care Financing Administration.

~~[(7)]~~ Co-insurance--A cost-sharing arrangement in which a covered person is responsible for paying a specified percentage of the charge for a covered service or product.

(8) Commissioner--The commissioner of the [Texas] Department of State Health Services [, or his successor].

(9) Co-pay/Co-payment--A cost-sharing arrangement in which a covered person is responsible for paying a specified or fixed charge for a covered service or product.

~~(9) Co-pay--The portion of the allowable amount for which a KHC recipient is responsible.]~~

(10) CRNA--Certified Registered Nurse Anesthetist.

~~(10) Covered services--Drugs, transportation, pharmaceutical products, medical care, treatment, services or equipment which have been approved by KHC for payment.]~~

(11) Department--The [Texas] Department of State Health Services [, or its successor].

(12) End-Stage Renal Disease (ESRD)--The final stage of renal impairment which is usually irreversible and permanent and requires dialysis and/or kidney transplant to reduce uremic symptoms and/or prevent the death of the patient.

(13) EOB--A form, in paper or electronic format, which provides an explanation of benefits. It is used to explain a payment or denial of a claim.

(14) Fair hearing--The informal hearing process the department follows under §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

(15) Final decision--A decision that is made by a decision maker after conducting a fair hearing under §§1.51 - 1.55 of this title (relating to Fair Hearing Procedures).

~~(16) HCFA--The Health Care Financing Administration, now known as the Centers for Medicare and Medicaid Services.]~~

(16) [(47)] Interim approval--The status given by KHC to an outpatient dialysis facility, free standing or hospital based, which has applied for participation as a KHC provider but has not executed an agreement with KHC.

(17) [(48)] KHC--The Kidney Health Care program.

~~(19) Medical benefits--Any inpatient or outpatient medical treatment or procedure approved by KHC as a covered service.]~~

(18) [(20)] Participating provider--Any individual or entity with KHC approval to furnish covered services to KHC recipients including:

(A) outpatient dialysis facilities;

(B) out-of-state outpatient dialysis facilities;

(C) hospitals and ambulatory surgical centers (ASCs) located in Texas and operating in compliance with applicable law;

(D) out-of-state hospitals and ASCs;

(E) military or Veterans Administration hospitals located in Texas which have a renal unit approved by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA);

(F) pharmacies approved as Texas Medicaid providers and licensed to operate within the United States and its territories, including mail order pharmacies;

(G) physicians and Certified Registered Nurse Anesthetists (CRNAs); or

(H) out-of-state physicians and CRNAs.

(19) [(21)] Recipient--An individual who is eligible to receive KHC benefits.

(20) [(22)] Suspended benefits--Eligibility for benefits or claims which are denied and/or held pending satisfaction of a KHC request or requirement.

~~(23) TDCI--The Texas Drug Code Index. This list of drugs by National Drug Code includes drugs and drug products approved by the department for payment as a benefit of KHC. Not all drugs listed on the TDCI are covered by KHC; however, all drugs covered by KHC are included on the TDCI.]~~

§61.2. Recipient Requirements.

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

(c) A KHC recipient's [recipient may have their KHC] benefits may be modified or suspended for any of the following reasons:

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

(4) failure to provide authorization for Medicare premium payments by KHC as specified in §61.6 of this title (relating to Limitations and Benefits Provided), if not eligible for Medicare premium-free hospitalization; ~~or~~

(5) failure to enroll in Medicare Part D benefits and apply for Low Income Subsidy under the Medicare Prescription Drug Improvement and Modernization Act of 2003, if the recipient is potentially eligible for these benefits; or

(6) [(5)] failure to notify/verify KHC of changes in the following:

(A) permanent home address;

(B) treatment status;

(C) insurance coverage; or

(D) location of treatment.

(d) - (g) (No change.)

§61.4. Applications.

Persons meeting the eligibility requirements set forth in §61.2(a)(1), (2), (3), (4), and (6) of this title (relating to Recipient Requirements) must make an application for benefits through a Kidney Health Care (KHC) participating outpatient dialysis facility or hospital.

(1) Complete application. A complete application is required before any eligibility determination will be made. A complete application shall consist of all of the following:

(A) - (D) (No change.)

(E) applicant financial data. Acceptable data to establish the applicant's financial qualifications shall be submitted with the application. The applicant or the person(s) legally obligated to support the applicant may [attach any of the following documents to] verify income by providing either of the following:

(i) a [A] copy of the first page of [either] the federal [applicant's, or the person(s) legally obligated to support the applicant's, IRS] individual income tax return [form] for the most recent [recently completed] tax year; or [an estimated or declared income for the current tax year on the Application for Benefits.]

(ii) a statement of estimated or declared income for the current tax year.

~~[(ii) Applicants who do not file a federal income tax return may submit documentation of financial assistance, income, or retirement benefits.]~~

(2) (No change.)

(3) Eligibility date for KHC benefits. The KHC eligibility date will be the date KHC receives a complete application. If KHC benefits are terminated, the eligibility date for any subsequent benefit period will be the date on which KHC receives a subsequent completed application for KHC benefits. ~~[Exception: The eligibility date for in-center dialysis patients for transportation services will be the first day of the month following the KHC eligibility effective date.]~~

(4) (No change.)

§61.6. *Limitations and Benefits Provided.*

(a) Benefits payable by KHC ~~[Kidney Health Care (KHC)]~~ are as follows:

(1) KHC allowable outpatient ~~[out-patient]~~ drugs and drug products included on the Texas Drug Code Index (TDCI) (a list of KHC allowable drugs is available upon request from KHC, [Texas] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756);

(2) covered transportation based on the recipient's treatment modality, as follows: [;]

(A) from the first day of the month following the KHC eligibility effective date for in-center dialysis recipients; or

(B) from the KHC effective date for transplant and home peritoneal dialysis recipients;

(3) (No change.)

(4) outpatient ~~[out-patient]~~ chronic maintenance dialysis treatments;

(5) inpatient ~~[in-patient]~~ chronic maintenance dialysis treatments (excluding treatment for emergency/acute dialysis); ~~[and]~~

(6) Medicare Part A and B premiums, [; if qualified.] To qualify for this benefit, recipients:

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

(7) Medicare Part B immunosuppressive drug co-insurance amounts. To qualify for this benefit, recipients:

(A) cannot be eligible for Medicaid to pay for their Medicare co-insurance amounts;

(B) shall be eligible for KHC drug benefits; and

(C) shall apply and be accepted for Medicare hospital and medical insurance.

(8) Limited Medicare Part D out-of-pocket expenses, which include premiums, deductibles, and co-insurance amounts. To qualify for this benefit, recipients:

(A) cannot be eligible for Low Income Subsidy from Medicare that covers full premium and deductible amounts;

(B) shall be eligible for KHC drug benefits; and

(C) shall apply and be accepted for Medicare Part D benefits.

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

~~[(d) Recipients eligible for immunosuppressive drug (ISD) coverage under Medicare are not eligible to receive KHC ISD coverage.]~~

(d) ~~[(e) Recipients eligible for drug coverage under a private/group health insurance plan are not eligible to receive KHC drug~~

benefits. A recipient that has exhausted drug coverage under a private/group health insurance plan may be eligible to receive drug benefits from KHC.

(e) ~~[(f)]~~ Access surgery benefits are payable only if the services were performed on or after the date Texas residency was established and not more than 180 days prior to the recipient's KHC eligibility effective date.

(f) ~~[(g)]~~ KHC medical benefits are payable during the Medicare three-month qualifying period to recipients who do not have Medicare coverage. Benefits are payable for services received on or after the KHC eligibility effective date. The three-month qualifying period shall be calculated from the first day of the month the recipient begins chronic maintenance dialysis. If a recipient becomes eligible for Medicare during the three-month period, KHC medical benefits shall not be payable from the date of Medicare eligibility.

(g) ~~[(h)]~~ Limited medical benefits are available beyond the qualifying period for eligible recipients who have applied for and have been denied Medicare coverage based on end-stage renal disease (ESRD). Recipients shall submit a copy of an official Social Security Administration Medicare denial notification (based on chronic renal disease) to the department. Transplant patients who have been successfully transplanted for three years or more are not eligible for limited medical benefits.

(h) ~~[(i)]~~ Recipients eligible for hospital and medical benefits from Medicare, the Veterans Administration, the military, or other government programs which cover the treatment of ESRD are not eligible to receive KHC medical benefits.

(i) ~~[(j)]~~ Recipients eligible for hospital and medical benefits from private/group health insurance which covers the treatment of ESRD are not eligible for KHC medical benefits.

(j) ~~[(k)]~~ KHC is the payor of last resort. All third parties must be billed prior to KHC. The Commissioner may waive this requirement in individually considered cases where its enforcement will deny services to a class of ESRD patients because of conflicting state or federal laws or regulations, under the Texas Health and Safety Code, ~~[Chapter 42.]~~ §42.009.

(k) ~~[(l)]~~ If budgetary limitations exist, the department may:

(1) restrict or categorize covered services. Categories will be prioritized based upon medical necessity, other third party eligibility and projected third party payments for the different treatment modalities, caseloads, and demands for services. Caseloads and demands for services may be based on current and/or projected data. In the event covered services must be reduced, they will be reduced in a manner that takes into consideration medical necessity and other third party coverage. The department may change covered services by adding or deleting specific services, entire categories or by making changes proportionally across a category or categories, or by a combination of these methods; and/or

(2) establish a waiting list of eligible applicants. Appropriate information will be collected from each applicant who is placed on a waiting list. The information will be used to facilitate contacting the applicant when benefits become available and to allow efficient enrollment of the applicant for benefits.

§61.7. *Claims Submission and Payment Rates.*

(a) (No change.)

(b) Claims for medical benefits shall be submitted to KHC ~~[Kidney Health Care (KHC)]~~ by the participating provider who rendered the service(s) to the KHC recipient.

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

§61.9. *Participating Providers.*

(a) The following criteria must be met for a facility, pharmacy, or other provider to qualify for participation in KHC [~~Kidney Health Care (KHC)~~].

(1) Outpatient dialysis facilities shall execute an agreement with KHC, and shall meet the following criteria:

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

(C) be licensed by the department [~~Texas Department of Health (department)~~] as an ESRD facility;

(D) - (E) (No change.)

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

(4) Pharmacies, including mail order pharmacies, shall enter into an agreement to participate in KHC through the Health and Human Services Commission Pharmacy Contracts and Rebates unit or designated contractor.

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

(b) Effective dates for participation in KHC are as follows:

(1) (No change.)

(2) The effective date of all pharmacy agreements shall be determined by the Health and Human Services Commission Pharmacy Contracts and Rebates unit or designated contractor.

(3) (No change.)

(c) (No change.)

§61.13. *Forms.*

Forms approved by the department [~~Texas Department of Health (department)~~] for use in KHC [~~the Bureau of Kidney Health Care (KHC)~~] will be provided to applicants and participating providers, as necessary.

§61.14. *Confidentiality of Information.*

(a) All information required by this chapter to be submitted may be verified at the discretion of the department [~~Texas Department of Health (department)~~] and without notice to the applicant or recipient of benefits of KHC [~~the Kidney Health Care program (KHC)~~], or to the providers of KHC services. This information is confidential to the extent authorized by law.

(b) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502246

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



25 TAC §61.15

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

The repeal is proposed under Health and Safety Code, §42.003(c), which authorizes the executive commissioner of the Health and Human Services Commission to adopt rules necessary to provide adequate kidney care and treatment for the citizens of this state. Government Code, §531.0055(e), and Health and Safety Code, §1001.075, also authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules reasonably necessary for the department to administer its regulatory and administrative functions.

The proposed repeal affects Health and Safety Code, Chapter 42.

§61.15. *Nondiscrimination Statement.*

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502247

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



CHAPTER 121. HOSPITAL CERTIFICATION AND CONSULTATION

SUBCHAPTER A. FEDERAL LAWS AND REGULATIONS ON HEALTH INSURANCE FOR THE AGED AND DISABLED

25 TAC §121.1 , §121.2

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

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes the repeal of §121.1 and §121.2, concerning the cross reference to federal laws and regulations governing health insurance for the Aged and Disabled.

BACKGROUND AND PURPOSE

The repeal is necessary to remove an outdated chapter that was originally promulgated in January of 1976. The original cross reference to these federal provisions, set forth in the rules, is no longer applicable. The rules, in their current form, serve only to cross reference federal laws and regulations pertaining to the regulatory activities of the department and the former Department of Human Services, now Department of Aging and Disability Services. There is no legal requirement for the cross reference to continue and thus repeal is needed. Further, the reference to the department in the rules cites the Department of Health Resources, which is an outdated reference. Some of the referenced regulations have been recodified or no longer exist. Repeal of these sections is necessary to align the department's rules more accurately with programs currently housed at the department.

SECTION-BY-SECTION SUMMARY

The repeal of §121.1 and §121.2 is necessary to align the department's rules with the programs that currently exist under the department's jurisdiction. Those sections that are the subject of this repeal represent only a cross reference to federal provisions of a program that are no longer applicable to the department.

FISCAL NOTE

Cathy B. Campbell, General Counsel, Office of General Counsel, has determined that for each year of the first five-year period that the repeals will be in effect, there will be no fiscal implications to state or local government as a result of repealing the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Campbell has also determined that there are no anticipated economic costs to small businesses, micro-businesses, or persons, because the rules are no longer necessary and business practices will not be altered in order to comply with the proposed repeal of the sections. There will be no impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Campbell has also determined that for each year of the first five years the repeal of the sections is in effect, the public benefit anticipated as a result of the repeal is more accurate representation of department programs and provisions governing those programs in department rules.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 proposed repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Lisa Hernandez, Deputy General Counsel, Office of General Counsel, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, extension 6587. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas 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 Chapter 1001, Health and Safety Code.

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

§121.1. *Federal Laws on Health Insurance for the Aged and Disabled.*

§121.2. *Federal Regulations on Health Insurance for the Aged and Disabled.*

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502231

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



CHAPTER 135. AMBULATORY SURGICAL CENTERS

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes amendments to §§135.1-135.4, 135.9, 135.10, 135.14, 135.18 - 135.25, 135.41, 135.42 and 135.52, the repeal of §§135.11, 135.15, and 135.26, and new §§135.11, 135.15, 135.26 and 135.29, concerning the regulation of ambulatory surgical centers.

BACKGROUND AND PURPOSE

The amendments, repeals, and new sections are proposed in accordance with Health and Safety Code (HSC), Chapter 243, which charges the department with the responsibility to license ambulatory surgical centers. The amendments, repeals, and new sections are necessary to comply with Government Code, Chapter 2054, Subchapter K, which requires the department to participate in an electronic system for occupational licensing transactions (Texas Online); Acts, 2003, 78th Legislature, Regular Session, Chapter 198, (House Bill 2292), §2.42, added Health and Safety Code, §12.0111, which requires the department to charge a fee sufficient to cover the cost of administering and enforcing the licensing program; and Health and Safety Code, §12.0112, which requires that the term for licenses issued or renewed after January 1, 2005, will be two years, Texas Government Code, Chapter 2005, which requires state agencies to adopt procedural rules for processing permit applications; and as a response to a request by stakeholders for clarification of certain provisions of the rules.

SECTION-BY-SECTION SUMMARY

The amendments to §§135.1, 135.14 and 135.18 - 135.22, 135.25, and 135.41 update and correct references within the sections. The proposed amendment to §135.2 adds definitions for "premises" and "extended observation", updates and clarifies the definitions of "advanced practice nurse", "ambulatory surgical center", "available", "licensed vocational nurse" and "registered nurse", and deletes the definition of "director" which is deemed unnecessary. The amendment to §135.3 clarifies that the fee for a one-year license is doubled when a license is issued for a two-year period. Department rules for

the issuance of two-year licenses beginning January 1, 2005, became effective on April 4, 2004. Wording is also added to the section concerning the department's authorization to collect subscription and convenience fees, in amounts to be determined by the Texas Online Authority, to recover costs associated with application and renewal application processing. The amendment to §135.4 requires the ASC governing body to adopt, implement and enforce policies relating to accurate billing for services and supplies and for compliance with the Texas Insurance Code. The amendment to §135.9 requires an evaluation of nutritional needs when a patient is in the ASC more than eight hours. The amendment to §135.10 adds a requirement for an emergency call system. The amendment to §135.23 clarifies the physical location or premises the ASC license covers. The amendment to §135.24 is to make the enforcement section language the same as other facility licensing rules. The amendment of §135.42 allows flammable germicides to be used for preoperative surgical skin preparation under specified conditions, establishes a requirement for the ASC to report surgical suite fires to the department within two business days and to implement a corrective action plan within 30 days. The amendment to §135.52 updates language to reflect current terminology used in other guidelines and standards and updates references for patient spaces.

The sections proposed for repeal address anesthesia and surgical services, nursing services, and reporting of incidents. The proposed new §§135.11, 135.15 and 135.26 reflect reorganization of existing sections and contain new language to clarify the requirements for providing anesthesia and surgical services, nursing services, and reporting requirements. New §135.11 identifies anesthesia that a hospital's governing body may approve for use in the ASC including the equipment and supply needs for each; requires compliance with the American Society of Anesthesiologists guidelines and standards; and requires that a physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged. New §135.15 requires a registered nurse with certification in basic cardiac life support to be on duty and on the premises whenever patients are in the facility, and establishes staffing requirements for the particular anesthesia to be administered. New §135.26 establishes specific incidents that must be reported to the department within 10 business days, and data that the ASC must provide annually on a form prescribed by the department. New §135.29 provides time periods for processing application for initial and renewal licenses.

FISCAL NOTE

Cindy Bednar, Manager, Facility Licensing Group, 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 administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bednar has determined that there will be costs to small businesses, micro-businesses or persons who are required to comply with the sections as proposed. These costs will be related to the department's collection of subscription and convenience fees from applicants and licensees, in amounts to be determined by the Texas Online Authority. There will be no anticipated impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bednar has also determined that for each year of the first five years the sections are in effect, the public benefit

anticipated as a result of enforcing or administering the sections will be to allow greater flexibility for patients to receive services in ambulatory surgical centers while maintaining minimum standards for safe patient care.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. 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 proposed amendments, repeals, and new sections 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 Cindy Bednar, Manager, Facility Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6648 or by email to Cindy.Bednar@dshs.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER A. OPERATING REQUIREMENTS FOR AMBULATORY SURGICAL CENTERS

25 TAC §§135.1 - 135.4, 135.9 - 135.11, 135.14, 135.15, 135.18 - 135.26, 135.29

STATUTORY AUTHORITY

The proposed amendments and new sections are authorized under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments and new sections affect the Health and Safety Code, Chapters 243 and 1001; and Government Code, Chapter 531.

§135.1. Scope and Purpose.

(a) The purpose of these sections is to implement Health and Safety Code, Chapter 243 which requires ambulatory surgical centers to be licensed by the [Texas] Department of State Health Services.

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

§135.2. *Definitions.*

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

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

(4) Advanced Practice Nurse (APN)--A registered [professional] nurse, currently licensed in the State of Texas, who has been approved by the Board of Nurse Examiners for the State of Texas (board) to practice as an advanced practice nurse based on completing an advanced educational program of study acceptable to the board. The term includes a nurse practitioner, nurse-midwife, nurse anesthetist, and a clinical nurse specialist [is prepared for advanced nursing practice by virtue of knowledge and skills obtained in an advanced educational program of study acceptable to the board, who meets requirements of Rule 221 and/or Rule 222 as defined by the Texas Board of Nurse Examiners, and has received authorization to practice as an APN in Texas].

(5) (No change.)

(6) Ambulatory Surgical Center (ASC)--A facility that [operates] primarily provides [to provide] surgical services to patients who do not require overnight hospitalization or extensive recovery, convalescent time or observation [hospital care]. The planned total length of stay for an ASC patient shall not exceed 23 hours. Patient stays of greater than 23 hours must be the result of an unanticipated medical condition and shall occur infrequently. The 23-hour period begins with the induction of anesthesia.

(7) (No change.)

(8) Available--Able to be physically present in the facility to assume responsibility for the delivery of patient care services within five minutes. [On the premises and sufficiently free from other duties to enable the individual to respond rapidly to emergency situations.]

(9) - (11) (No change.)

(12) Department--The [Texas] Department of State Health Services.

[(13) Director--The director of the Health Facility Licensing and Compliance Division of the Texas Department of Health or his or her designee.]

[(13) [(14)] Disposal--The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

[(14) [(15)] Electronic Signature--Signature produced or generated on a computer.

[(15) Extended observation--The period of time that a patient remains in the facility following recovery from anesthesia and discharge from the post anesthesia care unit, during which additional comfort measures or observation may be provided.

(16) - (17) (No change.)

(18) Licensed vocational nurse (LVN)--A person who is currently licensed under the Nursing Practice Act by the Board of Nurse Examiners for the State of Texas [the laws of this state to use the title,] as a licensed vocational nurse or who holds a valid vocational nursing license with multi-state licensure privilege from another compact state.

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

[(23) Premises--A building where patients receive outpatient surgical services.

[(24) [(23)] Prescriber--A person who is legally authorized to write an order or prescription for a health care service, medical device, or drug.

[(25) [(24)] Registered nurse (RN)--A person who is currently licensed by the Board of Nurse Examiners for the State of Texas [under the laws of this state] as a registered nurse or who holds a valid registered nursing license with multi-state licensure privilege from another compact state.

[(26) [(25)] Root cause analysis--An interdisciplinary review process for identifying the basic or contributing causal factors that underlie a variation in performance associated with an adverse event or reportable event as listed under §135.27 of this title (relating to Patient Safety Program). It focuses primarily on systems and processes, includes an analysis of underlying cause and effect, progresses from special causes in clinical processes to common causes in organizational processes, and identifies potential improvements in processes or systems.

[(27) [(26)] Title XVIII--Title XVIII of the United States Social Security Act, 42 U.S.C. §1395 et seq.

§135.3. *Fees.*

(a) Initial license fee. The fee for an initial license (includes change of ownership or relocation) is \$4,000. The license term is two years.

[(a) The Texas Board of Health has established the following schedule of fees for licensure as an ASC:]

[(1) initial/relocation license fee--\$2,000.]

[(2) renewal license fee--\$2,000.]

[(3) change of ownership license fee--\$2,000.]

(b) Renewal license fee.

(1) The fee for renewal licenses issued through December 31, 2005, will be either \$2000 for a one-year license, or \$4000 for a two-year license. The department will determine the license term and notify the ASC prior to the license renewal date.

(2) The fee for a renewal license issued January 1, 2006, and after will be \$4,000. The license term will be two years.

(c) [(b)] Official submission. The department will not consider an application as officially submitted until the applicant pays the application fee and submits the application form. [The fee must accompany the application form.]

(d) [(e)] Nonrefundable. Fees paid to the department are not refundable.

(e) [(d)] Payment of fees. All fees shall be paid to the [Texas] Department of State Health Services.

(f) [(e)] Fee schedule review. The department [board] shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through section amendments.

(g) Other fees. The department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online, in accordance with Texas Government Code, §2054.111.

§135.4. *ASC Operation.*

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

(j) The governing body shall adopt, implement and enforce a written policy to ensure accurate billing for services and supplies. The policy shall include a procedure for addressing complaints related to billed services and supplies.

(k) The governing body shall adopt, implement and enforce a policy requiring compliance with the Texas Insurance Code, Article 21.24-1 (relating to Assignment of Health Care Benefit Payments).

(l) [(j)] Informed consent for abortion. An ASC that performs abortions shall adopt, implement and enforce a policy to ensure compliance with Health and Safety Code, Chapters 171 and 245, Subchapters A and B (relating to Abortion and Informed Consent).

§135.9. *Medical Records.*

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

(j) The ASC record shall include the following:

(1) - (9) (No change.)

(10) evidence of evaluation of the patient by a physician or advanced practice nurse prior to dismissal; ~~[and]~~

(11) evidence that the patient was dismissed in the company of a responsible adult unless a physician or advanced practice nurse writes an order that the patient may be dismissed without the company of a responsible adult; and [-]

(12) for patients with a length of stay greater than eight hours, an evaluation of nutritional needs and evidence of how identified needs were met.

(k) - (q) (No change.)

§135.10. *Facilities and Environment.*

(a) The ASC shall have the necessary personnel, equipment, and procedures to handle medical emergencies that may arise in connection with services sought or provided. At a minimum, the ASC shall provide:

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

(3) a comprehensive emergency plan to address internal and external emergencies, including:

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

(C) a requirement for at least four drills a year of the internal emergency plan. ~~[- and]~~

~~[(4) personnel trained in cardiopulmonary resuscitation and the use of emergency equipment present in the facility during hours of operation.]~~

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

(d) An emergency call system shall be provided and readily accessible to staff and patients in all areas of the facility.

~~[(d) Appropriate emergency equipment and supplies shall be maintained and readily accessible to all areas of each building and shall include the following:]~~

~~[(1) emergency call system;]~~

~~[(2) oxygen;]~~

~~[(3) mechanical ventilatory assistance equipment, including airways and manual breathing bag;]~~

~~[(4) cardiac defibrillator;]~~

~~[(5) cardiac monitoring equipment;]~~

~~[(6) laryngoscopes and endotracheal tubes;]~~

~~[(7) functioning suction equipment; and]~~

~~[(8) emergency drugs and supplies specified by the medical staff.]~~

(e) - (h) (No change.)

§135.11. *Anesthesia and Surgical Services.*

(a) Anesthesia services.

(1) Anesthesia services provided in the ASC shall be limited to those that are approved by the governing body, which may include the following.

(A) Topical anesthesia--an anesthetic agent applied directly or by spray to the skin or mucous membranes, intended to produce transient and reversible loss of sensation to the circumscribed area.

(B) Local anesthesia--administration of an agent that produces a transient and reversible loss of sensation to a circumscribed portion of the body.

(C) Regional anesthesia--injection of an anesthetic agent to the nerves supplying a region of the body that results in a loss of sensation.

(D) Minimal sedation (anxiolysis)--a drug-induced state during which patients respond normally to verbal commands. Although cognitive function and coordination may be impaired, ventilatory and cardiovascular functions are unaffected.

(E) Moderate sedation/analgesia ("conscious sedation")--a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained (reflex withdrawal from a painful stimulus is NOT considered a purposeful response).

(F) Deep sedation/analgesia--a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (Reflex withdrawal from a painful stimulus is NOT considered a purposeful response).

(G) General anesthesia--a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilatory function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

(2) Anesthesia services shall be under the direction of a physician approved by the governing body upon the recommendation of the ASC medical staff.

(3) The medical staff will develop and enforce written practice guidelines and standards for the administration of anesthesia.

(A) Administration of anesthesia shall follow the applicable American Society of Anesthesiologists guidelines and standards, including:

(i) Basic Standards for Preanesthesia Care;

- (ii) Standards for Basic Anesthetic Monitoring;
- (iii) Standards for Postanesthesia Care; and
- (iv) Guidelines for Ambulatory Anesthesia and

Surgery.

(B) If the provisions contained in the guidelines listed in subparagraph (A) of this paragraph conflict with this section, the provisions of this section supersede.

(C) Copies of the standards and guidelines are available for review at the Department of State Health Services, Facility Licensing Group, Exchange Building, 8407 Wall Street, Austin, Texas 78754. Copies may also be obtained by writing the American Society of Anesthesiologists, 520 North Northwest Highway, Park Ridge, Illinois 60068-2573; Internet www.asahq.org; or by telephone at (847) 825-5586.

(4) Anesthesia must be administered only by:

(A) an anesthesiologist;

(B) a physician, dentist, oral surgeon or podiatrist who is qualified under state law and has education, training and experience in the type of anesthesia being performed; or

(C) a certified registered nurse anesthetist who is under the supervision, as defined by the Medical Practice Act, Texas Occupations Code, §157.058, and the Nurse Practice Act, Texas Occupations Code, §301.152, of the operating physician or of an anesthesiologist who is immediately available if needed.

(D) a qualified professional nurse, under the direct supervision of the physician, may administer those types of anesthesia that the Board of Nurse Examiners for the State of Texas has determined are within the scope of practice for a registered nurse. If a registered nurse administers anesthesia in the facility, the facility must:

(i) verify that the registered nurse has the requisite training, education and experience to administer the anesthesia;

(ii) maintain documentation to support that the registered nurse has demonstrated competency in the administration of the anesthesia;

(iii) with input from the facility's qualified anesthesia providers, develop, implement and enforce detailed, written policies and procedures to guide the registered nurse; and

(iv) ensure that the registered nurse has no other duties except to monitor the patient during the administration of the anesthesia and the procedure.

(5) Anesthesia shall not be administered unless the operating surgeon or anesthesiologist has evaluated the patient immediately prior to surgery to assess the risk of the anesthesia relative to the surgical procedure to be performed.

(6) The anesthesiologist or the operating physician shall be available until all of his or her patients operated on that day have been discharged from the post-anesthesia care unit.

(7) Patients who have received anesthesia shall be evaluated for proper anesthesia recovery by the operating surgeon or the person administering the anesthesia prior to discharge from the post-anesthesia care unit using criteria approved by the medical staff.

(8) Patients who remain in the facility for extended observation following discharge from the post-anesthesia care unit shall be evaluated immediately prior to discharge from the facility by a physician, the person administering the anesthesia or a registered nurse, in

accordance with written policies and procedures of the medical staff to include criteria developed by the medical staff for post-operative monitoring of anesthesia.

(9) A physician shall be on call and able to respond physically or by telephone within 30 minutes until all patients have been discharged from the ASC.

(10) Emergency equipment and supplies appropriate for the type of anesthesia services provided shall be maintained and accessible to staff at all times.

(A) Functioning equipment and supplies which are required for all facilities include:

(i) suctioning equipment, including a source of suction and suction catheters in appropriate sizes for the population being served;

(ii) source of compressed oxygen;

(iii) basic airway management equipment, including oral and nasal airways, face masks, and self-inflating breathing bag-valve set;

(iv) blood pressure monitoring equipment; and

(v) emergency medications specified by the medical staff and appropriate to the type of surgical procedures and anesthesia services provided by the facility.

(B) In addition to the equipment and supplies required under subparagraph (A) of this paragraph, facilities which provide moderate sedation/analgesia, deep sedation/analgesia, regional analgesia and/or general anesthesia must provide the following:

(i) intravenous equipment, including catheters, tubing, fluids, dressing supplies, and appropriately sized needles and syringes;

(ii) advanced airway management equipment, including laryngoscopes and an assortment of blades, endotracheal tubes and stylets in appropriate sizes for the population being served;

(iii) a mechanism for monitoring blood oxygenation, such as pulse oximetry;

(iv) electrocardiographic monitoring equipment;

(v) cardiac defibrillator; and

(vi) pharmacologic antagonists as specified by the medical staff and appropriate to the type of anesthesia services provided.

(b) Surgical services.

(1) Surgical procedures performed in the ASC shall be limited to those procedures that are approved by the governing body upon the recommendation of qualified medical personnel.

(2) Adequate supervision of surgery conducted in the ASC shall be a responsibility of the governing body, shall be recommended by qualified medical personnel, and shall be provided by appropriate personnel.

(3) Surgical procedures shall be performed only by health care practitioners who are licensed to perform such procedures within Texas and who have been granted privileges to perform those procedures by the governing body of the ASC, upon the recommendation of qualified medical personnel and after medical review of the practitioner's documented education, training, experience, and current competence.

(4) Surgical procedures to be performed in the ASC shall be reviewed periodically as part of the peer review portion of the ASC's quality assurance program.

(5) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgery.

(6) The necessity or appropriateness of the proposed surgery, as well as any available alternative treatment techniques, shall be discussed with the patient prior to scheduling the patient for surgery.

(7) Licensed nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(8) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area.

(A) If flammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Annex 2, Flammable Anesthetizing Locations, 1999) and with applicable state and local fire codes.

(B) If nonflammable agents are present in an operating room the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 99, Chapters 4 and 8, 1999) and with applicable state and local fire codes.

(9) With the exception of those tissues exempted by the governing body after medical review, tissues removed during surgery shall be examined by a pathologist, whose signed report of the examination shall be made a part of the patient's medical record.

(10) A description of the findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the health care practitioner who performed the operation. If the description is dictated, an accurate written summary shall be immediately available to the health care practitioners providing patient care and becomes a part of the patient's medical record. Refer to §135.9(p) of this title (relating to Medical Records).

(11) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be assured through the provision of adequate space, equipment, and personnel.

(A) Provisions shall be made for the isolation or immediate transfer of patients with communicable diseases.

(B) All persons entering operating rooms shall be properly attired.

(C) Acceptable aseptic techniques shall be used by all persons in the surgical area.

(D) Only authorized persons shall be allowed in the surgical area.

(E) Suitable equipment for rapid and routine sterilization shall be available to assure that operating room materials are sterile.

(F) Environmental controls shall be implemented to assure a safe and sanitary environment.

(G) Operating rooms shall be appropriately cleaned before each operation.

(12) Written policies and procedures for decontamination, disinfection, sterilization, and storage of sterile supplies shall be developed, implemented and enforced. Policies shall include, but not be limited to, the receiving, cleaning, decontaminating, disinfecting, preparing and sterilization of critical items (reusable items), as well as for the assembly, wrapping, storage, distribution, and the monitoring and control of sterile items and equipment.

(A) Policies and procedures shall be developed following standards, guidelines and recommendations issued by the Association of Operating Room Nurses (AORN), the Association for Professionals in Infection Control and Epidemiology (APIC), the Centers for Disease Control and Prevention (CDC) and, if applicable, the Society of Gastroenterology Nurses and Associates (SGNA). Standards, guidelines, and recommendations of these organizations are available for review at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas. Copies may also be obtained directly from each organization, as follows: AORN, 2170 South Parker Road, Suite 300, Denver CO, 80231, (800) 755-2676; APIC, 1275 K Street, NW, Suite 1000, Washington, DC, 20005, (202) 789-1890; CDC, National Center for Infectious Disease, Mailstop C-14, 1600 Clifton Road, Atlanta, GA, 30333; SGNA, 401 North Michigan Avenue, Chicago, IL, 60611.

(B) Policies and procedures shall also address proper use of external chemical indicators and biological indicators.

(C) Performance records for all sterilizers shall be maintained for a period of 6 months.

(D) Preventive maintenance of all sterilizers shall be completed according to manufacturers recommendations on a scheduled basis. A preventive maintenance record shall be maintained for each sterilizer. These records shall be retained at least one year and shall be available for review to the facility within two hours of request by the department.

(13) Emergency power adequate for the type of surgery performed shall be available in the operative and post operative recovery areas.

(14) Periodic calibration and/or preventive maintenance of all equipment shall be provided in accordance with manufacturer's guidelines.

(15) The informed consent of the patient or, if applicable, of the patient's legal representative, shall be obtained before an operation is performed.

(16) A written procedure shall be established for observation and care of the patient during the preoperative preparation and postoperative recovery period.

(17) Written protocols shall be established for instructing patients in self-care after surgery, including written instructions to be given to patients who receive conscious sedation, regional and general anesthesia.

(18) Patients who have received anesthesia shall be dismissed in the company of a responsible adult unless a physician or advanced practice nurse writes an order that the patient may be dismissed without the company of a responsible adult.

(19) An effective written procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC shall be developed. The ASC must have a

written transfer agreement with a hospital or all physicians on staff at the ASC must have admitting privileges at a local hospital.

§135.14. Radiology Services.

(a) - (f) (No change.)

(g) Policies shall address the safety aspects of radiology services, including, but not limited to:

(1) regulation of the use, removal, handling, and storage of any radioactive material which is required to be licensed by the [Texas] Department of State Health Services, [Bureau of] Radiation Control;

(2) - (6) (No change.)

(h) Laser equipment shall be licensed as required by the [Texas] Department of State Health Services, [Bureau of] Radiation Control. Policies and procedures shall be established and implemented for laser technology which include laser safety programs, education and training of laser personnel, credentialing for each specific laser and a requirement for all personnel working with lasers to be adequately trained in the safety and use of each type of laser utilized.

§135.15. Facility Staffing and Training.

(a) Nursing services.

(1) There shall be an organized nursing service under the direction of a qualified registered nurse (RN). The ASC shall be staffed to assure that the nursing needs of all patients are met.

(2) There shall be a written plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing service shall include, but is not limited to, nursing care rendered to patients preoperatively, intraoperatively, and postoperatively.

(A) The responsible individual for nursing services shall be a qualified RN whose responsibility and authority for nursing service shall be clearly defined and includes supervision of both personnel performance and patient care.

(B) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(C) Surgical technicians and licensed vocational nurses may be permitted to serve as the scrub nurse under the direct supervision of an RN; they shall not be permitted to function as circulating nurses in the operating rooms, except in ASCs where no general anesthesia is administered and when there is an adequate number of RNs immediately available for an emergency situation. Licensed vocational nurses and surgical technicians may assist in circulatory duties under the supervision of a qualified RN during general anesthesia cases.

(D) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(3) There shall be an adequate number of RNs on duty to meet the following minimum staff requirements: director of the department (or designee), and supervisory and staff personnel for each service area to assure the immediate availability of an RN for emergency care or for any patient when needed.

(A) An RN shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(B) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of an RN.

(4) An RN qualified, at a minimum, with current certification in basic cardiac life support, shall be on duty and on the premises at all times whenever patients are present in the facility.

(b) Additional staffing requirements. In addition to meeting the requirements for nursing staff under subsection (a) of this section, facilities must comply with the following minimum staffing requirements.

(1) Facilities that provide only topical anesthesia, local anesthesia and/or minimal sedation are required to have a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility.

(2) Facilities that provide moderate sedation/analgesia are required to have the following additional staff:

(A) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(B) an individual trained and currently certified in advanced cardiac life support must be available until all patients have been discharged from the post anesthesia care unit.

(3) Facilities that provide deep sedation/analgesia, general anesthesia, and/or regional anesthesia must have the following additional staff:

(A) a second individual on duty on the premises who is trained and currently certified in basic cardiac life support until all patients have been discharged from the facility; and

(B) an individual who is trained and currently certified in advanced cardiac life support must be on duty on the premises and sufficiently free of other duties to enable the individual to respond rapidly to emergency situations until all patients have been discharged from the post anesthesia care unit.

§135.18. Unlicensed Ambulatory Surgical Center.

(a) If the department [director] has reason to believe that a person or facility may be providing ambulatory surgical services without a license as required by the Act, the person or facility shall be so notified in writing by certified mail, return receipt requested, and shall submit to the department the following information within 20 days of receipt of the notice:

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

(b) If the person or facility has submitted an application for a license, the application will be processed in accordance with §135.20 of this title (relating to Initial Application and Issuance of License [for Initial Applicants]).

(c) (No change.)

(d) If the person or facility submits sufficient documentation to establish that ambulatory surgical services are not provided, the department [director] shall so notify the person or facility in writing within 30 days that no license is required. If the documentation submitted is determined to be insufficient by the department [director], the person or facility shall be so notified in writing and shall have 10 days to respond. Following receipt of the response, if any, the department [director] shall then notify the person or facility in writing within 10 days of the determination.

{(e) If a person or facility fails to respond as required by subsections (a) and (d) of this section, the provisions of §135.24(e) and (g) of this title (relating to Denial, Suspension, or Revocation of License) will govern.}

§135.19. *Exemptions.*

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

(c) The department [~~director~~] shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 30 days following receipt of the claim for exemption.

(d) (No change.)

(e) If the claim for exemption is proposed to be denied, the person or facility so affected shall have the right to appeal the determination to the department [~~director~~] by written letter with the reasons supporting exemption within 10 days following receipt of the proposed denial.

(f) - (g) (No change.)

~~{(h) In the event that a person or facility does not comply as required by subsection (g) of this section, the provisions of §135.24(e) and (g) of this title (relating to Denial, Suspension, or Revocation of License) will govern.}~~

§135.20. *Initial Application and Issuance of License.*

(a) (No change.)

(b) Upon written or verbal request, the department [~~director~~] shall furnish a person with an application form for an ASC license. The applicant shall submit to the department [~~director~~] a completed original application and the nonrefundable license fee.

(1) (No change.)

(2) Upon receipt of the application, the department [~~director~~] shall review the application to determine whether it is complete. All documents submitted to the department must be originals. The address provided on the application must be the address at which the ASC is operating.

(3) If the department [~~director~~] determines that the application for an unlicensed ASC is complete and correct, a representative of the department shall schedule a presurvey conference with the applicant in order to inform the applicant of the standards for the operation of the ASC. A presurvey conference, may at the department's discretion, be waived for an applicant of a licensed ASC for which a change of ownership is anticipated.

(4) (No change.)

(c) (No change.)

(d) Withdrawal of application. If an applicant decides not to continue the application process for a license the application may be withdrawn. The applicant shall submit a written request to withdraw to the department [~~director~~]. The department [~~director~~] shall acknowledge receipt of the request to withdraw.

(e) (No change.)

§135.21. *Inspections.*

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

(d) The survey report form shall be submitted as follows.

(1) The surveyor shall submit the survey report to their supervisor [~~the director~~] for evaluation and decision.

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

(4) If deficiencies are cited and the plan of correction is not acceptable, the department [~~director~~] will notify the applicant in writing and request that the plan of correction be resubmitted. Upon resubmission of the acceptable plan of correction, written notice will be sent to the applicant acknowledging same.

(5) - (7) (No change.)

§135.22. *Renewal of Annual License.*

(a) (No change.)

(b) Renewal license. The department shall issue a renewal license to an ASC that meets the minimum standards for a license set forth in these sections.

(1) The ASC shall submit the following to the department no later than 30 days prior to the expiration date of the license:

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

(D) an annual events report in accordance with §135.27(b)(1) [~~135.28(b)(1)~~] of this title (relating to Patient Safety Program); and

(E) a best practices report in accordance with §135.27(b)(2) of this title [~~135.28(b)(2)~~].

(2) - (4) (No change.)

(c) (No change.)

§135.23. *Conditions of Licensure [Annual License].*

(a) An ASC license is issued only for the premises and person or governmental unit named on the application.

(b) An ASC license is issued for a single physical location, and shall not include multiple buildings or offsite locations.

(c) Multiple ASCs may share a single building, provided that:

(1) each ASC is separately licensed; and

(2) no part of the building may be dually licensed by more than one ASC.

(d) [~~(a)~~] No license may be transferred or assigned from one person to another person. If a change of ownership of a licensed ASC is anticipated, in order to ensure continuity of patient services, the department shall be informed in writing and the applicant shall submit a license application and nonrefundable fee at least 30 days prior to the change of ownership of each ASC. The procedure shall be handled in accordance with §135.20 of this title (relating to Initial Application and Issuance of License [~~for Initial Applicants~~]), with the exception of the presurvey conference and the on-site inspection, unless deemed necessary by the department. A [~~temporary~~] license will be issued for the newly acquired ASC effective on the date the ownership changed. The previous license will be void on the date of acquisition.

(e) [~~(b)~~] No license may be transferred from one ASC location to another. If an ASC is relocating, the ASC shall complete and submit a license application and non-refundable fee at least 30 days prior to the relocation of the ASC. The procedure shall be handled in accordance with §135.20 of this title, with the exception of the presurvey conference, unless deemed necessary by the department. An initial license will be issued for the relocated ASC effective on the date the relocation occurred. The previous license will be void on the date of relocation.

(f) [~~(c)~~] Written notice to the department of any change in telephone number must be received within 30 days after the number has changed.

(g) [~~(d)~~] If the name of an ASC is changed, the department must be notified in writing within 30 days after the effective date of the name change.

§135.24. *Enforcement.*

(a) Reasons for enforcement action.

(1) The Department of State Health Services (department) may deny, suspend, or revoke an ASC's license in accordance with Health and Safety Code (HSC), §243.011, if the applicant or licensee:

- (A) fails to comply with any provision of the Act;
- (B) fails to comply with any provision of this chapter or any other applicable laws;
- (C) fails to comply with a special license condition;
- (D) fails to comply with an order of the commissioner or another enforcement procedure under the statute;
- (E) has a history of noncompliance with the rules adopted under this chapter relating to patient health, safety, and rights which reflects more than nominal noncompliance;
- (F) has aided, committed, abetted or permitted the commission of an illegal act;
- (G) fails to provide an adequate application or renewal information;
- (H) fails to timely pay assessed administrative penalties in accordance with the Act;
- (I) fails to comply with applicable requirements within a designated probation period;
- (J) fails to submit an acceptable plan of correction for cited deficiencies; or
- (K) if the facility is participating under Title XVIII, and the Centers for Medicare and Medicare Services terminates the ASC's Medicare provider agreement.

(2) The department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the ownership or operation of an ambulatory surgical center.

(A) In determining whether a criminal conviction directly relates, the department shall consider the provisions of the Texas Occupations Code, Chapter 53.

(B) The following felonies and misdemeanors directly relate because these criminal offenses indicate an ability or a tendency for the person to be unable to own or operate an ambulatory surgical center:

- (i) a misdemeanor violation of the statute;
- (ii) a misdemeanor or felony involving moral turpitude;
- (iii) a conviction relating to deceptive business practices;
- (iv) a misdemeanor of practicing any health-related profession without a required license;
- (v) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;
- (vi) an offense under the Texas Penal Code (TPC), Title 5, involving a patient or a client of any health care facility, a home and community support services agency or a health care professional;
- (vii) a misdemeanor or felony offense under various titles of the TPC, as follows:
 - (I) Title 5 concerning offenses against the person;

(II) Title 7 concerning offenses against property;
(III) Title 9 concerning offenses against public order and decency;

(IV) Title 10 concerning offenses against public health, safety, and morals; or

(V) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; and

(viii) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate an ambulatory surgical center.

(C) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, the license shall be revoked.

[(a) Denial, Suspension or Revocation of a License. The department has jurisdiction to enforce the Acts or Rules adopted under this chapter.]

[(1) The department may refuse to issue or renew a license for an ASC that does not participate under Title XVIII if the center:]

[(A) fails to comply with any provisions of the Act or these sections; or]

[(B) is not in compliance with minimum standards for licensure at least 30 days prior to the expiration date of the temporary or annual license.]

[(2) The department may suspend the license of an ASC for one or more of the following reasons:]

[(A) misstatement or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the ASC pursuant to the Act; or]

[(B) materially altering any license issued by the department.]

[(3) The department may revoke the license of an ASC for one or more of the following reasons:]

[(A) an act has been committed by the ASC or its employees which affects the health and safety of a patient;]

[(B) if an ASC has been cited for deficiencies and fails to submit an acceptable plan of correction in accordance with these sections; or]

[(C) if an ASC has been cited for deficiencies and fails to timely comply with minimum standards for licensure within the dates designated in the plan of correction.]

[(4) The department shall refuse to issue or renew a license of an ASC that participates under Title XVIII, if the certifying body, Centers for Medicare and Medicaid Services, has terminated that ASC's provider agreement under Title XVIII.]

(5) If the department [director] proposes to deny, suspend, or revoke a license, the department [director] shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 30 days after the date the applicant receives notice. The request must be in writing and submitted to the department as instructed in the notice of violation letter [director, Health Facility Licensing and Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756]. A hearing shall be conducted pursuant to the Government Code, Chapter 2001, Administrative Procedure Act, and §§1.21, 1.23, 1.25, and 1.27 of this title (relating to

Formal Hearing Procedures). If a hearing is not requested in writing within 30 days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(4) ~~[(6)]~~ If the department finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(5) ~~[(7)]~~ The [If the] provisions of Texas Occupations Code, Chapter 53, Consequences of Criminal Conviction, apply to an ASC[; any procedures covering the denial, suspension, or revocation of a license shall be governed by the provisions in those statutes].

(6) ~~[(8)]~~ If a person violates the licensing requirements or the standards prescribed by the Act, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

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

§135.25. Complaints.

(a) (No change.)

(b) All licensed ambulatory surgical centers are required to provide the patient and his/her guardian at time of admission a written statement identifying the department as the responsible agency for ambulatory surgical centers complaint investigations. The statement shall inform persons to direct complaint to the [Texas] Department of State Health Services, Facility Licensing Group [Health Facility Licensing and Compliance Division], 1100 West 49th Street, Austin, Texas 78756, telephone (888) 973-0022. This information must also be prominently and conspicuously posted for display in an area of the facility that is readily available to patients, families and visitors. Complaints may be registered with the department by phone or in writing. A complainant may provide his/her name, address, and phone number to the department. Anonymous complaints may be registered. All complaints are confidential.

(c) - (e) (No change.)

§135.26. Reporting Requirements.

(a) The ambulatory surgical center must make a report of the following incidents to the department. A written letter of explanation with supporting documents must be mailed to the department within 10 business days of the incident. The mailing address is Department of State Health Services, Facility Licensing Group, 1100 West 49th Street, Austin, Texas 78756.

(1) The death of a patient while under the care of the ASC;

(2) The transfer of a patient to a hospital;

(3) Patient development of complications within 24 hours of discharge from the ASC resulting in admission to a hospital; and

(4) A patient stay exceeding 23 hours.

(b) On an annual basis, the ASC must report the types and numbers of procedures performed and the average length of stay during the previous 12-month period. The report will be made using a form to be prescribed by the department.

(c) Any theft of drugs and/or diversion of controlled drugs shall be reported to the local police agency, the State Board of Pharmacy, the Texas Department of Public Safety, and/or the Drug Enforcement Administration, and the Department of State Health Services.

(d) An ASC that performs abortions must comply with the reporting requirements specified in the Texas Health and Safety Code, §245.011.

(e) Occurrences of fire in the ASC shall be reported as specified under §135.41(2) of this title (relating to Fire Prevention, Protection, and Safety) and §135.42(1)(F) of this title (relating to Handling and Storage of Gases, Anesthetics, and Flammable Liquids).

§135.29. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the Department of State Health Services (department).

(2) An application for an initial license is complete when the department has received, reviewed, and found acceptable the information described in §135.20 of this title (relating to Initial Application and Issuance of License).

(3) An application for an annual renewal license is complete when the department has received, reviewed and found acceptable the information described in §135.22 of this title (relating to Renewal of Annual License).

(b) Time Periods. An application from a facility for an initial license or a renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the department receives the application and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 45 calendar days.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 calendar days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that the department reimburse in full the fee paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and

good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the director.

(e) Hearings. If a hearing is proposed during the processing of the application, the hearing shall be conducted pursuant to the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003 and Rules of Procedure, 1 Texas Administrative Code, Chapter 155).

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502254

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



25 TAC §§135.11, 135.15, 135.26

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

The proposed repeals are authorized under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed repeals affect the Health and Safety Code, Chapters 243 and 1001; and Government Code, Chapter 531.

§135.11. *Anesthesia and Surgical Services.*

§135.15. *Nursing Services.*

§135.26. *Reporting of Incidents.*

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502255

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER B. SAFETY REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.41, §135.42

The proposed amendments are authorized under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Health and Safety Code, Chapters 243 and 1001; and Government Code, Chapter 531.

§135.41. *Fire Prevention, Protection, and Safety.*

An ambulatory surgical center (ASC) shall comply with the provisions of this section with respect to fire prevention, protection, and safety.

(1) (No change.)

(2) Fire reporting. Except as required under §135.42(1)(F) of this title (relating to Handling and Storage of Gases, Anesthetics, and Flammable Liquids), an ~~[An]~~ ASC shall report all occurrences of fire in writing no later than 10 calendar days following the occurrence to the department in care of the Facility Licensing Group (FLG) ~~[director, Health Facility Licensing and Compliance Division (HFLCD)]~~, [Texas] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or fax to (512) 834-4514. Any fire occurrence causing injury to a person shall be reported no later than the next business day to the ~~department [director]~~, FLG [HFLCD], by fax or overnight mail, to the address or fax number previously mentioned in this paragraph.

(3) - (12) (No change.)

§135.42. *Handling and Storage of Gases, Anesthetics, and Flammable Liquids.*

An ASC shall comply with the requirements of this section for handling and storage of gas, anesthetics, and flammable liquids.

(1) Flammable germicides. If flammable germicides, including alcohol-based products, are used for preoperative surgical skin preparation, the facility must: ~~[Flammable germicides shall not be used for preoperative preparation of the surgical field.]~~

(A) use only self-contained, single-use, pre-measured applicators to apply the surgical skin preparations;

(B) follow all manufacturer product safety warnings and guidelines;

(C) develop, implement and enforce written policies and procedures outlining the safety precautions required related to the use of the products, which, at a minimum, must include minimum drying times, prevention and management of product pooling, parameters related to draping and the use of ignition sources, staff responsibilities related to ensuring safe use of the product, and documentation requirements sufficient to evaluate compliance with the written policies and procedures;

(D) ensure that all staff working in the surgical environment where flammable surgical skin preparation products are in use have received training on product safety and the facility policies and procedures related the use of the product;

(E) develop, implement and enforce an interdisciplinary team process for the investigation and analysis of all surgical suite fires and alleged violations of the polices; and

(F) provide a written report of all occurrences of surgical suite fires within two business days to the department in care of the Facility Licensing Group, and complete an investigation of the occurrence and develop and implement a corrective action plan within 30 days.

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

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502256

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER C. PHYSICAL PLANT AND CONSTRUCTION REQUIREMENTS FOR NEW AND EXISTING AMBULATORY SURGICAL CENTERS

25 TAC §135.52

The proposed amendment is authorized under Health and Safety Code, §243.009, concerning rules and minimum standards to protect and promote the public health and welfare by providing for the issuance, renewal, denial, suspension, and revocation of each license; Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; §12.0112, which requires the term of each license issued to be two years; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendment affects the Health and Safety Code, Chapters 243 and 1001; and Government Code, Chapter 531.

§135.52. Construction Requirements for New Ambulatory Surgical Centers.

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

(d) Spatial requirements.

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

(7) Preoperative patient holding room.

(A) General. A preoperative holding area shall be provided and arranged in a one-way traffic pattern so that patients entering

from outside the surgical suite can change, gown, and move directly into the restricted corridor of the surgical suite. The holding area shall be separate from the post-operative recovery suite [recovery] and the restricted corridor.

(B) (No change.)

(C) Patient toilet. A toilet room with handicapped accessible water closet and hand washing facilities shall be provided. The toilet room may be shared with the post-operative recovery suite [recovery room], if conveniently located to both.

(D) (No change.)

(8) (No change.)

(9) Post-operative recovery suite [Recovery room].

(A) General. A post-operative recovery suite [recovery room] shall be distinct and separate from preoperative areas. The post-operative recovery suite [recovery room] shall be arranged to provide a one-way traffic pattern from the restricted surgical corridor to the post-operative recovery suite [recovery] and then to the extended observation rooms [second stage recovery] or discharge.

(B) Post anesthesia care unit [Patient station(s)]. A minimum of one patient station per operating room, plus one additional station, shall be provided.

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

~~(C)~~ Patient toilet. A toilet room with handicapped accessible water closet and hand washing facilities shall be provided. The toilet room may be shared with the preoperative patient holding area, if conveniently located to both.

(C) ~~[(D)]~~ Extended observation rooms [Second stage recovery]. Separate [A separate] supervised rooms [room] or areas [area] may be provided for patients who are sufficiently stabilized [able] to leave the post anesthesia care unit [recovery/post-anesthesia room], but require [need] additional time in the facility for observation or comfort measures prior to being discharged [for all vital signs to be stabilized to the point where the patient may leave the facility].

(i) When individual rooms are provided [for second stage recovery], the rooms shall have an area of at least 60 square feet. When such rooms include a bed or recliner, a minimum clearance of three feet at the foot and on each side of the bed or recliner shall be provided.

(ii) When an open or ward area is provided [for second stage recovery], the minimum clearance from the bed or recliner to the side wall may not be less than three feet; and a space of four feet shall be provided at the foot of each bed or recliner. The minimum clearance between beds or recliners may not be less than three feet.

(D) Patient toilet. A toilet room with handicapped accessible water closet and hand washing facilities shall be provided. The toilet room may be shared with the preoperative patient holding area, if conveniently located to both.

(10) - (12) (No change.)

(13) Surgical suite. The surgical suite shall be arranged to preclude unrelated traffic through the suite. The surgical suite shall contain at least one operating room and all surgical service areas required under subparagraph (B) of this paragraph.

(A) (No change.)

(B) Surgical service areas.

(i) Restricted corridor. The restricted corridor shall serve as the primary passageway for staff and patients within the surgical suite. The following rooms and areas when provided or required by NFPA 101 shall have direct access to the restricted corridor:

(I) - (II) (No change.)

(III) post-operative recovery suite [~~recovery room~~];

(IV) - (XI) (No change.)

(ii) - (ix) (No change.)

(14) Treatment room.

(A) A treatment room is not required, but when provided, it may be used only for minor procedures [~~that use only local anesthetics~~].

(B) If anesthesia is administered in the treatment room, the room must comply with NFPA requirements for an anesthetizing location.

(C) [~~(B)~~] The treatment room shall have a clear floor area of at least 100 square feet exclusive of fixed or moveable cabinets, counters, or shelves.

(D) [~~(C)~~] The treatment room shall contain an examination table, a counter for writing, and hand washing facilities.

(15) - (16) (No change.)

(e) Details.

(1) Corridors.

(A) (No change.)

(B) Communicating corridor. The communicating corridor shall be used to convey patients by stretcher, gurney, or bed.

(i) The communicating corridor shall link the preoperative holding area, operating room(s) [~~rooms(s)~~], and post-operative recovery suite [~~recovery room(s)~~], and shall be continuous to at least one exit.

(ii) (No change.)

(2) Doors and windows.

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

(C) Patient access doors. The minimum width of doors for patient access to examination and consultation rooms shall be three feet. The minimum width of doors requiring access for beds and gurneys (preoperative holding area, operating room, post-operative recovery suite [~~recovery room~~]) shall be three feet eight inches.

(D) - (F) (No change.)

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

(5) Hand washing facilities. Location and arrangement of fittings for hand washing facilities shall permit their proper use and operation. Hand washing fixtures with hands free controls shall be provided in each examination room, preoperative area, post-operative recovery suite [~~recovery room~~], soiled utility room, fluoroscopy room, clean work room, and toilet room. Particular care shall be given to the clearances required for blade-type operating handles. Lavatories and hand washing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 pounds on the front of the fixture. In addition to the specific areas noted, hand washing facilities shall be

conveniently located for staff use in rooms and areas noted under special requirements in subsection (d) of this section and throughout the center where patient care services are provided.

(6) - (8) (No change.)

(f) (No change.)

(g) Elevators. All buildings that have patient services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed to ensure that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated.

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

(4) Elevator car size.

(A) (No change.)

(B) When an operating room(s) is located on a different floor [~~other~~] than the preoperative area or the post-operative recovery suite, [~~and recovery floors~~] a hospital-type elevator shall be provided. Cars of hospital-type elevators shall be at least five feet eight inches wide by eight feet five inches deep.

(5) - (12) (No change.)

(h) Mechanical requirements. This subsection contains requirements for mechanical systems; air-conditioning, heating and ventilating systems; steam and hot and cold water systems; plumbing fixtures; piping systems; and thermal and acoustical insulation.

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

(5) Heating, ventilating, and air conditioning (HVAC) systems.

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

(C) Ventilation system requirements. All rooms and areas in the center shall have provision for positive ventilation. Fans serving exhaust systems shall be located at the discharge end and shall be conveniently accessible for service. Exhaust systems may be combined, unless otherwise noted, for efficient use of recovery devices required for energy conservation. The ventilation rates shown in Table I of §135.54(a) of this title shall be used only as minimum requirements since they do not preclude the use of higher rates that may be appropriate.

(i) Temperatures and humidities. The designed capacity of the systems shall be capable of providing the following ranges of temperatures and humidities.

(I) (No change.)

(II) Post-operative recovery suite [~~Recovery room~~]. The system serving the post-operative recovery suite [~~recovery room~~] shall be capable of maintaining a temperature of 75 degrees Fahrenheit and a relative humidity range between 45% and 60%.

(III) (No change.)

(ii) Thermometers and humidity gauges. Each operating room and post-operative recovery suite [~~recovery room~~] shall have temperature and humidity indicating devices mounted at eye level.

(iii) - (xii) (No change.)

(D) (No change.)

(6) - (11) (No change.)

(i) Electrical requirements. All electrical material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of the NFPA 70, "National Electrical Code," 1999 edition, §517-50; NFPA 99, Chapter 13; the requirements of this subsection; and as necessary to provide a complete electrical system. Electrical systems and components shall be listed by nationally recognized listing agencies as complying with available standards and shall be installed in accordance with the listings and manufacturer's instructions.

(1) - (11) (No change.)

(12) Receptacles. Only listed hospital grade grounding receptacles shall be used in the operating rooms and post-operative recovery suite [~~post anesthesia recovery area~~]. This does not apply to special purpose receptacles.

(A) - (H) (No change.)

(13) Equipment.

(A) The following shall be powered from the Type I essential electrical system in accordance with the requirements of NFPA 99, §3-4.2.2.3 when such a system is required for safe operation of the ASC referenced in paragraph (17) of this subsection.

(i) (No change.)

(ii) Ventilating system serving preoperative areas, operating rooms, and the post-operative recovery suite [~~post anesthesia recovery rooms~~] shall be connected to the equipment system in accordance with the requirements of NFPA 99, Chapter 3.

(B) Laser equipment shall be installed according to manufacturer recommendations and shall be registered with [~~the Bureau of~~] Radiation Control, [~~Texas~~] Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(C) (No change.)

(14) - (15) (No change.)

(16) Nurses calling systems.

(A) (No change.)

(B) A staff emergency assistance calling system station shall be located in each operating room, treatment room, examination room, post-operative recovery and preoperative holding area to be used by staff to summon additional help in an emergency. Activation of the system shall sound an audible signal at a staffed location, indicate type and location of call on the system monitor and activate a distinct visible signal in the corridor at the door. Additional visible signals shall be installed at corridor intersections in multi-corridor facilities. Distinct visible and audible signals shall be activated in the clean workroom, in soiled workroom, and if provided, in the nourishment station.

(17) - (18) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502257

Cathy Campbell

Director, Legal Services

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆

CHAPTER 412. LOCAL MENTAL HEALTH
AUTHORITY RESPONSIBILITIES
SUBCHAPTER C. CHARGES FOR
COMMUNITY SERVICES

25 TAC §§412.101 - 412.115

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§412.101 - 412.115, concerning charges for community services.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 412.101 - 412.115 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

The amendments are necessary to implement the Medicare prescription drug benefit program authorized by Title XVIII of the Social Security Act (the "Act"), Part D. Amendments to §§412.101 - 412.115 are also proposed to revise language as necessary to reflect the elimination of the Texas Department of Mental Health and Mental Retardation and the creation of the Department of State Health Services pursuant to House Bill 2292 (78th Legislature, Regular Session, 2003).

The amendments to implement the prescription drug benefit program are necessary to maximize third party coverage for persons receiving community mental health services and to ensure the state is the payer of last resort for prescription drug coverage. The proposed amendment to §412.105(f)(1) and the new §412.105(h) require all persons who are eligible for prescription drug benefits under Part D of the Act to enroll in the prescription drug plan of the person's choice. Eligible persons who do not enroll in a prescription drug plan must pay full cost for any medications provided by a Local Mental Health Authority. Provisions include responsibilities of Local Mental Health Authorities for assisting persons with all Part D enrollment procedures. These amendments will ensure that all available federal resources for community mental health services are directed to addressing the prescription drug needs of eligible Texans, and state resources are directed to those persons or medications not eligible for those federal resources.

SECTION-BY-SECTION SUMMARY

The following references were corrected throughout the rules: the words "mental health" were added to "local authorities" to read "local mental health authorities"; "TDMHMR" was replaced with "the department"; "mental health" replaced "MH"; "mental retardation" was removed from the text; and the references to "local authority" are replaced by the acronym "LMHA". In §412.103, the words "service coordination" were deleted and replaced with "case management services", and a new definition for the Department of State Health Services was added. In §412.105, subsection (f)(1) was revised to add failure to comply with subsection (h) as a condition under which the LMHA may charge the person the standard charge for services. Subsection (h) was added to require all persons who are eligible for prescription drug benefits under Part D of the Act to enroll in the prescription drug

plan of the person's choice. This subsection also includes responsibilities of the LMHA for assisting persons with all Part D enrollment procedures. In §412.109, "local authority" was replaced by "LMHA", and the reference to "mental retardation" is removed. Also, the "Office of Consumer Services and Rights Protection - Ombudsman" was replaced by the "department's Mental Health and Substance Abuse Client's Rights Office" and "Mail Code 2019" was added to address. In §412.113, the existing reference to "TDMHMR, Policy Development" was deleted, and replaced with the new name and new address for the department. The amendment to §412.114, includes a reference "of this title" to be correctly cited. The amendments to §412.115 replace the "Texas Board of Mental Health and Mental Retardation" with the "department's Advisory Council", "the department" replaces the existing "TDMHMR Central Office"; and inserts new text "mental health" to read "local mental health authorities".

FISCAL NOTE

Joe Vesowate, Assistant Commissioner for Mental Health and Substance Abuse, has determined that for each year of the first five-year period that the sections will be in effect, there will be no net fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed. To the extent variables can be determined, additional costs to the mental health budget are estimated to be \$1,676,976. There will be savings to the mental health budget for some persons, estimated at \$2,556,433. This amount is believed to be roughly equivalent to the new costs of providing the necessary outreach and assistance with enrollment, low-income subsidy applications, and consumer costs associated with the program. Any net savings, estimated at \$879,457, will accrue at the local level and will be used in a manner consistent with the intent of the program.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

In addition, Mr. Vesowate 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 expand provision of affordable pharmaceuticals to all Medicare eligible persons.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined in 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 sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to public health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department 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 Michael Maples, Mental Health and Substance Abuse Section, Mental Health and Substance Abuse Program Division, Department of State Health Services, 9090 West 45th Street, Mail Code 2018 Austin, Texas 78756, (512) 206-5968 or by e-mail to Michael.Maples@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal is scheduled for July 14, 2005, at 9:00 a.m., at the Department of State Health Services, Room K-100, 1100 West 49th Street, Austin, Texas 78756. For more information, please contact Pam Daggett at Pamela.daggett@dshs.state.tx.us or (512) 458-7375.

STATUTORY AUTHORITY

The proposed amendments are authorized by Government Code, §531.005, 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 Chapter 1001, Health and Safety Code.

The proposed amendments affect the Government Code, Chapter 531; and the Health and Safety Code, Chapter 1001.

§412.101. Purpose.

The purpose of this subchapter is to comply with the Texas Health and Safety Code, §534.067, by establishing a uniform fee collection policy for local mental health authorities that:

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

§412.102. Application.

(a) This subchapter applies to all local mental health authorities for community services contracted for through the performance contract that the authority provides directly or through subcontractors to members of the priority population. This subchapter also applies to persons in the priority population, and parents of persons under age 18 years in the priority population, who are seeking or receiving services.

- (b) This subchapter does not apply to:

- (1) (No change.)

(2) the department's [TDMHMR] In-Home and Family Support Program;

(3) inpatient services in a state mental health [MH] facility and non-crisis residential services as described in the performance contract; and

- (4) (No change.)

- (c) (No change.)

§412.103. Definitions.

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

- (1) (No change.)
- (2) Community services or services--Except for inpatient services in a state mental health [MH] facility and non-crisis residential services, the required and optional mental health [~~and mental retardation~~] services described in the performance contract, including:
- (A) (No change.)
- (B) community-based crisis residential services or inpatient services in a mental health facility that is not a state mental health [MH] facility;
- (C) - (D) (No change.)
- (E) case management services [~~(service coordination)~~];
- (F) - (G) (No change.)
- (3) Department--The Department of State Health Services.
- (4) [~~(3)~~] Extraordinary expenses--Major medical or health related expenses, major casualty losses, and child care expenses for the previous year or projections for the next year.
- (5) [~~(4)~~] Family members--
- (A) For an unmarried person under the age of 18 years--The person, the person's parents, and the dependents of the parents, if residing in the same household;
- (B) For an unmarried person age 18 years or older--The person and his/her dependents;
- (C) For a married person of any age--The person, his/her spouse, and their dependents.
- (6) [~~(5)~~] Gross income--Revenue from all sources before taxes and other payroll deductions. The term does not include child support received.
- (7) [~~(6)~~] Inability to pay--The person's maximum monthly fee is zero and the person:
- (A) does not have third-party coverage;
- (B) has third-party coverage, but has exceeded the maximum benefit of the covered service(s) or the third-party coverage will not pay because the services needed by the person are not covered services; or
- (C) has not identified payment for a needed service or services in an approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*).
- (8) [~~(7)~~] Income-based public insurance--Government funded third-party coverage that bases eligibility in whole or in part, on income [~~(i.e., CHIP and Medicaid)~~].
- (9) [~~(8)~~] LMHA or local mental health [~~Local~~] authority--An entity designated as the local mental health authority by the department [TDMHMR commissioner] in accordance with the Texas Health and Safety Code, §533.035(a).
- (10) [~~(9)~~] Performance contract--A written agreement between the department [TDMHMR] and a LMHA [~~local authority~~] for the provision of one or more functions as described in the Texas Health and Safety Code, §533.035(a).
- (11) [~~(10)~~] Person--A person in the priority population who is seeking or receiving services through a LMHA [local authority].

(12) [~~(11)~~] Priority population--Those groups of persons with mental illness [~~or mental retardation~~] identified in the department's [TDMHMR's] current strategic plan as being most in need of mental health [~~and mental retardation~~] services.

(13) [~~(12)~~] Significant financial change--Any change in the person's (or parent's) financial documentation, as described in §412.105(d) of this title (relating to Accountability), that affects the person's (or parent's) ability to pay. Examples of a significant financial change are:

- (A) a reduction in income due to the loss of a job or due to a reduction in hours worked on a job;
- (B) an increase in income because of an inheritance or a salary increase;
- (C) an increase or decrease in the number of family members;
- (D) the gain or loss of third-party coverage; and
- (E) an increase or decrease in extraordinary expenses.

(14) [~~(13)~~] Standard charge--A fixed price for a community service or unit of service.

(15) [~~(14)~~] State mental health [MH] facility--A state hospital or a state center with an inpatient component.

(16) [~~(15)~~] Team--The interdisciplinary team, multidisciplinary team, or treatment team.

(17) [~~(16)~~] Third-party coverage--A public or private payer of community services for a specific person that is not the person (e.g., Medicaid, Medicare, private insurance, CHIP, TRICARE).

§412.104. *Principles.*

The department [TDMHMR] supports the following principles:

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

(5) The department [TDMHMR] is the payer of last resort.

§412.105. *Accountability.*

(a) Prohibition from denying services. Local mental health authorities are prohibited from denying services to a person:

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

(b) Identifying funding sources. Local authorities are responsible for identifying and accessing available funding sources other than the department [TDMHMR], and for assisting persons (and parents) in identifying and accessing available funding sources other than the department [TDMHMR], to pay for services. Available funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, indigent pharmaceutical programs, or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Requirement for parents to enroll their children in income-based public insurance. Parents of children who may be eligible for Medicaid or the Children's [Childrens] Health Insurance Program (CHIP) must enroll their children in Medicaid or CHIP or provide documentation that they have been denied Medicaid or CHIP benefits or that their Medicaid or CHIP enrollment is pending. The LMHA [local authority] shall provide assistance as needed to facilitate the enrollment process.

(d) Financial documentation. If requested by the LMHA [local authority], persons (or parents) must provide the following financial documentation:

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

(e) Authorizing third-party coverage payment to the LMHA [local authority]. Persons (and parents) with third-party coverage must execute an assignment of benefits authorizing third-party coverage payment to the LMHA [local authority].

(f) Failure to comply.

(1) Except as provided by paragraph (2) of this subsection, if the person (or parent) fails to comply with any requirement in subsections (c) - (e) or (h) of this section, then the LMHA [local authority] will charge the person (or parent) the standard charge(s) for services. If, within 30 days after the person (or parent) initially failed to comply, the person (or parent) complies with the requirements, then the LMHA [local authority] will adjust the person's account to retroactively reflect compliance.

(2) The LMHA [local authority] will not charge the person the standard charge(s) for services if the LMHA [local authority] makes a decision, based on a clinical determination that is documented and includes input from the person's team, that the person's failure to comply is related to the person's mental illness [or mental retardation]. The clinical determination must be reassessed at least every three months. If the LMHA [local authority] decides that a person's failure to comply is related to the person's mental illness [or mental retardation], then the LMHA [local authority] must develop and implement a plan to reduce or eliminate the barriers related to the person's failure to comply.

(g) Requirement for adult persons to apply for SSI to become eligible for Medicaid. Adult persons who may be eligible for Medicaid must apply for Supplemental Security Income (SSI) or provide documentation that they have been denied SSI or that their SSI application is pending. The LMHA [local authority] shall provide assistance as needed to facilitate all aspects of the application process. If the adult person is unable to act in accordance with the requirement because of the person's mental illness [or mental retardation], then the LMHA [local authority] must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.

(h) Requirement for persons to enroll in Medicare Part D prescription drug plan. A person who is eligible for Medicare must enroll in a Medicare Part D prescription drug plan of the person's choice. The LMHA shall provide assistance as needed to facilitate all aspects of the Medicare Part D enrollment process. If the person is unable to act in accordance with this requirement because of the person's mental illness, then the LMHA must develop and implement a plan to reduce or eliminate the barriers related to the person's inability to act in accordance with the requirement.

§412.106. *Determination of Ability to Pay.*

(a) Financial assessment. The LMHA [local authority] must conduct and document a financial assessment for each person within the first 30 days of services. The LMHA [local authority] must update each person's financial assessment at least annually and whenever a significant financial change (as defined) occurs as long as the person continues to receive services. The financial assessment is accomplished using the financial documentation listed in §412.105(d) of this title (relating to Accountability), which represents the finances of the:

- (1) - (2) (No change.)
- (b) (No change.)
- (c) Third-party coverage.
 - (1) (No change.)
 - (2) Third-party coverage that will not pay.

(A) If the person's third-party coverage will not pay for needed services because the LMHA [local authority] does not have an approved provider on its network, then the LMHA [local authority] will propose to refer the person to his/her third-party coverage to identify a provider for which the third-party coverage will pay unless:

(i) the LMHA [local authority] is identified as being responsible for providing court-ordered outpatient services to the person;

(ii) the LMHA [local authority] is able to negotiate adequate payment for services with the person's third-party coverage; or

(iii) the person (or parent) voluntarily agrees to pay the standard charge(s) for the needed service(s).

(B) If the LMHA [local authority] proposes to refer the person to his/her third-party coverage as described in paragraph (2)(A) of this subsection, then the LMHA [local authority] will provide written notification to the person (or parent) in accordance with §412.109(e)(1) of this title (relating to Payments, Collections, and Non-payment), which provides an opportunity to appeal. The LMHA [local authority] must also comply with §412.109(e)(2) - (3) as initiated by the person (or parent).

(C) If the LMHA [local authority] refers the person to his/her third-party coverage, then the LMHA [local authority] will assist the person (or parent) in identifying a provider for which the third-party coverage will pay.

(D) If a person who has been referred to his/her third-party coverage is unable to identify or access needed services from an approved provider or if access will be unduly delayed, then the LMHA [local authority] will:

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

(E) The LMHA [local authority] will maintain documentation of:

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

(d) (No change.)

(e) Notification. After a financial assessment is conducted, the LMHA [local authority] must provide written notification to the person (or parents) that includes:

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

(4) the name and phone number of at least one LMHA [local authority] staff who the person (or parent) may contact during office hours to discuss the information contained in the written notification; and

(5) (No change.)

§412.107. *Standard Charges.*

Each LMHA [local authority] must establish, at least annually, a reasonable standard charge for each community service as indicated in the performance contract. The standard charge must cover, at a minimum, the LMHA's [local authority's] cost of ensuring the provision of the service.

§412.108. *Billing Procedures.*

(a) Monthly account.

(1) The LMHA [local authority] will maintain a monthly account for each person that lists all services provided to the person during the month and the standard charges for the services. Each service listed will indicate whether the service is:

(A) - (D) (No change.)

(2) (No change.)

(b) Accessing funding sources. The LMHA [local authority] must access all available funding sources before using the department's [TDMHMR] funds to pay for a person's services. Funding sources may include third-party coverage, state and/or local governmental agency funds (e.g., crime victims fund), Qualified Medicare Beneficiary (QMB) Program, indigent pharmaceutical programs, or a trust that provides for the person's healthcare and rehabilitative needs.

(c) Billing third-party coverage. The LMHA [local authority] will bill the person's third-party coverage the monthly account amount for covered services. If the LMHA [local authority] has negotiated a reimbursement amount with the third-party coverage that is different from the monthly account amount, then the LMHA [local authority] may bill the third-party coverage the negotiated reimbursement amount for covered services.

(d) Billing the person (or parents).

(1) No third-party coverage. If the monthly account amount for services not covered by third-party coverage:

(A) exceeds the person's maximum monthly fee (MMF), then the amount is reduced to equal the MMF and the LMHA [local authority] bills person (or parent) the MMF; or

(B) is less than the person's MMF, then the LMHA [local authority] bills the person (or parent) the monthly account amount for services not covered by third-party coverage.

(2) Medicare third-party coverage. Nothing in this paragraph is intended to conflict with any applicable law, rule, or regulation with which a LMHA [local authority] must comply.

(A) (No change.)

(B) If the total amount applied toward the person's MMF as described in paragraph (2)(A) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA [local authority] bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the LMHA [local authority] bills the person (or parent) the total amount applied toward the MMF.

(3) Non-Medicare third-party coverage.

(A) Cost-sharing exceeds MMF. If the amount of all applicable co-payments, co-insurance, and deductibles for services listed in the monthly account as covered by non-Medicare third-party coverage exceeds the person's MMF, then the LMHA [local authority] bills the person (or parent) all applicable co-payments, co-insurance, and deductibles.

(B) Cost-sharing does not exceed MMF.

(i) (No change.)

(ii) If the total amount applied toward the person's MMF as described in paragraph (3)(B) of this subsection:

(I) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA [local authority] bills person (or parent) the MMF; or

(II) is less than the person's MMF, then the LMHA [local authority] bills the person (or parent) the total amount applied toward the MMF.

(C) Annual cost-sharing limit. If the person (or parent) has reached his/her annual cost-sharing limit (i.e., maximum out-of-pocket expense) as verified by the non-Medicare third-party coverage, then the LMHA [local authority] will not bill the person (or parent) any co-payments, co-insurance, or deductibles, as applicable to the annual cost-sharing limit, for services covered by the non-Medicare third-party coverage for the remainder of the policy-year.

(4) Social Security work incentive provisions.

(A) If the person identified a payment amount for specific services in his/her approved plan utilizing Social Security work incentive provisions (i.e., *Plan to Achieve Self-Sufficiency; Impairment Related Work Expense*), then the LMHA [local authority] bills the person the monthly account amount for the specific services up to the identified payment amount. If the monthly account amount for the specific services is greater than the identified payment amount, then the remaining balance is applied toward the person's MMF.

(B) (No change.)

(C) If the total amount applied toward the person's MMF as described in paragraph (4)(B) of this subsection:

(i) exceeds the person's MMF, then the amount is reduced to equal the MMF and the LMHA [local authority] bills person (or parent) the MMF; or

(ii) is less than the person's MMF, then the LMHA [local authority] bills the person (or parent) the total amount applied toward the MMF.

(e) Statements.

(1) The LMHA [local authority] will send to persons (and parents) who have been determined as having the ability to pay monthly or quarterly statements that include:

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

(2) Unless requested otherwise, the LMHA [local authority] does not send statements to persons (or parents) who have an ability to pay if they maintain a zero balance (i.e., the person (or parent) does not currently owe any money).

(3) Unless requested otherwise, the LMHA [local authority] does not send statements to persons (or parents) who have an inability to pay.

§412.109. Payments, Collections, and Non-payment.

(a) Payment and collection.

(1) Persons (and parents) are responsible for promptly paying all charges owed to the LMHA [local authority].

(2) The LMHAs [local authorities] are responsible for making reasonable efforts to collect payments from all available funding sources before accessing the department's [TDMHMR] funds to pay for persons' services.

(b) Financial hardship. If a person (or parent) claims financial hardship as provided in this subsection, then the LMHA [local authority] must determine whether a significant financial change (as defined) has occurred. If a significant financial change has occurred, then the LMHA [local authority] must immediately update the person's (or parent's) financial assessment as required in §412.106(a) of this [the] title (relating to Determination of Ability to Pay).

(1) If a person (or parent) claims, and provides documentation, that financial hardship prevents prompt payment of all charges owed, then the LMHA [local authority] may arrange for the person (or parent) to pay a lesser amount each month.

(2) If a person (or parent) claims that financial hardship prevents prompt payment of all charges owed, then the LMHA [local authority] must arrange for the person (or parent) to pay a lesser amount each month only if the person has third-party coverage that is neither income-based public insurance nor Medicare and the person's cost-sharing exceeds his/her MMF. The lesser amount:

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

(3) (No change.)

(c) Discontinuing charges to persons (or parents) for services. If the LMHA [local authority] makes a decision, based on a clinical determination that is documented and includes input from the person's team, that being charged for services and receiving statements will result in a reduction in the functioning level of the person or the person's (or parent's) refusal or rejection of the needed services, then the LMHA [local authority] will discontinue charging the person (or parent) for services and stop sending statements. The clinical determination must be reassessed at least every three months. If the LMHA [local authority] decides to discontinue charging the person (or parent) for services, then the LMHA [local authority] must develop and implement a plan to address the issues related to the person's functioning level or the person's (or parent's) refusal or rejection of the needed services.

(d) Involuntary reduction or termination of services for non-payment by person (or parent).

(1) The LMHA [local authority] will address the past-due account of a person (or parent) who is not making payments to ensure reasonable efforts to secure payments are initiated with the person (or parent). For example, if the LMHA [local authority] determines that non-payment is related to financial hardship, then the LMHA [local authority] may assist the person (or parent) in making arrangements to pay a lesser amount each month in accordance with subsection (a)(2) of this section or if the LMHA [local authority] makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is related to the person's mental illness ~~[or mental retardation]~~, then the person's treatment/service plan may be modified to address the non-payment.

(2) If the LMHA [local authority] makes a decision, based on a clinical determination that is documented and includes input from the person's team, that non-payment is not related to the person's mental illness ~~[or mental retardation]~~ and, despite reasonable efforts to secure payment, the person (or parent) does not pay, then the LMHA [local authority] may propose to involuntarily reduce or terminate the person's services. The LMHA [local authority] may not propose to involuntarily reduce or terminate the person's services if the proposed action would cause the person's mental or physical health to be at imminent risk of serious deterioration or the LMHA [local authority] is identified as being responsible for providing court-ordered outpatient services to the person.

(3) If the LMHA [local authority] proposes to involuntarily reduce or terminate the person's services, then the LMHA [local authority] must:

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

(e) Notification, Appeal, and Review.

(1) Notification. The LMHA [local authority] will notify the person (or parent) in writing of the proposed action (i.e., to involuntarily reduce or terminate the person's services or refer the person to his/her third-party coverage) and the right to appeal the proposed action in accordance with §401.464 of this title (relating to Notification and Appeals Process). The notification will describe the time frames and process for requesting an appeal and include a copy of this subchapter.

If the person (or parent) requests an appeal within the prescribed time frame, then the LMHA [local authority] may not take the proposed action while the appeal is pending. The LMHA [local authority] may take the proposed action if the person (or parent) does not request a review within the prescribed time frame.

(2) Appeal and appeal decision. The appeal is conducted in accordance with §401.464(g) of this title ~~[(relating to Notification and Appeals Process)]~~. The local mental health authority will notify the person (or parent) in writing of the appeal decision in accordance with §401.464(h) of this title and the right to have the appeal decision reviewed by the department's Mental Health and Substance Abuse Client's Rights Office ~~[of Consumer Services and Rights Protection - Ombudsman]~~ (1-800-252-8154) ~~[at TDMHMR Central Office]~~ if the person (or parent) is dissatisfied with the appeal decision. The notification must describe the time frames and process for requesting a review.

(3) Review of appeal decision. If the person (or parent) is dissatisfied with the appeal decision, then the person (or parent) may request a review by the department's Mental Health and Substance Abuse Client's Rights Office ~~[of Consumer Services and Rights Protection - Ombudsman at TDMHMR Central Office]~~. A request for review must be submitted to the department's Mental Health and Substance Abuse Client's Rights Office ~~[of Consumer Services and Rights Protection - Ombudsman, TDMHMR]~~, Mail Code 2019, P.O. Box 12668, Austin, TX 78751, within 10 working days of receipt of the appeal decision. If the person (or parent) requests a review within the prescribed time frame, then the LMHA [local authority] may not take the proposed action while the review is pending. The LMHA [local authority] may take the proposed action if the person (or parent) does not request a review within the prescribed time frame and the appeal decision upholds the decision to take the proposed action.

(A) A person (or parent) who requests a review may choose to have the reviewer conduct the review:

(i) by telephone conference with the person (or parent) and a representative from the LMHA [local authority] and make a decision based upon verbal testimony made during the telephone conference and any documents provided by the person (or parent) and the LMHA [local authority]; or

(ii) by making a decision based solely upon documents provided by the person (or parent) and the LMHA [local authority] without the presence of any of the parties involved.

(B) The review:

(i) will be conducted no sooner than 10 working days and no later than 30 working days of receipt of the request for review unless an extension is granted by the director of the department's Mental Health and Substance Abuse Client's Rights Office ~~[of Consumer Services and Rights Protection - Ombudsman]~~;

(ii) will include an examination of the pertinent information concerning the proposed action and may include consultation with the department's Mental Health and Substance Abuse Client's Rights Office ~~[TDMHMR]~~ clinical staff and staff who are responsible for the policy contained in this subchapter;

(iii) - (iv) (No change.)

(C) Within five working days after the review, the reviewer will send written notification of the final decision to the person (or parent) and the LMHA [local authority].

(D) The LMHA [local authority] will take appropriate action consistent with the final decision.

(f) Prohibition of financial penalties. The LMHA [~~local authority~~] may not impose financial penalties on a person (or parent).

(g) (No change.)

§412.110. Monthly Ability-to-Pay Fee Schedule.

The Monthly Ability-To-Pay Fee Schedule, referenced as Exhibit A in §412.113 of this title (relating to Exhibit), is based on 150% of the Federal Poverty Guidelines. The department [~~TDMHMR~~] may revise the Monthly Ability-To-Pay Fee Schedule, based on any changes in the Federal Poverty Guidelines.

§412.111. Training.

In accordance with a prescribed training program developed by the department [~~TDMHMR~~], all local mental health authority staff who are involved in implementing or explaining the content of this subchapter must demonstrate competency prior to performing tasks related to charging for community services and annually thereafter.

§412.112. Brochure for Persons (and Parents).

(a) The department [~~TDMHMR~~] will develop a brochure that contains the policies for charging for community services that are contained in this subchapter, including:

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

(b) The LMHA [~~local authority~~] must provide persons (and parents) a copy of the brochure prior to their entry into services, except in a crisis.

§412.113. Exhibit.

This subchapter references Exhibit A--The Monthly Ability-To-Pay Fee Schedule, copies of which are available by contacting Mental Health and Substance Abuse Program Services [~~TDMHMR, Policy Development~~], Department of State Health Services, Mail Code 2018, P.O. Box 13247 [~~12668~~], Austin, TX 78711-2668.

§412.114. References.

This subchapter references the following rules and statutes:

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

(3) Section [~~25 TAC, §~~]401.464 of this title (relating to Notifications and Appeals Process).

§412.115. Distribution.

This subchapter is distributed to:

(1) all members of the department's Advisory Council [~~Texas Board of Mental Health and Mental Retardation~~];

(2) executive, management, and program staff of the department [~~TDMHMR Central Office~~];

(3) executive directors of all local mental health authorities; and

(4) (No change.)

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502245

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 458-7236

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER P. PREPARATION FOR ADULT LIVING

DIVISION 2. EDUCATION AND TRAINING VOUCHER PROGRAM

40 TAC §§700.1611, 700.1613, 700.1615, 700.1617, 700.1619, 700.1621, 700.1623, 700.1625

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1611, 700.1613, 700.1615, 700.1617, 700.1619, 700.1621, 700.1623, and 700.1625, concerning the Education and Training Voucher Program, in its Child Protective Services chapter. Under the federal law, *Promoting Safe and Stable Families Program Amendments of 2001*, a new program was created to provide postsecondary educational and training vouchers (ETV) for certain eligible foster care youth, including those who have aged out of foster care and those adopted out of foster care at a certain age. This law amended the Chaffee Foster Care Independence Act, making this new program subject to federal audit. The ETV Program allows DFPS to expand and supplement the current assistance provided to eligible former and current foster care youth and specifically, helps them to begin, continue and/or complete their educational and vocational goals toward achieving gainful employment and independence.

In April of 2003, Congress appropriated national funding for the ETV Program. DFPS submitted an application for the Texas state grant on July 30, 2003, and received \$1,416,125 in federal funding for the ETV Program. Over the past year and a half, program materials, processes and policies have been developed, implemented, and revised. DFPS is now proposing rules to establish in law the program eligibility requirements and participant's rights to ensure continued proper execution of the ETV program into the future.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that youth eligible for ETV program benefits will be able to take full advantage of the program. The anticipated results will be better outcomes for youth in adult living. There will be no effect on large, small, or micro-businesses because the proposed rules do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Linda Valdez at (512) 438-3144 in DFPS's Child Protective Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-313, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed sections 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 §2007.043, Government Code.

The new sections are proposed under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The new sections implement recent changes to Title IV-E, §477 of the Social Security Act (42 U.S.C. 677), known as the Chafee Foster Care Independence Act.

§700.1611. What is the Education and Training Voucher (ETV) Program?

The Education and Training Voucher (ETV) Program provides financial assistance to eligible former and current foster care youth in order to support their pursuit of postsecondary education or vocational training. Funding for the ETV Program is provided by the federal grant to the state, pursuant to the amended Chafee Foster Care Independence Act, 42 U.S.C. 677(i), with required state match. The existence of the ETV Program is subject to this funding.

§700.1613. Who can be eligible for the ETV Program?

(a) Youth in one of the following categories can be eligible to participate in the ETV Program:

- (1) at least 16 years of age and likely to remain in DFPS foster care until age 18;
- (2) not yet age 21 but aged out of DFPS foster care; or
- (3) not yet age 21 and was adopted from DFPS foster care after turning age 16.

(b) If a student is already participating in the ETV Program when turning age 21, the student may remain eligible for assistance until age 23, as long as the student is making satisfactory progress toward completion of postsecondary education or vocational training, as defined by the institution the student is attending.

§700.1615. What must an eligible youth do to qualify for participation in the ETV Program?

(a) To qualify for financial assistance under the ETV Program, an eligible youth must:

- (1) have a high school diploma or equivalent, or at least be beyond the age of compulsory school attendance (age 18);
- (2) be enrolled in an institution of higher education that falls within one of the following categories:

(A) an accredited or pre-accredited, public or nonprofit institution that provides a bachelor's degree or not less than a two-year program that provides credit towards a degree or certification;

(B) an accredited or pre-accredited, public or nonprofit institution that provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation; or

(C) an accredited or pre-accredited, public or nonprofit institution, or a private institution, that has been in existence for at least two years and that provides a program of training to prepare students for gainful employment in a recognized occupation; and

(3) complete and file an application and required documentation with the ETV coordinator.

(b) If denied eligibility, DFPS notifies the applicant in writing of the reason(s) for the denial, and of the right to appeal the denial, as defined in §700.1625 of this title (relating to Can a student appeal a denial of eligibility, or a suspension, or termination of benefits?).

§700.1617. How much financial assistance may an eligible youth receive under the ETV Program?

The total annual amount of financial assistance that an eligible youth may receive from the ETV Program is determined by the following criteria:

(1) The amount of financial assistance is limited to the lesser of \$5,000 or the total cost of attendance, as defined in §472 of the federal Higher Education Act of 1965 (20 USCS 108711).

(2) The amount of educational assistance to a student under the ETV Program and any other federal or federally supported program must not exceed the total cost of attendance, as defined in §472 of the federal Higher Education Act of 1965.

(3) Financial assistance provided under the ETV Program cannot duplicate benefits provided under any other federal or federally supported program.

(4) If a student is eligible for the state exemption from payment of tuition and fees, under Texas Education Code §54.211 or §54.2111, and is attending an institution where that exemption applies, the student may not receive financial assistance under the ETV Program for the cost of tuition and fees.

§700.1619. What types of expenses are included in the cost of attendance for which ETV funds can be used?

ETV funds can be used to pay for the cost of attendance, as that term is defined in §472 of the federal Higher Education Act of 1965, which includes the following:

(1) tuition and fees (for schools/programs that do not qualify for the state tuition/fee waiver);

(2) rental or purchase of required equipment, materials, books, supplies, computer;

(3) room and board allowance;

(4) reasonable costs associated with child care for a student's dependents;

(5) costs associated with special study projects, such as field work or an internship;

(6) reasonable transportation and personal expenses associated with school/program attendance; and

(7) required special services for students who have a disability.

§700.1621. After a student is initially determined eligible for the ETV Program, are there other requirements the student must meet?

(a) Yes; to remain eligible for the ETV Program, the student must:

(1) maintain satisfactory progress toward completion of postsecondary education or vocational training, as defined by the institution the student is attending; and

(2) submit documentation to establish that minimum enrollment requirements are met and that satisfactory progress, referred to in paragraph (1) of this subsection, is being made.

(b) A student's failure to meet the requirements of subsection (a) of this section may result in suspension of continued benefits under the ETV Program. DFPS sends the student written notice of the reason(s) for suspension of ETV benefits, and the student's right to appeal, as defined in §700.1625 of this title (relating to Can a student appeal a denial of eligibility, or a suspension, or termination of benefits?).

§700.1623. When does a student lose the right to continue receiving benefits under the ETV Program?

A student's benefits under the ETV Program may be terminated when DFPS discovers that any of the following events has occurred:

(1) the student falsified information in the application for benefits, or in providing required documentation to maintain eligibility for the ETV Program;

(2) the student has used ETV funds for expenses unrelated to the cost of attendance, as defined in §472 of the federal Higher Education Act of 1965, or falsified documentation in accounting for expenditures;

(3) the student is no longer attending the program for which financial assistance has been provided; or

(4) the student reaches the age of ineligibility, as defined in §700.1613 of this title (relating to Who can be eligible for the ETV Program?).

§700.1625. Can a student appeal a denial of eligibility, or a suspension, or termination of benefits?

(a) Yes, but the student must file a timely written request to appeal the decision in a fair hearing, as defined in §700.310 of this title (relating to Fair Hearings).

(b) DFPS sends a student written notice when denied the right to participate in the ETV Program, or when benefits are to be suspended or terminated after the student has been determined eligible. The written notice must state the specific reason(s) for denial, suspension, or termination and must inform the student of the right to make a written request, within 90 days of receipt of the notice, to appeal the decision in a fair hearing.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502225

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: July 17, 2005

For further information, please call: (512) 438-3437



WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.17

The Texas Board of Professional Engineers withdraws the proposed amendment to §137.17 which appeared in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1397).

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502266

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: June 6, 2005

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



PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners withdraws the proposed amendment to §341.1 which appeared in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2970).

Filed with the Office of the Secretary of State on May 31, 2005.

TRD-200502189

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: May 31, 2005

For further information, please call: (512) 305-6900



22 TAC §341.20

The Texas Board of Physical Therapy Examiners withdraws the proposed amendment to §341.20 which appeared in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2970).

Filed with the Office of the Secretary of State on May 31, 2005.

TRD-200502188

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Effective date: May 31, 2005

For further information, please call: (512) 305-6900



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 as published in 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 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 49. EQUINE

4 TAC §49.1

The Texas Animal Health Commission (Commission) adopts amendments to §49.1(m), regarding movement of untested equine to slaughter, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1381) and will not be republished. This section is being amended to add specific language and requirements for the movement of equine from a market to slaughter. In Chapter 161 of Texas Animal Health Commission, §161.149, there is a statutory requirement regarding the transfer of ownership of equine where there must be a negative test for equine infectious anemia (E.I.A.), unless the animal is covered by an exception. One exception is that the equine be "sold to slaughter, to be tested at the slaughter facility at Commission expense." This requirement was promulgated into regulation and located in §49.1(l).

Currently when equine are sold through a market without a test and destined for slaughter they are permitted using a VS 1-27 form and identified with a red collar, with a number, and issued by the commission. However there has been a problem identified by our field personnel regarding the difficulty of verifying the arrival of those equine. There seems to be several possible explanations including removal of the red collar before our personnel can verify arrival, or a number of the animals are never taken to slaughter, but rather diverted to be resold. Because this transfer process is not specifically stated in the requirements an initial step to hopefully remedy the problem is provide greater specificity in our requirements regarding this process. This will provide these slaughter horse buyers with specific requirements to follow as well as give the agency stronger compliance options.

Section 49.1(m) is being amended because it already has language regarding movement of equine to slaughter. The commission is inserting language to indicate that the requirement is applicable to any equine sold, "without a negative EIA test through a market," which conforms to §49.1(l). The commission is modifying the existing requirement of being on a VS-1-27 and utilizing language to state that the equine are "permitted for movement, by an accredited veterinarian or other authorized state or federal personnel, to slaughter" because it will provide for greater flexibility in the permitting process. The permit shall be signed by the consignor and contain information regarding permanent identification (i.e. branding, tagging or other means acceptable to the commission) of the equine, or by using the number on the red collar issued by the commission. This information will be verified

at arrival at the slaughter facility. This is intended to provide a specifically stated requirement which is applicable to a person who buys a horse for slaughter. The requirements are also being amended to provide for a timeframe for arrival at slaughter to ensure greater accountability by the buyer or consignor. These equine shall arrive at the slaughter facility no later than ten days from the date of the issuance of the permit. This is because some buyers take a very long time to actually take the permitted animal to slaughter which makes verification more difficult on agency personnel.

No comments were received regarding adoption of the amendments.

The amendments to §49.1 are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That is found in §161.061.

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

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

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock,

exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502260

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: June 26, 2005

Proposal publication date: March 11, 2005

For further information, please call: (512) 719-0714



TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1, 255.9, 255.16

The Office of Rural Community Affairs (Office) adopts amendments to §§255.1, 255.9, and 255.16, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP) without changes to the proposed text as published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2161).

The amendment to §255.1 defines the area benefit standards that apply to street paving activities. The amendments to §255.9 change the colonia construction fund funding cycle from an annual competition to a biennial competition for the 2005 and 2006 programs years and describe the guidelines for the past performance scoring criteria. The amendments to §255.16 describe the guidelines for the past performance scoring criteria.

The amendments make changes to the application and selection criteria for the amended program fund categories.

No written comments were received regarding the proposed amendments.

The amendments are adopted under §487.052 of the Government Code, which provides the Office of Rural Community Affairs with the authority to adopt rules implementing its statutory responsibilities.

The Texas Administrative Code, Title 10, Part 6, Chapter 255, is affected by the adoption of the amendments to §§255.1, 255.9, and 255.16.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502259

Charles S. (Charlie) Stone

Executive Director

Office of Rural Community Affairs

Effective date: June 26, 2005

Proposal publication date: April 15, 2005

For further information, please call: (512) 936-6710



10 TAC §255.7

The Office of Rural Community Affairs (Office) adopts amendments to §255.7, concerning the allocation of Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The amendments establish the standards and procedures by which the Office and the Texas Department of Agriculture will allocate and distribute 2005 program years funds under the Texas Capital Fund. The amendments are being adopted to make changes to the application and selection criteria for the programs available under the Texas Capital Fund.

The amendments to §255.7 are being adopted with one change to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1891). Based on the comments received, the proposed text in §255.7(i)(2)(A)(ii) has been changed from the proposed "Score 5 points for letters from 50% or more of the businesses and/or property owners in the designated Main Street program area. Score 10 points for letters from 75% of the businesses in the designated Main Street program area." to "Score 10 points for letters from 75% or more of the businesses and/or property owners in the proposed Texas Capital Fund project area."

The amendments make changes to the application and selection criteria for Texas Capital Fund programs.

Comments were received from four persons. Many of the comments were in favor of the proposed amendments. Those comments supporting the proposed amendments will not be summarized in the following paragraphs. Responses to the comments opposing the amendments are from staff of the Texas Department of Agriculture (TDA).

One commenter was against the proposed amendment to subsection (a)(4), that would lower the matching funds leverage ratio for the main street program from 0.2:1 to 0.1:1. TDA believes that the amendment is warranted because reducing the amount of matching funds will make it easier for small cities with limited resources to access the main street program and because the leverage ratio for the downtown revitalization program is also 0.1:1.

One commenter was against the proposed amendment to subsection (a)(9), that would change the current requirement that only one business can receive benefit under an infrastructure program or real estate program application to allow a maximum of three businesses to benefit from an infrastructure program or real estate program application. The commenter stated: We understand that the Texas Capital Fund Program previously supported projects with multiple benefiting businesses, but that after several failed projects, the TCF under the Texas Department

of Economic Development discontinued allowing multiple businesses to benefit from a single award. We believe that allowing multiple businesses to benefit will further complicate an already complex project development, application review, and implementation process and will create additional liability issues for the applicant locality and the Department. If there is more than one business with which the locality will be required to subcontract, the issue shared responsibility for job creation documentation, financial viability, match injection, and, perhaps, real estate repayment requirements will become extremely complex. On which company's financial viability will the financial analysis be based? Our experience has been that, at times, localities are hesitant to enter into TCF projects with even a single business because of uneasiness about the repayment liability. In addition, we believe that the Office of Rural Community Affairs is attempting to address the needs of smaller businesses by the creation of the Microenterprise Loan Program and the Small Business Loan Program. These programs will provide funds to assist businesses with on-site improvements. To address off-site improvements for smaller businesses, perhaps the TCF could develop a subcategory for sole proprietorship businesses who employ less than 15 persons. The cost per job for these new smaller businesses could be higher than the current maximum \$25,000 per job. TDA believes that the amendment should be adopted even though the commenter is concerned about the additional complexity that allowing three businesses will create. However, the proposed amendment is permissive and the infrastructure and real estate program will still allow applications that assist only one business.

One commenter was against the proposed amendment to subsection (f)(3)(A), that would change population figures for applicants under the Jobs Impact scoring criteria to the net of the population after persons in adult or juvenile correctional institutions, as shown in the 2000 census data, were deducted from an applicant's 2000 census population. The commenter stated that using population figures that are the net of people in prisons in most formulas is unfair. TDA believes that the amendment should be adopted because the change will help small communities that have a high number of persons in institutions and these individuals distort the true job impact ratio that is being used under the scoring criteria.

Two persons submitted comments opposing the proposed amendment to subsection (i)(2)(A)(ii). TDA agreed with the comments and clause (ii), as described in the third paragraph of this preamble, will be adopted using the language suggested by one commenter.

One commenter was against the proposed amendment to subsection (i)(2)(B), that would increase the score for the Infrastructure Project Plan from 5 points to 10 points. The commenter stated: We believe that the points for a developed Infrastructure Project Plan should not be increased from 5 points to 10 points. We believe that providing a plan to access affected businesses should be developed as the scope of the project is identified, but that evidence of support from the community is a more important scoring criteria than documenting a plan to ensure access to a business. We believe the 2 of the additional 5 points proposed for this category should be returned to obtaining letters from civic organizations and the other 3 points shifted to a new category under Subsection D awarded if the applicant has an adopted central business district or downtown revitalization plan in place. Most revitalization plans should likely also include business access plans. TDA believes that the amendment should be adopted because developing a plan to notify the and prepare the

public for a major infrastructure project is crucial as small businesses and property owners are most affected by these types of projects. In the interest of small and property owners and citizens of a community in general, an emphasis on public notification and planning should be reflected in the grant application process and review.

One commenter was against the proposed amendment to subsection (i)(2)(C), that would further define the scoring criteria for receiving points under the ADA Compliance Goals scoring factor because many downtown areas have already been made compliant with the Americans with Disabilities Act but need additional work in other areas. TDA believes that the amendment should be adopted because many communities need additional work to meet ADA compliance and this is a priority issue when addressing slum and blight. The applicant can explain if ADA has already been addressed and the proposed language allows for partial points if the scoring committee chooses to award them.

One commenter was against the proposed amendment to subsection (i)(2)(F), that would eliminate the Community Development Potential scoring factor and create a new Community Size scoring factor. The commenter requested that consideration be given to lowering the proposed 10 points for this factor because other scoring criteria already favor smaller communities and 10 points is too large of a percentage of the total available points to be based solely on population. TDA believes that the amendment should be adopted because smaller communities often have fewer resources and greater needs than their larger counterparts.

One commenter was against the proposed amendment to subsection (i)(2)(G), that would eliminate the Local Main Street program training scoring factor and create a new Main Street Program Participation scoring factor. The commenter stated: We are opposed to this new scoring category because it unfairly penalizes newer Main Street communities. We know of one instance where a community pursued Main Street designation with the specific intent of immediately applying for TCF Main Street funds. This aggressive, newly designated city will be penalized while less aggressive older Main Street cities will be given these points. In fact, this scoring practice will mean that Main Street cities 10 or more years in the program will receive maximum points on every application while it will take newer Main Street cities 10 years to earn the full 5 points. If the intent of the program is to "spread the wealth," perhaps these 5 points should be redirected to an "previously funded" category similar to that used in the TCF Infrastructure/Real Estate and TCF Downtown Revitalization programs where points are awarded to applicants who have not received a TCF award for at least two years. Since TCF rules do not allow applicants to apply for TCF-Main Street funds while they still have an open project, the "previously funded" period could extend for two prior cycles or four years. TDA believes that the amendment should be adopted because the purpose of this category is to provide an incentive for and reward to communities that commit significant financial and community resources to the revitalization of their commercial historic district over a number of years.

One commenter was against the proposed amendment that would create a new subparagraph (H) under subsection (i)(2), that would award points under a scoring factor created to encourage local attendance at Main Street grant training workshops. The commenter stated: We are opposed to this new scoring category because it places an onerous burden on smaller communities who rarely have travel budgets, and

because any travel costs incurred to attend grant application training is not a reimbursable expense. In addition, unless there are numerous training sessions scheduled close to the application deadline, cities who decide to apply in the last month before the deadline will always be penalized under this category. If the intent of the program is to ensure the applicant locality understands the TCF-Main Street program, we believe it would be a better use of travel funds to require grant recipients to attend an implementation workshop. TDA believes that the amendment should be adopted because the TDA will continue to coordinate Texas Capital Fund training with training that is already required for Main Street managers as a part of their letter of agreement. By conducting training with at least two required events throughout the year, it will ensure that obtaining these points will not be a burden. It supports a high standard for the program by requiring that TDA provide the best training possible to produce the best grant applications further ensuring the best use of these grant funds.

One commenter was against the proposed amendment to subsection (i)(2)(J), that would change the existing language to better define the criteria to receive points for sidewalk or ADA compliance activities under the downtown revitalization program. The commenter states: The program needs to allow communities to make their own self determination as to what sort of public improvements are needed to jump start the revitalization of their downtown. I have worked with many communities over the past thirty years and I have conducted nearly fifty central business planning studies. During our analysis of downtowns, we found that the key to jump starting reinvestment is to provide those public facilities that are needed to encourage private reinvestment. I have found that communities are in the best position to determine what is needed to jump start revitalization. At the present time, the DRP program emphasizes sidewalk improvements as the predominant remedy for revitalization. I believe a great disservice is being done because it leads many communities to believe that sidewalks are the only solution. On the contrary, the solution can come in any of the following public activities such as: sidewalks, parking lots, enhanced water and sewer services, sponsoring community events, clearance and demolition, drainage improvements, landscaping, lighting, and public common areas. For these reasons, DRP program should allow communities the greatest flexibility to make their own self determination as to how to solve their local problems. TDA believes that the amendment should be adopted to continue the emphasis on sidewalks and ADA compliance based on the historically large percentage of main street improvements program funds that have been used to address these activities. The downtown revitalization program does not prohibit other uses, but rather provides points in the scoring system for sidewalks and ADA activities. In many small towns, sidewalks are seen as a primary first step towards revitalization.

The amendments are adopted under §487.052 of the Government Code, which provides the Office of Rural Community Affairs with the authority to adopt rules implementing its statutory responsibilities.

The Texas Administrative Code, Title 10, Part 6, Chapter 255, is affected by the adoption of the amendments to §255.7.

§255.7. *Texas Capital Fund.*

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs,

projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available.

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications.

(3) A firm financial commitment from all funding sources.

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of \$750,000 or less; and 4:1 for awards of \$750,000 to \$1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed \$25,000 for awards of \$750,000 or less; \$10,000 for awards of \$750,001 to \$1,000,000; and \$5,000 for awards of \$1,000,001 to \$1,500,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated

main street or downtown business district geographic area and the assisted business will create or retain jobs to meet the national program objective.

(12) The TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed \$2 million in total awards during the program year. Additionally, no more than \$1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is \$1 million and the minimum award amount is \$750,100. The maximum amount for a normal award is \$750,000 and the minimum award amount is \$50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less \$600,000 for the main street program, and \$600,000 for the downtown revitalization program, as follows:

(A) First round. 30% of the annual allocation plus any deobligated and program income funds available, as of the application due date.

(B) Second round. 40% of the remaining allocation plus any deobligated and program income funds available, as of the application due date.

(C) Third round. 50% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. If only three application rounds are scheduled, all remaining funds will be allocated to the final round.

(D) Fourth round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(E) The downtown revitalization program projects may not exceed \$600,000 in total awards, unless there are unused funds remaining in the Texas Capital Fund real estate and infrastructure programs as of January 1st. If such funds are available, up to an additional \$600,000 may be used for downtown revitalization program projects.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is

wholly or partially owned by the community and leased to a specific benefiting business (either a for-profit entity or a non-profit entity).

(3) The main street program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 pm on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCDP funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) The TDA Commissioner reviews the recommendation and announces the final decision.

(8) TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on poverty rate stated on the score sheet. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on unemployment rate stated on the score sheet. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Community Need (maximum 60 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate (for cities, the most recently available quarterly city rate will be used; for counties, the most recently available quarterly county or census tract rate, for where the business site is located, whichever is higher, will be used) is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available quarterly unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less and counties with a total population of 35,000 or less, using 2000 census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. For counties: score 5 points if

the county population is less than 35,000 and score 5 additional points if the county population is less than 15,350. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(3) Jobs (maximum 20 points).

(A) Job Impact (maximum 10 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) Cost per Job (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below \$15,000--10 points.

(ii) Below \$20,000--5 points.

(4) Business Emphasis (maximum 20 points).

(A) Manufacturers (max 10 points). Awarded if the Business' primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3 or their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

(B) Small businesses (maximum 5 Points). Awarded if the Business employs no more than 50 employees for all locations both in and out of state. This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(C) HUB--Historically Underutilized Business (maximum 5 Points). Awarded if a business is certified by the state Texas Building and Procurement Commission (TBPC) as a Historically Underutilized Business (HUB). Provide a copy of TBPC's certification in the application.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form

of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

(3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

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

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(6) TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.

(7) The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.

(8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, city unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) one (1) letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)

(ii) Score 10 points for letters from 75% or more of the businesses and/or property owners in the proposed Texas Capital Fund project area.

(B) Infrastructure Project Plan--(10 points). Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.

(C) ADA Compliance Goals--(10 points). Does the project address ADA accessibility issues. How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.

(D) Historic Preservation Ethic and Preservation Impact--Main Street's Role--(10 points). Preservation is a major component of the Texas Historical Commission's Main Street program. Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5

points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:

(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.

(ii) Does the city have a current historic preservation ordinance?

(iii) Does the city have any historic preservation related programs or incentives?

(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?

(E) State Enterprise Zone and Economic Development Consideration--(10 points) Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three points will be awarded if the city has the economic development sales tax (4A, 4B or both). Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.

(F) Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(G) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.

(3) Applicant (maximum 30 points). There are three applicant scoring categories each worth 5 to 10 points.

(A) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.

(B) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional

matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(C) Main Street Standing (maximum 10 points). If the Main Street program received National Recognition the prior year, 10 points will be awarded.

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(I) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available, quarterly, city unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate (for cities, the most recently available quarterly city rate will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(G) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional

matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Commercial Support (maximum 10 points) Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.

(J) Sidewalks and ADA Compliance (10 points). Points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502294

Charles S. Stone
Executive Director

Office of Rural Community Affairs

Effective date: June 26, 2005

Proposal publication date: April 1, 2005

For further information, please call: (512) 936-6710

◆ ◆ ◆
TITLE 13. CULTURAL RESOURCES

PART 1. TEXAS STATE LIBRARY AND ARCHIVES COMMISSION

CHAPTER 2. GENERAL POLICIES AND PROCEDURES

SUBCHAPTER C. GRANT POLICIES

DIVISION 7. TEXAS READS GRANT PROGRAM, GUIDELINES FOR PUBLIC LIBRARIES

13 TAC §§2.171, 2.172, 2.175

The Texas State Library and Archives Commission adopts amended rules, 13 TAC §§2.171, 2.172, and 2.175, without changes to the text as published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1723). This section addresses criteria for the Texas Reads grant program.

No comments were received during the comment period.

These amendments are adopted under the authority of Government Code, §441.0092, that provides the commission authority to make grants to fund programs to promote reading and literacy through public libraries, determine eligibility standards for grants, provide procedures for grant applications, and determine the recipient and amount of each grant. The collection of revenue to fund the grant program is authorized under Transportation Code, §504.616.

The amended sections affect the Government Code, §441.0092, and the Transportation Code, §504.616.

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 31, 2005.

TRD-200502169

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: June 20, 2005

Proposal publication date: March 25, 2005

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



CHAPTER 3. STATE PUBLICATIONS DEPOSITORY PROGRAM

13 TAC §§3.1 - 3.17

The Texas State Library and Archives Commission adopts the repeal of Chapter 3, §§3.1 - 3.17, regarding the State Publications Depository Program without changes to the proposal as published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1724).

Staff review of the rules governing that service indicated that the chapter needed to be restructured and language needed to be updated to improve clarity of the rules and to bring the rules in line with current practices. The commission adopts the repeal of the current rules and a new updated, restructured set of rules governing this service.

No comments were received during the comment period.

This repeal is adopted under Government Code, §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to

adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) - (9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database.

The repeal affects Government Code, §§441.101 - 441.106.

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 31, 2005.

TRD-200502172

Edward Seidenberg

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: June 20, 2005

Proposal publication date: March 25, 2005

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



13 TAC §§3.1 - 3.13

The Texas State Library and Archives Commission adopts new Chapter 3, §§3.1 - 3.13, regarding the State Publications Depository Program, without changes to the proposed text as published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1725).

Staff review of the rules governing that service indicated that the chapter needed to be restructured and language needed to be updated to improve clarity of the rules and to bring the rules in line with current practices. The commission adopts the repeal of the current rules and a new updated, restructured set of rules governing this service.

No comments were received during the comment period.

The new sections are adopted under Government Code, §441.102(a), which requires the Texas State Library and Archives Commission to adopt policies to ensure the distribution of state publications to depository libraries; Government Code §441.103(b), which requires the Texas State Library and Archives Commission to adopt policies to ensure the acquisition of state publications from state agencies and institutions of higher education; Government Code §441.104(7) - (9), which requires the Texas State Library and Archives Commission to adopt policies to provide indexes of and electronic access to all state publications in electronic format, and Government Code §441.010(b), which establishes an electronically searchable central grant database.

The new sections affect Government Code, §§441.101 - 441.106.

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 31, 2005.

TRD-200502173

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: June 20, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 463-5459

◆ ◆ ◆

CHAPTER 4. SCHOOL LIBRARY PROGRAMS

SUBCHAPTER A. STANDARDS AND GUIDELINES

13 TAC §4.1

The Texas State Library and Archives Commission adopts amended 13 TAC §4.1, with three changes to the standards that are incorporated by reference in the rule, as published in the March 25, 2005, issue of the *Texas Register* (30 TexReg 1729).

This section establishes standards for school library programs, whose general purpose is to improve school library programs in Texas and their services to students and the community. The standards are a professional tool for objective assessment based on recognized measures of performance, and are based on research that shows a correlation between school library resources and services and greater student achievement.

One lengthy comment was received from a school librarian in Carrollton, Texas. This commenter did not address the text of the actual rule, but made numerous remarks and raised multiple questions regarding the sections of the standards that are included by reference in the rule.

There were 4 general comments on the standards. The agency made a general response to these and then addressed each of the four individually.

General Response: Most of the comments question the requirements necessary for a library to achieve "Exemplary" status. It should be noted that to achieve this status, the standards call for certain levels of staffing and resources. For even the smallest school at the exemplary level, the standards require a minimum of one and one-half certified librarians and one and one-half paraprofessional staff members. By definition, a one-person library will not have a sufficient level of staffing to meet the "Exemplary" status.

Comment 1: The "Example of an Annual Summary or Evaluation Report for the School Library Program" contains six standards under the category "Evaluation of Library Program Strategies for Librarians." This indicates the standards will be used to evaluate librarians and it is important to include in these standards only factors over which librarians have control. The factors are important to consider in evaluating a library program but the document needs to distinguish clearly between factors over which a librarian has control.

Response: The agency responds that this Summary is not part of the standards, but is part of the supplemental materials available for use by librarians. This is not an evaluation tool for the librarian, but rather the library program. Librarians will use the standards for planning and goal setting, as stated in the introduction, and provide a measure to demonstrate to school administrators what constitutes a good program. The librarian carries out the program, but the standards are used to evaluate the program, not the librarian. For example, if the school library had

several staff the standards are used to evaluate the program, not individual staff, or the staff as a whole.

Comment 2: Librarians have little control over their membership on campus and district level committees. The standards seem to suggest that in order to be exemplary a librarian must be on all of the committees listed each year, which is impossible, and those strategies that reference such service should be revised to better reflect reality.

Response: The agency responds that taking part in campus and district level committees is encouraged at all levels in the standards. At the exemplary level, the librarian is encouraged to be proactive, to take a leadership role, in asking for inclusion on such committees. Membership each year on all committees is not required.

Comment 3: Standards should be achievable. What percentage of school librarians in Texas do you estimate are exemplary according to these new standards right now?

Response: The agency responds that an estimated 10-20% of programs could meet the exemplary level with some effort, and many more will be exemplary in some areas, but not all. With school library program budgets as low as they generally are, it will be, and should be, impossible for all programs to be exemplary. The standards were developed in alignment with national standards established by the American Association of School Librarians and the National Board for Professional Teaching Standards.

Comment 4: How, and by whom, were the TEKS selected that appear in Table 1, "TAKS objectives and related TEKS student expectations?" My list based on my experience looks quite different. Why are all elementary social studies TEKS excluded?

Response: The agency responds that the Table is part of the supplementary materials, not part of the standards. The process to determine which TEKS could reasonably be expected to be taught in libraries involved sending sections of TEKS to various school library district coordinators. Librarians reviewed the lists and made recommendations for inclusion. The list is comprised of TEKS objectives that are tested on the TAKS test, and social studies is not tested at the elementary level. The list is not intended to be either all-inclusive, or exclusive, and a librarian could add as desired.

There were 26 comments on specific strategies for librarians:

Comment 1: Standard I, Principle 2, Strategy D: A good example of micromanagement. Why do I have to use nine different methods at the exemplary level to encourage students to develop a lifelong appreciation of literature. Only six methods are listed. What would the other three be?

Response: The agency responds that this principle states, "The librarian works collaboratively with students, teachers, and the community to promote local, state, and national reading initiatives that encourage learners to read, write, view, speak, and listen for understanding and enjoyment." The strategy states that for the exemplary level, "Collaborates with members of the learning community and actively engages, directs and encourages students to develop a lifelong appreciation of literature and other creative expressions of information through at least 9 methods throughout the school and community." There are many methods to do this; six suggestions are given, but others are available in the professional literature. The six listed reflect standard

practices in libraries. However, the agency agrees that the numbers given at the recognized and exemplary levels should be corrected so that 5, 6, and 7 methods respectively are required for standard, recognized and exemplary levels.

Comment 2: Standard I, Principle 3, Strategy D: What is the role of the librarian in administering the TPRI? This test is administered twice a year to hundreds of children per building at about one hour per child. How could I justify closing the library for that many hours each semester?

Response: The agency responds that at the exemplary level the strategy states, "Elementary librarians collaborate with teachers to administer reading assessment instruments such as the Texas Primary Reading Inventory (TPRI), and collaborate with teachers to determine how the results may be used to improve student reading achievement." No specific role or action is required, but rather that the librarian actively collaborates with the teachers on reading assessments. For example, if part of the class is in the classroom while the test is being administered, and part is in the library, the librarian provides library instruction or library programs to the part of the class that is not taking the test.

Comment 3: Standard I, Principle 3, Strategy F: What constitutes an online training module? Who is going to teach me to develop them? How many a year am I supposed to develop?

Response: The agency responds that educational terms vary but generally an online training module refers to an instructional unit available on a computer. Workshops on how to develop them may be available from many sources, such as education service centers. A specific number is not required, but should be based on the individual program.

Comment 4: Standard II, Principle 1, Strategy C: Another example of micromanagement. Librarians may choose to include students on library advisory committees, but making this an expectation is unreasonable.

Response: The agency responds that this is required only at the exemplary level. Involving students in the management and leadership of the school library program through an advisory committee is accepted practice in national standards such as those of the American Association of School Librarians, Information Literacy Standards for Student Learning www.ala.org/ala/aasl/aaslproftools/informationpower/informationliteracystandards_final.pdf.

Comment 5: Standard II, Principle 2, Strategy A: This conflicts with Standard III, Principle 4, Strategy A. As a one-person library to be open all hours of the instructional day means I never have a lunch break or engage in other activities. I can be exemplary at one, but not both; therefore, both are unachievable. Will there be additional compensation for added hours?

Response: The agency responds that Standard II asks the library program to be open extended hours at all levels to better serve the school community. Standard III asks the librarian to collaborate with teachers through regular sessions both during the school day and beyond at the exemplary level. As stated in the general response, at the exemplary level a higher level of staffing is required to achieve that status.

Comment 6: Standard II, Principle 3, Strategy C: How will students benefit if I understand the bidding process?

Response: The agency responds that Standard II, Principle 3, Strategy B at the exemplary level asks librarians to understand standard budget terms and processes, including understanding

that the bidding process helps obtain the lowest price for materials and services. Obtaining the lowest price helps maximize budget resources and thus benefits students.

Comment 7: Standard III, Principle 1, Strategy H: This strategy tells me that my professional judgment cannot be trusted. If I have read a book and believe the book needs to be added to the collection, my judgment is reason enough to purchase the book. It is unreasonable to expect me to find five reviews of the book in addition.

Response: The agency responds that at the exemplary level the librarian is asked to use five or more professional resources to locate, evaluate, and select materials. It does not require a librarian to find five reviews for every book. It asks that the librarian have tools to assist in collection development. A librarian would still use professional judgment.

Comment 8: Standard III, Principle 3, Strategy D: Why should I dedicate two computers for circulation since I am a one-person library? I can't use more than one computer at a time. More micromanagement.

Response: The agency responds that an exemplary library would have more than one staff member, as stated in the general response. Having more than one computer for circulation facilitates circulation of materials to customers when there are multiple staff assisting customers.

Comment 9: Standard III, Principle 4, Strategy A: This conflicts with Standard II, Principle 2, Strategy A.

Response: The agency responds that the response to Comment 5 above also applies here.

Comment 10: Standard IV, Principle 1, Strategy A: Are building principals and district directors in the state being notified that working with design professionals is appropriate for librarians?

Response: The agency responds that the standards are being distributed to school administrators as well as school librarians. The Commissioner's Rules Concerning School Facilities specifically mention school libraries. In general, at the exemplary level, the librarian is asked to take a proactive, leadership role.

Comment 11: Standard IV, Principle 2: Why should I be providing members of the learning community with opportunities to meet their recreational needs during and beyond the school day? A school library exists to meet the instructional needs of students. This is irrelevant to the mission of school libraries.

Response: The agency responds that this standard refers to recreational use of school library materials. A primary goal of the school library program is to encourage a love for reading, in addition to fulfilling instructional requirements.

Comment 12: Standard IV, Principle 2, Strategy I: Since my library is in the center of the building, how will I open the library during evenings and weekends without giving access to the rest of the building?

Response: The agency responds that this standard asks that the physical design of the library allow convenient access to the library beyond the instructional day. Evenings or weekends are not required. There are many possible solutions that could be explored with the school administration to ensure access, and secure the rest of the building. An example would be to install gates. Schools are often open beyond the instructional day to accommodate student activities.

Comment 13: Standard IV, Principle 2, Strategy L: What are the Illuminating Engineering Society standards, where do I get a copy, and how will students benefit from my knowledge of them?

Response: The agency responds that the standards for lighting ensure that students and teachers have proper lighting. Librarians should have knowledge of the standards to ensure that the library is properly lit. Copies may be found in libraries or could be requested via interlibrary loan.

Comment 14: Standard V, Principle 1, Strategies A, B, C, D: Who are the community constituents I should be partnering with beyond the school community, and how will this partnering benefit students?

Response: The agency responds that these strategies ask the librarian to establish partnerships within and beyond the school community to contribute to the school library program and student success. Examples of partners may include the public library, other schools, community colleges and universities, businesses, civic groups such as Rotary clubs, and other community non-profit organizations.

Comment 15: Standard V, Principle 2, Strategy E: What sort of resources should I be providing to community members during and beyond the instructional day? This standard implies that part of the mission of the school library is to fulfill the mission of the public library for those unwilling to visit the public library. That is unreasonable.

Response: The agency responds that the standard asks the librarian to provide library materials and services to community members and partners during and beyond the instructional day. This encourages use of libraries and increases support from the community for library program. For example, parents with preschool children should be allowed to check out resources. It is a community service, especially when parents do not have access to a public library.

Comment 16: Standard V, Principle 2, Strategy F: According to this standard twenty days will be added to the length of the school librarian's annual contract. Will the librarian be paid for these days and who will provide the funds?

Response: The agency responds that at the exemplary level the library should be open two days per week during the summer. All funding decisions are made at the local level and the district would determine the source of funds. No librarian is asked to work without compensation.

Comment 17: Standard V, Principle 4, Strategy A: What would be examples of community programs that promote the library?

Response: The agency responds that at the exemplary level the librarian is asked to participate in community programs run by non-profit organizations and others to promote the school library and student success. Examples of community groups are given in Comment 14.

Comment 18: Standard VI, Principle 1, Strategy D: This strategy is only relevant for high school librarians and that should be stated in the document.

Response: The agency responds that this standard states ". . . establishing collaboration with librarians in institutions of higher learning to provide high school students . . ." and thus applies to high school librarians only.

Comment 19: Standard VI, Principle 1, Strategy E: Why should I initiate collaboration with museums and science centers? How

will students benefit and how does this relate to school librarianship?

Response: The agency responds that collaboration between libraries and museums is a model best practice as promoted by the Institute of Museum and Library Services. Museums and science centers are learning environments that create interest in subjects and reading, and often have speakers or web-based resources for use by students and teachers. Initiating collaborations with these institutions helps promote student learning and reading, a primary purpose of school libraries.

Comment 20: Standard VI, Principle 3, Strategy A: This is another example of micromanagement. Some librarians may choose to have a selection advisory committee that includes students and community members, but making this an expectation is unreasonable.

Response: The agency responds that having such a selection committee is part of the exemplary level strategy and reflects the AASL national standards, Information Literacy Standards for Student Learning.

Comment 21: Standard VI, Principle 3, Strategy C and D: In my district all cataloging is done at the district level, so this strategy tells me I am condemned to be below standards.

Response: The agency responds that this standard does not state at what level the cataloging must be done. If the cataloging is done at the district level and meets the standard this meets the requirement. The agency agrees that the wording should be clarified and the phrase "campus or district" will be added.

Comment 22: Standard VI, Principle 5, Strategy E: This is another example of micromanagement. Some librarians will choose to organize book clubs, but making this an expectation is unreasonable.

Response: The agency responds that this strategy asks a librarian to inspire a love of reading by relating reading to students' interests through such means as individual dialogue, booktalks, book clubs, or large and small group instruction. Book clubs are not required.

Comment 23: Standard VI, Principle 5, Strategy F: This strategy says I will check out books for teachers on my personal account at the public library. Am I responsible for paying the late fees? This expectation is outrageous.

Response: The agency responds that this strategy asks librarians to provide access to the right book at the right time through resource sharing programs, and to use either a personal or institutional card to borrow needed resources from the public library or through interlibrary loan. Use of a personal card is not required. The librarian may set policies for the use of borrowed materials as they would for any other materials in the library. A common practice is to make such borrowed materials available on reserve only at the library or in the classroom.

Comment 24: Standard VI, Principle 7, Strategy A: This strategy says the librarian will go through the evaluation process twice a year, while classroom teachers go through evaluation once a year. This expectation is unreasonable.

Response: The agency responds that this strategy asks the librarian to review and revise library program goals twice a year with the immediate supervisor at the exemplary level. This is a review of the program goals, not the librarian.

Comment 25: Standard VI, Principle 7, Strategy D: This is another example of micromanagement. Some librarians will choose to read listservs, but making it an expectation is unreasonable. How will students benefit? Why do I have to read three as opposed to some other number?

Response: The agency responds that the exchange of ideas and information on electronic lists provides on-going education in areas such as curriculum, research, collection development, and technology. The exemplary level asks a librarian to read three such electronic lists to ensure exposure to a broad range of ideas and information. This on-going education enriches the librarian's experience and thus benefits students and the school community.

Comment 26: Standard VI, Principle 7, Strategy E: This strategy says every librarian in the state will submit a proposal to a conference every year. From a mathematical standpoint alone this is unreasonable. Are there any other professional fields in which practitioners are expected to submit a proposal to a conference every year?

Response: The agency responds that the language needs to be clarified and will be changed to reflect on the exemplary level that a librarian should attend a regional, state, or national association conference annually, present information gained at the campus and district level, and participate actively in regional, state, or national professional associations through such activities as serving on committees or presenting programs.

This amended section is adopted under the authority of Education Code, §33.021, which provides the Commission authority to adopt school library standards.

The adopted amended section affects the Education Code, §33.021.

§4.1. School Library Programs: Standards and Guidelines for Texas.

(a) The School Library Programs: Standards and Guidelines for Texas, which are available at <http://www.tsl.state.tx.us/ld/pubs/index.html>, are adopted by the Texas State Library and Archives Commission. The Standards and Guidelines are based on the work and recommendations of an advisory committee formed to review and update the current Standards and Guidelines.

(b) The School Library Programs: Standards and Guidelines for Texas are applicable to local Texas school districts (Independent, consolidated, common, or municipal districts and charter schools accredited by the Texas Education Agency as provided by TEC Chapter 11 Subchapter D, Chapter 39).

(c) The School Library Programs: Standards and Guidelines for Texas, describe six components for school library programs: Learner-Centered Teaching and Learning, Learner-Centered Program Leadership and Management, Learner-Centered Technology and Information Access, Learner-Centered Library Environment, Learner-Centered Connections to Community, and Learner-Centered Information Science and Librarianship. The Standards and Guidelines describe four levels of achievement, below standard, acceptable, recognized, and exemplary, for the goals within each component.

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 31, 2005.
TRD-200502170

Edward Seidenberg
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: June 20, 2005
Proposal publication date: March 25, 2005
For further information, please call: (512) 463-5459

◆ ◆ ◆
TITLE 19. EDUCATION

**PART 7. STATE BOARD FOR
EDUCATOR CERTIFICATION**

CHAPTER 241. PRINCIPAL CERTIFICATE

19 TAC §241.25, §241.30

The State Board for Educator Certification adopts the amendments to the following section of 19 TAC Chapter 241: §241.25 and §241.30, relating to Principal Certificate.

The proposed amendments to §241.25 and §241.30 were published in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11244).

The adopted amendments add new §241.25(4) which specifically states that a principal certificate candidate must complete a principal preparation program. In addition they would amend §241.30(b) and §241.30(e)(1) to clarify language regarding the holder of a Standard Principal Certificate or Standard Mid-Management certificate who is employed as a principal or assistant principal. The individual must select an approved assessment during the first year of employment and in the first year of each five-year period of employment. This will separate the assessment from the renewal requirement.

The State Board for Educator Certification received one public comment, from Regional Education Service Center VI, suggesting the proposed amendment to §241.30(b) be made more flexible by adding the phrase, "prior to employment or" before the phrase, "the first year of employment." The board accepts the comment and hereby adopts §241.30 with change and §241.25 is adopted without change.

The amendments to §241.25 and §241.30 are adopted under the statutory authority of the following Education Code sections: Section 21.031(a), which vests SBEC with the authority to regulate and oversee all aspects of the certification, continuing education, and standards of conduct of public school educators; and Section 21.041(b)(1), Education Code, which requires SBEC to propose rules that provide for the regulation of educators and the general administration of Chapter 21, Subchapter B, in a manner consistent with that subchapter; and Section 21.041(b)(2), which requires SBEC to specify the classes of certificates to be issued.

§241.30. Requirements to Renew the Standard Principal Certificate.

(a) Each individual who holds the Standard Principal or Mid-Management Certificate, issued on or after September 1, 1999, is subject to Chapter 232, Subchapter R of this title (relating to Certificate Renewal and Continuing Professional Education Requirements), except that 200 hours of continuing professional education must be completed every five years.

(b) Individuals holding the Standard Principal Certificate or Standard Mid-Management and who are employed as a principal or assistant principal must select an assessment from the list approved under

§241.35 of this title and should participate in the assessment the first year of employment as a principal or assistant principal. Follow-up assessments should be completed in the first year of each five-year period of employment. The individual is solely responsible for selecting the assessment used to satisfy the requirements of this subsection.

(c) Based on the results of the assessment required under subsection (b) of this section, each individual shall develop a professional growth plan which is directly related to the standards identified in §241.15 of this title (relating to Standards for the Principal Certificate), and must allow for the prioritization of professional growth needs.

(d) Consistent with TEC §21.054(b), the results of the individual assessment and the professional growth plan shall be used exclusively for professional growth purposes, and may only be released with the approval of the individual assessed.

(e) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is employed as a principal or assistant principal or fulfills the functions of a principal or assistant principal:

(1) must complete an assessment approved under §241.35 of this title (relating to Assessment Process Definition and Approval of Individual Assessments) and develop a professional growth plan as described in subsection (c) no later than August 31, 2004 and once in each subsequent five year period of employment as a principal or assistant principal; and

(2) may voluntarily comply with the requirements of subsection (a) under procedures adopted by the executive director under Subchapter R, §232.810 of this title (relating to Voluntary Renewal of Current Texas Educators). The executive director shall report to the employing school district those individuals who choose to renew under this subsection.

(f) An individual who holds a valid Texas professional administrator certificate issued prior to September 1, 1999, and who is not employed as an assistant principal or principal may voluntarily comply with the requirements of this section under procedures adopted by the executive director under Subchapter R, §232.810 of this title.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502207

Herman L. Smith, Ph.D.

Executive Director

State Board for Educator Certification

Effective date: June 21, 2005

Proposal publication date: December 3, 2004

For further information, please call: (512) 936-8304



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The Texas Board of Professional Engineers adopts an amendment to §131.81, relating to Definitions, with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1395). The text of the rule will be republished. The board has decided against adopting the proposed text in paragraph (7) for the definition of CAC/ABET due to issues relating to computer science degrees.

The board has adopted this rule to define the supervision of engineering construction as used in Section 1001.407 of the Act.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

§131.81. Definitions.

In applying the Texas Engineering Practice Act and the board rules, the following definitions shall prevail unless the word or phrase is defined in the text for a particular usage. Singular and masculine terms shall be construed to include plural and feminine terms and vice versa.

- (1) ABET--Accreditation Board for Engineering and Technology
- (2) Act--The Texas Engineering Practice Act, Chapter 1001, Texas Occupations Code.
- (3) Advisory Opinion--A statement of policy issued by the board that provides guidance to the public and regulated community regarding the board's interpretation and application of Chapter 1001, Texas Occupations Code, referred to as the Texas Engineering Practice Act "Act" and/or board rules and that do not have the force and effect of law.
- (4) Agency or Board--Texas Board of Professional Engineers.
- (5) Applicant--A person applying for a license to practice professional engineering or a firm applying for a certificate of registration to offer or provide professional engineering services.
- (6) Application--The forms, information, and fees necessary to obtain a license as a professional engineer or a certificate of registration for a firm.
- (7) Certificate of Registration--The annual certificate issued by the board to a firm offering or providing professional engineering services to the public in Texas.
- (8) Complainant--Any party who has filed a complaint with the board against a person or entity subject to the jurisdiction of the board.
- (9) Contested case--A proceeding, including but not restricted to rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by an agency after an opportunity for adjudicative hearing pursuant to the Administrative Procedure Act, Chapter 2001, Texas Government Code.
- (10) Direct supervision--Critical watching, evaluating, and directing of engineering activities with the authority to review, enforce, and control compliance with all engineering design criteria, specifications, and procedures as the work progresses. Direct supervision will

consist of an acceptable combination of: exertion of significant control over the engineering work, regular personal presence, reasonable geographic proximity to the location of the performance of the work, and an acceptable employment relationship with the supervised persons. Engineers providing direct supervision of engineering under the Act, §1001.405(f), shall be personally present during such work.

(11) EAC/ABET--Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology.

(12) EAOR number--An engineering advisory opinion request file number assigned by the executive director to a pending advisory opinion in accordance with this chapter.

(13) Engineering--The profession in which a knowledge of the mathematical, physical, engineering, and natural sciences gained by education, experience, and practice is applied with judgment to develop ways to utilize, economically, the materials and forces of nature for the benefit of mankind.

(14) Firm--Any entity that engages or offers to engage in the practice of professional engineering in this state. This includes sole proprietorships, firms, co-partnerships, corporations, partnerships, or joint stock associations.

(15) Good Standing--(License or Registration)--A license or registration that is current, eligible for renewal, and has no outstanding fees or payments.

(16) Gross negligence--Any willful or knowing conduct, or pattern of conduct, which includes but is not limited to conduct that demonstrates a disregard or indifference to the rights, health, safety, welfare, and property of the public or clients. Gross negligence may result in financial loss, injury or damage to life or property, but such results need not occur for the establishment of such conduct.

(17) Incompetence--An act or omission of malpractice which may include but is not limited to recklessness or excessive errors, omissions or failures in the license holder's record of professional practice; or an act or omission in connection with a disability which includes but is not limited to mental or physical disability or addiction to alcohol or drugs as to endanger health, safety and interest of the public by impairing skill and care in the provision of professional services.

(18) License--The legal authority granting the holder to actively practice engineering upon the payment of the annual renewal fee. Also, a certificate issued by the board showing such authority.

(19) License Holder--Any person whose license to practice engineering is current.

(20) Licensure--The granting of an original certificate and license to an individual.

(21) Misconduct--The violation of any provision of the Texas Engineering Practice Act and board rules. A conviction of a felony or misdemeanor that falls under the provisions of Texas Occupations Code, Chapter 53, will also be misconduct under the Texas Engineering Practice Act.

(22) NAFTA--North American Free Trade Agreement. NAFTA is related to the practice and licensure of engineering through mutual recognition of registered/licensed engineers by jurisdictions of Canada, Texas, and the United Mexican States.

(23) NCEES--National Council of Examiners for Engineering and Surveying.

(24) Party--Each person or agency named or admitted as a party to a proceeding under the Administrative Procedure Act.

(25) Person--Any individual, firm, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(26) Petitioner--Any party requesting the adoption of a rule by the Board.

(27) Pleading--Written allegations filed by parties concerning their respective claims.

(28) Professional engineering--Professional service which may include consultation, investigation, evaluation, planning, designing, or direct supervision of construction, in connection with any public or private utilities, structures, buildings, machines, equipment, processes, works, or projects wherein the public welfare, or the safeguarding of life, health, and property is concerned or involved, when such professional service requires the application of engineering principles and the interpretation of engineering data.

(29) Professional engineering services--Services which must be performed by or under the direct supervision of a licensed engineer and which meet the definition of the practice of engineering as defined in the Act, §1001.003. A service shall be conclusively considered a professional engineering service if it is delineated in that section; other services requiring a professional engineer by contract, or services where the adequate performance of that service requires an engineering education, training, or experience in the application of special knowledge or judgment of the mathematical, physical or engineering sciences to that service shall also be conclusively considered a professional engineering service.

(30) Protestant--Any party opposing an application or petition filed with the Board.

(31) Recognized institution of higher education--An institution of higher education as defined in §61.003, Education Code; or in the United States, an institution recognized by one of the six regional accrediting associations, specifically, the New England Association of Schools and Colleges, the North Central Association Commission on Accreditation and School Improvement, the Northwest Association of Schools and Colleges, the Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, or the Middle States Association of Colleges & Schools; or, outside the United States, an institution recognized by the Ministry of Education or the officially recognized government education agency of that country.

(32) Respondent--Any party against whom any complaint has been filed with the Board.

(33) Responsible charge--An earlier term synonymous with the term "direct supervision"; the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(34) Responsible supervision--An earlier term synonymous with the term "direct supervision;" the term is still valid and may be used interchangeably with "direct supervision" when necessary.

(35) Supervision of Engineering Construction--As used in §1001.407 of the Act, includes but is not limited to the periodic observation of materials and completed work to determine general compliance with plans, specifications and design and planning concepts. Supervision of engineering construction does not include the construction means and methods; responsibility for the superintendence of construction processes, site conditions, operations, equipment, personnel; or the maintenance of a safe place to work or any safety in, on or about the site.

(36) TAC/ABET--Technology Accreditation Commission of the Accreditation Board for Engineering and Technology.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502267

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: June 26, 2005

Proposal publication date: March 11, 2005

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



CHAPTER 133. LICENSING SUBCHAPTER D. EDUCATION

22 TAC §133.31

The Texas Board of Professional Engineers adopts an amendment to §133.31, relating to Educational Requirements for Applicants, with changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 803). The text of the rule will be republished. The board has decided against adopting the proposed text in subsection (a) for the acceptance of computer science degrees as equivalent to ABET accredited engineering degrees.

As a result of the NAFTA agreement, the Board is adopting language to consider all applicants who are currently licensed in Canada to have academic qualifications that are substantially equivalent to an accredited engineering program.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

§133.31. *Educational Requirement for Applicants.*

(a) Applicants for a license shall have graduated from at least one of the following degree programs or degree program combinations listed in this section:

(1) Approved engineering curriculums under §1001.302(a)(1)(A) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(A) of the Act:

(A) a degree from an engineering program accredited or otherwise approved by the:

(i) Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET) as published in the 2002 ABET Accreditation Yearbook and the 2002 ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(ii) Consejo de Acreditacion de la Ensenanza de la Ingenieria, Mexico (Council of Accreditation for Engineering Education, C.A.).

(B) A bachelor's degree in engineering or one of the mathematical, physical, or engineering sciences, plus a graduate degree in engineering, provided that:

(i) the graduate degree is obtained from a college having an engineering program approved by one of the organizations listed in subparagraph (A) of this paragraph where either the graduate or undergraduate degree in the same discipline is accredited; and

(ii) the combination of the degrees is acceptable to the Board as equivalent in EAC/ABET approved curricula content, and the combination of degrees contain sufficient design curricula to provide minimal competency in the use of engineering algorithms and procedures.

(C) a completed degree that has not been accredited or approved by either of the organizations identified in subparagraph (A) of this chapter, (relating to Proof of Educational Qualifications-Non-Accredited/Non-Approved Programs), and determined to meet the ABET general and program criteria requirements for an EAC/ABET-accredited or -approved program.

(2) Other programs under §1001.302(a)(1)(B) of the Act. The following degrees are acceptable to the board for meeting the educational requirements of §1001.302(a)(1)(B) of the Act:

(A) a bachelor degree from an engineering technology program that is accredited by the Technology Accreditation Commission of the Accreditation Board for Engineering and Technology (TAC/ABET) as published in the 2002 ABET Accreditation Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated;

(B) A bachelors or graduate degree in engineering, mathematical, physical, or related science that has not been accredited or approved by any of the organizations identified in paragraphs (1)(A) or (2)(A) of this subsection but has been obtained from a recognized institution of higher education as defined in Chapter 131 of this title. Such degree programs must include, as a minimum, the courses listed in clauses (i) and (ii) of this subparagraph or these courses must be taken in addition to the bachelor or graduate degree program:

(i) eight semester hours (12 quarter hours) of mathematics beyond trigonometry, including differential and integral calculus; and

(ii) 20 semester hours (30 quarter hours) of related engineering sciences including subjects such as mechanics, thermodynamics, electrical and electronic circuits, and others selected from material sciences, transport phenomena, computer science and comparable subjects depending on the discipline or branch of engineering. Course work should incorporate hands-on laboratory work as described in the EAC/ABET criteria, and shall contain a sufficient design program to provide minimal competency in the use of engineering algorithms and procedures.

(3) Other degree programs submitted to the board by the conferring institutions and determined by the board as meeting or exceeding the criteria of either of the accrediting organizations referred to in this section.

(A) The programs at the University of Texas at Tyler have been reviewed by the board and determined to be eligible for licensure under §1001.302(a)(1)(A) of the Act, effective for those who graduated in 1999.

(B) The following programs have been reviewed by the board and determined to be eligible for licensure under

§1001.302(a)(1)(B) of the Act and eligible for taking the examination on the fundamentals of engineering, effective the date listed:

(i) Tarleton State University, Accepted Programs: Hydrology (1992) and Engineering Physics (2001),

(ii) West Texas State A&M, Accepted Program: Mechanical Engineering (2003)

(b) Degree programs that have not been accredited or approved by any of the organizations identified in subsection (a)(1)(A) or (2)(A) of this section are not acceptable for fulfilling the educational requirements of the Act if they do not meet the definition of a recognized institution of higher learning as defined in Chapter 131 of this title and:

(1) give credit for life experience; or

(2) consist primarily of engineering, mathematical, physical, or engineering sciences courses that are correspondence courses that are self-taught outside a formal classroom setting.

(c) Applicants who have graduated from a degree program that is accredited by the jurisdictional authority in the Canadian or European community that have been evaluated pursuant to §133.33 of this chapter (relating to Proof of Educational Qualifications/Non-Accredited/Non-Approved Programs) and contain sufficient course hours to meet the requirements of subsection (a)(2)(B) of this section but not found to have sufficient course hours to be deemed equivalent or comparable to a Bachelor of Science degree as would be issued by a recognize institution of higher education in the United States may apply for licensure solely through the examination process.

(d) An applicant holding a verified Canadian P.Eng. or ing. License shall be considered to have academic qualifications substantially equivalent to an accredited engineering program.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502268

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: June 26, 2005

Proposal publication date: February 18, 2005

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



SUBCHAPTER F. REFERENCE DOCUMENTATION

22 TAC §133.53

The Texas Board of Professional Engineers adopts an amendment to §133.53, relating to Reference Statements, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 805) and will not be republished.

The adopted rule change permits evidence of retaliation by an applicant against a reference provider to be considered by the Board during the application review process.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502269

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: June 26, 2005

Proposal publication date: February 18, 2005

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



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.65

The Texas Board of Professional Engineers adopts an amendment to §133.65, relating to the Examination on the Fundamentals of Engineering, with changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 805). The text of the rule will be republished. The board has decided against adopting the proposed text in subsections (a) and (b) for the acceptance of computer science degrees as equivalent to ABET accredited engineering degrees.

The adopted rule requires examinees to either be currently enrolled in a degree program in Texas or to be residents of Texas.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

§133.65. *Examination on the Fundamentals of Engineering.*

(a) An undergraduate student who is within two full-time regular semesters (not including summer sessions) of graduating may take the examination on the fundamentals of engineering at a location prescribed by the board provided that the student is enrolled in a degree program in Texas and the program is:

(1) an engineering program accredited or approved by the EAC/ABET;

(2) a four year baccalaureate technical program accredited or approved by the TAC/ABET; or

(3) an engineering-related science program of four years or more that has been approved by the board.

(b) A graduate student may take the examination on the fundamentals of engineering at a location prescribed by the board provided that the student is enrolled in an EAC/ABET-accredited graduate degree program or in a graduate program at an institution which has

an EAC/ABET-accredited undergraduate degree program in that discipline, and the student has:

- (1) a baccalaureate degree that is EAC/ABET-accredited;
- (2) an engineering or engineering-related science program degree that has been approved by the board; or
- (3) a non-engineering related curriculum or other degree in which the student has provided evidence acceptable to the executive director as meeting the minimum requirements of §1001.302(a)(1)(A) or (B) of the Act.

(c) Persons who demonstrate that they meet the educational requirements for a license and who have not passed the examination on the fundamentals of engineering while in college and who are residents of Texas may apply to the board to take the examination in accordance with the applicable examination schedule adopted by the board.

(d) Persons who do not meet the criteria of subsection (a) of this section, but who need only to complete the examination on the fundamentals of engineering to fulfill the graduation requirements of a degree program that would meet the educational requirements for a license, may apply to the board to take the examinations in accordance with the applicable examination schedule adopted by the board.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502270
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: June 26, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 440-7723

◆ ◆ ◆

SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.81

The Texas Board of Professional Engineers adopts an amendment to §133.81, relating to Receipt and Process, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 806) and will not be republished.

The adopted rule change permits applicants who are not currently approved for the examination process and who are not currently in the board review process to voluntarily withdraw their application. The adopted rule change also allows applicants to have only one pending application at a time.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502296
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: June 26, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 440-7723

◆ ◆ ◆

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.13

The Texas Board of Professional Engineers adopts an amendment to §137.13, relating to Inactive Status, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 807) and will not be republished.

The adopted rule change clarifies that a professional engineer on Inactive Status may not offer or perform engineering services to the public.

No comments were received regarding the board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own, proceedings, and the regulation of the practice of engineering in this state.

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

Filed with the Office of the Secretary of State on June 6, 2005.

TRD-200502297
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: June 26, 2005
Proposal publication date: February 18, 2005
For further information, please call: (512) 440-7723

◆ ◆ ◆

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.32

The Texas Board of Professional Geoscientists (TBPG) adopts 22 Texas Administrative Code Chapter 851, §851.32, concerning the Continuing Education Program, with changes to the proposed text as published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1223) and will be republished. The only change to the rule is the omission of a period to subsection (n)(5) after the word illness.

The adopted rule establishes both requirements and procedures related to the continuing education of licensed geoscientists in the State of Texas. Legislation enactment in 2001 of Senate Bill 405 required the Texas Board of Professional Geoscientists to adopt and implement a recommended timeline and criteria by which continuing education rules would be established that would enable licensed geoscientists to renew their licenses.

The adopted rule provides language clarifying the agency's required number of educational hours as well as acceptable courses applicable within continuing education program. The need for this clarification is based on feedback from the geological community in the agency's initial year of operation. This rule is to become effective on September 1, 2006.

Two comments were received from the licensees and public. Comments from one individual were of a general nature indicating that the individual had not read nor understood the requirements within the rule. The other comment received was that the 15 hours per year requirement would be both too excessive and expensive to the licensee for implementation. The Board disagreed that the requirements are neither too excessive or expensive for the licensee to incur. Comments were submitted electronically to *geoscience@tbpg.state.tx.us*. All comments were received 30 days after publication of this rule in the *Texas Register*. No requests for a public hearing on the adopted section submitted under the Administrative Procedure Act were received by the Executive Director within the 15 calendar days after notice of this adopted rule had been published in the *Texas Register*.

The rule is adopted under the Texas Occupations Code, Chapter 1002, which authorizes the Board to adopt a mandated continuing education process and criteria by which all licensees will participate prior to their annual license renewal.

The adopted rule implements the Texas Occupations Code, §1002.302.

§851.32. Continuing Education Program.

(a) Each license holder shall meet the Continuing Education Program (CEP) requirements for professional development as a condition for license renewal.

(b) Terms used in this section are defined as follows:

(1) Professional Development Hour (PDH)--A contact hour (clock hour) of CEP activity. PDH is the basic unit for CEP reporting.

(2) Continuing Education Unit (CEU)--Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(3) College/Unit Semester/Quarter Hour--Credit for course in a discipline of geoscience or other related technical elective of the discipline.

(4) Course/Activity--Any qualifying course or activity with a clear purpose and objective which will maintain, improve, or expand the skills and knowledge relevant to the license holder's field of practice.

(c) Every license holder is required to obtain 15 PDH units during the renewal period year.

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional geoscientists, or review on-line of the Texas Geoscientist Practice Act and Board Rules.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 30 PDH units may be carried forward into the subsequent renewal periods.

(f) PDH units may be earned as follows:

(1) Successful completion or auditing of college credit courses.

(2) Successful completion of continuing education courses, either offered by a professional or trade organization, university or college, or offered in-house by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(3) Successful completion of correspondence, on-line, televised, videotaped, and other short courses/tutorials.

(4) Presenting or attending qualifying seminars, in-house courses, workshops, or professional or technical presentations made at meetings, conventions, or conferences sponsored by a corporation, other business entity, professional or technical societies, associations, agencies, or organizations, or other group.

(5) Teaching or instructing as listed in paragraphs (1) - (4) of this subsection.

(6) Authoring published papers, articles, books, or accepted licensing examination items.

(7) Active participation in professional or technical societies, associations, agencies, or organizations, including:

(A) Serving as an elected or appointed official;

(B) Serving on a committee of the organization;

(C) Serving in other official positions.

(8) Patents Issued.

(9) Engaging in self-directed course work.

(10) Software Programs Published.

(g) All activities described in subsection (f) of this section shall be relevant to the practice of a discipline of geoscience and may include technical, ethical, or managerial content.

(h) The conversion of other units of credit to PDH units is as follows and subject to subsection (g) of this section

(1) 1 College or unit semester hour--15 PDH

(2) 1 College or unit quarter hour--10 PDH

(3) 1 Continuing Education Unit--10 PDH

(4) 1 Hour of professional development in course work, seminars, or professional or technical presentations made at meetings, conventions, or conferences--1 PDH

(5) 1 Hour of professional development through self-directed course study (Not to exceed 5 PDH)--1 PDH

(6) Each published paper or article--10 PDH and book--45 PDH

(7) Active participation, as defined in subsection (f)(7) of this section in professional or technical society, association, agency, or organization (Not to exceed 5 PDH per year)--1 PDH

(8) Each patent issued--15 PDH

(9) Each software program published--15 PDH

(10) Teaching or instructing as described in subsection (f)(5) of this section--3 times the PDH credit earned.

(i) Determination of Credit

(1) The Board shall be the final authority with respect to whether a course or activity meets the requirements of these rules.

(2) The Board shall not pre-approve or endorse any CEP activities during the first two years after the effective date of this rule. It is the responsibility of each license holder to assure that all PDH credits claimed meet CEP requirements. However, a course provider may contact the Board for an opinion for whether or not a course or technical presentation would meet the CEP requirements. Two years after the effective date of this rule, pre-approval will be required.

(3) Credit for college or community college approved courses will be based upon course credit established by the college.

(4) Credit for qualifying seminars and workshops will be based on one PDH unit for each hour of attendance. Attendance at qualifying programs presented at professional and/or technical society meetings will earn PDH units for the actual time of each program.

(5) Credit for self-directed course work will be based on one PDH unit for each hour of study and is not to exceed 5 PDH per renewal period. Credit determination for self-directed course work is the responsibility of the license holder and subject to review as required by the Board.

(6) Credit determination for activities described in subsection (h)(6) of this section is the responsibility of the license holder and subject to review as required by the Board.

(7) Credit for activity described in subsection (h)(7) of this section requires that a license holder serve as an officer of the organization, actively participate in a committee of the organization, or perform other activities such as making or attending a presentation at a meeting or writing a paper presented at a meeting. PDH credits are not earned until the end of each year of service is completed.

(8) Teaching credit, as defined in subsection (f)(5) of this section, is valid for teaching a course or seminar for the first time only.

(j) The license holder is responsible for maintaining records to be used to support credits claimed. Records required include, but are not limited to:

(1) A log, on a form provided by TBPG, showing the type of activity claimed, sponsoring organization, location, duration, instructor's or speaker's name, and PDH credits earned; and

(2) Attendance verification records in the form of completion certificates, receipts, attendance roster, or other documents supporting evidence of attendance.

(k) The license holder must submit CEP certification on the log form provided by TBPG and a list of each activity, date, and hours

claimed that satisfy the CEP requirement for that renewal year when audited. A percentage of the licenses will be randomly audited each year.

Figure: 22 TAC §851.32(k)

(l) CEP records for each license holder must be maintained for a period of three years by the license holder.

(m) CEP records for each license holder are subject to audit by the board or its authorized representative.

(1) Copies must be furnished, if requested, to the Board or its authorized representative for audit verification purposes.

(2) If upon auditing a license holder, the Board finds that the activities cited do not fall within the bounds of educational, technical, ethical, or professional management activities related to the practice of geoscience; the Board may require the license holder to acquire additional PDH as needed to fulfill the minimum CEP requirements.

(n) A license holder may be exempt from the professional development educational requirements for one of the following reasons listed in paragraphs (1) - (5) of this subsection:

(1) New license holders by way of examination shall be exempt for their first renewal period.

(2) A license holder serving on active duty and deployed outside the United States, its possessions and territories, in or for the military service of the United States for a period of time exceeding one hundred twenty (120) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year.

(3) A license holder employed outside the United States, its possessions and territories, actively engaged in the practice of geoscience for a period of time exceeding three hundred (300) consecutive days in a year shall be exempt from obtaining the professional development hours required during that year except for five (5) hours of self-directed course work.

(4) License holders who list their status as "Inactive" and who further certify that they are no longer receiving any remuneration from providing professional geoscience services in Texas shall be exempt from the professional development hours required.

(5) License holders experiencing long term physical disability or illness may be exempt by applying for "inactive" status. Supporting documentation must be furnished to the Board.

(o) A license holder may bring an inactive license to active status by obtaining all delinquent PDH units. However, if the total number required to become current exceeds 30 units, then 30 units shall be the maximum number required.

(p) Noncompliance:

(1) If a license holder does not certify that CEP requirements have been met for a renewal period, the license shall be considered expired and subject to late fees and penalties.

(2) A determination by audit that CEP requirements have been falsely reported shall be considered to be misconduct and will subject the license holder to disciplinary action.

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

Filed with the Office of the Secretary of State on June 1, 2005.
TRD-200502205

Michael D. Hess
Executive Director
Texas Board of Professional Geoscientists
Effective date: September 1, 2006
Proposal publication date: March 4, 2005
For further information, please call: (512) 936-4402



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER Q. ACTUARIAL OPINION AND MEMORANDUM REGULATION

28 TAC §§3.1601 - 3.1611

The Commissioner of Insurance adopts the repeal of §§3.1601 - 3.1611 concerning the submission of actuarial opinions and their supporting memoranda with the annual statement of life insurance companies. The repeal of these sections is adopted without changes to the proposal published in the December 17, 2004 issue of the *Texas Register* (29 TexReg 11543).

The repeal of the sections is necessary to adopt new §§3.1601 - 3.1608 which appear elsewhere in this issue of the *Texas Register*. The new sections will provide consistent and stronger standards for reserves held by life insurance companies.

The purpose of the repeal is to eliminate obsolete sections.

No comments were received on the proposal.

The repeal of the sections is adopted under the Insurance Code Article 3.28 and §36.001. Insurance Code Article 3.28, §2A, authorizes and requires the department to define the specific requirements of actuarial opinions required under Article 3.28, including matters deemed to be necessary to the scope of such opinions, as well as to prescribe the qualifications of the persons who may certify to such opinions. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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 31, 2005.

TRD-200502185
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: June 20, 2005
Proposal publication date: December 17, 2004
For further information, please call: (512) 463-6327



28 TAC §§3.1601 - 3.1608

The Commissioner of Insurance adopts new §§3.1601 - 3.1608, concerning the submission of actuarial opinions and their supporting memoranda with the annual statements of life insurance companies. Sections 3.1604, 3.1606 and 3.1607 are adopted with changes to the proposal published in the December 17, 2004, issue of the *Texas Register* (29 TexReg 11543). Sections 3.1601 - 3.1603, 3.1605 and 3.1608 are adopted without changes.

The new sections are necessary to provide consistent and stronger standards for reserves held by life insurance companies. Insurance Code Article 3.28 §2A(a) requires every life insurance company doing business in this state to annually submit to the department the opinion of a qualified actuary that states whether the reserves and related actuarial items held in support of the policies and contracts of the insurer are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The sections are substantially based on the National Association of Insurance Commissioners "Model Actuarial Opinion and Memorandum Regulation." The sections replace the existing §§3.1601 - 3.1611 which are repealed elsewhere in this issue of the *Texas Register*. In §§3.1604(6), 3.1606(b)(2) and 3.1607(b), an incorrect citation to §3.1605(d) was changed to §3.1605(c). Also in §3.1606(b)(2) an incorrect citation to §3.1605(e)(2) was changed to §3.1605(d)(2). Finally, in §3.1607(a)(5) a typographical error was corrected to accurately reflect the Department's post office box number.

The new sections will require companies to develop information to better manage risks inherent to its business including those related to assets in support of reserves. The sections require all life insurance companies, with the exception of life insurance companies that only do business in Texas, to provide an actuarial opinion based on an asset adequacy analysis with their 2005 annual statement and thereafter. The sections establish standards that support adequate reserve levels in light of the assets held for such reserves and, to assist regulatory review, provide for a summary of analysis performed by the actuary. In addition to an actuarial opinion based on an asset adequacy analysis, the sections require the preparation of an actuarial memorandum which includes an asset adequacy analysis and a regulatory asset adequacy issues summary. Section 3.1601 states the purpose of Subchapter Q. Section 3.1602 states the scope and applicability of the subchapter. Section 3.1603 provides the commissioner may require a life insurance company that only does business in Texas to provide an actuarial opinion based on an asset adequacy analysis in accordance with the subchapter when he or she determines such an opinion is necessary. Section 3.1604 defines terms used in the subchapter. Section 3.1605 describes the general requirements for an actuarial opinion required by Insurance Code Article 3.28. Section 3.1606 describes the requirements for an actuarial opinion based on an asset adequacy analysis. Section 3.1607 describes the requirements for an actuarial memorandum including an asset adequacy analysis and a regulatory asset adequacy issues summary. Section 3.1608 provides an exemption for life insurance companies that only do business in Texas. Such companies do not have to perform the asset adequacy analysis required by §3.1606 unless directed by the commissioner to do so under §3.1603.

No comments were received regarding the proposed new sections.

The new sections are adopted under Insurance Code Article 3.28 and §36.001. Insurance Code Article 3.28, §2A, authorizes and requires the department to define the specific requirements of actuarial opinions required under Article 3.28, including matters deemed to be necessary to the scope of such opinions, as well as to prescribe the qualifications of the persons who may certify to such opinions. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§3.1604. *Definitions.*

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

(1) AVR--Asset valuation reserve.

(2) Actuarial opinion--The opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) and with applicable Actuarial Standards of Practice.

(3) Actuarial Standards Board--The board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

(4) Annual statement--That financial statement as of December 31st of the preceding year required to be filed annually by the company with the Texas Department of Insurance.

(5) Appointed actuary--A qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this subchapter, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary.

(6) Asset adequacy analysis--An analysis that meets the standards and other requirements referred to in §3.1605(c) of this title (relating to General Requirements).

(7) Company--A life insurance company or reinsurer subject to the provisions of this subchapter which includes a stipulated premium insurance company insuring or assuming risk for coverages under Insurance Code §884.307 or §884.402.

(8) IMR--Interest maintenance reserve.

(9) Qualified actuary--An individual who:

(A) is a member in good standing of the American Academy of Actuaries;

(B) is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(C) is familiar with the valuation requirements applicable to life and health insurance companies;

(D) has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and opportunity for hearing, to have:

(i) violated any provision of, or any obligation imposed by, the Insurance Code or other law in the course of his or her dealings as a qualified actuary;

(ii) been found guilty of fraudulent or dishonest practices;

(iii) demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary;

(iv) submitted to the commissioner during the past five years, pursuant to this subchapter, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this subchapter including standards set by the Actuarial Standards Board; or

(v) resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(E) has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under subparagraph (D) of this paragraph.

§3.1606. *Statement of Actuarial Opinion Based on an Asset Adequacy Analysis.*

(a) General description. The statement of actuarial opinion required by this section shall consist of the following paragraphs:

(1) a paragraph identifying the appointed actuary and his or her qualifications, recommended language is provided in subsection (b)(1) of this section;

(2) a scope paragraph, recommended language is provided in subsection (b)(2) of this section, identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis, and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) a reliance paragraph, recommended language is provided in subsection (b)(3) of this section, describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios) supported by a statement of each such expert with the information prescribed by subsection (e) of this section; and

(4) an opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities, recommended language is provided in subsection (b)(6) of this section.

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(A) if the appointed actuary considers it necessary to state a qualification of his or her opinion;

(B) if the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;

(C) if the appointed actuary must disclose whether additional reserves as of the prior opinion date are released as of this opinion date, and the extent of the release; or

(D) if the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

(b) Recommended language. The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. The language is that which should be included in typical circumstances in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case,

but the appointed actuary should use language which clearly expresses his or her professional judgment. Regardless of the language used, the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(A) For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:
Figure: 28 TAC §3.1606(b)(1)(A)

(B) For a consulting actuary, the opening paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(1)(B)

(2) The scope paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(2)

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(3)

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(4)

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(5)

(6) The opinion paragraph should include a statement such as:
Figure: 28 TAC §3.1606(b)(6)

(c) Assumptions for new issues. The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this section.

(d) Adverse opinions. If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reasons for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) Reliance on information furnished by other persons. If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

(f) Alternate option.

(1) Insurance Code Article 3.28 gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subsection (b)(6) of this section, the commissioner may make one or more of the following additional approaches available to the opining actuary:

(A) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met." If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the commissioner. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(C) a statement that the reserves "meet the requirements of the insurance laws and regulations of the State of (state of domicile) and I have submitted the required comparison as specified by this state."

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in clause (ii) of this paragraph) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under §7.18 of this title (relating to NAIC Accounting Practices and Procedures Manual). Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least:
Figure: 28 TAC §3.1606(f)(1)(C)(ii)

(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(2) The commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract with an independent actuary at the company's expense to prepare and file the opinion.

§3.1607. Description of Actuarial Memorandum Including an Asset Adequacy Analysis and Regulatory Asset Adequacy Issues Summary.

(a) General. Any actuarial memorandum required by the provisions of this subchapter shall be prepared in accordance with and subject to the provisions and qualifications of paragraphs (1) - (5) of this subsection.

(1) In accordance with Insurance Code Article 3.28, §2A, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves under the opinion. The memorandum shall be made available for examination by the commissioner upon his or her request.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of §3.1604 of this title (relating to Definitions), with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board as required by §3.1605 of this title (relating to General Requirements), or the standards and requirements of this subchapter, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the commissioner. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer required by this subchapter for any one of the current year or the preceding three years.

(5) In accordance with Insurance Code Article 3.28, §2A, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in subsection (c) of this section. The regulatory asset adequacy issues summary will be submitted to the Actuarial Division, Financial Program, M.C. 302-3A, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78714-9104 no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required.

(b) Details of the memorandum section documenting asset adequacy analysis. When an actuarial opinion under §3.1606 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis) is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in §3.1605(c) of this title and any additional standards under this subchapter. The documentation of the assumptions used in paragraphs (1) and (2) of this subsection shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions. The memorandum shall specify:

(1) for reserves:

(A) product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(B) source of liability in force;

(C) reserve method and basis;

(D) investment reserves;

(E) reinsurance arrangements;

(F) identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(G) documentation of assumptions to test reserves for the following:

(i) lapse rates (both base and excess);

(ii) interest crediting rate strategy;

(iii) mortality;

(iv) policyholder dividend strategy;

(v) competitor or market interest rate;

(vi) annuitization rates;

(vii) commissions and expenses; and

(viii) morbidity.

(2) For assets:

(A) portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(B) investment and disinvestment assumptions;

(C) source of asset data;

(D) asset valuation bases; and

(E) documentation of assumptions made for:

(i) default costs;

(ii) bond call function;

(iii) mortgage prepayment function;

(iv) determining market value for assets sold due to disinvestment strategy; and

(v) determining yield on assets acquired through the investment strategy.

(3) For the analysis basis:

(A) methodology;

(B) rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

(C) rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(D) criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(E) whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis;

(4) summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis;

(5) summary of results; and

(6) conclusions.

(c) Details of the regulatory asset adequacy issues summary.

(1) The regulatory asset adequacy issues summary shall include:

(A) descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) the extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis.

(C) the amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion.

(D) comments on any interim results that may be of significant concern to the appointed actuary.

(E) the methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested.

(F) whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(3) The regulatory asset adequacy issues summary will be used to examine the company's financial condition and ability to meet its liabilities. It will be considered information obtained during the course of an examination under Insurance Code Article 1.15 and treated as confidential.

(d) Conformity to standards of practice. The memorandum shall include a statement with wording substantially similar to that of this subsection as follows: Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.

(e) Use of assets supporting the IMR and the AVR. An appropriate allocation of assets in the amount of the IMR, whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of

assets supporting the AVR; these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(f) Documentation retention. The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

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 31, 2005.

TRD-200502184

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: June 20, 2005

Proposal publication date: December 17, 2004

For further information, please call: (512) 463-6327

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 101. GENERAL AIR QUALITY RULES

SUBCHAPTER F. EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

DIVISION 3. OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO REDUCE EXCESSIVE EMISSIONS

30 TAC §§101.221 - 101.223

The Texas Commission on Environmental Quality (commission) adopts the amendments to §§101.221 - 101.223. Sections 101.221 - 101.223 are adopted *without changes* to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2030), and will not be republished.

The amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking action would extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of §§101.221 - 101.223 to the EPA for review and approval into the SIP. If the commission submits these revisions to the EPA, these sections would expire on June 30, 2006.

SECTION BY SECTION DISCUSSION

The adopted revisions to §§101.221 - 101.223 delete references to the June 30, 2005, expiration and replace it with a new expiration date of January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. The adopted revisions further provide that if the commission submits a revised version of these sections, these sections expire on June 30, 2006.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking does not meet the definition of a "major environmental rule." Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). A "major environmental rule" means 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. The amendments are intended to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. The amendments will not 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.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed 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) adopt a rule solely under the general powers of the agency instead of under a specific state law. The amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code, which are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the amendments do not meet any of the four applicability requirements.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the rulemaking action under Texas Government Code, §2007.043. The specific purpose of this rulemaking is to extend the expiration date of June 30, 2005, to January 15, 2006, unless the commission submits a revised version of these sections to the EPA for review and approval into the SIP. If the commission submits a revised version of these sections, these sections expire on June 30, 2006. Promulgation and enforcement of the amendments would be neither a statutory nor a constitutional taking because

they do not affect private real property. Specifically, the amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the adopted amendments will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 101.221 - 101.223 are applicable requirements under 30 TAC Chapter 122, Federal Operating Permits. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permits Program will be required to certify compliance with amended §§101.221 - 101.223.

PUBLIC COMMENT

A public hearing for this rulemaking was held on April 26, 2005, in Austin, and no oral comments were received. The public comment period ended at 5:00 p.m. on April 26, 2005, and written comments were submitted by Environmental Integrity Project.

Comment

Comments were submitted by Environmental Integrity Project, who suggested changes to §101.222(b) - (e) to ensure that these subsections comply with the federal Clean Air Act.

Response

These comments address subsections of the rule that were not proposed for change, and are therefore, outside the scope of this rulemaking. These comments are, however, related to rulemaking (Rule Project No. 2005-024-101-CE), which is planned for proposal in the near future. The commission urges EIP to review

that future rulemaking proposal and re-submit these comments, as applicable, during the designated comment period.

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events; and §382.05101, concerning *De Minimis* Air Contaminants, which authorizes the commission to develop by rule the criteria to establish a *de minimis* level of air contaminants for which a permit is not required.

The adopted amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, and 382.017.

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

Filed with the Office of the Secretary of State on June 3, 2005.

TRD-200502234

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Effective date: June 23, 2005

Proposal publication date: April 8, 2005

For further information, please call: (512) 239-6087

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

31 TAC §§65.602, 65.609 - 65.611

The Texas Parks and Wildlife Commission adopts amendments to §§65.602 and 65.609 - 65.611, concerning Scientific Breeder's Permits, without changes to the proposed text as published in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2365).

The amendments are recommended by the department's White-tailed Deer Advisory Committee (WTDAC) as a measure to protect native deer herds from the potential threat of Chronic Wasting Disease (CWD). The emergence of CWD in both captive and free-ranging deer populations in other states and Canada is cause for concern due to the potential threat to wild deer and livestock populations in Texas. CWD has been detected in free-ranging ungulates in Colorado, Illinois, Nebraska, New Mexico, Wisconsin, and Wyoming, the Canadian provinces of Alberta, Saskatchewan, and Ontario, and is known to have occurred in captive herds in Colorado, Wyoming, Montana, South Dakota, Oklahoma, Kansas, Nebraska, and New York.

The epidemiological nature of CWD is not well understood and has not been extensively studied, but CWD is known to be communicable, incurable, and invariably fatal to the ungulates that contract it. At the current time, there is no live test for CWD; animals suspected of having CWD must be euthanized in order to obtain brain tissue for definitive diagnosis.

The Texas Parks and Wildlife Department regulates the importation of white-tailed and mule deer under the provisions of Scientific Breeder Permit regulations. Currently, the rules require any deer released to the wild to either meet the entry requirements established by the Texas Animal Health Commission for cervidae or be released directly from a facility enrolled in a herd health certification plan. The current rules, though helpful, do not adequately address a potentially difficult problem. Since CWD has not yet been exhaustively studied, the peculiarities of its transmission, infection rate, incubation period, and potential for transmission to other species are not definitively known. Therefore, it is possible that infected or exposed deer could be unknowingly imported into Texas, where they could then possibly infect wild deer or domestic stock. Since deer imported into Texas are frequently liberated for hunting purposes (1,397 in 2001), the risk to the multi-billion dollar hunting and livestock industries represented by even one infected animal among a wild population is considerable.

The Texas Parks and Wildlife Department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department strongly believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the suspension of importation of deer, pending resolution of the epidemiological uncertainty surrounding imported deer, is a wise and responsible course of action. The proposed rules are intended, first, to prevent the importation of potentially diseased deer, and second, to provide a bulwark against undetected infection, which by the time it is noticed in clinical manifestations among wild populations, could cause incalculable harm.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, is necessary because the prohibition of importation makes entry requirements unnecessary.

The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other

states are fully understood and deer in this state can be presumed to be safe from infection.

The amendment to §65.610, concerning Transport of Deer and Transport Permit, is necessary to suspend the importation of deer until the epidemiological realities of deer diseases in other states are fully understood and deer in this state can be presumed to be safe from infection.

The amendment to §65.611, concerning Prohibited Acts, is necessary to serve the long-term goal of minimizing the risk of disease transmission to wild populations of deer from deer possessed under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L.

The effect of the proposed amendments would be to prohibit the importation of white-tailed or mule deer into the state and to provide for a violation for the act of importing deer in violation of the rules.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, will function by removing the entry requirements for imported deer.

The amendment to §65.609, concerning Purchase of Deer and Purchase Permit, will function by restricting the purchase of deer to in-state sources only and by stipulating that transport privileges under a purchase permit do not apply to deer obtained from out of state sources.

The amendment to §65.610, concerning Transport of Deer and Transport Permit, will function by stipulating that a purchase permit will not be issued for deer obtained from an out-of-state source and by clarifying that a transport permit is valid for the transport of deer in-state only.

The amendment to §65.611, concerning Prohibited Acts, will function by making it an offense for any person to possess a deer obtained from an out-of-state source, except for deer obtained prior to the effective date of the rulemaking.

The department received six comments opposing adoption of the proposed amendments. Of those comments opposing adoption, those that elaborated a reason for opposition are as follows, accompanied by the department's response.

Two commenters stated that the importation of deer should be allowed, but only if the deer are tested prior to importation. The department disagrees with the comment and responds that there is no live-animal test for CWD. CWD tests can only be performed post-mortem. No changes were made as a result of the comment.

The department received 40 comments supporting adoption of the rules.

The Texas Wildlife Association and the Texas Deer Association commented in support of adoption of the proposed rules.

The amendments are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502233

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Effective date: June 21, 2005

Proposal publication date: April 22, 2005

For further information, please call: (512) 389-4775

◆ ◆ ◆

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 159. SPECIAL PROGRAMS

37 TAC §159.3

The Texas Board of Criminal Justice adopts amendments to §159.3, concerning Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding, with changes to the text as proposed in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2166).

The purpose of the amendments is to clarify the Memorandum of Understanding between the Texas Department of Criminal Justice (TDCJ), the Department of State Health Services (DSHS), and the Community Supervision and Corrections Departments (CSCDs) concerning a continuity of care system for offenders with mental illness or mental retardation. The rule and the Memorandum of Understanding (MOU) have been amended by deleting references to the local mental health/mental retardation authorities as parties to the MOU.

No comments were received on the proposed amendments.

The amendments are adopted under Texas Government Code and Texas Health and Safety Code, §614.013.

Cross Reference to Statutes: Texas Health and Safety Code, §614.013.

§159.3. Continuity of Care System for Offenders with Mental Impairments/Memorandum of Understanding.

(a) The Texas Department of Criminal Justice (TDCJ) adopts a memorandum of understanding (MOU) between the Texas Department of Criminal Justice, the Department of State Health Services (DSHS), and Community Supervision and Corrections Departments concerning a continuity of care system for offenders with mental illness or mental retardation, as required by Texas Health and Safety Code, §614.013.

(b) Copies of the MOU are filed in offices of the Texas Correctional Office on Offenders with Mental Impairments, 8610 Shoal Creek Boulevard, Austin, Texas 78757, and may be reviewed during regular business hours.

Figure: 37 TAC §159.3(b)

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 27, 2005.

TRD-200502163

Melinda Bozarth
General Counsel
Texas Department of Criminal Justice
Effective date: June 16, 2005
Proposal publication date: April 15, 2005
For further information, please call: (512) 463-0422



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER L. PERMANENCY PLANNING 40 TAC §700.1208

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), new §700.1208, without changes to the proposed text published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1261). Under the federal Social Security Act, Title IV-E, §471(a), and federal rules 45 Code of Federal Regulations §1356.21(n) implementing the Adoption and Safe Families Act, states are required to provide specific goals by state law as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care) who, at any time during such year, will remain in foster care after having been in such care for more than 24 months. DFPS currently fulfills this requirement by attaching a performance measure as a rider to the DFPS section of the state Appropriations Act. The justification for the new section is to put the required information in rules, instead of relying on the Appropriations Act. In addition, the rule reduces from 45% to 35% the percentage of children who may remain in foster care for more than 24 months.

The new section will function by ensuring that the length of children's stay in substitute care will continue to be monitored closely.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the Social Security Act, Title IV-E, §471(a).

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502226
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



CHAPTER 745. LICENSING

SUBCHAPTER M. ADMINISTRATIVE REVIEWS AND DUE PROCESS HEARINGS

DIVISION 2. DUE PROCESS HEARINGS

40 TAC §745.8843

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.8843, without changes to the proposed text published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1262).

The State Office of Administrative Hearings (SOAH) procedural rules will allow DFPS to obtain a default judgment based on notice of hearing sent to the party's last known address if the DFPS rules authorize it. The current DFPS rules are not specific enough to satisfy SOAH's procedural rules. This change satisfies the SOAH requirement. The amendment also clarifies that the person requesting a hearing must inform DFPS of a change in address.

The amendment will function by ensuring that the person requesting the hearing will be more aware of their responsibilities when requesting a due process hearing.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes FPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements HRC, §40.029.

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

Filed with the Office of the Secretary of State on June 1, 2005.
TRD-200502227

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.615, 746.617, 746.619, 746.621, 746.623, 746.629, 746.1325, 746.3309, 746.3401, 746.3503, 746.3505, 746.4003, and 746.5403; the repeal of §746.4005; and new §746.5017, in its Minimum Standards for Child-Care Centers chapter. The amendments to §§746.623, 746.629, and 746.3309 are adopted with changes to the proposed text published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1263). The amendments to §§746.615, 746.617, 746.619, 746.621, 746.1325, 746.3401, 746.3503, 746.3505, 746.4003, and 746.5403; the repeal of §746.4005; and new §746.5017 are adopted without changes and will not be republished.

The amendments to §§746.615, 746.617, 746.619, 746.621, and 746.623 change the name of the Texas Department of Health to the Texas Department of State Health Services (DSHS). In addition, current DFPS rules conflict with new rules recently adopted by the DSHS, so DFPS is cross-referencing DSHS rules to ensure the DFPS minimum standards do not conflict with DSHS rules. The purpose of the amendment to §746.629 is to cross-reference the Department of State Health Services rules for Vision and Hearing requirements in the Texas Administrative Code. This will eliminate any conflicts in interpretation and will ensure that the child-care community and Licensing staff utilize the most current rules regarding vision and hearing screening requirements.

The amendment to §746.1325 clarifies the definition of self-instructional and instructor-led training. Typically, caregivers derive greater benefit from instructor-led training, due to the interaction with the trainer and others in the group, thus the current rules limit the amount of annual training that can be obtained through self-instructional methods. However, changes in technology have expanded the training resources available to the child-care community, including computer-based training modules, which may be either self-instructional or instructor-led. The rule will help centers, as well as DFPS Licensing staff, correctly classify training formats.

The justification for the amendment to §746.3309 is to clarify that baked goods provided by parents for celebrations can be shared with other children. This change is the result of a concern raised by parents and permit holders that the current rule limits a parent's opportunity to provide baked goods prepared outside of the child-care operation for not only their child, but all children in a group for birthdays or other type celebrations.

The amendment to §746.3401 clarifies that a sanitation inspection must be completed before a provisional permit can be issued and at least once every 12 months.

The amendments to §746.3503 and §746.3505 are the result of concerns that have been expressed regarding the length of

time required for the diaper-changing surface to air dry between diaper changes as a part of the sanitizing process specified in §746.3409. When diapers are changed on consecutive children in an infant care room, waiting 10 minutes between each diaper change is not feasible. The rule change provides an option to use a non-absorbent paper liner on the changing surface or wipe the surface dry after approximately two minutes when changing children consecutively. Additionally, the directions for sanitizing the changing surface are moved to §746.3505, which is a more appropriate location for the topic.

The amendment to §746.4003 and the repeal of §746.4005 update the rules to be consistent with recent recommendations concerning syrup of ipecac. The American Academy of Pediatrics recently reported on the adverse effects of administering syrup of ipecac in the event of poisoning. Research has shown that the syrup can cause serious harm if not administered correctly. In many communities, syrup of ipecac is no longer available for purchase over the counter.

New §746.5017 addresses children swimming in a body of water other than a swimming pool. The current rules do not clearly prohibit swimming in bodies of water other than swimming or wading pools, such as rivers, lakes or ponds. The new rule clearly states this. Unlike properly maintained swimming pools and wading pools, caregivers cannot clearly see the bottom of a lake, river, pond, or creek to know when a child may be in distress in the water, a child is missing, or has drowned. In addition, bodies of water such as rivers, creeks, and coastal waters lack physical boundaries, which limit the area a child may swim in, may have an undercurrent that can quickly carry a child outside of a designated swimming area, and the water has not been treated chemically to protect children's health.

The title of §746.5403 is amended to make the rule consistent with §746.5401, which allows a gas leak inspection to be conducted once every two years, rather than annually.

The sections will function by protecting the health, safety, and well being of children.

During the public comment period, DFPS received comments from 14 child-care providers and the Department of State Health Services. A summary of the comments and responses follows:

Comments concerning §746.615: One commenter agreed with the change.

Comments concerning §746.617: One commenter stated that the Internet address referenced in the rule was not working properly and recommended the website address be placed next to the reference. The same commenter also recommended that the immunization requirements be placed in the publication. Another commenter agreed with the proposed rule change.

Response: The Internet address is now working correctly for DSHS and the immunization chart will be available on-line before the end of April. A copy of the immunization requirements will be sent to all providers with the revision pages and Licensing plans to set up a link from the DFPS website to the DSHS website. Licensing staff will also provide hard copies of the chart to those caregivers who do not have access to the Internet. DFPS is adopting this section without change.

Comments concerning §746.619: One commenter agreed with the change.

Comments concerning §746.621: One commenter stated the Internet address is not accessible and recommended that the requirements for provisional admittance be written in the rule. One commenter agreed with the proposed rule change.

Response: The DSHS Internet website is now working properly and up to date requirements for provisional admittance can be obtained from this site as well as from the Licensing representative. DFPS is adopting this section without change.

Comments concerning §746.623: Five comments were received. Three commenters expressed concern that existing immunization records would not comply with the new documentation requirements. One of these commenters explained that some doctor's offices charge a fee to obtain a copy of a shot record. One commenter recommended DFPS's sample enrollment form be updated to match the proposed rule. One commenter agreed with the proposed rule change.

Response: The rule deletes the option for provider's to make a handwritten copy; therefore, these are the only immunization records that will be impacted by the rule change. Providers will have the opportunity to update these records prior to the effective date of the rule. Procedurally, Licensing may also offer technical assistance rather than noting a deficiency to allow additional time for caregivers to comply. Sample forms will be updated after adoption of the final rule. Verification of vaccines with a signature or rubber stamp is not a new requirement; however, in response to commenters concerns staff is adopting subsection (b)(4) with a change to now read "the signature or stamp of a physician or other health professional validating the record." This change is in line with DSHS requirements for documentation and will allow the majority of immunization records that are already on file at operations to comply.

Comments concerning §746.629: One commenter recommended changes to the rule to be consistent with the Texas Administrative Code (TAC).

Response: DFPS is adopting the rule with the following changes:

- (1) In subsection (a), add "and grades" at the end of the sentence.
- (2) In subsection (b)(1), delete "vision and hearing screening" and replace with "visual acuity and sweep check results."
- (3) In addition, it was noted that subsection (b) does not accurately track the TAC.

As a result, DFPS is adding subsection (b)(3), which states "an affidavit stating that the vision or hearing screening conflicts with the tenets or practices of a church or religious denomination of which the affiant is an adherent or member."

Comments concerning §746.1325: One commenter recommended experiential and applied activities be defined.

Response: "Experiential" and "applied" have the same meaning as that assigned by Webster's Dictionary. DFPS is adopting this section without change.

Comments concerning §746.3309: DFPS received five comments. One commenter agreed with the proposed change. Two commenters stated "baked goods" is too narrow of a definition; it does not include sandwiches, snacks, fruit or non-sweet foods. One of the same commenter's recommended parents be allowed to bring in any food or drink that does not contain a known allergy for a child in the class. A fourth commenter recommended food provided by a parent be individually wrapped or

pre-packaged. A fifth commenter disagreed with changing the rule and stated many parents are accustomed to not bringing food and now do other things to celebrate such as reading a favorite book to the class.

Response: As a result of comments, DFPS is adopting the section with the following revised language in subsection (d): "You must ensure meals and snacks provided by a parent and shared with other children meet the needs of children who require special diets."

Comments concerning §746.3503: One commenter recommended disposable gloves be required for all diaper changes.

Response: Caregivers currently have the option to use disposable gloves when changing diapers; however, using disposable gloves does not prevent or reduce the spread of germs, unless proper hand washing steps are followed after the gloves are discarded. DFPS is adopting this section without change.

Comments concerning §746.3505: DFPS received three comments. One commenter expressed concern that the rule change would not prevent the spread of germs. One commenter recommended the non-absorbent paper liner be required only for children ages 0-12 months, and a paper towel liner be allowed for older children. One commenter agreed with the proposed change.

Response: Germs can be spread during any diapering procedure, regardless of the age of the child. Paper towels do not prevent germs, associated with diapering, from contacting the changing surface as non-absorbent paper liners would. However, paper towels can be used if the surface is fully sanitized between each use. DFPS is adopting this section without change.

Comments concerning §746.4003: Two commenters agreed with the recommended rule change.

Comments concerning §746.5017: DFPS received four comments. Two commenters that offer swimming/wading activities in creeks/lakes expressed concern that these activities would be prohibited. One of the two commenters recommended requiring a lifeguard certified in waterfront safety, rather than prohibiting the activity altogether. One commenter questioned whether water activities at water parks connected to a lake or river would still be allowed. One commenter agreed with the proposed rule change.

Response: Operations that currently offer swimming/wading activities in natural bodies of water as a part of a summer program will have the opportunity to request a variance or waiver of the minimum standard, allowing Licensing to look at the risk factors in each individual situation. This is also true for programs using a water park connected to a lake or river. DFPS is adopting this section without change.

SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §§746.615, 746.617, 746.619, 746.621, 746.623, 746.629

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall

study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Human Resources Code, §40.029 and §42.042.

§746.623. *What documentation is acceptable for immunization records?*

(a) Documentation on file at the child-care center may be the original immunization record or a photocopy of the record. An official immunization record generated from a state or local health authority, such as a registry, or a record received from school officials including a record from another state, is also acceptable.

(b) The immunization record must include:

- (1) The child's name and birth date;
- (2) The number of doses and vaccine type;
- (3) The month, day, and year the child received each vaccination; and
- (4) The signature or stamp of a physician or other health professional validating the record.

§746.629. *Must children in my care have vision and hearing screening?*

(a) The Special Senses and Communication Disorders Act, Texas Health and Safety Code, Chapter 36, requires a screening or a professional examination for possible vision and hearing problems for children of certain ages and grades. Refer to 25 TAC Chapter 37, Subchapter C, (relating to Vision and Hearing Screening), for specifics on vision and hearing screening. This information may be accessed on the Internet at: www.dshs.state.tx.us/vhs/.

(b) You must keep one of the following at the child-care center for each child required to be screened:

- (1) The individual visual acuity and sweep check results;
- (2) A signed statement from the child's parent that the child's screening records are current and on file at the pre-kindergarten program or school the child attends away from the center. The statement must be dated and include the name, address, and telephone number of the pre-kindergarten program or school; or
- (3) An affidavit stating that the vision or hearing screening conflicts with the tenets or practices of a church or religious denomination of which the affiant is an adherent or member.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502208

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



SUBCHAPTER D. PERSONNEL

DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §746.1325

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502209

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §746.3309

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

§746.3309. *May parents provide meals and/or snacks for their children instead of my child-care center providing these?*

(a) Yes; however, your enrollment agreement signed by the parent must include a statement that the parent is choosing to provide the child's meals and/or snacks from home and the parent understands

the child-care center is not responsible for its nutritional value or for meeting the child's daily food needs.

(b) If the parent provides a meal but not a snack, you are responsible for providing a snack as specified in §746.3307 of this title (relating to What kind of foods must I serve for snacks?).

(c) You must provide safe and proper storage and service of the individual meals and snacks provided by parents.

(d) You must ensure meals and snacks provided by a parent and shared with other children meet the needs of children who require special diets.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502210

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



SUBCHAPTER R. HEALTH PRACTICES

DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3401

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502211

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



DIVISION 2. DIAPER CHANGING

40 TAC §746.3503, §746.3505

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502212

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



SUBCHAPTER S. SAFETY PRACTICES

DIVISION 4. FIRST-AID KITS

40 TAC §746.4003

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502213

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



40 TAC §746.4005

The repeal is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The repeal implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502214
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



SUBCHAPTER V. SWIMMING POOLS AND WADING/SPLASHING POOLS

40 TAC §746.5017

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502215
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES

DIVISION 4. GAS AND PROPANE TANKS

40 TAC §746.5403

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502216
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.107, 747.111, 747.113, 747.201, 747.207, 747.613, 747.615, 747.617, 747.621, 747.623, 747.633, 747.1323, 747.3109, and 747.3803; the repeal of §747.3805; and new §747.4817, in its Minimum Standards for Child-Care Homes chapter. The amendments to §747.623 and §747.633 are adopted with changes to the proposed text published in the March 4, 2005, issue of the *Texas Register* (30 TexReg 1268). The amendments to §§747.107, 747.111, 747.113, 747.201, 747.207, 747.613, 747.615, 747.617, 747.621, 747.1323, 747.3109, and 747.3803; the repeal of

§747.3805; and new §747.4817 are adopted without changes to the proposed text and will not be republished.

The purpose of the amendments to §§747.107, 747.111, 747.113, and 747.201 concerns the one-time opportunity to choose to operate as a licensed child-care home or licensed child-care center. The minimum standard rules do not currently support this choice in all cases. A variety of group day care homes, choosing to operate as a licensed child-care home, did not fit neatly into the minimum standard rules that became effective September 1, 2003. These include, but are not limited to, a corporation owning a group day care home, a group day care home operating in a public school, and a governing body owning more than one group day care home. The changes will clarify the oversight and essentially grandfather these operations as licensed child-care homes. These changes also eliminate the need to process a variance for each of these rules, thus reducing the associated paperwork for both the permit holder, as well as DFPS Licensing staff.

The amendment to §747.207 cross-references Chapter 745, Licensing, and eliminates conflicting requirements.

The amendments to §§747.613, 747.615, 747.617, 747.621, and 747.623 change the name of the Texas Department of Health to the Texas Department of State Health Services (DSHS). In addition, current DFPS rules conflict with new rules recently adopted by the DSHS, so DFPS is cross-referencing DSHS rules to ensure the DFPS minimum standards do not conflict with DSHS rules. The purpose of the amendment to §747.633 is to cross-reference the Department of State Health Services rules for Vision and Hearing requirements in the Texas Administrative Code. This will eliminate any conflicts in interpretation and will ensure that the child-care community and Licensing staff utilize the most current rules regarding vision and hearing screening requirements.

The amendment to §747.1323 clarifies the difference between self-instructional and instructor-led training. Typically, caregivers derive greater benefit from instructor-led training, due to the interaction with the trainer and others in the group, thus the current rules limit the amount of annual training that can be obtained through self-instructional methods. However, changes in technology have expanded the training resources available to the child-care community, including computer-based training modules, which may be either self-instructional or instructor-led. The rule will help centers, as well as DFPS Licensing staff, correctly classify training formats.

The purpose of the amendment to §747.3109 is to clarify that baked goods provided by parents for celebrations can be shared with other children. This is the result of a concern raised by parents and permit holders that the current rule limits a parent's opportunity to provide baked goods prepared outside of the child-care operation for not only their child, but all children in a group for birthdays or other type celebrations.

The amendment to §747.3803 and the repeal of §747.3805 update the rules to be consistent with recent recommendations concerning syrup of ipecac. The American Academy of Pediatrics recently reported on the adverse effects of administering syrup of ipecac in the event of poisoning. Research has shown that the syrup can cause serious harm if not administered correctly. In many communities, syrup of ipecac is no longer available for purchase over the counter.

New §747.4817 addresses children swimming in a body of water other than a swimming pool. The current rules do not clearly prohibit swimming in bodies of water other than swimming or wading pools, such as rivers, lakes, or ponds. The new rule clearly states this. Unlike properly maintained swimming pools and wading pools, caregivers cannot clearly see the bottom of a lake, river, pond, or creek to know when a child may be in distress in the water, a child is missing, or has drowned. In addition, bodies of water such as rivers, creeks, and coastal waters lack physical boundaries, which limit the area a child may swim in, may have an undercurrent that can quickly carry a child outside of a designated swimming area, and the water has not been treated chemically to protect children's health.

The sections will function by protecting the health, safety, and well being of children.

During the public comment period, DFPS received comments from the Allied Professional Home Child-Care Association, 6 child-care providers, and the Department of State Health Services (DSHS). A summary of the comments and responses follows:

Comments concerning §747.107: A petition containing 50 signatures was received from a child-care association. The petition requested the rule not be changed, therefore making it unnecessary to change §747.111, §747.113, and §747.201. The petition stated that the proposed rule changes the definition of who they are and where they provide care and it would take away the ability to provide care in the home for registered and licensed child-care homes.

Response: The rule clarifies an existing rule and is not a change for home-based operations. Impact is limited to those operations licensed as a group day care home prior to September 1, 2003, that are not operating in the permit holder's residence (approximately 62 statewide). The rule eliminates the need to process variances for each of these operations, thus reducing the associated paperwork for both the permit holder, as well as DFPS Licensing staff. Current rules require all licensed and registered homes provide care in the caregiver's residence. DFPS is adopting the section without change.

Comments concerning §747.613: One commenter agreed with the proposed rule change.

Comments concerning §747.615: One commenter agreed with the proposed rule change.

Comments concerning §747.617: One commenter agreed with the proposed rule change.

Comments concerning §747.621: One commenter agreed with the proposed rule change.

Comments concerning §747.623: DFPS received four comments. All commenters expressed concern about current immunization records complying with the proposed changes. All stated it would be impossible for parents to obtain a stamp or signature of a physician for prior immunizations. One commenter agreed with the proposed deletion of the hand-written copies.

Response: The rule deletes the option for provider's to make a handwritten copy; therefore, these are the only immunization records that will be impacted by the rule change. Providers will have the opportunity to update these records prior to the effective date of the rule. Procedurally, Licensing may also offer technical assistance rather than noting a deficiency to allow additional time

for caregivers to comply. Sample forms will be updated after adoption of the final rule. Verification of vaccines with a signature or rubber stamp is not a new requirement; however, in response to commenters' concerns, staff is adopting subsection (b)(4) with a change to now read "the signature or stamp of a physician or other health care professional validating the record." This change is in line with DSHS requirements for documentation and will allow the majority of immunization records that are already on file at operations to comply.

Comments concerning §747.633: One commenter recommended changes to the rule to be consistent with the Texas Administrative Code (TAC). Response: DFPS is adopting the rule with the following changes:

(1) In subsection (a), add "and grades" at the end of the sentence.

(2) In subsection (b)(1), delete "vision and hearing screening" and replace with "visual acuity and sweep check results."

(3) In addition, it was noted that subsection (b) does not accurately track the TAC. As a result, DFPS is adding subsection (b)(3), which states "an affidavit stating that the vision or hearing screening conflicts with the tenets or practices of a church or religious denomination of which the affiant is an adherent or member."

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §§747.107, 747.111, 747.113

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502217

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 1. PRIMARY CAREGIVER

40 TAC §747.201, §747.207

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502218

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437

SUBCHAPTER C. RECORD KEEPING DIVISION 1. RECORDS OF CHILDREN

40 TAC §§747.613, 747.615, 747.617, 747.621, 747.623, 747.633

The amendments are adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendments implement the Human Resources Code, §40.029 and §42.042.

§747.623. *What documentation is acceptable for immunization records?*

(a) Documentation may be the original immunization record or a photocopy. An official immunization record generated from a state or local health authority, such as a registry, or a record received from school officials including a record from another state, is also acceptable.

(b) The immunization record must include:

- (1) The child's name and birth date;
- (2) The number of doses and vaccine type;
- (3) The month, day, and year the child received each vaccination; and
- (4) The signature or stamp of a physician or other health care professional validating the record.

§747.633. *Must children in my licensed child-care home have vision and hearing screening?*

(a) The Special Senses and Communication Disorders Act, Texas Health and Safety Code, Chapter 36, requires a screening or a professional examination for possible vision and hearing problems for children of certain ages and grades. Refer to 25 TAC, Chapter 37, Subchapter C, (relating to Vision and Hearing Screening), for specifics on vision and hearing screening. This information may be accessed on the Internet at: www.dshs.state.tx.us/vhs/.

(b) You must keep one of the following at the child-care home for each child required to be screened:

- (1) The individual visual acuity and sweep check results; or
- (2) A signed statement from the child's parent that the child's screening records are current and on file at the pre-kindergarten program or school the child attends away from the child-care home. The statement must be dated and include the name, address, and telephone number of the pre-kindergarten program or school; or
- (3) An affidavit stating that the vision or hearing screening conflicts with the tenets or practices of a church or religious denomination of which the affiant is an adherent or member.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502219
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



SUBCHAPTER D. PERSONNEL DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §747.1323

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by

the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502220
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §747.3109

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502221
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: July 1, 2005
Proposal publication date: March 4, 2005
For further information, please call: (512) 438-3437



SUBCHAPTER S. SAFETY PRACTICES DIVISION 4. FIRST-AID KITS

40 TAC §747.3803

The amendment is adopted under Government Code §531.0055, which provides that the Health and Human

Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The amendment implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502222

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



40 TAC §747.3805

The repeal is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The repeal implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502223

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



SUBCHAPTER V. SWIMMING POOLS AND WADING/SPLASHING POOLS

40 TAC §747.4817

The new section is adopted under Government Code §531.0055, which provides that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; Human Resources Code (HRC) §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the executive commissioner and the commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department; and HRC, §40.029, which authorizes DFPS to propose and adopt rules to facilitate implementation of Department programs.

The new section implements the Human Resources Code, §40.029 and §42.042.

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

Filed with the Office of the Secretary of State on June 1, 2005.

TRD-200502224

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: July 1, 2005

Proposal publication date: March 4, 2005

For further information, please call: (512) 438-3437



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts amendments to §31.11, concerning state formula program and §31.36, concerning the Section 5311 grant program for public transportation. Section 31.11 and §31.36 are adopted with changes to the proposed text as published in the April 15, 2005, issue of the *Texas Register* (30 TexReg 2206).

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §456.022 authorized the Texas Transportation Commission (commission) to adopt rules to establish a formula that may take into account a transportation provider's performance, the number of its riders, the need of residents in its service area for public transportation, population, population density, land area, and other factors established by the commission.

On June 24, 2004, the commission amended §31.11 and §31.36 to establish formulas for the distribution of state and federal funds. The commission now desires to further refine the formulas to better allocate funding resources.

The Public Transportation Advisory Committee (PTAC) met several times to discuss the changes to the existing formulas and rules. PTAC provides a forum for the exchange of information between the department, the commission, and committee members.

Four PTAC committee members represent a diverse cross-section of public transportation providers; three members represent a diverse cross-section of public transportation users; and two members represent the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

PTAC's duties include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds, and commenting on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption. PTAC recommended that state funds be allocated between urban and non-urbanized areas with 35% of the funding allocated to the urban areas of the state and 65% of the funding allocated to the non-urbanized areas of the state. PTAC also recommended that any further distribution of state funds allocated to urban areas be based on population not to exceed 199,999, in both the 80%, which is allocated based on population, and the 20%, which is allocated based on system performance. PTAC further recommended that state funds performance criteria for the urban areas be based on local funds per operating expense, operating expense per mile (inverted), as compared to the systems performance from the previous year, and ridership per capita.

On May 20, 2005, PTAC met and made the following additional recommendations to the proposed rules. PTAC recommended a change to §31.11 concerning state funds performance criteria for the urban areas by replacing operating expense per mile (inverted) with vehicle revenue miles per capita. PTAC also recommended that the state and federal funds performance criteria in §31.11 and §31.36 for the rural areas be based on local funds per operating expense, operating expense per mile, and operating expense per passenger. In addition, PTAC agreed with other proposed changes to the state formula for urban and rural areas and federal funds for Section 5311, non-urbanized areas, which include the following.

(1) Provisions of the phase-in process are revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years.

(2) The limitation of the growth cap will be removed allowing systems to grow to their full formula allocation, subject to available funding.

(3) Should available funding exceed the full formula allocations, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards will allow the commission to address state priorities. These awards are not subject to the transition funding allocation process in succeeding fiscal years.

The amendments to §31.11, Formula Program, provide changes to the current formula. The funds will be allocated between small urban and non-urbanized areas with 35% of the funding allocated to the urban areas of the state and 65% of the funding

allocated to the non-urbanized areas of the state. This percentage funding split more closely parallels historical distribution between urban and non-urbanized areas.

Urban areas that have populations of 200,000 or greater will be adjusted on a pro rata basis to reflect a population level of 199,999 for both the 80%, which is allocated based on population, and the 20%, which is allocated based on system performance. This adjustment of population more closely aligns systems with the population levels used at the federal level, which separate smaller urban systems from larger urban systems, and also more closely aligns with the population levels used in the definition of urban transit district defined in Transportation Code, Chapter 458.

Section 31.11(b)(1)(B)(ii) is adopted with changes. Performance criteria for the urban areas are changed to local funds per operating expense, vehicle revenue miles per capita, and ridership per capita. Section 31.11(b)(2)(B)(ii) is adopted with changes. Performance criteria for the rural areas are changed to local funds per operating expense, operating expense per mile, and cost per passenger. These revised performance criteria reflect standards that provide a more meaningful and accurate measurement and comparison.

The five-year phase-in process that went into effect in fiscal year 2005 will continue for the next four fiscal year allocations. However, the provisions of the phase-in process are revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years. This will allow an entity time to plan before it will be affected by a significant change in funding. In addition, the limitation of 20% growth will be removed allowing systems to grow to their full formula allocation, subject to available funding. Should available funding exceed the full formula allocations allocated in fiscal years 2004 and 2005, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards will allow the commission to address state priorities. These awards are not subject to the transition funding allocation process in succeeding fiscal years.

The amendments to §31.36, Section 5311 Grant Program, provide changes to the current formula. Performance criteria for the rural areas described in §31.36(g)(2)(B)(ii) are changed to local funds per operating expense, operating expense per mile, and operating expense per passenger.

The five-year phase-in process that went into effect in fiscal year 2005 will continue for the next four fiscal year allocations. However, the provisions of the phase-in process are revised to use fiscal year 2004 as the base year when calculating allocations for the next allocation of funds, after which, succeeding allocations will be based on previous fiscal years. This will continue to guarantee that an entity will have time to plan before it will be affected by a significant reduction. In addition, the limitation of 20% growth will be removed allowing systems to grow to their full formula allocation, subject to available funding. Should available funding exceed the full formula allocations allocated in fiscal year 2004, additional funding will be awarded by the commission on a

pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards will allow the commission to address state priorities. These awards are not subject to the transition funding allocation process in succeeding fiscal years.

COMMENTS

The department conducted three statewide public hearings to receive comments concerning the proposed amendments. Various oral and written comments were received from 316 individuals and entities.

As part of the official rulemaking process, PTAC's duties include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds, and commenting on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption. At their May 20, 2005 meeting, PTAC had the opportunity to review and comment on the proposed amendments prior to adoption and made the following recommendations.

Comment: For the small urban portion of the state formula, PTAC recommended replacing the current performance measure "operating expense per mile (inverted)" with "vehicle revenue miles per capita."

Response: The department concurs with the suggested recommendation and has incorporated the change in §31.11(b)(1)(B)(ii).

Comment: For the small urban portion of the state formula, PTAC recommended that the portion of the formula that addresses needs/performance be changed from 80% needs and 20% performance to 70% needs and 30% performance.

Response: The department does not concur in that a disproportionate impact could be felt in too short a time by subrecipients negatively affected. Further revisions to the rules will be considered in the future.

Comment: For the small urban portion of the state formula, PTAC recommended requiring 20% of the total operating budget (inclusive of capitalized and preventive maintenance and ADA) to be comprised of non-state and non-federal revenues including local funds, fare box, and other generated revenues. It further recommended a requirement of a minimum ratio of 1:1 or "dollar-for-dollar" local contribution for systems serving populations of less than 200,000. Additionally, they recommended a requirement of a minimum ratio of 3:1 local contribution for systems serving populations 200,000 or greater. Additionally, separate urbanized areas served by the same system should be accounted for separately.

Response: The department does not concur in that a disproportionate impact could be felt in too short a time by subrecipients negatively affected. Further revisions to the rules will be considered in the future.

Comment: For the rural portion of the state formula, PTAC recommended replacing the current performance measure "local funds per capita" with "local funds per operating expense."

Response: The department concurs with the recommendation and has incorporated the change in §31.11(b)(2)(B)(ii).

Comment: For the rural portion of the state formula, PTAC recommended replacing the current performance measure "operating expense per mile (inverted) as compared to the system's performance from the previous year" with "operating expense per mile." PTAC further recommended replacing the current performance measure "ridership per capita as compared to the system's performance from the previous year" with "operating expense per passenger."

Response: The department concurs with the recommendations and has also incorporated the changes in §31.11(b)(2)(B)(ii).

Comment: PTAC also recommended, for the rural portion of the state formula, deleting the current performance measure "vehicle revenue miles."

Response: The department concurs with the recommendation and has incorporated the change.

Comment: Regarding §31.36(g)(2)(B)(ii), PTAC made various recommendations. For the rural portion of the federal formula, the suggested revision to the current performance measures follow. Change "local funds per capita" to "local funds per operating expense." Change "operating expense per mile (inverted) as compared to the system's performance from the previous year" to "operating expense per mile." Change "ridership per capita as compared to the system's performance from the previous year" to "operating expense per passenger." And delete the current performance measure "vehicle revenue miles."

Response: The department concurs with all of PTAC's recommendations and has incorporated these changes in §31.36.

Comment: PTAC made the recommendation to reduce an amount off the top of the federal appropriations that will be sufficient to provide an increase to those systems targeted for increases by the state formula. All systems would be held constant at their fiscal year 2004 level of state funding and those systems identified for increases would receive additional federal funds instead of additional state funds.

Response: The department does not concur with this recommendation and believes that other proposed provisions will allow the commission discretionary funding which may be used to offset funding anomalies.

Comments: Numerous comments were submitted regarding local transit services and the importance of these services to the residents who rely on these services. Comments varied from issues with local bus service routes and fares, to the impact that would be realized if services were cut due to funding reductions.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comments: Several commenters expressed disappointment in the locations of the public hearings since, in their view, the hearings were located in areas that precluded the negatively affected transit districts, as well as their elected officials and patrons, from providing comment.

Response: The department values the contributions of all transit providers throughout the state and encourages public input on all of its rule changes. Because of the importance of this rulemaking, the department chose to hold three public hearings, even though none are required. While the department would like to

be able to hear in person from citizens and providers throughout the state, both time and resources make this impossible. Instead, the department provided an avenue by which comments could be submitted through the mail.

Comments: Comments were received from 241 individuals from the Colorado Valley area requesting that funding not be taken from their system. These individuals rely on Colorado Valley Transit to take them to dialysis treatment, medical appointments, work, or shopping.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comments: Fourteen individuals oppose any reductions that would impact service in The Woodlands. Comments included statements that the service provided includes commuter service to the Houston metro area.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comments: Seven individuals submitted written and oral comments suggesting that additional funds are being obligated at the federal and state levels; therefore, no system should receive a reduction in funding.

Response: Actual funding levels will not be known until the state appropriations act and the federal transportation reauthorization act become law. Funding levels may vary from the scenarios presented. At this time, it appears that no additional state funding will be available for the fiscal year 2006 - 2007 biennium. If additional state and federal funds do become available, then the proposed formula would allocate those funds.

Comment: County judges from Floyd, Wharton and Motley counties stated: no transit system must receive a reduction below their fiscal year 2004 level; increase funding over the next two years, not five, to those systems proposed to receive increased funding; and freeze those systems that stand to lose funding.

Response: Given fixed funding, it is not possible to provide increased funding to some areas of the state while at the same time freezing allocations to other areas. If additional funds do become available, then the proposed formula would allocate those funds.

Comment: The Wharton county judge submitted comments opposing any cuts in funds that reduce service, reduce the ability to meet the needs of the public, the loss of jobs, and an infrastructure that has been built with local, state and federal dollars. He also opposes the current proposed commission formula which cuts funds for both rural and small urban transit districts while some systems will gain under the proposed rules.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comments: County judges from Concho, McCulloch, and Mason and a representative of Concho Valley Rural Transit District provided written comments encouraging the department and

the commission to accept comprehensive planning documents from areas of the state wishing to use these funds, to include time, place, and manner for measuring outcomes, and to provide for transitioning to alternate funding sources to compensate for unforeseen funding anomalies. They also support that additional funds be awarded on a competitive basis with consideration for coordination, and technical support activities that promote efficiency and effectiveness; and, that these funds not be included in the transition funding allocation process in succeeding years. Additionally, they recommend that the department determine performance indicators such as: cost efficiency (how much does it cost to produce a unit of service?); service effectiveness (how many passengers ride for each type-demand-response, fixed route, etc.); cost effectiveness (how much does it cost to provide service to one passenger?); service quality (are we providing customer service?). And finally, they encourage the department and the commission to: provide the incentives to ensure that sustained efforts in planning, cooperation, and coordination are priorities in every transit operation; and continue holding the transit community accountable for the efficient and effective delivery of service to the citizens of Texas. They support the efforts to equitably distribute formula funds and improve transit services by the department and the commission.

Response: The department strongly encourages public transportation planning and coordination. The department warmly welcomes local or regional participation in the process for planning and coordination and has brought together a regional planning work group to review current public transportation planning and programming practices within metropolitan, suburban, and rural areas and to enhance service delivery, customer satisfaction, efficiency, and effectiveness. The department also agrees that further review is appropriate regarding suggested recommendations for possible inclusion in future amendments to the rules.

Comment: A representative from Brownsville Urban System (BUS) commented that their system's budget will be cut 22% over five years, even though the population and land area are increasing. BUS has 1.5 million passengers per year with trips to doctors, dialysis, and jobs.

Response: The proposed formula removes consideration of land area in calculating the initial small urban/rural state funds distribution. This change is forecast to increase overall allocation to small urban systems. Brownsville is a small urban system. Brownsville reports high system trips per capita, in comparison to other small urban systems, and this performance increases its potential share of the allocation. However, as Texas changes, such as the addition of the three new small urban systems created in fiscal year 2004, and there are no additional appropriations, the department must be fair and equitable in the distribution of funds to all areas of the state.

Comment: A representative from Brownsville Urban System commented that the proposed rules are similar to tearing up a highway in south Texas in order to build a new highway in north Texas.

Response: The proposed rules do not cover highways in Texas. The department notes the analogy presented by the commenter.

Comment: A representative of Brazos Transit District (BTD) stated the proposed rules are devastating to rural citizens, will accomplish the opposite of the desired effect, and will reduce service to 44% of state's population.

Response: Of the 38 existing rural systems, 20 systems will increase in combined state and federal allocation over the period 2004 - 2010, and 18 will decrease, assuming constant funding levels. The 20 systems which increase represent 55.28% of the rural population served by public transportation. The department is responsible for a fair and equitable distribution of funds to all areas of the state.

Comment: A representative of Brazos Transit District stated the proposed rules are based on false premises and limited information.

Response: The commenter did not specify the false premises and limited information. Without more details, this comment cannot be addressed.

Comment: A representative of Brazos Transit District stated the citizens that reside in areas served by metropolitan transit authorities receive public transportation subsidies in excess of \$20 per capita, while citizens in rural Texas currently receive only \$5.45 of the same type subsidy.

Response: The proposed amendments are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comment: A representative of Brazos Transit District commented that there are federal and state funds available to make all systems whole. Example: impose a cap on the administrative burden as a proportionate share of the total public transit subsidy; define local contribution and fare box revenue; use existing infrastructure; don't use local funds per capita as a measure; and using cost per mile inverted accomplishes the opposite of what is intended. The true barometer is cost per mile. Ridership per capita measures nothing; it does not relate to performance. Revenue vehicle miles is incomplete. The true measure is cost per trip.

Response: The department welcomes input on potential factors and measures in calculating funding allocations. Some of these ideas were discussed and recommended by the Public Transportation Advisory Committee at their May 20, 2005 meeting.

Comment: BTB stated the amended rules would have a negative impact on its service areas of \$11 million and a loss of 44 jobs. It was further stated that the proposed rules would disenfranchise 200,000 of almost 2 million riders currently served by the programs scheduled for reductions.

Response: It is not possible to verify these claims. The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comment: BTB stated that it is irresponsible to reduce funding based on a convoluted, ill conceived formula that has no basis in the reality of valid, nationally recognized, operational performance measurements. The commenter strongly supports performance measures, but noted the measures being considered in no way measure performance.

Response: The department welcomes input on potential factors and measures. The proposed funding allocation formula was based upon considerable input from PTAC, as well as input from other knowledgeable parties. PTAC itself met many times over

the several months leading up to the rule proposal. The proposed measures are identical or very similar to measures discussed in several national publications, including reports from the Transportation Research Board's Transit Cooperative Research Program.

Comment: A representative of Golden Crescent Regional Planning Commission commented that their system will see a gain, but should not wait for five years for the impact--should use 10% set-aside to bring all systems up to full allocation.

Response: The department agrees and proposes to remove the limitation on growth. However, a set aside would reduce overall funding available for formula distribution and therefore, the department proposes a set aside only after systems have achieved their full formula allocations.

Comments: Six members of Colorado Valley Transit District's (CVTD) board provided comments stating CVTD will lose approximately \$217,000 under proposed rules. They further state that CVTD supports the Texas Transit Association's (TTA) position on the funding formula.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need. Additionally, elements of TTA's proposal are included in the proposed rules. However, TTA's proposal depends upon an increased level of funding at the state and federal levels and these appropriations are uncertain.

Comments: Fifteen individuals submitted comments supporting the proposal recommended by the Texas Transit Association.

Response: As stated, elements of TTA's proposal are included in the proposed rules. However, TTA's proposal depends upon an increased level of funding at the state and federal levels and these appropriations are uncertain.

Comment: East Texas Council of Governments (ETCOG) does not support increasing the percentage of the funding formula on performance over the next four years.

Response: That element of the formula is not being amended with this ruling.

Comment: ETCOG does not support ridership per capita being compared system to system.

Response: The commenter did not provide a basis or rationale for this comment. Therefore, the comment is noted. However, the stated measure for rural systems is being proposed to change to cost per passenger, per PTAC's recommendation.

Comments: ETCOG submitted a resolution that states no rural operator should receive a reduction in funds, while at the same time, with the likelihood of additional federal and state funds over the next few years, the underfunded rural operators will be at full funding sooner than five years. Additionally, the following entities submitted written and oral support of ETCOG's resolution: Goodwill Industries of Tyler; Minibus board of directors; and The United Way of Tyler.

Response: State and federal levels of appropriations are uncertain. Given fixed funding, it is not possible to provide increased funding to underserved areas of the state while at the same time freezing allocations to other areas.

Comment: Five individuals from Brownsville submitted comments stating a decrease in operating funds by more than 13% would force Brownsville Urban System to reduce service and eliminate routes and staff.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comment: Five individuals from Brownsville submitted comments stating that the Brownsville Urban System is doing exactly what the Texas Transportation Commission is asking public transit operators to do, work towards achieving better operational efficiency as well as better coordination of public transportation services in the region.

Response: The department appreciates the efforts made in this area to enhance planning and coordination.

Comment: Five individuals from Brownsville submitted comments stating the City of Brownsville, Brownsville Urban System (BUS), will lose approx 22% of its state funding by 2010.

Response: Actual funding levels will not be known until the state appropriations act and the federal transportation reauthorization act become law. Funding levels may vary from the scenarios presented. At this time, it appears that no additional state funding will be available for the fiscal year 2006 - 2007 biennium. If additional state and federal funds do become available, then the proposed formula would allocate those funds.

Comment: Fourteen individuals submitted comments stating that an analysis/inventory should be conducted on services now available at all 38 rural transit districts prior to adoption.

Response: The department believes that such a survey would be an important part of coordination, regional service plans, and allocation formula development. However, such formula development should not delay the vital task of providing a fair and equitable allocation of funds, given that future efforts would further refine and improve the process.

Comment: Thirteen individuals submitted written comments requesting that the department revise the proposed rules that prevent any reductions in funding below the already minimal funding now available to Capital Area Rural Transit System (CARTS).

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comment: One individual submitted comments stating that the current proposal calls for CARTS to receive a 30% reduction in funding. Additionally, if CARTS loses funding from TxDOT, the fares are likely to be increased. The seniors and disabled persons living in San Marcos cannot afford an increase in fares.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comment: A representative from Kleburg County Human Services stated that their "system would lose more than 50% of its

funding within five years, so no way for services to continue, our performance is outstanding, given the level of funding."

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need. In addition, performance data reported from this system indicates a decline in three of the four measures.

Comment: A representative from Kleburg County Human Services commented that the state should be more fair and equitable, should reconsider changing rules, and help everybody equally.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comment: A representative from the American Association of Retired Persons (AARP) stated that merely counting people may omit recognition of greater need by certain people, especially the blind.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all small urban and rural systems. There are additional programs available to assist those with special needs, such as the Section 5310 Elderly and Disabled program, and the various client transportation programs.

Comment: A representative from the United Way of Texas suggested the department take a look at how the United Way allocates funding, and, specific to performance measures, look at the United Way's experience.

Response: The department welcomes input on potential factors in calculating funding allocations. PTAC will be closely reviewing the formula in the future and welcomes input from experienced parties.

Comment: A representative of the Texas Transit Association suggested that the department is not following the Texas Administrative Code regarding rule changes. Additional impact analysis should have been performed.

Response: Counsel for the department has reviewed the current process and determined that the department is in compliance with the Texas Administrative Code.

Comment: A representative from Texarkana Urban Transit District commented that the state operating assistance should be awarded to systems for efficient operation based on nationally recognized performance measures.

Response: The department welcomes input on potential factors and measures. The proposed funding allocation formula was based upon considerable input from PTAC, as well as input from other knowledgeable parties. PTAC itself met many times over the several months leading up to the rule proposal. The proposed measures are identical or very similar to measures discussed in several national publications, including reports from the Transportation Research Board's Transit Cooperative Research Program.

Comment: A representative from Texarkana Urban Transit District stated that the importance or weight placed on performance

measures has to be increased because population is not an accurate measure of needs.

Response: The department welcomes input on potential factors in calculating funding allocations. PTAC will be closely reviewing the formula in the future and welcomes input from experienced parties.

Comment: A representative from Collin County Area Regional Transit commented that any formula allocation that is based upon census data that is so skewed for explosive growth counties is going to result in lower per capita funding throughout the rest of this decade.

Response: The requirement that the department use the U.S. Census Bureau data is currently in the Texas Administrative Code and is not being amended. Additionally, PTAC has discussed this issue, contacted the state demographer, and determined that no reliable data source is available that determines population at the level of detail required for the current formula.

Comment: A representative of Tyler Transit System (TTS) commented that under the current funding formula, there's a potential reduction of 49,000 trips to jobs that would be cut for TTS. If the current performance measures are kept in place, TTS will lose funding and reduce services which will impact the number of trips performed each year. There will be more costs to the system but less state funds to help pull down federal funds.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comment: One individual stated the reduction in funds to Brazos Transit District will negatively impact the transit program in Lufkin, Nacogdoches, and other counties in the area.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comment: State Senator Tommy Williams provided written comments strongly opposing the funding formula proposed by the commission. He is concerned that the formula will reduce funding to the Brazos Transit District on average of \$300,000 per year in each of the five years. The proposal also contemplates a 15% reduction in funds for South East Texas Rural Transit District. He further stated that rural systems cannot continue to receive cuts in funding and be expected to continue to deliver the same programs and services for less money. Additionally, he stated that while the proposal will not result in a decrease from small urban programs in Beaumont and The Woodlands, it is troubling that these programs will be funded at levels which do not take into account the increasing costs of maintenance and operation of services.

Response: The proposed funding allocation formula was based upon considerable input from PTAC, as well as input from other knowledgeable parties. PTAC itself met many times over the several months leading up to the rule proposal. Given fixed funding, it is not possible to provide increased funding to some areas of the state while at the same time freezing allocations to other areas. Unfortunately, there is not sufficient funding to provide for all needs at every system.

Comment: State Senator Gonzalo Barrientos submitted comments expressing concern that CARTS' reduction of 30% over the next three years is unacceptable. CARTS serves nine counties, which includes four of the fastest growing counties in the state. He further stated the proposed formula includes performance measures related to service of diverse populations and such measures are not recognized by the FTA. He also expressed concern over testimony presented at a public hearing by a representative of a renal clinic who stated that people will die if the reductions caused by the proposed formula occur.

Response: The proposed funding allocation formula was based upon considerable input from PTAC, as well as input from other knowledgeable parties. PTAC itself met many times over the several months leading up to the rule proposal. The proposed measures are identical or very similar to measures discussed in several national publications, including reports from the Transportation Research Board's Transit Cooperative Research Program. The proposed measures do not discriminate between service populations, and the Federal Transit Administration (FTA) does not use any performance measures in allocating rural and small urban funding among the states.

Comment: State Senator Craig Estes submitted comments that expressed concern that the proposed funding formula will have a detrimental impact on many riders within Senate District 30.

Response: Given fixed funding, it is not possible to provide increased funding to some areas of the state while at the same time freezing allocations to other areas. If additional funds do become available, then the proposed formula would allocate those funds.

Comment: State Senator Troy Fraser commented that he is opposed to the formula. He agrees with the commission's efforts to increase funding to transit systems in Texas, but not at the expense of others; 16 rural and 12 small urbans will see a decrease.

Response: Given fixed funding, it is not possible to provide increased funding to some areas of the state while at the same time freezing allocations to other areas. If additional funds do become available, then the proposed formula would allocate those funds.

Comment: State Senator Todd Staples requested the department look at FTA's performance measures when considering recommendations made by the PTAC. He is opposed to any funding formula that would cause a net decrease in rural transportation services. He further stated that when there are better performance measures, they should be a larger percentage of the allocation. He thinks the commission is right on track for keeping some amount of money for discretionary funding.

Response: The proposed measures are identical or very similar to measures discussed in several national publications, including reports from the Transportation Research Board's Transit Cooperative Research Program. The proposed measures do not discriminate among service populations, and the Federal Transit Administration (FTA) does not use any performance measures in allocating rural and small urban funding among the states. The proposed funding allocation formula does not decrease the overall funding level across the state.

Comment: State Senator Eddie Lucio commented that he is strongly opposed to the proposed amendments. He stated that the City of Brownsville, Brownsville Urban System (BUS), will

lose approximately 22% of its state funding by 2010 and a decrease in operating funds by more than 13% would force BUS to reduce service and eliminate routes and staff. He further stated that BUS is doing exactly what the commission is asking public transit operators to do, work towards achieving better operational efficiency as well as better coordination of public transportation services in the region.

Response: The proposed formula removes consideration of land area in calculating the initial small urban/rural state funds distribution. This change is forecasted to increase overall allocation to small urban systems. Brownsville is a small urban system. Brownsville reports high system trips per capita, in comparison to other small urban systems, and this performance increases its potential share of the allocation. However, as Texas changes, such as with the addition of the three new small urban systems created in fiscal year 2004, and with no additional appropriations, the department must be fair and equitable in the distribution of funds to all areas of the state.

Comments: Eight individuals submitted comments agreeing with "Principles of Moving Forward" proposed by Just Transportation Alliance (JTA). Additionally, seven of these individuals stated that they support the commission's proposed funding formula with certain refinements.

Response: The department welcomes input from interested focus groups. The department will encourage the PTAC to continue to receive input as the formula is further refined.

Comment: One commenter suggested the definition of "population" used in the current formula be amended for those systems that provide services only to persons with disabilities and seniors. The commenter further stated the definition of "small urban" transportation system eligible for \$5307 state dollars should be clarified with those current recipients that fail to provide general public transportation in a small urban area excluded from funding. Additionally, the commenter strongly supports the commission's proposal to allocate "excess" or "additional" funds on a pro rata basis, competitively or both, and the priorities to which the commission has identified competitive dollars would be targeted.

Response: The department will consider refinements to the formula as it is improved.

Comment: One individual commented that the proposal to create discretionary funds from any transit dollars that come as a windfall to the state as a result of legislative action or the passage of TEA is a sound idea. Such funds could be used to help established agencies that lose money under the revised formula or to help transit providers take advantage of opportunities to leverage federal and local funds by applying directly to the commission for discretionary funds. The commenter also stated that the performance measures in the current formula reflect revenue generation. Additionally, the commenter stated the legislature mandated increasing accountability, performance, and efficiency among transit providers. Tying funding to performance rewards districts that do well and does not reward those that are merely marking time.

Response: The department welcomes continued participation by the public and interested groups as the formula is improved.

Comment: Comments submitted by JTA suggested the proposed funding formula needs to be revised. JTA supports revising the population element for systems that do not offer general public transportation. JTA supports revising the land

area element, using three-year averages for each performance measure, increasing the value of performance measures in the formula, and revising the current performance measures to include indicators that measure customer satisfaction, innovation, coordination, financial stewardship, and efficiency. JTA stated that transit systems must begin and continue to use the remaining four years of the transition period to deliberately and strategically prepare for their projected fiscal year 2010 funding allocation. JTA supports the 10% funding base and the growth cap while increasing its maximum percentage, however, JTA strongly disagrees with the elimination of the growth cap. JTA supports a staged approach to funding changes during the transition and a "balloon" reduction or increase for systems whose projected allocations exceed the total funding floor reductions or total growth cap increases over the transition period.

JTA further states that transit systems, the Public Transportation Division (PTN), the commission, users, their families, and advocates should work together to ensure that quality transit services are available to as many Texans as possible throughout the transition period and beyond. JTA strongly supports the commission's proposal to allocate "excess" or "additional" funds on a pro rata basis, competitively, or both. JTA strongly supports the considerations the commission identified in its proposal: coordination and technical support activities; compensation for unforeseen funding anomalies; assistance with eliminating waste and ensuring efficiency; maximum coverage in the provision of public transportation services; and reductions in air pollution. JTA supports a continuing role for PTAC as the commission responds to the availability of "excess" funds. JTA noted, to fulfill the legislature's mandates, each region must begin an inclusive process of planning for the development, coordination, and deployment of services that tangibly increases the quantity and quality of public transportation during and after the transition period. JTA urged the department, particularly PTN and the commission, to commit the resources communities will need to access planning services and other technical supports. JTA urged the department and the commission, in future rulemaking associated with health and human services coordination, to ensure that providers are fairly compensated relative to their costs for services they provide. JTA stated the coordination of health and human services transportation should, as practical and feasible, use the existing network of transportation, particularly the fixed route component, as specified by the Texas Legislature. JTA urged PTN to survey providers and others to identify those state policy and federal regulations that impede cost-effective transportation services or innovation. JTA urged the department to review and revise evaluation criteria used to award health and human services transportation contracts to support, not conflict, the legislature's presumption that "as practical and feasible, the existing network of transportation, particularly the fixed route component" should be used.

Response: The department welcomes input from interested focus groups. The department will encourage PTAC to continue to receive input as the formula is further refined.

Comment: A commenter representing Citibus, a transit system in Lubbock, submitted written comments. The commenter stated the current formula still needs significant modification and recommended the following requirements as conditions of receiving state funds.

(1) Require 20% of the total operating budget, inclusive of capitalized preventive maintenance and ADA, to be composed of

non-state and non-federal revenues including local funds, fare-box, and other generated revenues.

(2) Require a minimum ratio of 1:1 or dollar-for-dollar local contribution for systems serving populations of less than 200,000.

(3) Require a minimum ratio of 3:1 local contribution for systems serving populations of 200,000 or more.

Separate urbanized areas served by the same system should be accounted for separately. The commenter strongly urged PTAC to consider forwarding the proposed state small urban formula to the commission with the recommendations that these additional local match requirements be imposed as a condition of receiving state assistance and that work begin immediately to develop a revised formula for the next funding cycle.

The commenter also suggested using annual increases in federal appropriations to stabilize funding and to mitigate for the losses in state funding that some systems would experience under the proposed formula. The commenter proposed using fiscal year 2004 as the benchmark year and that all systems would be held constant at their fiscal year 2004 level of state funding. The commenter stated current federal appropriation estimates suggest that Texas' rural systems will receive substantial increases in federal funding beginning next year. The commenter suggested that the department could reduce an amount of funds from the top of the state's federal Section 5311 appropriation prior to running the formula and that amount taken off the top would be sufficient to provide increases to those systems targeted for increases by the state formula. The commenter also recommended that all systems be held constant at their fiscal year 2004 level of state funding and those systems identified for increases would receive additional federal funds instead of additional state funds.

Response: The department welcomes input from interested parties. These comments were also received and reviewed by the PTAC at their meeting on May 20, 2005.

Comment: One individual noted that state the funding formula should subsidize public transportation providers on a rational basis, but based on funding allocation tables there are small urban transit systems with high ridership that are negatively affected. The commenter stated it does not seem logical that transit providers who carry a lot of passengers are going to lose funding.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comments: Several individuals submitted comments supporting the use of performance measures, but stated that they must be reflective of longstanding, nationally accepted, and recognized standards and not have the effect of penalizing any transit system.

Response: The department welcomes input on potential factors and measures. The proposed funding allocation formula was based upon considerable input from PTAC, as well as input from other knowledgeable parties. PTAC itself met many times over the several months leading up to the rule proposal. The proposed measures are identical or very similar to measures discussed in several national publications, including reports from the Transportation Research Board's Transit Cooperative Research Program.

Comments: Several individuals submitted written comments expressing concern over traffic congestion and compromised air quality which would be a result of reducing the number of trips/routes/buses due to cuts in funding in rural and urban areas.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress.

Comment: A commenter representing Capital Area Rural Transit System (CARTS) provided comments disputing taking service away from people in one area to provide service in other areas. The commenter further stated that the performance measures proposed do not accurately gauge or measure performance and the population data is based on information that is at least five years old. The commenter stated that services can be grown incrementally, but don't do it by cutting existing services.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need.

Comment: One individual requested that the department not take away the rides for dialysis patients because loss of rides equals death.

Response: Local public transportation services are controlled by the local providers and their oversight boards. The department is responsible for a fair and equitable distribution of funds to all areas of the state as appropriated by the legislature and Congress. In addition, there may be alternative transportation services available.

Comment: An individual representing Texoma Area Paratransit System (TAPS) offered comments. The commenter is generally opposed to some of the performance measures contained in the proposed amendments and the transition period in §31.11, subsection (c). The commenter stated that if §31.11(c), is changed to reflect the use of any and all funds available to the commission, above the fiscal year 2004 base year allocation amounts, and after providing for increased allocations for those cities warranting increases under the proposed formula changes, it should ensure that no small urban transit system receive any less than their fiscal year 2004 base year allocation amount of state transit funds. The commenter also stated that so allocating state transit funds to small urban transit systems of the state, the commission should also endeavor to provide funds each biennium in at least an amount that will allow the required matching dollars for the federal public transit appropriations for each small urban area as appropriated by the U.S. Congress, approved by the President, and published in the Federal Register each year.

Response: The proposed rules are designed to provide a more fair and equitable allocation to all systems. This means systems should receive an allocation more closely related to their actual need and performance. Without an increase in funds, it is likely that no system will receive funding equal to their total need. The commission does not determine the overall level of funding but it is responsible for allocating the funds available.

Comment: A representative of Central Texas Rural Transit District and its board of directors submitted written comments. They stated that over the past year, transit agencies have been forced

to deal with rapidly increasing fuel prices, vehicle maintenance, and insurance. They further stated that these transit agencies are struggling to maintain current service levels and cannot endure the funding cuts that would occur if the proposed rules are adopted. Additionally, they noted the proposed performance measures are not true measures of performance. They maintain that nationally accepted performance measures cited by the National Transportation Board and accepted by FTA are cost per trip, cost per mile, and farebox recovery rate, and that there are no nationally recognized performance measures that include "per capita" in the calculation.

Response: Actual funding levels will not be known until the state appropriations act and the federal transportation reauthorization act become law. Funding levels may vary from the scenarios presented. At this time, it appears that no additional state funding will be available for the fiscal year 2006 - 2007 biennium. If additional state and federal funds do become available, then the proposed formula would allocate those funds. The department welcomes input on potential factors and measures. The Transit Cooperative Research Program Report number 88, "A Guidebook for Developing a Transit Performance-Measurement System" lists over 400 measures, including several that use "per capita" as an element.

SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11

STATUTORY AUTHORITY:

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers; and Transportation Code, §461.003, which requires the commission to adopt rules necessary to implement Transportation Code, Chapter 361 and provides the commission with the authority to adopt rules to require certain state agencies to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services, and to adopt rules to require a public transportation provider to provide detailed information on its public transportation services.

CROSS REFERENCE TO STATUTE: Transportation Code, §456.022.

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain appropriated amounts from the public transportation fund. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to designated recipients. The commission will allocate those funds between small urban and rural providers, with 35% of the funding allocated to small urban providers and 65% of the funding allocated to rural providers.

(1) Urban funds available under this section will be allocated to municipalities that are designated recipients or transit

providers in urbanized areas that are not served by an authority and to designated recipients that received state transit funding during the fiscal biennium ending August 31, 1997, that are not served by an authority but are located in urbanized areas that include one or more authorities. Any local governmental entity having the power to operate or maintain a public transportation system, except an authority, may receive formula program funds. The commission will distribute the money in the following manner.

(A) Eighty percent will be awarded giving consideration to population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each urbanized area relative to the sum of all urbanized areas. Any urban provider whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the urbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per operating expense, vehicle revenue miles per capita, and ridership per capita. Any urban provider whose urbanized area population is 200,000 or greater will have the aforementioned criteria adjusted on a pro rata basis to reflect a population level of 199,999. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(2) Rural funds available under this section will be allocated in nonurbanized areas. Any eligible recipient may receive formula program funds. Of the money allocated under this paragraph, the commission will distribute the money in the following manner.

(A) Eighty percent will be awarded giving consideration to population weighted at 75% and on land area weighted at 25% by using the latest census data available from, and as defined by, the U.S. Census Bureau for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in subsection (c) of this section in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per operating expense, operating expenses per mile and operating expense per passenger. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Funds allocated under this section and any local funds may be used for any transit-related activity except that a designated recipient not included in a transit authority but located in an urbanized area that includes one or more transit authorities may only use funds to provide:

(A) 65% of the local share requirement for federally financed projects for capital improvements;

(B) 50% of the local share requirement for projects for operating expenses and administrative costs;

(C) 50% of the total cost of a public transportation capital improvement, if the designated recipient certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(D) 65% of the local share requirement for federally financed planning activities.

(c) Transition. Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau, the allocations under subsection (b)(1) and (2) of this section will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time no award to a transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year, except that fiscal year 2004 will be used as the base year when calculating allocations for fiscal year 2006 allocation of funds, after which succeeding allocations will be based on previous fiscal years. All allocations under subsection (b)(1) and (2) of this section are subject to revision to comply with this standard. If available funding exceeds the allocations allocated in fiscal years 2004 and 2005, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards are not subject to the transition funding allocation process in succeeding fiscal years.

(d) Change in service area. If part of a transit district's service area is changed due to declaration by the United States Census Bureau, or if the service area is otherwise altered, the department and the subrecipient shall negotiate an appropriate adjustment in the funding awarded to that subrecipient for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in subsection (c) of this section.

(e) Unobligated funds. Any money under this section that the designated recipient has not applied for before the November commission meeting in the second year of a state fiscal biennium will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Returned funds. Any money under this section that the designated recipient agrees to return to the department will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(g) Application. To receive funds allocated under this section, a designated recipient must first submit a completed application, in the

form prescribed by the department, to the appropriate district. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 USC §5301 and §1602a. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(h) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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 31, 2005.

TRD-200502176

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 20, 2005

Proposal publication date: April 15, 2005

For further information, please call: (512) 463-8630



SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §31.36

STATUTORY AUTHORITY:

The amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §456.022, which requires the commission to adopt rules establishing a formula allocating funds among eligible public transportation providers; and Transportation Code, §461.003, which requires the commission to adopt rules necessary to implement Transportation Code, Chapter 361 and provides the commission with the authority to adopt rules to require certain state agencies to contract with the department for the department to assume the responsibilities of that agency relating to the provision of public transportation services, and to adopt rules to require a public transportation provider to provide detailed information on its public transportation services.

CROSS REFERENCE TO STATUTE: Transportation Code, §456.022.

§31.36. *Section 5311 Grant Program.*

(a) Purpose. The Federal Transit Act, codified at 49 USC §5311, authorizes the Secretary of the United States Department of Transportation to make grants for public transportation projects in nonurbanized areas. The department has been designated by the governor to administer the Section 5311 program.

(b) Goal and objectives. The Department's goal in administering the Section 5311 program is to promote the availability of professional, cost-effective, efficient, and coordinated passenger transportation services to the general public in nonurbanized areas using the most efficient combination of financial and other resources. To achieve this goal, the objectives of the department are to:

(1) promote the development and maintenance of a network of general public transportation services in nonurbanized areas throughout the state, in partnership with local officials;

(2) fully integrate the Section 5311 program with other federal, state, and local resources that are designed to serve nonurbanized populations;

(3) improve the efficiency, effectiveness, and safety of Section 5311 systems through the provision of technical assistance; and

(4) include private sector operators in the overall plan to provide public transportation services.

(c) Department role. The department acts as the designated recipient for all Section 5311 funds appropriated to the state and has an oversight responsibility for all nonurbanized transit services within the state. The department, however, recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:

(1) develop application materials and disseminate information to prospective applicants and other interested parties;

(2) allocate the available program funds in a fair and equitable manner as described in subsection (g) of this section (the department will not provide Section 5311 funds to more than one transit system in a geographical area);

(3) develop evaluation criteria and select projects for funding;

(4) prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;

(5) negotiate and execute contracts with local Section 5311 subrecipients;

(6) prepare requests for federal reimbursement, and process payment requests from Section 5311 subrecipients;

(7) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations; and

(8) provide technical assistance to Section 5311 subrecipients to aid them in improving transit services.

(d) Eligible subrecipients. State agencies, local public bodies, private nonprofit organizations, Native American tribes and organizations, and operators of public transportation services are eligible to receive Section 5311 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. An entity must be a rural transit district to receive Section 5311 funds except that private for-profit operators of public transportation services and entities that are not rural transit districts are eligible to receive Section 5311 funds through the department under the intercity bus program, as set forth in subsections (g)(1) and (i) of this section.

(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the Section 5311 program.

(1) State administrative expenses. The department may use up to 15% of the annual federal apportionment to defray its expenses incurred for the administration of Section 5311 program. These funds may also be used to provide technical assistance to subrecipients. Technical assistance may include project planning, program development, management development, coordination of public transportation projects, and related research. Projects are solicited

from subrecipients and other interested parties. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include, but are not limited to:

(i) buses;

(ii) vans or other paratransit vehicles;

(iii) radios and communications equipment;

(iv) passenger shelters, bus stop signs, and similar passenger amenities;

(v) wheelchair lifts and restraints;

(vi) vehicle rehabilitation, remanufacture, or overhaul;

(vii) preventive maintenance, including all maintenance costs;

(viii) extended warranties that do not exceed the industry standard;

(ix) the mass transit portion of ferry boats and terminals;

(x) operational support such as computer hardware or software;

(xi) installation costs and vehicle procurement, testing, inspection, and acceptance costs;

(xii) construction or rehabilitation of transit facilities, including design, engineering, and land acquisition;

(xiii) facilities to provide access for bicycles to mass transit facilities and equipment for transporting bicycles on mass transit vehicles;

(xiv) the lease of equipment or facilities, provided that the local subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase of equipment or facilities after considering management efficiency, availability of equipment, staffing capabilities and guidelines on capital leases as contained in 49 CFR Part 639;

(xv) the capital portions of costs for service under contract;

(xvi) joint development projects (FTA Circular 9300.1A, or its latest version, provides guidelines for joint development projects);

(xvii) the introduction of new technology, through innovative and improved products, into mass transportation;

(xviii) transit-related intelligent transportation systems; and

(xix) the provision of ADA paratransit service, which shall not exceed 10% of the state's annual apportionment of Section 5311 funds and shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.

(B) The capital cost of contracting includes depreciation, interest on facilities and equipment, and those allowable capital costs that would otherwise be incurred directly, including maintenance. No capital assets (vehicle, equipment, or facility) that have any remaining federal interest in them and no items purchased with state or local government funds may be capitalized under the grant agreement.

(C) Based on funding availability, federal funds may be used to reimburse up to 80% of eligible capital expenditures. The federal share may increase to up to 90% for bicycle facilities projects or for incremental costs related to compliance with the Clean Air Act or with the Americans with Disabilities Act of 1990. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1E, or its latest version. The local subrecipient must provide a 20% or 10% cash match at the time the equipment is delivered or the services are received.

(3) Project administrative expenses. Costs not directly tied, but essential, to the operations of passenger transportation systems may be reimbursed at up to 80% with federal funds. The local subrecipient must provide a 20% match, either in cash or with in-kind donations.

(4) Operating expenses. Those costs directly tied to systems operations, such as fuel, oil, drivers', mechanics', and dispatchers' salaries, and replacement parts may be reimbursed at 50% of net operating costs. The local subrecipient must provide a 50% match, either in cash or with in-kind donations.

(f) Local share requirements. FTA program funds cannot be used as the local share required for Section 5311 grants. Eligible match sources include local or state programs, or unrestricted federal funds. At least half of the local share for both net operating and non-operating expenses must be cash or cash equivalent from sources other than unrestricted federal funds. In-kind contributions, volunteer services, and donations are eligible as local share if the value is documented.

(g) Allocation of funds. As part of its administration of the Section 5311 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state (FTA Circular 9040.1E, or its latest version). The department will allocate Section 5311 funds to local subrecipients in the following manner.

(1) Reserve. Unless the governor certifies to the Secretary of the United States Department of Transportation that the intercity bus service needs of the state are being adequately met, the department will reserve not less than 15% of the Section 5311 federal apportionment for the development and support of intercity bus transportation to be allocated under subsection (i) of this section. If it is determined that all or a portion of the set-aside monies is not required for intercity bus service, those funds will be applied to the formula apportionment process described in paragraph (2) of this subsection. Procedures for determining if a certification of adequacy is warranted are as follows.

(A) The department will review all data on intercity bus service availability, including outstanding requests from intercity operators, and levels of service.

(B) The department will consult with other state agencies that have jurisdiction with respect to intercity bus regulation and seek their recommendations as to the adequacy of current service.

(C) Based on the findings of subparagraphs (A) and (B) of this paragraph, the commission may certify or recommend that the governor certify to the adequacy of intercity bus service.

(2) Remaining balance allocation. Except as provided in paragraph (1) of this subsection, the balance of the annual Section 5311 federal apportionment, plus the remaining balance of previous Section 5311 federal apportionments, and any state funds appropriated specifically for the purpose of funding nonurbanized public transportation services will be allocated in the following manner.

(A) Eighty percent will be awarded giving consideration to population weighted at 75% and on land area weighted at 25% by using the latest census data available from, and as defined by, the

U.S. Census Bureau for each nonurbanized area relative to the sum of all nonurbanized areas.

(B) If the transit district is in good standing with the department and has no deficiencies and no findings of noncompliance, 20% will be awarded under clause (i) or (ii) of this subparagraph as follows.

(i) The commission, using all or a portion of the funds, may award funding to address strategic priorities for the nonurbanized public transportation program. These amounts are not subject to the transition funding allocation process described in paragraph (3) of this subsection in succeeding fiscal years, and will be awarded on a competitive basis unless they are needed to compensate for funding anomalies arising under this subsection.

(ii) The commission will award the funding by giving equal consideration to local funds per operating expense, operating expenses per mile and operating expense per passenger. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(3) Transition. Each agency will have five years to transition to full formula allocation and during the five years after the first application of new census data from the United States Census Bureau, the allocations under paragraphs (1) and (2) of this subsection will be adjusted to avoid extreme short-term disruptions in the continuity of funding. During this time no award to a transit district under this section will be less than 90% of the award to that transit district for the previous fiscal year, except that fiscal year 2004 will be used as the base year when calculating allocations for the next allocation of funds, after which succeeding allocations will be based on previous fiscal years. All allocations under paragraphs (1) and (2) of this subsection are subject to revision to comply with this standard. If available funding exceeds the allocations allocated in fiscal year 2004, additional funding will be awarded by the commission on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, and reductions in air pollution. These additional awards are not subject to the transition funding allocation process in succeeding fiscal years.

(4) Adjustments to allocation.

(A) If part of a transit district's service area is changed due to declaration by the United States Census Bureau or the service area is otherwise altered, the department and that subrecipient shall negotiate an appropriate adjustment in the funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in paragraph (3) of this subsection.

(B) If a previously designated urbanized area is declared nonurbanized by the United States Census Bureau, a public transportation subrecipient serving that area must apply for funds in accordance with paragraph (5) of this subsection.

(5) Application and contract. Prior to receiving funds a subrecipient must complete and comply with all application requirements, rules, and regulations applicable to the Section 5311 program. A completed application must be submitted, in a form prescribed by the department, to the appropriate district office, and document the need and demand for general public passenger transportation services. A contract shall be for no less than 12 months unless authorized by the department.

(h) Program of projects. All projects for a fiscal year will be identified in accordance with the allocation rules included in subsection (g) of this section. After commission approval of the allocation, these projects will be submitted to the FTA as the annual program of projects for the fiscal year.

(i) Intercity bus. If the governor does not certify to the adequacy of intercity bus transportation within the state, funds will be made available in accordance with subsection (g)(1) of this section. An annual request for proposals will be issued for projects complying with FTA definitions of intercity bus transportation.

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 31, 2005.

TRD-200502177

Richard D. Monroe

General Counsel

Texas Department of Transportation

Effective date: June 20, 2005

Proposal publication date: April 15, 2005

For further information, please call: (512) 463-8630



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas State Board of Pharmacy

Title 22, Part 15

TRD-200502293

Filed: June 6, 2005

Adopted Rule Reviews

Texas Animal Health Commission

Title 4, Part 2

The Texas Animal Health Commission (commission) has completed review of Chapter 43, concerning "Tuberculosis", in accordance with the Texas Government Code, Section 2001.039. The rules to be reviewed are found in Chapter 43, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following subchapters and sections:

Subchapter A and entitled "Cattle": §43.1, Cattle (All Dairy and Beef Animals, genus Bos), and Bison (genus Bison); §43.2, Interstate Movement Requirements; and §43.3, Slaughter Plant Collection.

Subchapter B and entitled "Goats": §43.10, Definitions; §43.11, Accredited Herd Plan for Goats; and §43.12, Requirements for Entry into Texas.

Subchapter C and entitled "Eradication of Tuberculosis in Cervidae": §43.20, Definitions; §43.21, General Requirements; §43.22, Herd Status Plans for Cervidae; and §43.23, Requirements for Entry into Texas.

Subchapter D and entitled "Movement Restriction Zone" (MRZ): §43.30, Special Requirements for Movement Restriction Zone (MRZ); and §43.31, Testing Requirements in Movement Restriction Zone (MRZ).

The rules were published for comment in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1475). The commission did not receive any comments. The commission finds reason for the rule to continue to exist and readopts these sections pursuant to the requirements of the Section 2001.039 of the Texas Government Code.

This concludes the review of Chapter 43, Tuberculosis.

TRD-200502264

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: June 6, 2005

◆ ◆ ◆
The Texas Animal Health Commission (commission) has completed review of Chapter 55, concerning "Swine", in accordance with the Texas Government Code, Section 2001.039. The rules to be reviewed are found in Chapter 43, which is located in Title 4, Part 2, of the Texas Administrative Code and contain the following subchapters and sections:

Section 55.1, Testing Breeding Swine Prior to Sale or Change of Ownership; §55.2, Prohibition on the Use of Modified Live Virus Hog Cholera Vaccine; §55.3, Feeding of Garbage; §55.4, Livestock Markets Handling Swine; §55.5, Pseudorabies; §55.6, Entry Requirements; §55.7, Slaughter Plant Requirements; §55.8, Dealer Recordkeeping; and §55.9, Feral Swine.

The rules were published for comment in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1475). The commission did not receive any comments. The commission finds reason for the rule to continue to exist and readopts these sections pursuant to the requirements of the Section 2001.039 of the Texas Government Code.

This concludes the rule review of Chapter 55, Swine.

TRD-200502265

Gene Snelson

General Counsel

Texas Animal Health Commission

Filed: June 6, 2005

◆ ◆ ◆
Texas Parks and Wildlife Department

Title 31, Part 2

The Texas Parks and Wildlife Commission adopts the rules review of the following subchapters within Chapter 61, Design and Construction, as published in the July 23, 2004, issue of the *Texas Register* (29 TexReg 7154). As a result of the review, the commission readopted the contents of the following subchapters without change, except as indicated. No comments were received concerning readoption of the rules.

CHAPTER 61. DESIGN AND CONSTRUCTION

Subchapter A. Contracts for Public Works

§61.21. General.

§61.22. Soliciting Bids.

§61.23. Submission and Receipts of Bids.

§61.24. Award of Bids.

§61.25. Solicitation, Evaluation, and Selection of Proposals.

§61.26. Award in Response to Proposals.

NOTE: The contents of §61.23 and §61.24 were amended as a result of the review. The Notice of Adoption appeared in the December 24, 2004, issue of the *Texas Register* (29 TexReg 12231).

Subchapter B. Procedural Guide for Land and Water Conservation Fund Program

§61.81. Application Procedures.

Subchapter C. Boat Ramp Construction and Rehabilitation

§61.101. General.

§61.102. Fees.

§61.103. Requirements of Applicants.

Subchapter D. Guidelines for Administration of Local Land and Water Conservation Fund Projects

§61.121. Policy.

Subchapter E. Guidelines for Administration of Texas Local Parks, Recreation, and Open Space Program

§61.131. Policy.

§61.132. Texas Recreation and Parks Account Grants Manual.

§61.133. Grants for Outdoor Recreation Programs.

§61.134. Grants for Indoor Recreation Programs.

§61.135. Grants for Community Outdoor Outreach Programs.

§61.136. Grants for Small Communities.

§61.137. Grants for Regional Parks.

NOTE: The contents of §§61.132 - 61.137 were amended as a result of the review. The Notice of Adoption appeared in the Adopted Rules section of the April 29, 2005, issue of the *Texas Register* (30 TexReg 2556).

This review is pursuant to the Texas Government Code, §2001.039.

TRD-200502325

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Filed: June 7, 2005



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: 4 TAC §28.10(g)

Program Fee Schedule

Loan Guaranty Program	
Application Fee	A non-refundable application fee will be required in the amount of \$100 with the application. If the application is approved, the application fee will be credited toward the loan guaranty fee.
Loan Guaranty Fee	A loan guaranty fee of one and one-half percent (1.5%) of the guaranty amount by Texas Agricultural Finance Authority shall be paid within ten (10) days of the initial funding of the loan. The loan guaranty fee shall be reduced by the amount of the application fee received.
Legal Fees	Any and all legal fees incurred by the board in issuing a guaranty or participating in any loan will be an obligation of the borrower.
Closing Costs	All closing costs associated with the closing of an approved loan shall be paid by the borrower.
Direct Loan Program	
Application Fee	A non-refundable application fee will be required in the amount of \$100 with the application. If the application is approved, the application fee will be credited toward the loan origination fee.
Loan Origination Fee	A loan origination fee of one and one-half percent (1.5%) of the loan amount by Texas Agricultural Finance Authority shall be paid within ten (10) days of the initial funding of the loan. The loan origination fee shall be reduced by the amount of the application fee received.
Lender Servicing	Lender shall be entitled to a servicing fee in the amount of 50 basis points to be retained from each payment of interest made by the borrower.
Legal Fees	Any and all legal fees incurred by the board in issuing a direct loan will be an obligation of the borrower.
Closing Costs	All closing costs associated with the closing of an approved loan shall be paid by the borrower.

Figure: 22 TAC §851.32(k)

**Texas Board of Professional Geoscientists
CONTINUING EDUCATION PROGRAM ACTIVITY LOG**

NAME: _____ P.G. NUMBER: _____ RENEWAL PERIOD COVERED: _____

DATE(s)	ACTIVITY (Title, Location, Instructor)	SPONSORING ORGANIZATION (Name and Address)	Type Code*	Duration	PDH Earned ¹	Carry over (Max 30 PDH) ²
* Code: P=Participant Credit I=Instructor Credit A=Author Credit M=Meeting Credit E=Ethics Related Credit³						
Total						

PDH = Professional Development Hours. This is the standard unit of credit for the TBPG Continuing Education Program.

- 1 - Minimum of 15 PDH per renewal is required for renewal.
 - 2 - Maximum of 30 PDH can be carried over from the previous year.
 - 3 - Minimum of 1 PDH is required to meet Ethics Requirement.
- Conversion to PDH: Direct Hrs = 1 PDH
 CEU, Papers, etc. = 10 PDH
 College Semester 1 hr = 15 PDH
 A maximum of 5 PDH is allowed for self-directed course work.

Figure: 28 TAC §3.1606(b)(1)(A)

“I, (name), am (title) of (insurance company name) and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

Figure: 28 TAC §3.1606(b)(1)(B)

“I, (name), a member of the American Academy of Actuaries, am associated with the firm of (name of consulting firm). I have been appointed by, or by the authority of, the Board of Directors of (name of company) to render this opinion as stated in the letter to the commissioner dated (insert date). I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

Figure: 28 TAC §3.1606(b)(2)

"I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20(). Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.

Asset Adequacy Tested Amounts--Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (*) (2)	Analysis Method (**) (3)	Other Amount (4)	Total Amount (1)+(2)+(3) (4)
Exhibit 5 Life Insurance					
Annuities					
Supplementary Contracts With Life Contingencies					
Accidental Death Benefits					
Disability - Active Lives					
Disability - Disabled Lives					
Miscellaneous Reserves					
Total Exhibit 5 (Page 3, Line 1)					
Exhibit 6 Active Life Reserve					

Claim Reserve					
Total Exhibit 6 (Page 3, Line 2)					
Exhibit 7 Guaranteed Interest Contracts Column 2, Line 14					
Annuities Certain Column 3, Line 14					
Supplemental Contracts Column 4, Line 14					
Dividend Accumulations or Refunds Column 5, Line 14					
Premium and Other Deposit Funds Column 6, Line 14					
Total Exhibit 7 Column 1, Line 14 (Page 3, Line 3)					
Exhibit 8, Part 1 Life (Page 3, Line 4.1)					
Health (Page 3, Line 4.2)					
Total Exhibit 8, Part 1 Column 1, Line 4.4					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					

IMR (General Account, Page ___ Line ___)	
(Separate Accounts, Page ___ Line ___)	
AVR (Page ___ Line ___)	(***)
Net Deferred and Uncollected Premium	

Notes:

() The additional actuarial reserves are the reserves established under §3.1605(d)(2) of this title (relating to General Requirements).*

*(**) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in §3.1605(c) of this title, by means of symbols that should be defined in footnotes to the table.*

*(***) Allocated amount of AVR.*

Figure: 28 TAC §3.1606(b)(3)

“I have relied on (name), (title) for (e.g., “anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios” or “certain critical aspects of the analysis performed in conjunction with forming my opinion”), as certified in the attached statement. I have reviewed the information relied upon for reasonableness.”

A statement of reliance on other experts should be accompanied by a statement by each of the experts with the information prescribed by subsection (e) of this section.

Figure: 28 TAC §3.1606(b)(4)

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to (exhibits and schedules listed as applicable) of the company’s current annual statement.”

Figure: 28 TAC §3.1606(b)(5)

“In forming my opinion on (specify types of reserves) I relied upon data prepared by (name and title of company officer certifying in force records or other data) as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to (exhibits and schedules to be listed as applicable) of the company’s current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary.”

The reliance paragraph shall be accompanied by a statement by each person relied upon with the information prescribed by subsection (e) of this section.

Figure: 28 TAC §3.1606(b)(6)

"In my opinion the reserves and related actuarial values concerning the statement items identified above:

{a} are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

{b} are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

{c} meet the requirements of the insurance law and regulation of the state of (state of domicile); and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

{d} are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

{e} include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on the assets, and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company.

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material changes which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion:

(Describe the change or changes.)

Choose whichever of the two immediately preceding paragraphs is appropriate.

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary

Date"

Figure: 28 TAC §3.1606(f)(1)(C)(ii)

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

MEMORANDUM OF UNDERSTANDING

Between the Texas Department of Criminal Justice the Department of State Health Services (DSHS) and Community Supervision and Corrections Departments

For the purpose of establishing a continuity of care system for offenders with mental illness or mental retardation (mental impairments); the Texas Department of Criminal Justice (TDCJ); Department of State Health Services (DSHS); and local Community Supervision and Corrections Departments (CSCDs) (The Entities) agree to the following:

1. AUTHORITY AND PURPOSE:

Texas Health and Safety Code, §614.013 authorizes TDCJ, DSHS, local MHMR authorities, and CSCDs to establish a Memorandum of Understanding (MOU) that identifies methods for:

- identifying offenders with mental impairments in the criminal justice system and collecting and reporting prevalence rate data to the Texas Correctional Office on Offenders with Medical and Mental Impairments (TCOOMMI);
- developing interagency rules, policies, procedures, and standards for the coordination of care of and the exchange of information on offenders with mental impairments by local and state criminal justice agencies, Department of State Health Services, local mental health or mental retardation authorities, the Commission on Jail Standards, and local jails;
- identifying the services needed by offenders with mental impairments to reenter the community successfully; and
- establishing a process to report implementation activities to TCOOMMI.

2. ALL ENTITIES AGREE TO:

- a) Follow the statutory provisions in Chapter 614 of the Health and Safety Code relating to the exchange of information (including electronic) about offenders with mental impairments or mental retardation for the purpose of providing or coordinating services among the Entities; and when appropriate include such requirements in any relevant rules, policies or contract/grants.
- b) Develop rules, policies, procedures, regulations or standards that describe the agency's role and responsibility in the continuity of care process for persons with mental impairments and/or mental retardation.
- c) Develop procedures that provide for the preparation and sharing of assessments or diagnostics prior to the imposition of community supervision, incarceration, or parole, and the transfer of such diagnostics between local and state entities described in this agreement.

- d) Participate in cross training or educational events targeted for improving each agency's knowledge and understanding of the criminal justice, and MHMRA systems' roles and responsibilities.
- e) Inform each other of any proposed policy, procedure, standard or rule changes which could affect the continuity of care system with each agency afforded thirty (30) days after receipt of proposed change(s) to respond to the recommendations prior to the adoption.
- f) Provide written status reports to TCOOMMI on the implementation of initiatives outlined in this MOU on a routine basis, but not less than once a year.
- g) Actively seek federal funds to operate or expand the service capability to include local and state criminal justice entities contracting with the public mental health system for the purpose of maximizing Medicaid and other entitlements.

3. TDCJ THROUGH ITS DIVISIONS SHALL:

- a) Cross reference offender database to the CARE system and make information available to the CSCDs on a monthly basis.
- b) Develop standards for specialized mental health caseloads and provide training/technical assistance to specialized officers on a routine basis.
- c) Establish a process for cross-referencing data on CID inmates with the DSHS CARE system on a weekly basis. This process will include an internal mechanism for distributing the information to the appropriate division(s), contract entities or other providers as deemed necessary and allowed by law.
- d) Develop a process to ensure that any psychiatric, diagnostic or treatment information pertaining to offenders will be provided to relevant local and state criminal justice, mental health or other contract providers prior to release from custody.
- e) Ensure that offenders being released from institutional facilities have access to a ten-day supply of medications upon their release.
- f) Establish an internal procedure in cooperation with TCOOMMI to review Motion to Revoke cases (blue warrants) involving any parolee with a mental impairment. This review will address interventions that have been made or should be made prior to final revocation action.
- g) Report implementation activities to TCOOMMI on a quarterly basis.

4. DSHS SHALL:

- a) Develop, in cooperation with TCOOMMI, continuity of care rules specific to juveniles or adults with mental impairments and/or mental retardation who are involved in the criminal justice system.

- b) Notify in accordance with DSHS Rules, the local mental health authority and TCOOMMI, of a 46.B defendant's release from a state facility to the committing jurisdiction after restoration of competency has been determined.
 - c) Include in the performance contract requirements for local MHMR authorities to adhere to and implement the activities outlined in the MOU, including statutory provisions specific to sharing of information, and cross-referencing data with local and state correctional, juvenile justice and criminal justice entities.
 - d) Respond to TDCJ's weekly data requests to cross-reference offender data to the CARE system and provide match information within 7 days.
 - e) Provide quarterly reports to TCOOMMI on the status of MOU implementation activities.
5. COMMUNITY SUPERVISION AND CORRECTIONS DEPARTMENTS ARE RESPONSIBLE FOR THE FOLLOWING ACTIVITIES:
- a) Submit to the local MHMR Authorities a list of offenders who are being supervised (i.e., pre-trial, if applicable; deferred adjudication or placed on community supervision) by the department on a schedule mutually agreed upon by the department and the local MHMR authority. The initial list submitted should include all offenders on some form of supervision in order to establish a baseline. All lists thereafter will consist of new and/or deleted cases during the period being reported.
 - b) Facilitate the coordination of supervision with local MHMR authorities or other treatment providers. This will include:
 - joint staffings of mutual offender/clients to review compliance to treatment and supervision;
 - input on modifications of conditions;
 - coordination with treatment providers on imposing new conditions, sanctions or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
 - coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.
 - c) Provide technical assistance and training to local MHMR staff on criminal justice issues specific to community supervision.
 - d) Participate in quarterly meetings with the MHMR Executive Director(s) and/or his/her designee to review the implementation of MOU activities and to document status.
 - e) Contract with the local MHMR authorities for mental health/mental retardation assessments or other treatment services in order to minimize duplication of effort and maximize Medicaid or other federal benefits.

6. DSHS WILL REQUIRE THE LOCAL MHMR AUTHORITIES THROUGH THE PERFORMANCE CONTRACTS TO PERFORM THE FOLLOWING ACTIVITIES:
- a) Provide to the CSCD the name of the designated staff member who serves as the contact for all criminal justice referrals and other related issues (i.e., obtaining client information, records or assessments).
 - b) Facilitate the coordination of supervision with the CSCD personnel that will include:
 - joint staffings of mutual offender/clients to review compliance to treatment and supervision;
 - input on modifications of conditions;
 - coordination with CSCD personnel on imposing new conditions, sanctions and/or motion to revoke/adjudicate in order to explore all possible alternatives to incarceration; and
 - coordination on the development of a joint supervision and treatment plan if governing standards for the respective participants can be adhered to in the proposed plan.
 - c) Establish a process for cross-referencing probation and/or local inmate jail lists with the DSHS CARE system. Progress toward or obstacles to complying with this MOU activity will be reported to TCOOMMI with an explanation of obstacles and recommendations for correction. If a process cannot be established electronically, an alternative should be developed that will establish a referral and reporting system between the center and local CSCDs and jails in their catchment area.
 - d) Coordinate with the jail on those persons incarcerated who have been returned to the local jail under a Section 46.B, Code of Criminal Procedure commitment, in accordance with TCOOMMI contract requirements with the local MHMR authority.
 - e) Designate a continuity of care contact person for all 46.B commitments to serve as the primary liaison between local MHMR authorities, jails and TCOOMMI.
 - f) Participate in quarterly meetings with the CSCD Director or his/her designee to review the implementation of MOU activities and to document status.
 - g) Offer or provide technical assistance and training to the CSCD and other criminal justice entities (pre-trial, jail, courts) on mental health and related issues.
 - h) Provide written quarterly reports to TCOOMMI and the DSHS governing body on the implementation and status of MOU activities as outlined in this section. These reports will satisfy reporting requirements in Section 2 of this MOU.

7. REVIEW AND MONITORING:

- a) This MOU shall be adopted by the Department of State Health Services, the Texas Department of Criminal Justice, and local CSCDs. Subsequent to adoption, all parties must provide status reports to TCOOMMI. Amendments to this MOU may be made at any time by mutual agreement of the parties.
- b) TCOOMMI will serve as the dispute resolution mechanism for conflicts concerning this MOU at both the local and statewide level.
- c) TCOOMMI, in coordination with each state agency identified, shall develop a standardized process for collecting and reporting the MOU implementation outcomes by local and state criminal justice agencies and local mental health or mental retardation authorities. The findings of these reports shall be submitted to TCOOMMI by September 1 of each even-numbered year and shall be included in recommendations to the legislature in TCOOMMI's biennium report.

8. RENEWAL:

This agreement shall be renewed annually by mutual agreement of all the parties.

Certification

This Memorandum of Understanding is adopted to be effective _____ 2005.

Brad Livingston, Executive Director
Texas Department of Criminal Justice

Eduardo Sanchez, MD, MPH Commissioner
Department of State Health Services

Local CSCD

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Open Solicitation for Donley County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 Texas Administrative Code (TAC) §19.2324(b), primary selection process, the Department of Aging and Disability Services (DADS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for **Donley County, County #065**. Medicaid nursing facility occupancy rates in **Donley County** exceeded the 90% occupancy threshold for six consecutive months during the period of **November 2004 through April 2005**. The county occupancy rates for each month of that period were: **96.8%, 96.7%, 97.7%, 98.5%, 96.8%, 97.7%**. In accordance with the requirements contained in 40 TAC §19.2324(b), current nursing facility licensees or property owners of currently licensed nursing facilities may apply for an additional allocation of Medicaid beds. The allocation of additional Medicaid beds is restricted to nursing facility beds that are currently licensed and may be converted to Medicaid-certified beds. Applicants for additional Medicaid beds must demonstrate a history of quality care as specified in 40 TAC §19.2322(e). Applicants must submit a written reply as described in 40 TAC §19.2324(b)(5) to Joe D. Armstrong, Department of Aging and Disability Services, Licensing and Credentialing Section, Regulatory Services, Mail Code E-342, P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by DADS before the close of business July 18, 2005, the published ending date of the open solicitation period. If one or more applicants are eligible for additional Medicaid beds, DADS will allocate Medicaid beds in accordance with 40 TAC §19.2324(b)(6) and (7). If the number of beds allocated under the primary selection process does not reduce the occupancy rate below 90%, DADS will place another public notice in the *Texas Register* in accordance with secondary selection process requirements.

TRD-200502338
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: June 8, 2005

Texas Department of Agriculture

Request for Proposals: Financial Advisor

1. Purpose.

The Texas Agricultural Finance Authority (the Authority), a public authority established within the Texas Department of Agriculture (the Department), seeks proposals in response to this Request for Proposals (RFP) from firms with the qualifications and experience required to provide financial advisory services to the Authority. This RFP is issued for the purpose of selecting a financial advisor for all financing matters as described herein.

The Authority reserves the right to select one or more co-financial advisors from firms that respond to this RFP. The Authority's decision to select a co-financial advisor, if any, will be determined by the evaluation of the responses to the RFP. Please indicate in Part 1 of your

response whether your firm would like to serve as only a financial advisor, only a co-financial advisor, or either.

2. Background of the Authority.

The Authority was created by the Texas Legislature under Texas Agriculture Code (the Code), Chapter 58, for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or exporting businesses in Texas and for providing financial assistance for other rural economic development activities. The Authority is governed by a nine-member Board of Directors (the Board), appointed by the Governor with the consent of the State Senate for two-year staggered terms. Employees of the Department are designated by the Commissioner of Agriculture to administer the Authority. The Authority provides financing alternatives through instruments including direct loans, loan guaranties, loan participation, insurance or co-insurance.

Chapter 58 and Chapter 59 of the Code provide for the issuance by the Authority of revenue bonds and general obligation bonds. Chapter 58 and Chapter 59 of the Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. Under Chapter 58 of the Code, the Authority is authorized to issue up to \$230 million in general obligation bonds and up to \$500 million in revenue bonds for rural agricultural development and agricultural related projects in the state of Texas. Under Chapter 59 of the Code, the Authority may issue up to \$300 million of general obligation bonds for financing agricultural real estate.

The Board may approve eligible borrowers for financing through direct loans, loan guaranties, loan participation, direct issuance of obligations, or other financial instruments.

3. Scope of Services.

The financial advisor is to be responsible for all duties and services necessary or advisable to facilitate the issuance of bonds and other obligations, including but not limited to: devising and recommending to the Board a plan of financing for bonds to be issued, which plan shall include a maturity schedule and other terms and conditions, as well result in the most advantageous terms to the Authority, consistent with a minimum effective interest rate; determining the timing of the offering and the sizing of the issue; participating in document preparation and assisting bond counsel in the coordination of the offering; preparing such information, as necessary, for the rating agencies and upon Authority approval, assisting in the presentation to such agencies; assisting the Authority in maintaining on-going relationships with the credit rating agencies; participation in POS and OS preparation and delivery of a camera-ready copy to the printer; advising the Authority concerning the need for credit enhancement and assisting in the negotiations regarding such; assisting in the approval process of the Bond Review Board and any other agency as necessary to the issuance of the bonds; assisting in closing details and post-closing duties, including the development of a final report to the Bond Review Board to include a verification of all costs of issuance and preparation of a complete bond transcript; answering questions or requests for additional information from prospective purchasers; evaluating any bids submitted for the purchase of the bonds; advising the Authority with respect to the investment of bonds proceeds and the accounting of arbitrage earnings; assisting the Authority in providing information to various legislators and

other state agencies; advising the staff of the Authority and the Board of ongoing development in the bond industry as they affect the Authority; soliciting bids for, contracting with, and paying on behalf of the Authority, fees associated with the printing of bond offering documents, ratings, trustee and paying agent fees and related services when necessary; monitoring and controlling the costs of fees and expenses incurred in connection with the issuance of the bonds; monitoring, suggesting and advising the Authority on refunding opportunities, derivatives and other financial products that would help the Authority lower its cost of borrowing; and all other matters necessary or incidental to the issuance and administration of debt obligations.

In addition, the financial advisor shall advise the Authority on any matters that might have an affect on the Authority or any of its outstanding issues. The Authority will be responsible for allocating duties and tasks between the Financial Advisor and Co-Financial Advisor, if any, commensurate with level of compensations.

The financial advisor and co-financial advisor, if any, will not be permitted to underwrite any portion of an issue or program for the Authority during the term of employment.

4. Form of Response.

a. Overview of the Firm.

Provide a description of the firm, including general experience and history in public finance, date founded, number of offices, location and number of professionals and employees in each office, total number of employees and professionals in the firm, description of specialty practice areas and firm philosophy. Describe structure of firm ownership (e.g., publicly held corporation, partnership, etc.) and any parents, affiliates, or subsidiaries of the firm.

b. Qualifications.

List the experience since January 1, 1997, of the firm and/or professionals proposed to be assigned to the Authority (see number 6 below also), as financial advisor, financial consultant, or senior manager on a negotiated underwriting for the following types of issuers and issues. If listing experience of a professional while at a different firm, please specify the name of the firm. Please include the name of the issuer, title of the bonds, date of the bonds, par amount of the issue, type of sale, and role the firm played. Tabular format is acceptable.

By Issuer Type as follows: State of Texas issuers; Other issuers in the State of Texas; Regional authorities and state-level issuers in states other than Texas.

By Issue Type as follows: State level General Obligation Bonds; State Revenue Bonds; Tax Exempt Commercial Paper; Taxable Commercial Paper.

Please select one transaction from the above list that you feel best demonstrates your ability to serve the Authority and describe in detail the financial issues involved in the transaction and your firm's approach to the analysis. (Please limit your discussion to no more than two pages.)

c. Other Experience.

Please describe your experience with respect to the following topics. Include any specific suggestions or practices that as financial advisor you would recommend for the Authority. The topics are: arbitrage compliance; continuing disclosure compliance; investor relation programs; interest rate swaps and other derivatives.

d. Bond Sale Pricing.

Describe the steps your firm would take as financial advisor to ensure the bidding process on competitive sales and the pricing process on negotiated sales renders the lowest true interest cost for the Authority.

What role do you suggest the Authority play in organizing the sales effort of the bonds (i.e., establishing priority of orders, designation rules, etc.)? What techniques would be most effective for the State to achieve its HUB participation goals on competitive and negotiated transactions? What techniques would you employ to evaluate senior and co-manager performance on a specific transaction?

e. Credit Relations.

Describe your firm's proposed approach to maintaining rating agency relationships for the Authority.

Describe your firm's recommended approach, if any, to developing and maintaining investor relations programs. Address the costs and benefits of such programs and how they relate to continuing disclosure requirements.

f. Resumes.

Provide brief resumes for those individuals who would be assigned to serve the Authority. Indicate the individuals' years of experience in public finance, any relevant licenses they hold, and how any particular area of expertise would benefit the Authority. Specify who would be assigned as the primary day-to-day contact for the Authority and indicated the role they played in the transactions listed above.

g. Business Practices.

Please describe your firm's previous experience and involvement working with Historically Underutilized Businesses (HUB) certified firms (if your firm is not HUB certified) or as a HUB certified firm, in a co-financial advisor relationship. Please describe your firm's approach to working with co-financial advisor, including level of effort, and division of duties.

Please describe efforts made by your firm to encourage and develop the participation of minorities and women in your firm's provision of financial advisory services or underwriting, if any.

h. Conflict of Interest.

Please disclose any conflicts of interest. Disclose all contractual or informal business arrangement/agreements, including fee arrangements and consulting agreements between your Firm and the Authority, its staff and/or its Board, or any entity that provides services to the Authority.

i. References.

Please provide names, addresses, and phone numbers of at least two references.

j. Fee Structure.

Please provide your fee structure, including if applicable, hourly rates, a per transaction maximum on hourly fees, flat fees, and a per transaction cap on expenses (not to be exceeded without prior approval from the Authority). Fees based on a percentage of the par amount of the bonds or on a per bond basis are discouraged.

5. Term of Agreement.

The contract term is to be for a period beginning with the date of hiring by the Authority to August 31, 2006. The Board may renew the contract, at its option, for up to (2) additional terms of one (1) year each. The Board retains the right to terminate the contract for any reason and at any time, upon the payment of then earned fees and expenses.

6. Proposal Modification.

Any proposal may be modified or withdrawn, even after received by the Authority, at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposed due date; however, non-substantive correction or deletions may be made with the approval of the Authority. The Authority also reserves the right to make amendments to the RFP by giving written notice to all firms who receive the RFP and publishing notice thereof in the *Texas Register*.

7. Time Schedule.

Proposals are due no later than **5:00 p.m. August 1, 2005**. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should submit one unbound original and three (3) copies of their proposal to: Mr. Robert Wood, Assistant Commissioner for Rural Economic Development, **IN RESPONSE TO RFP: FINANCIAL ADVISOR**, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress, Stephen F. Austin Bldg., 10th Floor, Austin, Texas 78701.

A duly authorized representative of the firm must execute the submitted RFP response. An unsigned proposal will not be accepted. All proposals become the property of the Authority. Proposals must set forth accurate and complete information as required by this RFP. Oral instruction of offers will not be considered. Contact with Board Members regarding this RFP is expressly prohibited and will result in disqualification of your proposal. Questions regarding this RFP should be submitted, in writing, to Mr. Robert Wood, assistant commissioner for rural economic development, at the address listed above or by fax, (512) 936-0300.

The staff designated for the Authority will review the proposals, present the top three proposals and a recommendation to the Authority Board at the first available meeting of the Board.

8. Basis of Award.

The selection will be based on demonstrated competence, experience, knowledge and qualifications, as well as the reasonableness of the proposed fee.

Firms responding are encouraged to maintain a Texas office staffed with personnel who are responsible for providing financial advisory services to the Authority. By this RFP, however, the Authority has not committed itself to employ a financial advisor nor does the suggested scope of service or term of agreement below require that the financial advisor be employed for any or all of those purposes. The Authority reserves the right to make those decisions after receipt of proposals and the Authority's decision on these matters is final.

The Authority reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

9. Cost Incurred in Responding.

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify the RFP which may be required by the Authority shall be the sole responsibility of, and shall be borne by the applicant.

10. Release of Information and Open Records.

All proposals shall be deemed, once submitted, to be the property of the Authority and subject to the Texas Public Information Act (the Act). Under the Act, information submitted in response to this RFP may not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the evaluation process is completed by the Authority and a contract is awarded, proposals and

information included therein may be subject to public disclosure under the Act.

TRD-200502251
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 3, 2005



Request for Qualifications: Bond and Program Counsel

1. Purpose.

The Texas Agricultural Finance Authority (the Authority), a public authority within the Texas Department of Agriculture (the Department), is seeking proposals in response to this Request for Qualifications (RFQ) for bond and program counsel. The Authority is seeking to employ Bond Counsel and Program Counsel to assist the Authority in the issuance of and/or purchase of bonds and to provide general program assistance when needed under Chapter 44, Chapter 58, and Chapter 59 of the Texas Agriculture Code (the Code).

2. Background of the Authority

The Authority was created by the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or export businesses in Texas. The Authority can provide financing through instruments including direct loans, loan guaranties, insurance or co-insurance. The Authority is governed by a nine-member Board of Directors (the Board), appointed by the Governor with the consent of the State Senate for two-year staggered terms. Employees of the Department are designated by the Commissioner of Agriculture to administer the Authority.

The Board may approve eligible borrowers for financing through direct loans, loan guaranties, loan participation, direct issuance of obligations, or other financial instruments. The Authority may also purchase bonds or municipal anticipation notes from eligible local government entities for the purpose of assisting those local government entities in their rural economic development efforts.

Chapter 58 and Chapter 59 of the Code also provide for the issuance by the Authority of revenue bonds and general obligation bonds. Under Chapter 58 of the Code, the Authority is authorized to issue up to \$230 million in general obligation bonds and up to \$500 million in revenue bonds for rural agricultural development and agricultural-related projects in the state of Texas. Under Chapter 59 of the Code, the Authority may issue up to \$300 million of general obligation bonds for financing agricultural real estate.

3. Statement of Duties for the Bond Counsel.

The counsel's responsibilities for bond work will include, but will not be limited to, advice to the Board, and staff of the Department (Staff) on: the legal ramifications and constraints of the issuance and investment policy; the legality of loan policy proposals and legal aspects of investments and loan policy; the legality of proposed debt structuring techniques; compliance with federal tax and securities requirements for financings associated with the Authority's programs; and, real and anticipated changes in state and federal law, regulations, or public policy, and the potential and real impact on existing or anticipated bond issues, investment policy, and loan policy.

With respect to new bond issues, bond counsel, in consultation with the Authority's Financial Advisor and Staff, may be asked to prepare or review legal documents required by the Board, Comptroller of Public Accounts, Attorney General, or outside parties; request and obtain approval of the bond issue from the Attorney General, Governor, Bond

Review Board and other required authorities; and review all financial models and render opinions on the legality and relevant tax position of the proposed issuance and lending scenario.

The counsel shall also perform other legal services, if requested by the Authority, that do not come within the functions of bond counsel for a particular bond issue, but are needed for the implementation and administration of the programs of the Authority. Such services shall include, without limitation, the following: consultation concerning planning and development of programs of the Authority; providing advice concerning policies for lending or granting funds to eligible borrowers; review of program applications; review and drafting of loan documents; assistance in implementing loan guarantee programs; advice and services concerning legislation affecting such programs; advising on, and upon request of the Authority, initiating and pursuing collection actions in relation to loan programs; and providing advice concerning administration of the Authority.

4. Proposal Contents.

Responses to this RFQ should include, at least, the following: a thorough description of your firm's ability to represent the Authority in the stated job duties; a description of your firm's past experience as counsel for other state agencies; a description of your firm's past experience as counsel to state and federal banks, credit unions, finance companies, and other financial institutions; a designation of the individuals who might be assigned to the work of the Authority; examples of similar programs in which your firm has assisted as legal counsel; a quotation of your proposed fee structure based upon the issuance of financing enhanced by the general obligation of the State and/or a stand alone revenue bond issuance; a statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in your firm; affirmation that the firm does not, and shall not during the term of the contract, represent any plaintiff in a proceeding seeking monetary damages from the State of Texas or any of its agencies; and a statement of willingness to comply with policies, directives, and guidelines of the Authority and the Attorney General of the State of Texas.

5. Statement of Evaluation Process.

Responses to this RFQ will be evaluated and ranked according to the information provided, and summarized for the Board's review. Staff will rank the proposals and make a recommendation to the Board at the first available meeting. The Board intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at a fair and reasonable price. The Authority reserves the right to issue more than one contract for this RFQ. The Authority reserves the right to contract with separate bond and program counsel, and to contract with more than one bond or program counsel.

6. Proposal Requirements.

A duly authorized representative of the firm must execute the submitted response. An unsigned response will not be accepted. Issuance of this RFQ in no way constitutes a commitment by the Authority to award a contract, to issue bonds, or to pay for any services incurred either in the preparation of a response to this RFQ or for the production of any contract for services. The Authority also reserves the right to make amendments to the qualifications requested by giving written notice to all firms who receive this RFQ. All communications with the Authority concerning this RFQ and the selection of Bond Counsel or Program Counsel shall be directed to Robert Wood, Assistant Commissioner for Rural Economic Development, with the Department, acting as program manager on behalf of the Authority. Any contact by a submitting firm, its employees or representatives with any Board member

of the Authority for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.

7. Proposal Submission.

All proposals must be received no later than 5:00 p.m., August 1, 2005. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that its response reaches the Authority before the proposed due date. Firms should submit one unbound original and three (3) copies of their proposal to: Mr. Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, Street Address: 1700 N. Congress Ave., Stephen F. Austin Bldg., 11th Floor, Austin, Texas 78701.

Please mark the envelopes containing proposals with the following note in the lower left-hand corner: **IN RESPONSE TO PROPOSAL REQUEST: BOND and PROGRAM COUNSEL.** All proposals become the property of the Authority. Proposals must set forth full, accurate and complete information as required by this request. Oral responses, instructions or offers will not be considered. The Authority reserves the right to reject any and all responses.

8. Term of the Agreement.

The contract term shall be for the period beginning September 1, 2005, through August 31, 2006.

9. Terms of the Agreement.

The contract issued under this RFQ will be in the form prescribed by the Office of the Attorney General for Outside Counsel Contracts.

10. Proposal Modification.

Any response may be modified or withdrawn even after received by the Authority at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of Staff. The Authority reserves the exclusive right to review proposals and make an appropriate selection from such proposals. The Authority is not bound to accept any proposal by virtue of this RFQ.

11. Cost Incurred In Responding.

All costs directly or indirectly related to preparation of a response to the RFQ or any oral presentation required to supplement and/or clarify the RFQ which may be required by the Authority shall be the sole responsibility of, and shall be borne by, your firm.

12. Release Of Information And Open Records.

All proposals shall be deemed, once submitted, to be the property of the Authority and are subject to Texas Public Information Act (the Act). Under the Act, information submitted in response to this RFQ may not be released by the Authority during the proposal evaluation process or prior to the awarding of a contract. After the Authority completes the process and a contract is awarded, proposals and information included therein may be subject to public disclosure under the Act.

TRD-200502252

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: June 3, 2005

◆ ◆ ◆
Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 27, 2005, through June 2, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on June 8, 2005. The public comment period for these projects will close at 5:00 p.m. on July 8, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Industrial Real Estate Holdings, L.P.; Location: The project is located on the Houston Ship Channel, on the north side of the channel, at 14035 Industrial Road, in Houston, Harris County. The project can be located on the U.S.G.S. quadrangle map entitled: Pasadena, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 289259; Northing: 3292802. Project Description: The applicant is requesting authorization to modify Department of Army Permit 18770(10) to conduct onsite improvements at an existing barge docking facility on the Houston Ship Channel. The applicant proposes to extend an existing concrete dock by 550 feet, add 2 new breasting dolphins, and perform maintenance dredging within an existing barge slip identified as "Slip C." Approximately 200,000 cubic yards of material will be hydraulically or mechanically excavated from the slip and placed into the Peggy Lake, Lost Lake, Clinton, House Tract, East & West Jones, Dynegey, Galena Park, or Jacinto Port Dredge Material Placement Areas. These placement areas were previously authorized for use during onsite dredging operations under Amendment (07) of this permit. No wetlands or vegetated shallows will be impacted as a result of the proposed activities. CCC Project No.: 05-0290-F1; Type of Application: U.S.A.C.E. permit application #18770(11) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: City of Corpus Christi; Location: The project is located in and adjacent to the Oso Beach Municipal Golf Course, in waterbodies locally known as Oso Lake and the Cullen Channel, both which ultimately outfall into Oso Bay. The project can be located on the U.S.G.S. quadrangle map entitled: Oso Creek, NE, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 662500; Northing: 3066260. Project Description: The proposed project consists of drainage improvement intended to provide flood relief for the Meadowbrook Subdivision. The proposed improvements include the excavation and reshaping of 13.6 acres of existing open water area within Oso Lake, the filling of 6.6 acres of peripheral jurisdictional areas in Oso Lake, the removal of the Cullen Dam, the lowering of the Oso Lake Dam, the hand clearing of exotic trees from a 1,270 foot long by 100 foot wide segment downstream of the Oso Lake Dam, and the placement of articulated concrete blocks in the bottom of the Cullen Channel for mitigation. The removal of the Cullen Dam and Oso Lake Dam will lower current water levels to the extent that 2.38 acres of open water and adjacent wetland areas will be drained. CCC Project No.: 05-0292-F1; Type of Application: U.S.A.C.E. permit application #23762 is being evaluated under §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the

Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at 512/475-0680.

TRD-200502329

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: June 8, 2005

Comptroller of Public Accounts

Notice of Award

Pursuant to Section 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 172b) the award of the following contract:

A contract is awarded to Vinson & Elkins, L.L.P., The Terrace 7, 2801 Via Fortuna, Suite 100, Austin, Texas 78746-7568. The total contract amount is a maximum of \$180,000. The term of the contract is June 2, 2005 through August 31, 2007.

The Comptroller's Request for Proposals 172b (RFP) related to this contract award was published in the March 14, 2005, issue of the *Texas Register* (30 TexReg 1513).

TRD-200502243

Pamela Smith

Deputy General Counsel for Contracts

Comptroller of Public Accounts

Filed: June 3, 2005

Notice of Request for Proposals

Pursuant to Chapter 403, Sections 403.011, 403.105, 403.1041, and 403.1069; and Chapter 404, Subchapter G, Sections 404.103, 404.104, and 404.104(c); and Chapter 2254, Subchapter A, and Chapter 2256, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Treasury Safekeeping Trust Company (Trust Company), announces issuance of its Request for Proposals (RFP #172g) from qualified, independent firms or individuals to provide professional certified public accountant services for the Trust Company for the purpose of providing financial audits and compliance attestation services (the "Audits") with respect to the (i) Trust Company, (ii) Tobacco Settlement Permanent Trust Account (the "Tobacco Fund"), and (iii) TexPool and TexPool Prime, which are local government investment pools managed by the Texas Comptroller of Public Accounts by and through the Trust Company. The selected contractor or contractors (Contractor) will provide the requested services to the Trust Company to complete one or more Audits. The Trust Company reserves the right to award one or more contracts

under this RFP. If approved by the Trust Company, the Contractor will be expected to begin performance of the contract, if any, on or about Monday, August 22, 2005.

Contact: Parties interested in submitting a proposal should contact Mary Salluce, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, 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 17, 2005, between 2:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Texas Marketplace after Friday, June 17, 2005, 2:00 p.m. CZT. The Texas Marketplace website address is <http://esbd.tbpc.state.tx.us>.

Questions: All written inquiries and questions must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Tuesday, June 28, 2005. Prospective proposers are encouraged to fax Questions to (512) 475-0973 to ensure timely receipt. The Questions must be addressed to Mary Salluce, Assistant General Counsel, Contracts, and must be signed by an official of that entity. On or before Friday, July 1, 2005, the Trust Company expects to post responses to questions as a revision to the Texas Marketplace notice of issuance of this RFP. Questions received after the deadline will not be considered; respondents shall be solely responsible for ensuring timely receipt of all Questions.

Closing Date: Proposals must be delivered to the Office of Assistant General Counsel, Contracts, at the location specified above (ROOM G24) no later than 2:00 p.m. (CZT), on Friday, July 8, 2005. Proposals received in ROOM G24 after this time and date will not be considered; respondents shall be solely responsible for ensuring the timely receipt of their proposals in the Issuing Office, ROOM G-24.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Comptroller and Chief Executive Officer of the Trust Company will make the final decision on award(s). The Trust Company reserves the right to accept or reject any or all proposals submitted. The Trust Company is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Neither the Comptroller, nor the Trust Company shall pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - June 17, 2005, 2:00 p.m. CZT; Questions Due - June 28, 2005, 2:00 p.m. CZT; Official Responses to Questions posted - July 1, 2005; Proposals Due - July 8, 2005, 2:00 p.m. CZT; Contract Execution - August 15, 2005, or as soon thereafter as practical; Commencement of Work - August 22, 2005. Revisions to this schedule, if any, will be posted as revisions to the Texas Marketplace notice of issuance of this RFP.

TRD-200502313
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: June 8, 2005

◆ ◆ ◆
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 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/06/05 - 06/12/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/06/05 - 06/12/05 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 06/01/05 - 06/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 06/01/05 - 06/30/05 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/05 - 09/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 07/01/05 - 09/30/05 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009¹ for the period of 07/01/05 - 09/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The lender credit card quarterly rate as prescribed by §346.101 of the Texas Finance Code¹ for the period of 07/01/05 - 09/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 07/01/05 - 09/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 07/01/05 - 09/30/05 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009¹ for the period of 07/01/05 - 09/30/05 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 06/01/05 - 06/30/05 is 5.50% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 06/01/05 - 06/30/05 is 5.50% for Commercial over \$250,000.

- ¹ Credit for personal, family or household use.
- ² Credit for business, commercial, investment or other similar purpose.
- ³ For variable rate commercial transactions only.
- ⁴ Only for open-end credit as defined in §301.002(14) of the Texas Finance Code.

TRD-200502228
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: June 1, 2005

◆ ◆ ◆
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 and §303.009 of the Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/13/05 - 06/19/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 06/13/05 - 06/19/05 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200502330

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 8, 2005

Deep East Texas Local Workforce Development Board

Public Notice

The Deep East Texas Local Workforce Development Board, Inc. dba WorkForce Solutions Deep East Texas issues this public notice of its annual strategic and operational Plan Modification.

WorkForce Solutions Deep East Texas is responsible for the implementation of workforce development programs in the following 12 counties: Angelina, Houston, Jasper, Nacogdoches, Newton, Polk, Sabine, San Augustine, San Jacinto, Shelby, Trinity, and Tyler. The Integrated Plan Modification for program year 2005 and fiscal year 2006 will be submitted to the Texas Workforce Commission no later than July 25, 2005. At a minimum, the integrated plan modification will include a labor market analysis, a gap analysis and plan for engaging local businesses to better meet their workforce needs, information regarding the alignment to the state workforce plan, priority of service statement, partnership information, performance targets, and budget information.

The planning cycle was amended in August 2004 by the Texas Workforce Commission. The current strategic and operational plan has been extended through September 30, 2005. The Board will make available to the public a draft of its Plan Modification for the new plan year of October 1, 2005 through September 30, 2006. The draft Plan Modification will be available on the WorkForce Solutions Deep East Texas Internet site <http://www.dework.org>; or may be requested by telephone (936) 639-8898 or in person at 539 South Chestnut, Suite 300, Lufkin, Texas 75901.

The public comment period will begin on June 17, 2005 and the deadline for receipt of comments is 5:00 p.m. on July 18, 2005. Public comments must be submitted in writing to the following postal address: 539 South Chestnut, Suite 300, Lufkin, Texas 75901, faxed to the following number: (936) 633-7491, or e-mailed to the following individual: Marilyn Hartsook at the following Internet e-mail address: marilyn.hartsook@twc.state.tx.us. All comments will be submitted to the Texas Workforce Commission and incorporated as part of the Board's Plan Modification. For more information, call Marilyn Hartsook at (936) 639-8898.

The Deep East Texas Local Workforce Development Board is an equal opportunity organization. Auxiliary aids or services are available upon request to those individuals with disabilities. For extra assistance, please contact us at (936) 639-8898.

TRD-200502316

Marilyn Hartsook

Planner

Deep East Texas Local Workforce Development Board

Filed: June 7, 2005

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Chevron USA, Inc., Docket No. 2004-0499-AIR-E on May 31, 2005 assessing \$21,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Pipe Line Company, Docket No. 2004-0592-AIR-E on May 31, 2005 assessing \$9,375 in administrative penalties with \$1,875 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Acme Brick Company dba Featherlite Building Products Swenson Hoggy Lease, Docket No. 2004-0888-WQ-E on May 31, 2005 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ISP Synthetic Elastomers, LP, Docket No. 2004-0959-AIR-E on May 31, 2005 assessing \$17,000 in administrative penalties with \$3,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512/239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Celanese, Ltd., Docket No. 2004-0975-AIR-E on May 31, 2005 assessing \$3,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Blassingame, Inc. dba Superior Fiberglass, Docket No. 2004-1144-AIR-E on May 31, 2005 assessing \$8,550 in administrative penalties with \$1,710 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at 817/588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abitibi-Consolidated Corporation, Docket No. 2004-1145-AIR-E on May 31, 2005 assessing \$2,475 in administrative penalties with \$495 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409/899-8781,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AROC (Texas), Inc., Docket No. 2004-1202-AIR-E on May 31, 2005 assessing \$1,550 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Caldwell/VSR, Inc., Docket No. 2004-1257-AIR-E on May 31, 2005 assessing \$9,850 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, P.E., Enforcement Coordinator at 432/570-1359, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lide Industries, Inc. dba Linde Industries, Inc. dba Ultrafab Incorporated, Docket No. 2004-1270-AIR-E on May 31, 2005 assessing \$4,180 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Devon Louisiana Corporation, Docket No. 2004-1289-AIR-E on May 31, 2005 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512/239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Advanced Aromatics, L.P., Docket No. 2004-1297-AIR-E on May 31, 2005 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512/239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tige Boats, Inc., Docket No. 2004-1363-AIR-E on May 31, 2005 assessing \$2,600 in administrative penalties with \$520 deferred.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tony Lama Company, Docket No. 2004-1374-AIR-E on May 31, 2005 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, P.E., Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas State University-San Marcos, Docket No. 2004-1380-AIR-E on May 31, 2005 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Kensley Greuter, Enforcement Coordinator at 512/239-2520, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCommas LFG Processing Partners, LP dba McCommas LFG Processing Facility, Docket No. 2004-1485-AIR-E on May 31, 2005 assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Varco, L.P. dba Varco Shaffer, Docket No. 2004-1506-AIR-E on May 31, 2005 assessing \$3,920 in administrative penalties with \$784 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hanlon Gas Processing, Ltd., Docket No. 2004-1521-AIR-E on May 31, 2005 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at 903/535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding El Paso Field Services, L.P. dba Almeda Refined Products Terminal, Docket No. 2004-1530-AIR-E on May 31, 2005 assessing \$2,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OGRE, Inc. dba The Mur-Tex Company, Docket No. 2004-1596-AIR-E on May 31, 2005 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prince Texas Group, Inc. dba Super Stop No. 11 dba Super Stop No. 12 dba Super Stop No. 13 dba Super Stop No. 16 dba Super Stop No. 18 dba Super Stop No.19, Docket No. 2002-0698-PST-E on May 31, 2005 assessing \$54,950 in administrative penalties with \$50,750.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at 713/422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Henry Crosby dba Crosby Exxon, Docket No. 2003-1225-PST-E on May 31, 2005 assessing \$1,625 in administrative penalties with \$325 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at 512/239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2003-0446-AIR-E on May 31, 2005 assessing \$73,892 in administrative penalties with \$14,778 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronnie Kramer, Enforcement Coordinator at 806/468-0512, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Charles Donaldson, Docket No. 2004-0264-PWS-E on May 31, 2005 assessing \$6,438 in administrative penalties with \$1,288 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512/239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Crossing Katy, Inc., Docket No. 2004-0379-PST-E on May 31, 2005 assessing \$13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817/588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Edinburg, Docket No. 2004-0502-MWD-E on May 31, 2005 assessing \$26,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512/239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Department of Veterans Affairs, Docket No. 2004-0589-PST-E on May 31, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Erika Fair, Enforcement Coordinator at 512/239-6673, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cliff Cummings dba Mid Lake Kamp Ground, Docket No. 2004-0637-PWS-E on May 31, 2005 assessing \$410 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Clifton, Docket No. 2004-0663-MWD-E on May 31, 2005 assessing \$6,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chad Blevins, Enforcement Coordinator at 512-239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bartlett, Docket No. 2004-0695-PWS-E on May 31, 2005 assessing \$5,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nhan Pham dba Joels Sandy Beach Mart, Docket No. 2004-0715-PST-E on May 31, 2005 assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hico, Docket No. 2004-0757-PWS-E on May 31, 2005 assessing \$4,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at 512/239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bowie-Sims-Prange, Inc., Docket No. 2004-0825-PST-E on May 31, 2005 assessing \$4,590 in administrative penalties with \$918 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BT Sikes Water Wells, Inc., Docket No. 2004-0826-WR-E on May 31, 2005 assessing \$500 in administrative penalties with \$100 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sajjad Z. Bhayani dba EZ Mart, Docket No. 2004-0913-PST-E on May 31, 2005 assessing \$3,675 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hidalgo County Municipal Utility District No. 1, Docket No. 2004-0929-MWD-E on May 31, 2005 assessing \$13,195 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at 956/430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Transeastern, Inc., Docket No. 2004-0966-PST-E on May 31, 2005 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817/588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Teresa Salinas dba Tex Mart 3, Docket No. 2004-1009-PST-E on May 31, 2005 assessing \$2,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817/588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Amruddin K. Budri dba 3 Amigos Food Mart, Docket No. 2004-1033-PST-E on May 31, 2005 assessing \$2,020 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Good Time Stores, Inc. dba Good Times Store No. 61, Docket No. 2004-1046-AIR-E on May 31, 2005 assessing \$1,840 in administrative penalties with \$368 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, P.E., Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunbelt Rentals, Inc., Docket No. 2004-1049-MLM-E on May 31, 2005 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, P.G., Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GHNA Corporation dba Franky's Exxon, Docket No. 2004-1057-PST-E on May 31, 2005 assessing \$3,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, P.E., Enforcement Coordinator at 432/620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Weir Bros, Inc., Docket No. 2004-1061-WQ-E on May 31, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at 512/239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Q & K Construction Co., Inc., Docket No. 2004-1065-WQ-E on May 31, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at 512/239-3308, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texcon Materials, Ltd. dba Texcon Materials Pettibone Plant and S & S Sand Pit, Docket No. 2004-1067-WQ-E on May 31, 2005 assessing \$20,000 in administrative penalties with \$4,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frost Crushed Stone Company, Inc., Docket No. 2004-1068-WQ-E on May 31, 2005 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at 512/239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delma Perry, Jr. dba Lone Star Tire Disposal, Docket No. 2004-1106-MSW-E on May 31, 2005 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, P.G., Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jay and Kishan, LLC dba Shell Food Mart, Docket No. 2004-1150-PST-E on May 31, 2005 assessing \$2,250 in administrative penalties with \$450 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alamo Concrete Products, Ltd., Docket No. 2004-1153-WQ-E on May 31, 2005 assessing \$825 in administrative penalties with \$165 deferred.

Information concerning any aspect of this order may be obtained by contacting A. Sunday Udoetok, Enforcement Coordinator at 512/239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A. B. Marathon Gas and Go Coastal, Inc. dba Gulfway Quick Mart Citgo, Docket No. 2004-1159-PST-E on May 31, 2005 assessing \$1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SNV Corporation dba E Z Convenience Shop, Docket No. 2004-1226-PST-E on May 31, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Austin S & S, Inc. dba Super Mart, Docket No. 2004-1237-PST-E on May 31, 2005 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at 817/588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southmost Aviation, Inc., Docket No. 2004-1275-PST-E on May 31, 2005 assessing \$7,500 in administrative penalties with \$1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at 512/239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Martin Eagle Oil Company, Inc., Docket No. 2004-1304-PST-E on May 31, 2005 assessing \$14,500 in administrative penalties with \$2,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210/403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hedar Elatassi dba South Braeswood Texaco, Docket No. 2004-1329-PST-E on May 31, 2005 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at 512/239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Western Gas Resources, Inc., Docket No. 2004-1343-AIR-E on May 31, 2005 assessing \$21,825 in administrative penalties with \$4,365 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at 512/239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hoot Johnson Construction, Inc., Docket No. 2004-1393-WQ-E on May 31, 2005 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361/825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Village Of Surfside, Docket No. 2004-1415-PWS-E on May 31, 2005 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at 512/239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Petroleum, L.P. dba Hidden Meadows Shell, Docket No. 2004-1422-PST-E on May 31, 2005 assessing \$4,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at 512/239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Angel Brothers Enterprises, Ltd., Docket No. 2004-1441-PST-E on May 31, 2005 assessing \$1,040 in administrative penalties with \$208 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Craig Fleming, Enforcement Coordinator at 512/239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Smith's Texas Quick Stop, Inc., Docket No. 2004-1443-PST-E on May 31, 2005 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Leila Pezeshki, Enforcement Coordinator at 210/403-4080, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding L.S.F., Inc. dba Lone Star Fabrication, Docket No. 2004-1448-MLM-E on May 31, 2005 assessing \$6,825 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713/767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Balch Oil Company, Inc. dba 66 Truck & Auto Plaza, Docket No. 2004-1449-PST-E on May 31, 2005 assessing \$5,100 in administrative penalties with \$1,020 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512/239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas and Kansas City Cable Partners, L.P. dba Time Warner Cable, Docket No. 2004-1451-PST-E on May 31, 2005 assessing \$3,750 in administrative penalties with \$714 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210/403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Universal Enterprises, Inc. dba Handi Stop 39, Docket No. 2004-1454-PST-E on May 31, 2005 assessing \$3,750 in administrative penalties with \$750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713/422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jasbir Singh dba Rolands Kwik Stop, Docket No. 2004-1461-PST-E on May 31, 2005 assessing \$1,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at 210/490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding H. Richards Oil Co., Docket No. 2004-1489-PST-E on May 31, 2005 assessing \$625 in administrative penalties with \$125 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903/535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding George Mashni dba Skywood Food Market, Docket No. 2004-1493-PST-E on May 31, 2005 assessing \$1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512-239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Corpora Aerial Service, Inc., Docket No. 2004-1520-PST-E on May 31, 2005 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Dallas Moving & Storage Co., Inc., Docket No. 2004-1865-PST-E on May 31, 2005 assessing \$950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at 512/239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mo-Vac Environmental, Inc., Docket No. 2004-1157-MLM-E on May 31, 2005 assessing \$13,440 in administrative penalties with \$1,428 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, P.G., Enforcement Coordinator at 512/239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200502337

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 8, 2005



Notice of District Petition

Notice mailed June 7, 2005

TCEQ Internal Control No. 04142005-D03; The Commons at Rowe Lane, L.P.; Atlan Ernest Pfluger, Jr.; Joy Pfluger; Ruby Mae Pfluger (a/k/a Mrs. Atlan E. Pfluger, Sr.); and Patricia Pfluger Hoffman (Petitioners) filed a petition for creation of Lakeside Municipal Utility District No. 3 of Travis and Williamson Counties (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 240.407 acres located within Travis and Williamson Counties, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Pflugerville, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 686-05-02-22-8A, effective February 22, 2005, the City of Pflugerville, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; (4) acquire, own, develop, construct, improve, manage, maintain and operate parks and recreational facilities; and (5) construct, acquire, improve, maintain, and operate any additional facilities, systems, plants and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioner have conducted a preliminary investigation to determine the cost of the project, and from the information available at the time, the cost of the project is estimated to be approximately \$24,375,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a

way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502335

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 8, 2005



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. 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 18, 2005**. 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 a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. 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 18, 2005**. 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, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Duke Pendergraft dba Pendergraft Stone; DOCKET NUMBER: 2004-0938-WQ-E; TCEQ ID NUMBER: RN104285317; LOCATION: 0.8 miles North of Bean Road from the intersection of Rockdale Road and Bean Road, Haskell, Haskell County, Texas; TYPE OF FACILITY: stone quarry; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(a), by failing to obtain authorization to discharge storm water associated with industrial activity to water in the state through either an individual permit or the Multi-Sector General Permit; PENALTY: \$39,000; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: Marrice Hampton; DOCKET NUMBER: 2004-1052-MLM-E; TCEQ ID NUMBER: RN104222336; LOCATION: 12170 County Road 1121, Smith County, Texas; TYPE OF FACILITY: solid waste dump; RULES VIOLATED: 30 TAC §328.60(a) and §330.4(a), and Texas Health and Safety Code, §361.112(a), by failing to obtain registration for a facility receiving or storing more than 500 scrap tires on the ground; 30 TAC §330.4(a), by failing to obtain authorization from the TCEQ prior to accepting or storing municipal solid waste; and 30 TAC §111.201, by failing to prevent outdoor burning of tires, brush, debris, and municipal solid waste; PENALTY: \$7,000; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

TRD-200502312

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 7, 2005



Notice of Opportunity to Comment on Settlement Agreements 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 18, 2005**. 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 the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. 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 18, 2005**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: BASF Corporation; DOCKET NUMBER: 2003-0157-MLM-E; TCEQ ID NUMBERS: 33849, HG-1249-P, and RN100225689; LOCATION: 4403 La Porte Freeway, Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §116.115(c), Permit Number 8199A, Special Condition Numbers 8 and 18, Texas Health and Safety Code (THSC), §382.085(b), by failing to perform the stack sampling and other testing as required to establish the actual pattern and quantities of air contaminants being emitted into the atmosphere from the isobutylaldehyde scrubber and failing to demonstrate the compliance for the 97.6% removal efficiency of isobutylaldehyde; 30 TAC §115.352(2) and THSC, §382.085(b), by failing to make the first attempt at repair within the five calendar days after the leak is found; 30 TAC §115.356(2)(F)(iv) and (vi) and THSC, §382.085(b), by failing to keep the records of the dates on which a leaking component was repaired and the reason for the delay of repair; 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to make the notations in the flare operation log regarding the flare observations; 30 TAC §101.201(b)(7) and THSC, §382.085(b), by failing to identify in the record all the air contaminants involved for the non-reportable upset; 30 TAC §116.115(c), Permit Number 8199, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent an unauthorized release of ethylhexanol; and 30 TAC §335.224(11) and 40 Code of Federal Regulations (CFR) §266.103(c)(7)(ii) and §266.103(d), by failing to timely submit recertification of compliance for the boiler industrial furnace; PENALTY: \$12,772; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Estrella Freight Service, L.L.C.; DOCKET NUMBER: 2004-1621-PST-E; TCEQ ID NUMBERS: 22768 and RN101538395; LOCATION: 2020 Sycamore School Road, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: fleet refueling; 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 petroleum underground storage tanks (USTs); PENALTY: \$2,100; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Larry Anderson and Andtech Pollution Control, Inc.; DOCKET NUMBER: 2001-0080-WOC-E; TCEQ ID NUMBERS: WW0004406, OC20019, RN103318127, and RN103740684; LOCATIONS: 9750 Ten Mile Bridge Road, three miles west of Keller on Golden Triangle Road, 6221 Abbott Avenue, 2800 Golden Triangle Boulevard, and 3613 Lovell Avenue, Fort Worth, Tarrant County; 563 Pinetree Avenue, Keller, Tarrant County; 4000 Ace Lane, Lewisville, and 914 Country Club Road, Argyle, Denton County; 820 North Texas Expressway, Allen, Collin County; and 900 Gifco Road, Midlothian, Ellis County, Texas; TYPE OF FACILITY: wastewater operation; RULES VIOLATED: 30 TAC §325.128 and TCEQ Water Quality Permit Number 11494-001, Special Provision VI.2., by failing to provide adequate process control of wastewater treatment facilities for which they were responsible for by causing or allowing violations of the TCEQ's rules; 30 TAC §30.33 and §30.331(c), by failing to maintain the required sludge disposal records; 30 TAC §325.128 and TCEQ Water Quality Permit Number 12536-002, Operational Requirements Number 1, by failing to properly operate and maintain

all facilities and systems of treatment and control; 30 TAC §325.128 and TCEQ Water Quality Permit Number 13831-001, Operational Requirements Number 1, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal were properly operated; 30 TAC §30.331(c) and TCEQ Permit Number 13831-001, Effluent Limitations and Monitoring Requirements Numbers 2 and 6, by failing to comply with permitted effluent limitations; 30 TAC §30.331(c), and TCEQ Permit Number 13831-001, Monitoring and Reporting Requirements Numbers 3.a. and 3.b., by failing to properly complete and maintain discharge monitoring reports; 30 TAC §30.331(c) and TWC, §26.121, by failing to prevent waste sludge from being deposited in large volumes into an adjacent creek; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Definitions and Standard Permit Conditions Number 1.a., by failing to measure the flow rate; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect samples for five-day biochemical oxygen demand, total suspended solids, and dissolved oxygen (DO) at the frequency required in the permit; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Monitoring and Reporting Requirements Number 3.c., by failing to note the time of sample collection and analysis; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Monitoring and Reporting Requirements Number 5, by failing to maintain calibration records for the DO meter; 30 TAC §30.331(c) and TCEQ Permit 13831-001 and 12909-001, Operational Requirements Number 1, by failing to properly maintain the mechanical operations of the clarifier; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Operational Requirements Number 1, by failing to properly maintain the chlorine contact chamber; 30 TAC §30.331(c) and TCEQ Permit 13831-001, Operational Requirements Number 1, by failing to maintain a proper solids inventory within the aeration basin; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Effluent Limitations and Monitoring Requirements Numbers 2 and 6, by failing to comply with the permitted effluent limitations; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Operational Requirements Number 1, by failing to properly maintain the aeration basin and digester; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Monitoring and Reporting Requirements Number 5, by failing to maintain calibration records for the DO meter; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Sludge Requirements Number II.G., by failing to submit an annual sludge report; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Effluent Limitations and Monitoring Requirements Number 1, by failing to collect the required effluent samples; 30 TAC §30.331(c), by failing to accurately complete the monthly effluent report; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Definitions and Standard Permit Conditions Number 1.a., by failing to accurately measure the flow rate; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Monitoring and Reporting Requirements Number 1, by failing to note the time of sample collection and analysis; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Monitoring and Reporting Requirements Number 1, by failing to record the results of manganese interference determinations; 30 TAC §30.331(c) and §30.33 and TCEQ Water Quality Permit Number 12982-001, Monitoring and Reporting Requirements Number 3, by failing to have the sludge records readily available for review; 30 TAC §30.331(c) and TCEQ Permit 12909-001, Monitoring and Reporting Requirements Number 1, by failing to correctly report the effluent flows; 30 TAC §30.331(c) and TCEQ Permit 13036-001, Operational Requirements Number 1, Section I, Requirements Applying to all Sewage Sludge Land Applications, by failing to ensure that the facility and all of its systems of collection, treatment, and disposal were properly operated; 30 TAC §30.331(c) and TCEQ Permit 13043-001, Operational Requirements Number 1, by failing to properly chlorinate the effluent; 30 TAC §30.331(c) and TCEQ Permit 13043-001, Final Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with effluent limits;

30 TAC §30.331(c) and TCEQ Permit 13043-001, Monitoring and Reporting Requirements Number 1, by failing to accurately report the effluent flow rate; 30 TAC §30.331(c) and §30.33, and TCEQ Permit 13043-001, Monitoring and Reporting Requirements Number 5, by failing to calibrate flow measuring and recording devices; 30 TAC §30.331(c) and §30.33, and TCEQ Permit 13403-001, VI. Special Provisions Number 3, by failing to maintain and operate the treatment facility in order to achieve optimum efficiency of treatment capability; 30 TAC §30.331(c) and §30.33, and TCEQ Permit 13806-001, Final Effluent Limitations and Monitoring Requirements Number 4, and TWC, §26.121, by allowing a discharge of solids; 30 TAC §30.331(c) and TCEQ Permit 13063-001, Operational Requirements Number 1, by failing to properly maintain a proper solids inventory within the aeration basin; 30 TAC §30.331(c) and TCEQ Permit 13043-001, Operational Requirements Number 1, by failing to properly maintain the chlorine contact chamber; 30 TAC §30.331(c), Texas Pollutant Discharge Elimination System Permit Number 12807-001, Section II. Requirements Specific to Bulk Sewage Sludge, G. Reporting Requirements, by failing to submit an annual sludge report; and 30 TAC §30.331(c) and TCEQ Permit Number 13036-001, Effluent Limitations and Monitoring Requirements, by exceeding effluent limitations and failing to report the flow and chlorine maximum residual; PENALTY: \$0, revocation of license; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Minerva Benitez dba B & G Grocery & Supplies; DOCKET NUMBER: 2004-1020-PST-E; TCEQ ID NUMBERS: 65864 and RN102046513; LOCATION: 1.9 miles west on Highway 83 North near Rio Grande City, Starr County, Texas; 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 petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Parker County's Squaw Creek Downs, L.P.; DOCKET NUMBER: 2003-1240-MLM-E; TCEQ ID NUMBER: RN103005526; LOCATION: 130 Trinity Meadows Lane, Willow Park, Parker County, Texas; TYPE OF FACILITY: horse racing and stable service operation; RULES VIOLATED: TWC, §26.121(a), by causing an unauthorized sewage discharge from its sewer system; 30 TAC §321.47(b)(3), by failing to construct and manage waste control facilities and land application areas to protect surface water and groundwater and prevent nuisance conditions; and 30 TAC §111.201, by conducting unauthorized outdoor burning of waste; PENALTY: \$5,350; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Ticona Polymers, Inc.; DOCKET NUMBER: 2003-1265-MLM-E; TCEQ ID NUMBERS: NE-0022-I, 30084, and RN101625721; LOCATION: two miles south of Bishop on Highway 77 South, Nueces County, Texas; TYPE OF FACILITY: organic chemical manufacturing plant; RULES VIOLATED: 30 TAC §335.69(a)(1)(B) and §335.112(a)(9) and 40 CFR §262.34(a)(1)(ii) and §265.193(a)(3) and (f), by failing to provide secondary containment for ancillary equipment of a less than 90-day hazardous waste tank; 30 TAC §101.20(1) and §116.115(c), THSC, §382.085(b), and 40 CFR §60.562-1(a)(1)(i)(c), by failing to demonstrate compliance

with the applicable emission standards; 30 TAC §116.115(b)(2)(E)(i) and TCEQ Air Permit Number 2691, General Condition 7, by failing to maintain records containing data and information sufficient to demonstrate compliance with the permit; 30 TAC §122.143(4) and §122.145(2), and Federal Operating Permit Number O-02006, by failing to submit a deviation report within 30 days of the end of the reporting period; and 30 TAC §122.143(4) and §122.146(5)(D), and Federal Operating Permit Number O-02008, by failing to submit in a Permit Compliance Certification all instances of deviation, the probable cause of each deviation, and any corrective measures or preventative measures taken for the respective deviation; PENALTY: \$20,687; STAFF ATTORNEY: Rebecca Nash Petty, Litigation Division, MC 175, (512) 239-3693; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(7) COMPANY: Wang Hun Chong dba The New C Store; DOCKET NUMBER: 2004-0723-PST-E; TCEQ ID NUMBERS: 49219 and RN100764216; LOCATION: 1125 West Arkansas Lane, Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §115.242(3)(J) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system in proper operating condition and free of defects that would impair the effectiveness of the system, including pressure/vacuum relief valves and vapor check valves; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to install a method of corrosion protection for the tank system; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the UST systems; 30 TAC §334.50(b)(2)(A)(i)(III) and TWC, §26.3475(b), by failing to test a line leak detector at least once per year for performance and operational reliability; 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(b), by failing to ensure that all tanks were monitored for releases at a frequency of at least once every month, not to exceed 35 days between each monitoring; 30 TAC §334.72, by failing to report, within 24 hours, monitoring results that indicated that a release may have occurred; and 30 TAC §334.74, by failing to immediately investigate and confirm all suspected releases of regulated substances required to be reported; PENALTY: \$3,600; STAFF ATTORNEY: Barbara L. Klein, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200502311

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 7, 2005



Notice of Priority Groundwater Management Area Report Completion

Under 30 TAC §294.41(g), the executive director of the Texas Commission on Environmental Quality (TCEQ) gives notice of the completion, recommended action, and availability of the Priority Groundwater Management Area (PGMA) report entitled *Evaluation for the Hudspeth County Priority Groundwater Management Study Area*. In the report, the executive director concludes the Hudspeth County study area should not be designated as a PGMA at this time. Evaluation of available data indicates the problems identified in the report are not critical problems. Based on currently available information, the study area has adequate water resources of sufficient quality to meet water demands for the next 25-year period. The executive director also concludes that the water problems identified in the report can be addressed

by water suppliers and water users through conservation, well and well field siting considerations, and development of alternative supplies, or through local initiative to establish a groundwater conservation district (GCD).

EXECUTIVE SUMMARY OF REPORT

The purpose of this evaluation is to determine if the Hudspeth County area is experiencing, or is likely to experience within the next 25 years, critical groundwater problems, and whether a GCD should be created in order to address such problems. The study area included all of Hudspeth County; however, only the area outside of the Hudspeth County Underground Water Conservation District (UWCD) No. 1 was considered for PGMA designation. Because GCDs have the authority to manage groundwater resources, the Hudspeth County UWCD No. 1 has been excluded from PGMA designation consideration.

For this report, TCEQ staff considered comments, data, and information provided by a number of different sources. These sources included water stakeholders from within the study area, the Texas Water Development Board, the Texas Parks and Wildlife Department, the Far West Texas Regional Water Planning Group, and independent research by the staff. The report discusses the available authority and management practices of existing groundwater management entities within and adjacent to the study area, and makes recommendations on appropriate strategies needed to conserve and protect groundwater resources in the study area.

Within the study area, groundwater is produced from the Hueco Bolson, West Texas Bolsons, Capitan Reef Complex, Bone Spring-Victorio Peak, and the Diablo Plateau aquifers. Irrigation has been historically the largest use of groundwater. In 2000, 263,886 acre-feet were used for irrigation and 614 acre-feet for livestock with 41,863 acre-feet and 31 acre-feet, respectively, coming from surface water. Groundwater supplied 222,023 acre-feet for irrigation, 583 acre-feet for livestock, 376 acre-feet for municipal uses, two acre-feet for manufacturing, and one acre-foot for mining. However, information generated for Hudspeth County stakeholders indicated that only about 103,000 acre-feet of groundwater were used for irrigation in 2000. The total annual water demand for the study area is expected to decrease by more than 6% by 2030. The Rio Grande is the only surface water resource for the study area. The 2003 estimated population for the study area is 3,193 and is projected to increase to 4,054 by 2030.

The water supply problems identified in the study area include widespread high total dissolved solids concentrations in groundwater and the lack of firm alternative supplies for irrigation use in the Rio Grande Valley during drought-of-record conditions. Groundwater concerns expressed by area stakeholders included sustainability, water quality, availability, access to alternative water supplies, and the possibility of water exportation. More groundwater research is needed in this study area to understand the nature and dynamics of the aquifers and to understand how much usable water is truly available for annual use.

The available data indicates that water is of sufficient quality in the study area to meet intended and projected uses. Water suppliers either use or are planning to use desalination to treat groundwater to meet drinking water standards. Surface and groundwater supplies are sufficient to meet the present needs during typical years and are projected to be sufficient to meet all future needs to 2030. The exception to this is the irrigation surface water use category in the Rio Grande Valley during drought-of-record conditions. Another potential water supply problem for the study area is water exportation. It is unknown at this time how much, and from where, this water exportation may take place. Therefore, the potential effect this exportation will have on the water resources of the study area cannot be determined at this time.

The water supply and water quality issues identified in the report are not presently critical problems and are not anticipated to be critical problems during the next 25-year planning horizon, and it is concluded and recommended that the Hudspeth County PGMA study area should not be designated as a PGMA at this time. This does not mean that groundwater management would not be beneficial for the study area aquifers. Locally initiated creation of a GCD for the Hueco Bolson, Red Light Draw, Eagle Flat, Green River Valley, and Capitan Reef Complex aquifers, or adding these areas to an existing GCD are feasible and practicable groundwater management options for citizens of the study area to consider.

REPORT AVAILABILITY

The executive director's report was filed with the Office of the Chief Clerk of the TCEQ on June 7, 2005. The report is available for public inspection at the Office of the Hudspeth County Clerk, P.O. Box 58, Sierra Blanca, Texas 79851; Fort Hancock Independent School District/Hudspeth County Public Library, 101 School Drive, Fort Hancock, Texas 79839; and Grace Grebing Public Library, 110 North Main, Dell City, Texas 79837. The report is available for inspection from area GCDs by contacting Hudspeth County UWCD No. 1, 107 South Dodson, Dell City, Texas 79837; Culberson County GCD, P.O. Box 1295, Van Horn, Texas 79855; and Jeff Davis County UWCD, P.O. Box 1203, Fort Davis, Texas 79734. The report is also available for review at the TCEQ Region 6 Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901 and on the TCEQ Web site at <http://www.tmrcc.state.tx.us/water/quality/gw/index.html>. Copies of the report may be obtained by contacting James Carson Sloan, TCEQ, Water Supply Division, at (512) 239-3975, or by email at jsloan@tceq.state.tx.us. The TCEQ physical address is 12100 Park 35 Circle, Austin, Texas 78753.

TRD-200502332

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: June 8, 2005



Notice of Water Quality Applications

The following notices were issued during the period of May 24, 2005 through June 3, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, 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 THIS NOTICE.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 14141-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located 1/8 mile southeast of the intersection of Farm-to-Market Road 1488 and Farm-to-Market Road 2978 in Montgomery County, Texas.

AZTECA MILLING, L.P. which operates a corn flour mill, has applied for a renewal of Permit No. WQ0003111000, which authorizes the disposal of treated wastewater at a daily average flow not to exceed 420,000 gallons per day via irrigation of 475 acres. This permit will not authorize a discharge of pollutants into water in the State. The facility and land application site are located at 4700 South Jefferson, approximately one-half mile south of the intersection of Interstate Highway 27 (State Highway 87) and Business 27, five miles southwest of the City

of Plainview, Hale County, Texas. The facility and land application site are located in the drainage area of White River Lake, in Segment No. 1240 of the Brazos River Basin.

CITY OF BIG WELLS has applied for a renewal of TPDES Permit No. 13782-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 2,000 feet west of Farm-to-Market Road 1867 and 2,200 feet south of U.S. Highway 85 in Dimmit County, Texas.

BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT NO. 25 has applied for a renewal of TPDES Permit No. 14322-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The facility is located approximately 4,000 feet south of the intersection of County Road 59 and State Route 288 in Brazoria County, Texas.

CAMP LONGHORN CAPITAL, INC. has applied for a renewal of Permit No. 13459-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 20,000 (June - August) and 1,400 (September - May) gallons per day via surface irrigation of 4.0 acres of non-public access perennial pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,200 feet northeast of the confluence of Swamp Creek with Peters Creek and 3,600 feet south of Hoovers Valley Road in Burnet County, Texas.

CANYON RIDGE INVESTMENT COMPANY has applied for a renewal of Permit No. 11198-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 124,000 gallons per day via surface irrigation of 49 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 1,000 feet north of McCormick Road and approximately 4,000 feet east of Interstate Highway 27 in Randall County, Texas.

CITY OF CORPUS CHRISTI has applied for a renewal of TPDES Permit No. WQ0010401008, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 3,000,000 gallons per day. The facility is located at 201 Jester Street, the Encinal Peninsula adjacent to the Laguna Madre, approximately 0.5 mile southeast of the intersection of Jester Street and State Highway 358 in the City of Corpus Christi in Nueces County, Texas.

CITY OF CRANE has applied for a renewal of Permit No. 10750-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 450,000 gallons per day via surface irrigation of 115 acres of non-public access land and 60 acres of public exposure golf course. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.2 miles northwest of the intersection of U. S. Highway 385 and State Highway 329 and northwest of the City of Crane in Crane County, Texas.

EQUITECH-BIO, INC. which operates a facility supplying animal serums and serum fractions derived from whole animal blood, has applied for a major amendment to Permit No. WQ0004237000 to authorize an increase in the daily average flow to the subsurface drainfield from 300 gallons per day to 500 gallons per day. The current permit authorizes the disposal of reverse osmosis reject water and equipment wash water associated with the blood serum extraction and filtering process via subsurface disposal at a daily average flow not to exceed 300 gallons per day. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at 512 Cotton Gin Lane, on the northwest corner of the intersection of Cotton Gin Lane and Industrial Lane, northwest of the City of Kerville, Kerr County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 19 has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014579001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 255,000 gallons per day. The facility will be located approximately 2,000 feet north of the intersection of Riverwood Drive and Quebec Boulevard and approximately 100 feet south of the Right-of-Way of the Brazos River in Fort Bend County, Texas.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 109 has applied for a major amendment to TPDES Permit No. 11533-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 6,000,000 gallons per day to an annual average flow not to exceed 9,000,000 gallons per day; to remove effluent limitations and monitoring requirements for total lead; and to reduce the frequency of monitoring requirements for the 48-hour acute test. The facility is located on Atascocita Road approximately 0.6 miles south of Farm-to Market Road 1960 and approximately 2.1 miles west of the intersection of Atascocita Road and Farm-to Market Road 1960 in Harris County, Texas.

KINGS MANOR MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 13526-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The plant site is located 0.6 mile northeast of the intersection of State Highway Loop 494 and Kingwood Drive in Harris County, Texas.

LAGUNA MADRE WATER DISTRICT has applied for a renewal of TPDES Permit No. 13772-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located approximately 3.7 miles north of the Queen Isabela Causeway (Park Road 100), on the west side of South Padre Island near Andy Bowie Park in Cameron County, Texas.

CITY OF MEMPHIS has applied for a major amendment to TPDES Permit No. 10220-001 to authorize the addition of constructed wetlands in the treatment process. The current permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 326,000 gallons per day. The current permit also authorizes the disposal of treated domestic wastewater via irrigation of 120 acres of nonpublic access grassland adjacent to the plant site. The facility is located approximately one mile southeast of the intersection of State Highway 256 and U.S. Highway 287 in Hall County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13462-002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day via flood irrigation of 59 acres of non public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on a county road, southwest of La Paloma, 0.80 mile west of the intersection of U.S. Highway 281 and Farm-to-Market Road 732 in Cameron County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13462-003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 230,000 gallons per day via flood irrigation of 65 acres of non public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on a county road, northeast of Santa Maria, one mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 2556 in Cameron County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13462-004, which authorizes the

disposal of treated domestic wastewater at a daily average flow not to exceed 160,000 gallons per day via flood irrigation of 56 acres of non public access grassland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located north of the City of San Pedro, 0.6 mile northeast of the intersection of U.S. Highway 281 and Farm-to-Market Road 1421 in Cameron County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13462-005, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 135,000 gallons per day via flood irrigation of 49 acres of non public access grassland. The facility and disposal site are located approximately 2 miles north of the intersection of U.S. Highway 281 and Farm-to-Market Road 1479 (Rangerville Road), east of Rangerville Road, north-northwest of the Town of Los Indios in Cameron County, Texas.

MILITARY HIGHWAY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 13462-006, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 510,000 gallons per day. The facility is located approximately 1/2 miles east of the intersection of Balli Road and Farm-to-Market Road 907 and approximately 500 feet west of the intersection of Balli Road and Tower Road in Hidalgo County, Texas.

MISCHER INVESTMENTS, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014588001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. The facility will be located approximately 2.3 miles south and 2.4 miles west of the intersection of U.S. Highway 290 and Barker-Cypress Road in Harris County, Texas.

NORTH ALAMO WATER SUPPLY CORPORATION has applied for a renewal of Permit No. 13747-003, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 122,000 gallons per day via surface irrigation of 34 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 6,000 feet southwest of the intersection of Farm-to-Market Road 490 and Farm-to-Market Road 493, southwest of the City of Hargill in Hidalgo County, Texas.

PRESTO UTILITIES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014599001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day. The facility will be located west of Applewhite Road, immediately south of the Medina River Bridge and approximately 2 miles north of Loop 1604, in Bexar County, Texas.

PRESTO UTILITIES, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014600001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 375,000 gallons per day. The facility will be located in south Bexar County about 1000 feet east of Applewhite Road and about 1/2 mile north of Atascosa County Line in Bexar County, Texas.

CITY OF RANKIN has applied for a renewal of Permit No. WQ0010601001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day via surface irrigation of 60 acres of non-public access agriculture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.5 miles southwest of the intersection of U.S. Highway 67 and Farm-to-Market Road 349 in Upton County, Texas.

CITY OF RIO HONDO has applied for a renewal of TPDES Permit No. 10475002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located approximately 500 feet east of the Arroyo Colorado Tidal and approximately 1.5 miles north of the intersection of Farm-to-Market Road 106 and Farm-to-Market Road 1846 in Cameron County, Texas.

THE CITY OF ROCKDALE has applied for a major amendment to TPDES Permit No. WQ0010658001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 750,000 gallons per day to an annual average flow not to exceed 1,250,000 gallons per day. The facility is located southwest of the intersection of Beverly Road and Southern Pacific Railroad, in Milam County, Texas.

SIGNOR ENTERPRISES, INC. has applied for a renewal of Permit No. 14099-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 7,200 gallons per day via subsurface drip irrigation with a minimum area of 72,000 square feet of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on Hamilton Pool Road approximately 1.3 miles west of Crumley Ranch Road and 1.0 mile east of Ranch Road 12 in Travis County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014582001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 6,000 feet northeast of the intersection of Farm-to-Market Road 980 and Farm-to-Market Road 3454 in Walker County, Texas.

SOUTH CENTRAL WATER COMPANY has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014592001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 320,000 gallons per day. The facility will be located approximately 1,560 feet southeast of the intersection of Lone Star and Farm-to-Market Road 1774, and approximately 840 feet south of the intersection of Farm-to-Market Road 149 and Farm-to-Market Road 1774 in Montgomery County, Texas.

U.S. DEPARTMENT OF THE NAVY which operates the Corpus Christi Naval Air Station Industrial Waste Treatment Plant, has applied for a major amendment to TPDES Permit No. WQ0002317000 to authorize an extension to the compliance period for fecal coliform effluent limitations at Outfall 001; the additional discharges of wash water and storm water via Outfall 001; removal of effluent limitations for total arsenic, total mercury, and vinyl chloride at Outfall 001; an increase in effluent limitations for total nickel, total silver, and total zinc at Outfall 001; and removal of effluent limitations for total toxic organics at Outfall 101. The current permit authorizes the discharge of domestic wastewater, utility wastewater, and previously monitored effluents (process wastewater, treated groundwater, utility wastewater, and domestic wastewater) at a daily average flow not to exceed 1,500,000 gallons per day via Outfall 001. The facility is located at 8851 Ocean Drive, at the Corpus Christi Naval Air Station, on the south side of Corpus Christi Bay between Oso Bay and Laguna Madre, on the north end of the Encinal Peninsula, and east of the City of Corpus Christi, Nueces County, Texas.

WESTFIELD MOBILE HOME COMMUNITY, LTD. has applied for a renewal of TPDES Permit No. 12555-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located at 520 Gulf Bank

Road approximately 1,300 feet east of Airline Drive in Harris County, Texas.

WORLD LAND DEVELOPERS, LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014577001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 4,600 feet southeast of the intersection of County Road 205 and State Highway 78 and approximately 6,800 feet southwest of the intersection of County Road 483 and Farm-to-Market Road 2755 (Main Street) in Collin County, Texas.

ZAVALA COUNTY has applied for a renewal of TPDES Permit No. 14006-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 4000 feet south of the intersection of Farm-to-Market Road 1433 and Farm-to-Market Road 65 on the south side of Crystal City in Zavala County, Texas.

TRD-200502334

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 8, 2005



Notice of Water Rights Application

Notices mailed June 6, 2005 through June 7, 2005.

Application No. TP-5884; Enbridge Pipelines (E. Texas) L.P., 1600 N. Jackson, Jacksonville, Texas 75766, applicant, seeks a Temporary Water Use Permit pursuant to Texas Water Code 11.138 and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code 295.1, et seq. Applicant seeks a temporary water use permit to divert and use not to exceed 52.17 acre-feet of water within a period of 14 days from the Bowles Creek, tributary of Striker Creek, tributary of Angelina River, tributary of Neches River, Neches River Basin, at a maximum diversion rate of 4.46 cfs (2,000 gpm) for industrial use (hydrostatic testing of pipeline) in Cherokee County. The diversion point will be located at Latitude 32.072 N, Longitude 95.988 W, at the crossing of Bowles Creek and the Enbridge's Right of Way approximately 21.3 miles northeast of City of Rusk, Cherokee County and 1.25 miles northwest of the City of Big Springs, Texas. Water not consumed will be returned to the place of diversion after the hydrostatic testing of the pipeline is completed. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 3, 2005. Additional information was received on April 29, 2005. The application was accepted for filing and declared administratively complete on May 18, 2005. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by June 27, 2005.

APPLICATION NO. 5872; Deerfield Heights Partners, Ltd., P.O. Box 140447, Dallas, Texas 75214, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to 11.121, Texas Water Code, and TCEQ Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Deerfield Heights Partners, Ltd., applicant, seeks to maintain an existing, on-channel dam and reservoir with a capacity of 91.7 acre-feet of water (normal maximum operating level) on Mustang Creek, tributary of the East Fork Trinity River, tributary of the Trinity River, Trinity River Basin, with a surface area of 8.43 acres of land for in-place recreation purposes in Kaufman County. The dam is located in the Juan Lopez Original Survey, Abstract No. 286, Station 34 +60 on the centerline of the dam is N 45.295 W, 2,951.5 feet

from the south corner of the Lopez Survey at Latitude 32.758 N, Longitude 96.449 W, approximately 14.2 miles northwest from the City of Kaufman, Kaufman County, Texas and approximately 2.2 miles northeast from the City of Forney, Texas. Ownership of the inundated land is evidenced by a Special General Warranty Deed filed as Volume 19549, Pages 02064 00555 through 02064 00558 in the Kaufman County Clerk's office. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on December 3, 2004. Additional information was received on February 3, 2005 and May 16, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on May 18, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

WATER USE PERMIT NO. 4075C (APPLICATION NO. 4393C); Harold Frank, 3020 Chevy Circle, Temple, Texas 76504, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for an Amendment to Water Use Permit No. 4075 (Application No. 4393) pursuant to Texas Water Code (TWC) 11.122, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Water Use Permit No. 4075 (Application No. 4393) authorizes permittee to divert and use not to exceed 512 acre-feet of water per year from a diversion area on the Brazos River, Brazos River Basin, from any point on the east, or left, bank of that portion of the Brazos River that borders permittee's land between a point bearing S 10 E, 5,200 feet from the northwest corner of the Thomas J. Chambers Grant, Abstract No. 2 and a point bearing S 10 W, 9,600 feet from the same survey corner, at a maximum diversion rate of 6.7 cfs (3,000 gpm), for agricultural purposes to irrigate 256 acres of land out of a 274.88 acre-tract in the Chambers Grant, approximately 20 miles northwest of Franklin, Robertson County, Texas. The time priority for this right is September 6, 1983. Ownership of the described land is recorded in Volume 402, Page 624, of the Robertson County Deed Records. The permit contains a special condition whereby the permittee can divert the authorized water only when the flow of the Brazos River at the USGS Gaging Station No. 08098290 near Highbank, Texas equals or exceeds 610 cfs (273,285 gpm) during the months of April through August and 120 cfs (53,860 gpm) during the remaining months, exclusive of any releases dedicated by Brazos River Authority from its conservation storage for subsequent use downstream. The permit contains another special condition whereby the right to divert shall expire on and become null and void on December 31, 2004, unless prior to that date the permittee applies for and is subsequently granted a term extension. Other special conditions exist. Applicant seeks to amend Water Use Permit No. 4075 (Application No. 4393) to extend or delete the expiration date of the permit. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on November 8, 2004. Additional information and fees were received on March 1, 2005 and April 14, 2005. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 25, 2005. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200502336

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: June 8, 2005



Proposed Enforcement 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, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. 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 18, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on July 18, 2005**. 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 should be submitted to the commission in **writing**.

(1) COMPANY: Alon USA, L.P.; DOCKET NUMBER: 2005-0449-AIR-E; IDENTIFIER: Air Account Number HT0011Q, Regulated Entity Number (RN) 100250869; LOCATION: Big Spring, Howard County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Air Permit Number 36845, and THSC, §382.085(b), by failing to comply with the discharge limitation of 13.7 pounds per hour of carbon monoxide; PENALTY: \$5,560; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(2) COMPANY: Alvarado I.S.D.; DOCKET NUMBER: 2005-0536-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14101-001, RN101528297; LOCATION: Alvarado, Johnson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 14101-001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations, by failing to submit the annual sludge report, and by failing to submit the discharge monitoring reports (DMRs); PENALTY: \$5,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Amanie, Corporation dba Kwik Pantry Food Mart; DOCKET NUMBER: 2005-0371-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 34652, RN102357043; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$3,424; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Arechiga Petroleum, Inc. dba Arechiga Shell; DOCKET NUMBER: 2005-0207-PST-E; IDENTIFIER: PST Facility Identification Number 28596, RN101744043; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,050; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2005-0368-AIR-E; IDENTIFIER: Air Account Number AC0055Q, RN102582673; LOCATION: Diboll, Angelina County, Texas; TYPE OF FACILITY: polyisocyanurate rigid foam manufacturing; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2) and THSC, §382.085(b), by failing to submit annual compliance certifications; and THSC, §370.008 and the Code, §5.702, by failing to pay toxic release inventory Form R reporting fees; PENALTY: \$5,880; ENFORCEMENT COORDINATOR: Kimberly Morales, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Awais and Sons, Inc. dba Texaco; DOCKET NUMBER: 2003-0805-PST-E; IDENTIFIER: PST Facility Identification Number 42827, RN102452075; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$2,624; ENFORCEMENT COORDINATOR: Ruben Soto, (512)

239-4571; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: B -5 Bar, Inc. dba The Store Exxon; DOCKET NUMBER: 2004-1783-PST-E; IDENTIFIER: PST Facility Identification Number 49905, RN102233475; LOCATION: Batesville, Zavala County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,232; ENFORCEMENT COORDINATOR: Cari Bing, (512) 239-1445; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Cal-Tex Lumber Company, Inc.; DOCKET NUMBER: 2005-0567-AIR-E; IDENTIFIER: Air Account Number NA00550, RN101611325; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §122.145(2)(C) and §122.146(2) and (5)(C) and THSC, §382.085(b), by failing to submit the deviation reports, by failing to include the deviation, and by failing to submit the annual compliance certification; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Charlie Hong dba Coastal Mart; DOCKET NUMBER: 2005-0589-PST-E; IDENTIFIER: PST Facility Identification Number 74195, RN101728111; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$856; ENFORCEMENT COORDINATOR: Suzanne Baldwin, (512) 239-1675; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Tuan Tran dba Crabb River Exxon; DOCKET NUMBER: 2005-0305-PST-E; IDENTIFIER: PST Facility Identification Number 74104, RN101847101; LOCATION: Richmond, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,280; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Crest Water Company dba Oak River Ranch Water System; DOCKET NUMBER: 2005-0254-PWS-E; IDENTIFIER: Public Water Supply (PWS) Number 2130031, RN101276004; LOCATION: Nemo, Somervell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(i) and (n)(3), by failing to provide an adequate service agreement and by failing to provide well driller logs; 30 TAC §290.43(c)(2), by failing to provide a proper roof hatch on the ground storage tank; 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of at least 200 gallons per connection; 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay public health service fees; PENALTY: \$336; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Dixie Chemical Company, Inc.; DOCKET NUMBER: 2005-0126-AIR-E; IDENTIFIER: Air Account Number HG0199M, Air Permit Number 18658, RN100218486; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 18658, and THSC, §382.085(b), by failing to comply with the

permitted emission limit of 0.45 pounds per hour of methyl isobutyl ketone; PENALTY: \$2,580; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Imad Abdelgader dba Express Lane Grocery; DOCKET NUMBER: 2005-0532-PST-E; IDENTIFIER: PST Facility Identification Number 14890, RN102226537; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$640; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(14) COMPANY: FFP Operating Partners, L.P. dba On The Go Fuel; DOCKET NUMBER: 2005-0175-AIR-E; IDENTIFIER: Air Account Number EE1961R, RN100814342; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: \$2,230; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(15) COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 2005-0125-AIR-E; IDENTIFIER: Air Account Number CB0038Q, RN100218973; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 7699, and THSC, §382.085(b), by failing to prevent unauthorized emissions from emission point number (EPN) 999; 30 TAC §101.201(g) and THSC, §382.085(b), by failing to meet the minimum reporting requirements for a reportable emission event; and 30 TAC §111.111(a)(4)(A)(ii) and §116.115(c), Permit Number 19168, and THSC, §382.085(b), by failing to prevent unauthorized emissions from EPN Numbers 1018 and 1067; PENALTY: \$23,688; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Fresno C-Store, Inc. dba Crossroad Market; DOCKET NUMBER: 2005-0479-PWS-E; IDENTIFIER: PWS Number 0790235, RN101223212; LOCATION: Fresno, Fort Bend County, Texas; TYPE OF FACILITY: transient non-community water supply; RULE VIOLATED: 30 TAC §290.109(c)(1)(A), (2)(F), (3)(A)(ii), and (g)(4) and THSC, §341.033(d), by failing to submit routine bacteriological samples, by failing to provide public notice, by failing to submit the appropriate number of additional samples, by failing to perform repeat sampling, and by failing to post public notice; PENALTY: \$1,800; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: HCS Holding Company L.P. dba The Shops At The Galleria; DOCKET NUMBER: 2005-0210-WQ-E; IDENTIFIER: Storm Water General Permit Number TXR15B367, RN104006754; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: shopping center site; RULE VIOLATED: Permit Number TXR15B367 and the Code, §26.121(a)(2), by allegedly having caused or allowed the unauthorized discharge of storm water; PENALTY: \$8,400; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(18) COMPANY: City of Huxley; DOCKET NUMBER: 2004-0932-PWS-E; IDENTIFIER: PWS Number 2100019, RN101193803; LOCATION: Shelbyville, Shelby County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(b)(1) and (f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes and haloacetic acids; 30 TAC §290.46(e)(6) and THSC, §341.033(a), by failing to operate a water system that treats surface water under the direct supervision of a licensed water works operator; and 30 TAC §290.42(l), by failing to compile and maintain a plant operations manual; PENALTY: \$1,826; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: INS Emerald, L.L.C. dba Texas Foods; DOCKET NUMBER: 2005-0151-PST-E; IDENTIFIER: PST Facility Identification Number 70037, RN101541555; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to ensure that all tanks are monitored for releases; and 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current delivery certificate is posted at the facility; PENALTY: \$5,915; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Joesingh, Inc. dba J & S All Season; DOCKET NUMBER: 2005-0219-PST-E; IDENTIFIER: PST Facility Identification Number 74534, RN101741403; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,712; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Karim Sunesara dba Jack Grocery 4; DOCKET NUMBER: 2004-1734-PST-E; IDENTIFIER: PST Facility Identification Number 44903, RN102250719; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.246(1) and (3) - (6) and THSC, §382.085(b), by failing to maintain a copy of the California Air Resources Board executive order for the Stage II vapor recovery system, by failing to maintain a maintenance log for all repairs and replacements, by failing to maintain proof of attendance and completion of training, by submitting altered test results to indicate a passing result when the test actually failed, and by failing to maintain a daily inspection log; and 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$14,110; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Monroe @ Winkler Investments, Inc. dba Mike Food Mart; DOCKET NUMBER: 2005-0181-PST-E; IDENTIFIER: PST Facility Identification Number 11849, RN101886216; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all underground storage tank (UST) systems; 30 TAC §334.50(b)(2)(A)(ii), (d)(4)(A)(i) and (ii)(II), and the Code, §26.3475(c)(1), by failing to test or monitor each pressurized line for releases, by failing to conduct inventory volume measurements and by failing to perform an automatic test for substance loss capable of detecting a release; PENALTY: \$8,160; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL

OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(23) COMPANY: Palai, LLC dba Lone Star Foods; DOCKET NUMBER: 2005-0028-PST-E; IDENTIFIER: PST Facility Identification Number 68228, RN101748283; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to monitor the UST system for releases, by failing to monitor piping for releases, and by failing to test a line leak detector; 30 TAC §334.48(c), by failing to conduct monthly inventory control; and 30 TAC §334.7(d)(3), by failing to notify the agency of any change in registration information; PENALTY: \$4,992; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Petroleum Transport, Inc.; DOCKET NUMBER: 2005-0615-PST-E; IDENTIFIER: RN104565056; LOCATION: O'Donnell, Lynn County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §33.5(b)(1)(A), by failing to ensure that the owner had a valid, current delivery certificate; PENALTY: \$800; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(25) COMPANY: Pine Tree Estates 2 Landowner Association Inc.; DOCKET NUMBER: 2004-0003-MWD-E; IDENTIFIER: TPDES Permit Number 13831-001; LOCATION: Keller, Tarrant County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §§305.125(1), (4), and (5), 317.4(d) and (g), and 317.6(b)(3), TPDES Permit Number 13831-001, and the Code, §26.121(a), by failing to comply with the dissolved oxygen (DO) permit limit of three milligrams per liter, by failing to prevent unauthorized discharges from the facility, by failing to properly maintain the mechanical operations of the clarifier, by failing to submit the required DMRs, by failing to accurately measure flow, by failing to maintain a proper solids inventory, and by failing to properly maintain the chlorine contact chamber; 30 TAC §319.5(b) and TPDES Permit Number 13831-001, by failing to collect samples for biochemical oxygen demand, total suspended solids, and DO; and 30 TAC §319.7(a) and (c) and TPDES Permit Number 13831-001, by failing to maintain the pH, DO, and chlorine logs, by failing to accurately complete and maintain DMRs, and by failing to maintain calibration records for the DO meter; PENALTY: \$0; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: P.M. Fuel Service, Incorporated; DOCKET NUMBER: 2005-0281-PST-E; IDENTIFIER: RN102868551; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Jill McNew, (512) 239-0560; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: Price Construction, Ltd.; DOCKET NUMBER: 2005-0250-AIR-E; IDENTIFIER: RN104485503; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to obtain authorization to construct and operate a hot mix asphalt plant; 30 TAC §111.111(a)(1)(B) and THSC, §382.085(b), by failing to comply with the statewide opacity limit of 20%; and 30 TAC §101.201(e) and THSC, §382.085(b), by failing to submit notification of the

excess opacity event documented during the complaint investigation; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Ronnie Kramer, (806) 353-9251; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(28) COMPANY: Randall's Food & Drugs LP dba Tom Thumb 3560; DOCKET NUMBER: 2004-1769-PST-E; IDENTIFIER: PST Facility Identification Number 75212, RN103036059; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: food and drugs store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.248(2), by failing to replace a trained facilities operator within the three-month period following the departure of the preceding operator; PENALTY: \$525; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Juan R. Trevino dba Rangerville Drive In; DOCKET NUMBER: 2005-0245-PST-E; IDENTIFIER: PST Facility Identification Number 73860, RN101681971; LOCATION: San Benito, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(30) COMPANY: Real Estate Property Investments, L.L.C.; DOCKET NUMBER: 2004-0859-EAQ-E; IDENTIFIER: Edwards Aquifer Site Registration Number 13-99042101, RN102745155; LOCATION: San Antonio, Bexar County, Texas; TYPE OF FACILITY: apartment complex; RULE VIOLATED: 30 TAC §213.4(g)(1)(A), by failing to record the approved Edwards Aquifer Protection Plan (EAPP) in the county deed records; 30 TAC §213.5(b)(4)(B)(i), by failing to maintain the temporary best management practices as described in the technical report of the approved EAPP; and 30 TAC §213.4(k), by failing to adhere to Special Condition 6 of the approved EAPP; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(31) COMPANY: Rental Service Corporation dba Rental Service Store 670; DOCKET NUMBER: 2004-2114-AIR-E; IDENTIFIER: Air Account Number EE1153K, RN102382041; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: rental store that dispenses gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to meet the minimum oxygen content requirement of 2.7% by weight; PENALTY: \$840; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(32) COMPANY: Rip Griffin Truck Service Center, LP dba Rip Griffin Oil Company; DOCKET NUMBER: 2005-0052-AIR-E; IDENTIFIER: RN102822616; LOCATION: Lubbock and El Paso; Lubbock and El Paso Counties, Texas; TYPE OF FACILITY: fuel distributor; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to meet the minimum oxygen content requirement of 2.7% by weight; and 30 TAC §334.5(b)(1)(A) and the Code, §26.3467(a), by failing to ensure that the owner or operator had a valid, current delivery certificate; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Susan Longenecker, (512) 239-0968; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092; 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(33) COMPANY: S.L.C. Water Supply Corporation; DOCKET NUMBER: 2005-0108-PWS-E; IDENTIFIER: PWS Number 1470031,

RN101265908; LOCATION: Groesbeck, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(2)(H), by failing to provide sufficient emergency power to deliver a minimum of 0.35 gallons per minute per connection; 30 TAC §290.46(e)(6)(A), by failing to employ a Class B licensed operator; 30 TAC §290.121(a), by failing to have an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.44(d)(1), by failing to have a screen on an air release device; 30 TAC §290.43(e), by failing to maintain an intruder-resistant fence; 30 TAC §290.41(e)(2)(C), by failing to maintain the buoys at the raw water intake; 30 TAC §290.42(d)(13) and (e)(4)(B), by failing to identify the settled water line and the backwash waste line by the use of labels or various colors of paint and by failing to store chlorine cylinders outside in such a manner as to protect them from adverse weather conditions and vandalism; PENALTY: \$1,540; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(34) COMPANY: Schenectady International, Inc.; DOCKET NUMBER: 2005-0136-AIR-E; IDENTIFIER: Air Account Number BL0048R, RN100218999; LOCATION: Freeport, Brazoria County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(a)(1)(B) and THSC, §382.085(b), by failing to submit an initial emissions notification; and 30 TAC §116.115(c), Air Permit Number 2341, and THSC, §382.085(b), by failing to obtain regulatory authority or meet the demonstration requirements of 30 TAC §101.22 for emissions from an upset event; PENALTY: \$9,160; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(35) COMPANY: Frank J. Simons; DOCKET NUMBER: 2005-0386-OSI-E; IDENTIFIER: RN104410352; LOCATION: Paint Rock, Concho County, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.50(b)(1) and THSC, §366.071(a), by failing to hold a current on-site sewage system facility (OSSF) installers license; and 30 TAC §285.3(a)(1) and THSC, §366.051(c), by failing to obtain the required prior authorization to construct from the Conch County OSSF program; PENALTY: \$400; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(36) COMPANY: Jimmy Keith Socia; DOCKET NUMBER: 2005-0727-OSI-E; IDENTIFIER: OSSF Installer License Number OS0005563, RN103535761; LOCATION: Lufkin and Buna; Angelina and Jasper Counties, Texas; TYPE OF FACILITY: on-site sewage; RULE VIOLATED: 30 TAC §285.61(4) and THSC, §366.051(c), by failing to begin construction of an OSSF only after obtaining documentation that the owner, or owner's agent, has the permitting authority's authorization to construct; PENALTY: \$208; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(37) COMPANY: Sprint Petroleum, Inc. dba Sprint 24 306; DOCKET NUMBER: 2005-0045-PST-E; IDENTIFIER: PST Facility Identification Number 67806, RN101557015; LOCATION: Greenville, Hunt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to provide proper release detection and by failing to conduct a line leak detector test; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Judy Kluge, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(38) COMPANY: Stephens Fuel Company dba Dwaynes Auto Center; DOCKET NUMBER: 2005-0333-PST-E; IDENTIFIER: PST Facility Identification Number 34110, RN101540284; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$2,560; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Mohammad Iftikhar Ashraf dba Super Food Mart 28; DOCKET NUMBER: 2005-0231-PST-E; IDENTIFIER: PST Facility Identification Number 47238, RN101892032; LOCATION: Edom, Van Zandt County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$3,360; ENFORCEMENT COORDINATOR: Dana Shuler, (512) 239-2505; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(40) COMPANY: James M. Boswell dba Texas Water Supply; DOCKET NUMBER: 2005-0311-PWS-E; IDENTIFIER: PWS Number 1870131, RN101259679; LOCATION: Leggett, Polk County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e) and (q)(1), by failing to employ a licensed water works operator and by failing to issue a boil water notice; 30 TAC §290.43(c), by failing to take a bacteriological sample; 30 TAC §290.45(b)(1)(C)(iii) and §290.46(m) and THSC, §341.0315(c), by failing to maintain the service pumps to provide adequate water pressure and meet minimum capacity requirements; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay outstanding public health service fees; PENALTY: \$571; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(41) COMPANY: U.S. Ecology Texas, L.P.; DOCKET NUMBER: 2004-1146-MLM-E; IDENTIFIER: Solid Waste Registration Number 50052, Hazardous Waste Permit Number 50052, Compliance Plan Number 50052, and Underground Injection Control (UIC) Permit Number WDW278, RN101445666; LOCATION: Robstown, Nueces County, Texas; TYPE OF FACILITY: hazardous waste disposal; RULE VIOLATED: 30 TAC §334.5, §335.152(a)(7), Hazardous Waste Permit Number 50052, and 40 Code of Federal Regulations (CFR) §264.171 and §264.173(a), by failing to maintain hazardous waste containers in good condition and by failing to ensure hazardous waste containers are closed during storage; 30 TAC §335.69(a)(1)(B) and 40 CFR §262.34(a)(1)(ii) and §265.193, by failing to provide proper secondary containment; Hazardous Waste Permit Number 50052 and 40 CFR §265.15, by failing to conduct inspections of permitted waste management units; 30 TAC §335.4 and §335.152(a)(2), (8), (12), and (20), Hazardous Waste Permit Number 50052, and 40 CFR §§264.35, 264.192, §264.1101(c)(1)(iii), (3), and (d)(2), and §265.301, by failing to maintain required aisle space, by failing to obtain the required engineer's certification, by failing to detect and remove accumulated liquid, by failing to repair the secondary containment system, by failing to operate all components of the leachate collection/leak detection systems with less than 12 inches of head on each liner system, and by failing to collect decontamination liquids from the containment building; 30 TAC §335.152(a)(12), Hazardous Waste Permit Number 50052, and 40 CFR §264.303(b), by failing to inspect leachate collection systems; Hazardous Waste Permit Number 50052, by failing to record and convert action leakage rates on amounts of liquids removed from each leak detection system and by failing to remove rainwater from the active landfill cell; 30 TAC §335.6(a), by failing to notify the commission of a hazardous waste storage tank;

30 TAC §331.64(c) and UIC Permit Number WDW278, by failing to maintain an automatic alarm shutoff system and by failing to properly maintain and use continuous recording devices to record injection tubing pressures and injection flow rates; 30 TAC §331.65(b)(1), UIC Permit Number WDW278, and 40 CFR §146.69(a), by failing to submit a quarterly injection report; 30 TAC §331.63(d) and UIC Permit Number WDW278, by failing to maintain the annulus pressure; 30 TAC §305.125(1), Compliance Plan 50052, and Hazardous Waste Permit Number 50052, by failing to sample all wells and by failing to ensure that the facility does not accept unauthorized waste; Hazardous Waste Permit Number 50052 and 40 CFR §264.13(a) and §264.31, by failing to follow the waste analysis plan and by failing to operate the facility in a manner that minimizes the possibility of fire, explosions, or any unplanned, sudden, or non-sudden release of hazardous constituents; and 30 TAC §335.12(c)(2) and 40 CFR §264.72(b), by failing to reconcile a waste manifest discrepancy; PENALTY: \$138,320; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(42) COMPANY: Jaime Vasquez; DOCKET NUMBER: 2005-0452-MSW-E; IDENTIFIER: Municipal Solid Waste (MSW) Unauthorized Site Number 455150106, RN104349121; LOCATION: near Las Yescas, Cameron County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste; RULE VIOLATED: 30 TAC §330.5(a), by failing to prevent the disposal of MSW at an unauthorized site; PENALTY: \$1,680; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(43) COMPANY: Vinyard Enterprises, Inc. dba Vinyard's Food Mart; DOCKET NUMBER: 2005-0240-PST-E; IDENTIFIER: PST Facility Identification Number 47106, RN103730586; LOCATION: Scroggins, Franklin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(44) COMPANY: Weirich Bros., Inc.; DOCKET NUMBER: 2005-0005-WQ-E; IDENTIFIER: TPDES Permit General Stormwater Permit Number TXR05P073, RN101935492; LOCATION: Junction, Kimble County, Texas; TYPE OF FACILITY: sand and gravel mining; RULE VIOLATED: 30 TAC §327.3(b), by failing to notify the agency as soon as possible after the discovery of the spill or discharge; and 30 TAC §327.5(a), by failing to immediately abate and contain a spill or discharge; PENALTY: \$1,264; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(45) COMPANY: Wilsonart International, Inc.; DOCKET NUMBER: 2005-0325-AIR-E; IDENTIFIER: Air Account Number BF0110G, RN100215631; LOCATION: Temple, Bell County, Texas; TYPE OF FACILITY: plastic laminate production plant; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 9739, and THSC, §382.085(b), by failing to comply with the emissions limits; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

TRD-200502315

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: June 7, 2005

◆ ◆ ◆ General Land Office

Notice of Renewal of Major Consulting Services

The General Land Office (GLO) is a participant in a project for the development and implementation of a comprehensive tide monitoring and gauging system known as the Texas Coastal Observation Network (TCOON). Other participants include the National Ocean Service (NOS), the Conrad Blucher Institute (CBI) of Texas A&M University at Corpus Christi (TAMU-CC), and the U.S. Army Corps of Engineers (COE). TCOON is funded and administered through a cooperative effort of NOS, GLO, and COE.

Pursuant to §2254.021, et seq., TEX. GOV'T CODE, the GLO is requesting offers of consulting services to assist with the review and analysis of tide and water level data received from the operation of TCOON during the two-year period from September 1, 2005, through August 31, 2007.

The requested consultant services will require an understanding of ocean tide gauging systems. The consultant selected to provide these services will be responsible for:

- (i) Coordination of all gauge installation and leveling;
- (ii) Coordination of operational reporting with other project participants; and
- (iii) Continuation of the process of automating the data collection, analysis, leveling, station stability monitoring, and data computation.

It is the intent of GLO to award this contract to Mr. Briah K. Connor, Jr., who has previously provided these consulting services for the TCOON Network. However, the GLO reserves the right to evaluate the qualifications and experience of any other Respondents, to reject any and/or all responses, and to negotiate specific terms of an agreement that is in the best interest of the state. The closing date for receipt of offers of these consulting services is 5:00 p.m. CDT, July 7, 2005. Further information may be obtained by contacting LaNell Aston, General Land Office, 1700 N. Congress Avenue, Room 837, Austin, TX 78701-1495, phone (512) 463-1921.

TRD-200502341

Larry L. Laine

Chief Clerk, Deputy Land Commissioner

General Land Office

Filed: June 8, 2005

◆ ◆ ◆ Texas Health and Human Services Commission

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on June 23, 2005, to receive public comment on proposed payment rates with a proposed effective date of September 1, 2005, for private duty nursing services under Early Periodic and Screening, Diagnosis, and Treatment (EPSDT) services under the Texas Health Steps-Comprehensive Care Program (THSteps-CCP). The public hearing will be held on June 23, 2005, at 1:30 p.m., in the HHSC Big Bend Conference Room, in Building H of the Braker Center, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the building entrance facing Metric Boulevard. Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Nancy Kimble, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200. Overnight or

special delivery mail may be sent, or written comments may be hand delivered, to Ms. Kimble, HHSC Rate Analysis for Acute Care Services, Mail Code H-400, Building H of the Braker Center, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Kimble at (512) 491-1983. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Kimble (telephone: (512) 491-1363; FAX: (512) 491-1983; or E-mail: nancy.kimble@hhsc.state.tx.us) on or after June 13, 2005.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Kimble by June 21, 2005, so that appropriate arrangements can be made.

TRD-200502331

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: June 8, 2005

◆ ◆ ◆
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
Fort Worth	Maxum Health Services Corporation DBA Insight Diagnostic Center - Eighth Ave.	L05887	Fort Worth	00	05/18/05
Laredo	Metabolic Imaging of Laredo LLP	L05890	Laredo	00	05/24/05
Sugar Land	Heart & Vascular Association of Houston PA	L05892	Sugar Land	00	05/24/05

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	86	05/23/05
Austin	Daughters of Charity Health Services of Austin DBA Brackenridge Hospital	L00268	Austin	85	05/24/05
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	41	05/25/05
Beaumont	Christus St. Elizabeth Hospital DBA St Elizabeth Hospital	L00269	Beaumont	97	05/18/05
Bedford	Texas Oncology PA DBA Edwards Cancer Center	L05550	Bedford	07	05/18/05
Brownsville	JRG Equipment DBA Springman Medical Plaza	L05831	Brownsville	02	05/25/05
Bryan	St Joseph Regional Health Center	L00573	Bryan	65	05/19/05
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	30	05/17/05
Corpus Christi	Flint Hills Resources LP	L00322	Corpus Christi	35	05/26/05
Dallas	Cardiology & Interventional Vascular Assoc.	L05412	Dallas	02	05/17/05
Fannin	Coletto Creek Power LP DBA Coletto Creek Power Station	L02519	Fannin	17	05/26/05
Fort Worth	Lockheed Martin Corporation	L05633	Fort Worth	02	05/19/05
Houston	Rice Nuclear Diagnostics	L05830	Houston	03	05/17/05
Houston	Memorial Hermann Healthcare System DBA Hermann Hospital	L04655	Houston	24	05/16/05
Houston	Nuclear Imaging Services LLC	L05775	Houston	08	05/19/05
Houston	Methodist Health Centers DBA Methodist Willowbrook Hospital	L05472	Houston	17	05/26/05
Lewisville	Texas Oncology PA DBA Lake Vista Cancer Center	L05526	Lewisville	08	05/25/05
Lufkin	Pickett Heart Clinic	L05681	Lufkin	01	05/26/05
Mesquite	Lone Star HMA LP DBA Mesquite Community Hospital	L02733	Mesquite	35	05/25/05
Midland	Endeavor Energy Resources LP	L05745	Midland	04	05/26/05
Plano	Columbia Med. Ctr. of Plano Subsidiary LP DBA Medical Center of Plano	L02032	Plano	75	05/17/05

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Point Comfort	Formosa Plastics Corporation - Texas	L03893	Point Comfort	29	05/19/05
San Antonio	Southwest Genetics	L04490	San Antonio	09	05/23/05
San Antonio	VHS San Antonio Partners LP DBA Baptist Health System	L00455	San Antonio	144	05/19/05
Sherman	Scela Inc DBA North Texas Nuclear Pharmacy	L05461	Sherman	06	05/19/05
Sherman	Wilson N Jones Memorial Hospital	L02384	Sherman	32	05/19/05
Sweetwater	Rolling Plains Memorial Hospital	L02550	Sweetwater	21	05/20/05
Temple	Scott and White Memorial Hospital and Scott Sherwood and Brindley Foundation DBA Scott and White Memorial Hospital	L00331	Temple	72	05/17/05
Throughout Tx	Texas Department of Transportation	L00197	Austin	107	05/23/05
Throughout Tx	Apex Inspections Inc	L05563	Carrollton	02	05/19/05
Throughout Tx	Terracon Consultants Inc	L05268	Dallas	15	05/26/05
Throughout Tx	Numed Diagnostic Imaging	L02129	Denton	55	05/19/05
Throughout Tx	Terra - Mar Inc.	L03157	Fort Worth	44	05/25/05
Throughout Tx	Bohowiak Wireline Company Inc	L05797	Granbury	01	05/24/05
Throughout Tx	H & G Inspection Company Inc. ADBA Statewide Maintenance Company	L02181	Houston	198	05/16/05
Throughout Tx	Mandes Inspection & Testing Services Inc	L05220	Houston	51	05/24/05
Throughout Tx	Austin Reed Engineering LLC	L05578	Houston	04	05/19/05
Throughout Tx	Mandes Inspection & Testing Services Inc.	L05220	Houston	52	05/25/05
Throughout Tx	Non Destructive Inspection Corporation	L02712	Lake Jackson	120	05/19/05
Throughout Tx	Turner Specialty Services LLC	L05417	Nederland	15	05/23/05
Throughout Tx	Big State X-Ray	L02693	Odessa	43	05/27/05
Throughout Tx	Big State X-Ray	L02693	Odessa	42	05/26/05
Throughout Tx	T C Inspection Inc	L05833	Oyster Creek	03	05/19/05
Throughout Tx	Conam Inspection & Engineering Inc.	L05010	Pasadena	93	05/17/05
Throughout Tx	Fugro Consultants LP	L04322	Pasadena	76	05/17/05
Throughout Tx	Plant and Pipeline Inspection Inc.	L05746	Rockport	06	05/16/05
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	125	05/24/05
Tyler	East Texas Medical Center	L05702	Tyler	06	05/26/05
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	97	05/25/05

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Corpus Christi	Cardiology Associates of Corpus Christi	L04611	Corpus Christi	24	05/25/05
Houston	Westhollow Technology Center	L02116	Houston	42	05/17/05
San Antonio	Cardiovascular Associates of San Antonio PA	L04996	San Antonio	09	05/19/05
Throughout Tx	IES Incorporated	L03694	Denver City	09	05/26/05
Throughout Tx	Raba-Kistner Consultants (SW) Inc.	L02337	El Paso	22	05/24/05
Throughout Tx	Mundy Maintenance and Services LLC	L04360	Pampa	29	05/18/05

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200502317
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 7, 2005



Notice of Agreed Order with Hill Country Health Centers, Inc., dba Dripping Springs Chiropractic Center

On May 31, 2005, the Radiation Program Officer, Department of State Health Services (department), approved the settlement agreement between the department and Hill Country Health Centers, Inc., dba Dripping Springs Chiropractic Center (Registrant R17871), of Dripping Springs. A total administrative penalty in the amount of \$850 was assessed the Registrant for violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502250
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 3, 2005



Notice of Amendment Number 35 to the Radioactive Material License of Waste Control Specialists, LLC

Notice is hereby given by the Department of State Health Services (department), Radiation Safety Licensing Branch, that it has amended Radioactive Material License Number L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas, one mile North of State Highway 176; 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

Amendment number 35 provides requested clarification as to the types of waste containers and placement on the existing authorized Container Storage Area.

The department has determined that the amendment of the license and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste processing facility is operated in accordance with the requirements of 25 Texas Administrative Code

(TAC), Chapter 289; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing, upon written request, within 30 days of the date of publication of this notice by a person affected as set out in 25 TAC, §289.205(f). 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 a county, in which the 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 Mr. Richard A. Ratliff, P.E., Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. Any request for a hearing must contain the name and address of the person who considers himself affected by this action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code, Chapter 401, the Administrative Procedure Act (Texas Government Code Chapter 2001), the formal hearing procedures of the department (25 TAC, §1.21 et seq.) and the procedures of the State Office of Administrative Hearings (1 TAC, Chapter 155).

A copy of the license amendment and supporting materials are available, by appointment, for public inspection and copying at the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays). Information relative to inspection and copying the documents may be obtained by contacting Chrissie Toungate, Custodian of Records, Radiation Safety Licensing Branch.

TRD-200502320
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 7, 2005



Notice of Intent to Revoke Certificates of Registration

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following x-ray machine or laser registrants: Oakley Chiropractic Clinic, New Caney, R00872; Valley Veterinary Hospital, Edinburg, R01150; Richard D. Morgan, D.D.S., Inc., Lubbock, R05709; Curtis E. Dill, D.D.S., Mesquite, R15552; Lake Joe Pool Animal Clinic, Cedar Hill, R19475; Oatman Chiropractic, Devine, R19788; Oncology Maintenance Services, Plano, R21293; Simeus Foods International, Inc., Mansfield, R21881; SKWD, Quinlan, R23264; Joseph A. Lopez, M.D., PA, Denton, R25518; Edward B. Silverman, Dallas, R25642; CRT ORR Inc., Greenville, R25823; Celso Garcia, D.C., Inc., Houston, R26200; Talamantez Chiropractic, Brownsville, R26888; Thomas Wade Jones (Preferred Dental), Arp, R27557; Memorial Hospital - Memorial City, Houston, Z00901; Christopher L. Harris, Houston, Z01673; Q Plus LTD, Grand Prairie, R07882.

The complaints allege that these registrants have failed to pay required annual fees. The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502318
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 7, 2005

Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to 25 Texas Administrative Code, §289.205, the Department of State Health Services (department), filed complaints against the following licensees: X-CEL NDE Inc., Odessa, L03548; Henley Enterprises, Hewitt, L05372.

The complaints allege that these licensees have failed to pay required annual fees. The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the department that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the department within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200502319
Cathy Campbell
General Counsel
Department of State Health Services
Filed: June 7, 2005

Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Providence at Marine Creek Apartments) Series 2005

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Marine Creek Elementary, 4801 Huffines Boulevard, Fort Worth, Texas 76135, at 6:00 p.m. on July 7, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Cottonwood Hammer, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, equipping and rehabilitating a multifamily housing development (the "Development") described as follows: 252-unit multifamily residential rental development, of which a portion of the units will be for seniors, to be located at either approximately the 4400 block of Old Decatur Road near Northwest Loop 820, Tarrant County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Robbye Meyer at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-2213; and/or robbye.meyer@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Robbye Meyer in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robbye Meyer prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Robbye Meyer at least three days prior to the hearing date. 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.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200502339
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: June 8, 2005

◆ ◆ ◆
Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by WELLCARE PRESCRIPTION INSURANCE, INC., a foreign Life, Accident, and/or Health company. The home office is in Tampa, Florida.

Application for admission to the State of Texas by SANTA FE INSURANCE COMPANY OF TEXAS, a foreign Fire and/or Casualty company. The home office is in Santa Fe, New Mexico.

Application for incorporation to the State of Texas by CALIFORNIA INDEMNITY INSURANCE COMPANY, a domestic Fire and/or Health company. The home office is in Dallas, Texas.

Application for EL PASO FIRST HEALTH PLANS, INC., to use the assumed name EL PASO CHOICE a domestic Health Maintenance Organization. The home office is in El Paso, Texas.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701, within 20 days after this notice is published in the *Texas Register*.

TRD-200502343
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 8, 2005

◆ ◆ ◆
Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2614 on June 29, 2005 at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, in Austin, Texas, to consider a petition by the Texas Windstorm Insurance Association (TWIA) requesting approval of a reinsurance program to operate in concert with the catastrophe reserve trust fund established under Article 21.49, §8(i), Insurance Code. Article 21.49, §8(h)(17) provides that, with the approval of the Texas Department of Insurance, TWIA may establish a reinsurance program that operates in addition to or in concert with the catastrophe reserve trust fund.

The current reinsurance program, which was approved by the Commissioner in Commissioner's Order No. 04-0529 (May 26, 2004), expires on May 31, 2005. The new program is proposed to be effective on June 1, 2005.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear to testify for or against the approval of the proposed reinsurance program. Copies of the TWIA petition and proposed reinsurance agreement are available for review in the Office of the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. To request copies of the petition and sample reinsurance agreement, please contact Sylvia Gutierrez at (512) 463-6327.

TRD-200502348
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 8, 2005

◆ ◆ ◆
Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of CENTRAL BENEFITS ADMINISTRATORS, INC., a foreign third party administrator. The home office is COLUMBUS, OHIO.

Application for admission to Texas of CITICORP INSURANCE SERVICES, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application for admission to Texas of CONCERO, INC., a foreign third party administrator. The home office is PORTLAND, OREGON.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200502342
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: June 8, 2005

◆ ◆ ◆
Texas Lottery Commission

Instant Game Number 568 "Instant Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 568 is "INSTANT BINGO". The play style is "bingo with bonus feature".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 568 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 568.

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: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, TWO, THREE, FIVE, TEN, TWENTY, FIFTY, ONEHUN, TRY and PLAY.

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. 568 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	
G46	

G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
G60	
O61	
O62	
O63	
O64	
O65	
O66	
O67	
O68	
O69	
O70	
O71	
O72	
O73	
O74	
O75	
01	
02	
03	
04	
05	
06	
07	
08	
09	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

21	
22	
23	
24	
25	
26	
27	
28	
29	
30	
31	
32	
33	
34	
35	
36	
37	
38	
39	
40	
41	
42	
43	
44	
45	
46	
47	
48	
49	
50	
51	
52	
53	
54	
55	
56	
57	
58	
59	
60	
61	
62	
63	
64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
TWO	DOLLARS
THREE	DOLLARS
FIVE	DOLLARS
TEN	DOLLARS
TWENTY	DOLLARS
FIFTY	DOLLARS
ONEHUN	DOLLARS
TRY	AGAIN
PLAY	AGAIN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify

and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 568 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) 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: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000 or \$30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (568), 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: 568-0000001-001.

L. Pack - A pack of "INSTANT BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. 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.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT BINGO" Instant Game No. 568 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 "INSTANT BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 131 (one hundred thirty-one) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 4 that match the Bingo Numbers and Bonus Numbers on the Caller's Card. Each card has a corresponding prize box. Players win by matching those same numbers on the four Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical, or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card the player wins prize according to the legend of the respective playing card. In the Instant Bonus play area, if a player reveals a prize amount the player wins prize indicated automatically. The player can win up to four times on any ticket but only once on each "card".

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 131 (one hundred thirty-one) 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. A ticket will win as indicated by the prize structure.

B. A ticket can win up to four times but only once per Card.

C. No duplicate numbers will appear on the Caller's Card and Bonus Numbers.

D. No duplicate numbers will appear on each individual Player's Card.

E. Each Caller's Card will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The Bonus Numbers will have a maximum of two (2) numbers for each range per letter.

F. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

G. Instant Bonus Game: The Play area consists of one (1) Play Symbol.

H. Instant Bonus Game: Winning tickets will display a prize amount: TWO DOLLARS, THREE DOLLARS, FIVE DOLLARS, TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS and ONE-HUN DOLLARS.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT BINGO" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if

valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "INSTANT BINGO" Instant Game prize of \$1,000 or \$30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "INSTANT BINGO" 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; or
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 "INSTANT BINGO" 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 "INSTANT BINGO" 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 Section 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 24,960,000 tickets in the Instant Game No. 568. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 568 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	2,945,280	8.47
\$3	1,248,000	20.00
\$5	898,560	27.78
\$10	149,760	166.67
\$15	49,920	500.00
\$20	399,360	62.50
\$30	36,712	679.89
\$50	73,840	338.03
\$100	23,400	1,066.67
\$500	1,248	20,000.00
\$1,000	55	453,818.18
\$30,000	9	\$2,773,333.33

*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 4.28. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 568 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. 568, 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-200502309
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: June 7, 2005

The Application: North Texas Telephone Company filed with the Public Utility Commission of Texas an application for approval of an increased depreciation rate on digital switching equipment and circuit equipment with a proposed effective date of January 1, 2005.

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 31187.

TRD-200502308
 Adriana A. Gonzales
 Rules Coordinator
 Public Utility Commission of Texas
 Filed: June 6, 2005

◆ ◆ ◆

Public Utility Commission of Texas

Notice of Application for Approval of Depreciation Rate

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 3, 2005, for approval of a depreciation rate on digital switching equipment and circuit equipment, pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2005) (PURA) §52.252 and §53.056. A summary of the application follows.

Docket Title and Number: Application of North Texas Telephone Company for Approval of a Depreciation Rate Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 31187.

◆ ◆ ◆

Notice of Application for Approval of Special Five Year Amortization

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 2, 2005, for approval of a special five year amortization of digital switching equipment retired December 31, 2004, pursuant to Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supplement 2005) (PURA) §52.252 and §53.056. A summary of the application follows.

Docket Title and Number: Application of North Texas Telephone Company for Approval of Special Five Year Amortization Pursuant to P.U.C. Substantive Rule §26.206, Docket Number 31181.

The Application: North Texas Telephone Company filed with the Public Utility Commission of Texas an application for approval of a special five year amortization of digital switching equipment retired December 31, 2004.

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 31181.

TRD-200502307
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2005



Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On June 3, 2005, Intermedia Communications, LLC filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60082. Applicant intends to relinquish its certificate.

The Application: Application of Intermedia Communications, LLC to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 31188.

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 29, 2005. 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 31188.

TRD-200502340
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 8, 2005



Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on April 27, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition of the Lake Arrowhead Exchange for Expanded Local Calling Service, Project Number 31047.

The petitioners in the Lake Arrowhead exchange request ELCS to the exchanges of Archer City, Bellevue, Henrietta, Holliday, and Joy.

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 July 1, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 31047.

TRD-200502306
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 6, 2005



Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on May 27, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of SBC Internet Services, Inc. (SBCIS) request for a code for Local Routing Number in the Dallas rate center.

Docket Title and Number: Petition of SBC Internet Services, Incorporated for Review of Pooling Administrator's Denial of Application for Numbering Resources. Docket Number 31165.

The Application: SBCIS submitted a petition to the Pooling Administrator (PA) to provide it with a growth code in the Dallas rate center.

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 22, 2005. 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 31165.

TRD-200502235
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 3, 2005



Texas Department of Transportation

Notice of Intent - Supplemental Environmental Impact Statement for Roadside Pest Management Program

Pursuant to 43 TAC §2.43(f)(3) and (h), the Texas Department of Transportation (TxDOT) issues this notice that TxDOT will prepare a Supplemental Environmental Impact Statement (SEIS) for the Roadside Pest Management Program (PMP). The PMP program concerns the control of pests, and is a vital part of TxDOT's maintenance operations. The PMP program helps to ensure the safety of highway users and TxDOT maintenance personnel; prevents erosion through the establishment of permanent vegetation cover; promotes and protects the integrity of the state's transportation investments; promotes and preserves native wildlife habitats and native flora to the greatest extent practicable; and promotes the efficient use of state resources.

The initial Environmental Impact Statement was completed in 1996. Since that time, new techniques, chemicals, and procedures have become available that improve TxDOT's ability to control pests while minimizing adverse impacts to the environment. TxDOT will prepare the SEIS to disseminate information about the current program and environmental impacts. The SEIS will focus on updating the chemicals utilized by TxDOT and the techniques used in their application. In

addition, the SEIS will update other means of pest control such as mechanical, biological, and cultural treatments.

Public hearings will be held for the proposed project; however, dates for the hearings have not yet been determined. Notices of the public hearings will be published in newspapers of general circulation in multiple regions of Texas at least 30 days prior to the hearings and again 10 days prior to the hearings. The notices will provide the date, time, and location of each hearing.

TxDOT invites comments and suggestions from all interested persons to ensure that all significant concerns are identified and addressed. Comments or questions related to the program or the preparation of the environmental documents should be directed to Dennis Markwardt, Maintenance Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701. Mr. Markwardt can be reached by telephone at (512) 416-3093.

TRD-200502230

Richard D. Monroe

General Counsel

Texas Department of Transportation

Filed: June 1, 2005



Request for Proposal for Aviation Engineering Services

The County of Brazoria through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: Brazoria County, Angleton/Lake Jackson-Brazoria County Airport; TxDOT CSJ No. 0512ANGLE; Scope: Provide engineering/design services for site development and associated appurtenances for a pre-engineered metal aircraft hangar building system with hangar access paving at the Brazoria County Airport.

The DBE goal is set at 6%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online, by selecting "Angleton/Lake Jackson-Brazoria County Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.** (Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Five completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight July 11, 2005 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483; Overnight delivery must be received by 4:00 p.m. (CDST) on July 12, 2005; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. July 12, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200502314

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: June 7, 2005



Request for Proposal for Aviation Engineering Services - Lee County Airport

The City of Giddings and Lee County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described in this notice.

Airport Sponsor: City of Giddings and Lee County, Giddings-Lee County Airport. TxDOT CSJ No.:0514GIDNG Scope: Provide engineering/design services to construct new hangar access taxiways, aircraft tie-downs, associated pavement markings and drainage structures, and will include the future construction of two ten-unit T-Hangar pre-engineered metal building systems with associated appurtenances at the Giddings-Lee County Airport.

The DBE goal is set at 6%. TxDOT Project Manager is Megan Caffall.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing and project narrative and are available online by selecting "Giddings-Lee County Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

<http://www.dot.state.tx.us/avn/avn550.doc>

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.** (Attention: To ensure utilization of the latest version of Form 550, firms are encouraged to download Form 550 from the TxDOT website as addressed above. Utilization of Form 550 from a previous download may not be the exact same format. Form 550 is an MS Word Template).

Four completed, unfolded copies of Form AVN 550 must be post-marked by U. S. Mail by midnight July 11, 2005 (CDST). Mailing address is: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on July 12, 2005; overnight address is: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. July 12, 2005 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members.

The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Megan Caffall, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200502333

Richard Monroe

General Counsel

Texas Department of Transportation

Filed: June 8, 2005



Request for Proposals from Law Firms - Transportation Law Matters

The Texas Department of Transportation (department) requests proposals from law firms interested in providing legal representation required by the department and the Texas Transportation Commission (commission) with respect to the innovative financing and development of transportation projects, including the use of public/private partnerships. The department's general counsel will make the selection of outside counsel.

Description: The department is a state agency granted powers under Chapter 227, Texas Transportation Code, to plan and construct a new set of intermodal transportation facilities that will be known as the Trans-Texas Corridor and that will integrate highway, rail, and utility

components. The department is also authorized under Chapter 361, Texas Transportation Code, to construct, maintain, repair, operate, extend or expand turnpike projects on the state highway system. Section 227.023 and Subchapter I, Chapter 361, Texas Transportation Code, authorize the department to enter into comprehensive development agreements with private entities for the acquisition, financing, design, construction, maintenance, and/or operation of facilities on the Trans-Texas Corridor and department turnpike projects. The department, when entering into a comprehensive development agreement, is required to use a competitive procurement process that provides the best value for the department. The department may solicit proposals or accept unsolicited proposals for a proposed project. A comprehensive development agreement may provide for public/private partnerships, including the issuance of franchises.

The department will engage outside counsel to provide legal advice and assistance to the commission and the department in connection with the development of transportation projects, comprehensive development agreements, and other public/private partnerships. Outside Counsel will be required to provide advice and counsel to the department in these areas, including providing legal advice and support on the terms of comprehensive development agreements and drafting and administering comprehensive development agreements, as well as legal advice and support on issues involved in developing public/private partnerships for the development of transportation projects, including procurement processes and innovative financing options. The department invites responses to this request for proposals from qualified firms for the provision of legal services under the direction and supervision of the department's Office of General Counsel. Outside counsel engaged by the department must demonstrate competence and expertise in the foregoing areas. Extensive prior experience in providing legal services related to public/private partnerships for the development of transportation projects and the innovative financing of those projects is required.

Responses: Responses to the request for proposals may be submitted by an individual law firm, attorney, or joint venture between two or more law firms and/or attorneys. Responses to the request for proposals should include at least the following information: (1) a description of the firm's qualifications for performing the foregoing legal services; (2) the names, experience, education, and expertise of the attorneys who will be assigned to work on such matters, and the availability of the lead attorney and other firm personnel who will be assigned to work on these matters, along with appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of these legal services; (3) information relative to the capabilities and resources of the firm's offices, and an organizational chart indicating the relevant areas of responsibility of each attorney assigned to work on these matters; (4) the submission of fee information (either in the form of hourly rates for each attorney and paralegal who will be assigned to perform services in relation to these matters, comprehensive flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (5) an abstract of the firm's cost control procedures and how it charges for its services; (6) a comprehensive description of the procedures used by the firm to supervise the provision of legal services in a timely and cost effective manner; (7) 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 Texas Department of Transportation, or to the State of Texas or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (8) confirmation of willingness to comply with the rules, policies, directives, and guidelines of the department, the commission, and the Attorney General of the State of Texas.

Format and Person to Contact: Two copies of the proposal are requested. The proposal 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. They should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard D. Monroe, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. For questions, please telephone Jack Ingram, Associate General Counsel at (512) 463-8630.

Deadline for Submission of Response: All proposals must be received by the Texas Department of Transportation at the previously stated address no later than 5:00 p.m., July 11, 2005.

TRD-200502229

Richard D. Monroe
General Counsel

Texas Department of Transportation

Filed: June 1, 2005

University of Houston

Notice of Request for Proposal

In compliance with Chapter 2254, Texas Government Code, the University of Houston furnishes this notice of request for proposal. The University of Houston seeks proposals from qualified firms to provide advice and consultation to the University of Houston and its Executive Director of Public Safety to assist in undertaking a campus safety study and analysis identifying specific recommendations to improve student, parent and staff employee perceptions. This advice and consultation is authorized and supported by the UHS Chancellor/President as being of substantial need and necessary in performing the needed evaluation. Interested parties are invited to express their interest and describe their capabilities on or before July 18, 2005.

The term of the contract is to be for a thirty (30) day period beginning on or about July 20, 2005 and ending August 20, 2005. Further technical information can be obtained from Malcolm Davis at 713-743-0580. All proposals must be specific and must be responsive to the criteria set forth in this request.

GENERAL INSTRUCTIONS: Submit six (6) copies of your proposal in a sealed envelope to: University of Houston, Attention: Malcolm Davis, Executive Director of Public Safety and Chief of Police, University of Houston, 3869 Wheeler Street, Houston, Texas 77204-6191 before 4:00 P.M. July 18, 2005.

SCOPE OF WORK: The objectives of the study include, but are not limited to, a comprehensive plan for improved safety for the entire University of Houston Campus and specific changes with respect to: (A) Egress in and off campus; (B) Architectural changes; (C) Landscaping; (D) Deployment of University police and other parties in security; (E) Technology that may be applicable; (F) Education to student, parents and staff on safety issues; and (G) Marketing and advertising of University safety issues and successes.

Criteria for Evaluation: A. Relevant Qualifications and Experience with Institutions of Higher Education (30 Points); B. Price (25 Points); C. Responsiveness to RFP (25 Points); D. Team Composition and Capabilities (20 Points).

Schedule: July 18, 2005 Proposal Due; On or about July 20, 2005 Firm is selected, contract is signed and Project begins; and August 20, 2005, Project completed.

TERMINATION: This Request for Proposal (RFP) in no manner obligates the University of Houston to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written consultant contract. Progress towards this end is solely at the discretion of the University of Houston and may be terminated without penalty or obligation at any time prior to the signing of a contract. The University of Houston reserves the right to amend or cancel this RFP at any time, for any reason and to reject any or all proposals.

TRD-200502305

Brian S. Nelson

Executive Director and Associate General Counsel

University of Houston

Filed: June 6, 2005

The University of Texas System

Request for Information (RFI) - Immigration Matters

The University of Texas System (U. T. System) requests information from law firms interested in representing U. T. System and its institutions in certain immigration matters. This RFI is issued for the purpose of establishing (for the time frame beginning September 1, 2005 to August 31, 2006) a referral list from which U. T. System, by and through its Office of General Counsel, will select appropriate counsel for representation on specific immigration matters as the need arises.

Description. The U. T. System comprises six health institutions and nine academic institutions. U. T. System institutions attract and employ faculty and staff from around the world in furtherance of their mission. There are circumstances when the hiring of foreign faculty and staff is impacted by U.S. immigration laws. Further, students from around the world attend U. T. System institutions. There are circumstances when the attendance of foreign students at U. T. institutions is impacted by immigration laws. Subject to approval by the Texas Attorney General, U. T. System will engage outside legal counsel to provide legal counsel and advice to the U. T. System on immigration law matters pertaining to the hiring and employment of aliens and immigration law matters pertaining to foreign students. This legal counsel and advice may include, but not be limited to, the following: matters regarding petitioning for nonimmigrant visas; petitioning for employer sponsored permanent residency; representation before the Department of Labor including labor condition applications, labor certifications, PERM; complying with SEVIS requirements; and providing counsel on the impact of homeland security issues on immigration law. This legal counsel will include interaction with and representation before applicable U.S. governmental agencies including the Department of Homeland Security and the Department of Labor. This legal counsel will include interaction with the U. T. System Office of General Counsel, U. T. System institution international offices and U. T. institution human resource offices. The law firm should be admitted to practice before Texas United States District Courts.

U. T. System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of U. T. System's 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, including the firm's prior experience in immigration law-related matters including experience handling such immigration issues specific to hiring foreign faculty, physicians and staff at a university, 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) the submission of fee information (either in the form of hourly rates for each attorney who may be assigned to perform services in relation to U. T. System'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 U. T. System 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 U. T. System and the Attorney General of the State of Texas.

Format and Person to Contact. Responses should be sent by mail, facsimile, electronic mail, or delivered in person, marked "Response to Request for Information - Immigration Matters" and addressed to

Priscilla Lozano, Office of General Counsel, The University of Texas System, 201 West 7th Street, Austin, Texas 78701; (plozano@utsystem.edu; fax: (512) 499-4523; telephone (512) 499-4462 for questions). **Electronic mail is preferred.** 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. Do not send brochures.

Deadline for Submission of Response. All responses must be received by the Office of General Counsel of the U. T. System at the address set forth above not later than 5:00 p.m., Friday, July 22, 2005.

TRD-200502323

Francie A. Frederick

Counsel and Secretary to the Board of Regents

The University of Texas System

Filed: June 7, 2005



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 29 (2004) is cited as follows: 29 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 "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 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 subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). 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).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

Change of Address

(Please fill out information below)

Paper Subscription

One Year \$240 First Class Mail \$300

Back Issue (\$10 per copy)

_____ Quantity

Volume _____, Issue # _____.

(Prepayment required for back issues)

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

PHONE NUMBER _____

FAX NUMBER _____

Customer ID Number/Subscription Number _____

(Number for change of address only)

Payment Enclosed via Check Money Order

Mastercard/VISA Number _____

Expiration Date ____/____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Visit our home on the internet at <http://www.sos.state.tx.us>.

Periodical Postage

PAID

Austin, Texas
and additional entry offices

