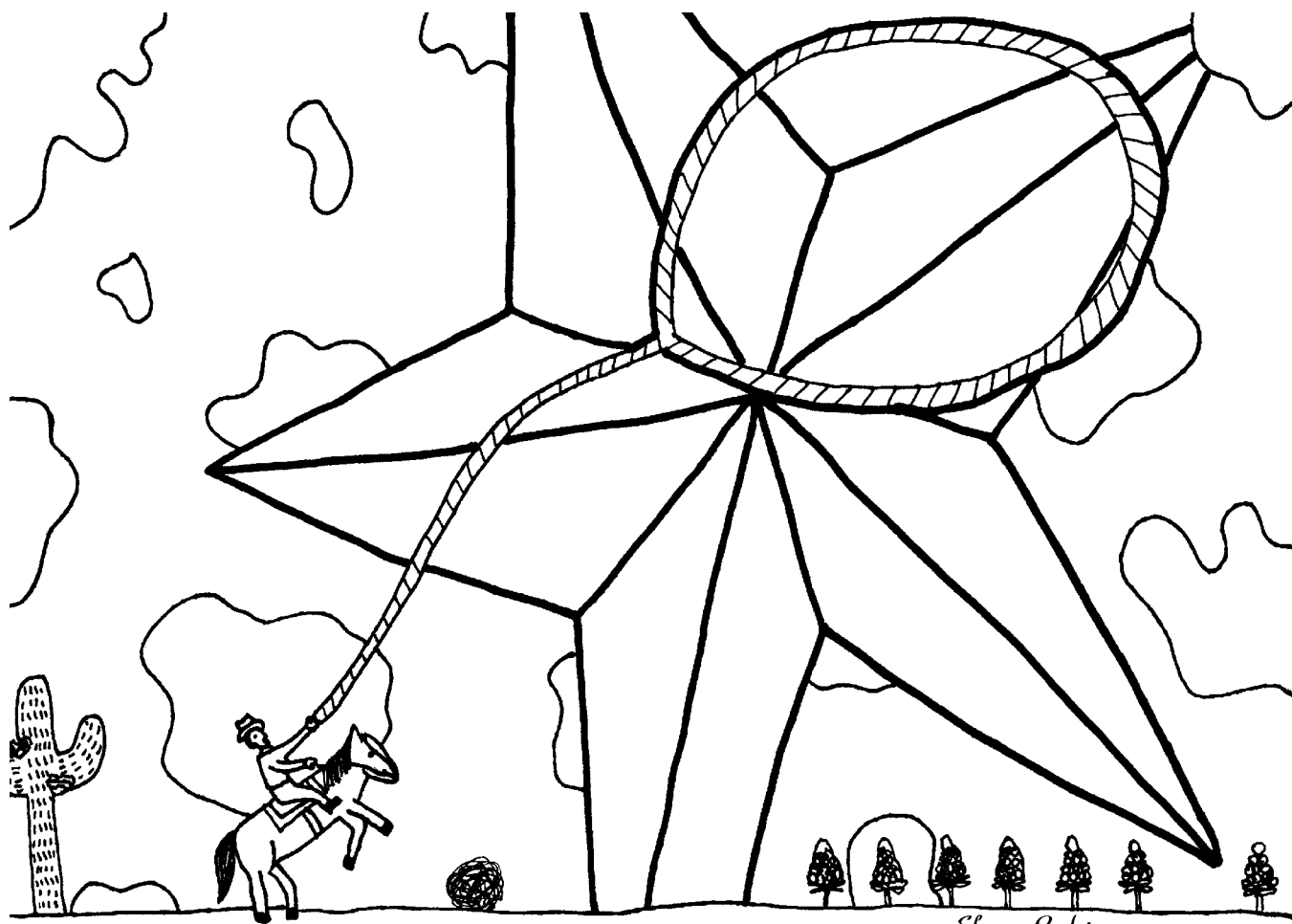

TEXAS REGISTER

Volume 30 Number 37

September 16, 2005

Pages 5875-5990



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

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

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register's* Internet site:
<http://www.sos.state.tx.us/open/index.shtml>

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: Subadmin@sos.state.tx.us

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.

<http://www.oag.state.tx.us/opinopen/opengovt.shtml>

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

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

...

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

THE GOVERNOR

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

Appointments

Appointments for August 30, 2005

Appointed as Chief Administrative Law Judge, Office of Administrative Hearings, for a term to expire two years from the date of qualification, Sheila Bailey Taylor of Austin. Judge Taylor is being reappointed.

Naming as designee on the Homeland Security Council, pursuant to SB 9, 79th Legislature, Regular Session, for a term at the pleasure of the Governor, Steven C. McCraw of Austin. Mr. McCraw will serve as Presiding Officer of the Council.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Richard Earl Tankerson of The Woodlands.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, Robert K. Peters of Tyler.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2007, David Coco of Austin.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Joseph Muniz of Harlingen.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Robin Riccardi of Spring.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2009, Connie Hughes of Idalou.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2011, Timothy J. Flannery of Seabrook.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2011, Lance L. Goetz, M.D. of Dallas.

Appointed to the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term to expire February 1, 2011, Diane Marie Novy of Sugar Land.

Designating Tim Flannery of Seabrook as Presiding Officer of the Assistive and Rehabilitative Services Council, pursuant to HB 2292, 78th Legislature, Regular Session, for a term at the pleasure of the Governor.

Designating John W. Luna as Presiding Officer of the Texas Council on Purchasing from People with Disabilities for a term at the pleasure

of the Governor. Mr. Luna is replacing Margaret Pfluger as Presiding Officer. Ms. Pfluger will continue to serve on the council.

Appointments for August 31, 2005

Appointed to the Texas Higher Education Coordinating Board for a term to expire August 31, 2011, A. W. Whit Riter, III of Tyler. Mr. Riter is being reappointed.

Appointed to the Public Utility Commission of Texas for a term to expire September 1, 2011, Julie Caruthers Parsley of Austin. Ms. Parsley is being reappointed.

Appointed as Commissioner of Workers' Compensation, pursuant to HB 7, 79th Legislature, Regular Session, for a term to expire February 1, 2007, Albert Betts, Jr. of Austin.

Designating Terry Glen Rascoe, M.D. as Presiding Officer of the Texas State Board of Acupuncture Examiners for a term at the pleasure of the Governor. Dr. Rascoe will replace Dr. Everett Heinze, Jr. as Presiding Officer.

Rick Perry, Governor

TRD-200503901



Proclamation 41-3018

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of Texas, do hereby certify that Hurricane Katrina, a disaster in sister states, has created an emergency disaster and emergency conditions for the people in the State of Texas beginning September 1, 2005.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby proclaim the existence of such a disaster and direct that all necessary measures, both public and private as authorized under Section 418.015 of the code, be implemented to meet that disaster.

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

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my Office in the City of Austin, Texas, this the 1st day of September, 2005

Rick Perry, Governor

Attested by: Roger Williams, Secretary of State

TRD-200503909



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-0377-GA

Requestor:

Mr. Carl Reynolds

Administrative Director

Office of Court Administration

Post Office Box 12066

Austin, Texas 78711-2066

Re: Eligibility of former and retired judges to sit by assignment (RQ-0377-GA)

Briefs requested by September 30, 2005

RQ-0378-GA

Requestor:

The Honorable Brandon S. Belt

Coryell County Attorney

113 South 7th

Gatesville, Texas 76528

Re: Imposition of municipal hunting regulations on newly annexed areas of a city (RQ-0378-GA)

Briefs requested by October 1, 2005

RQ-0379-GA

Requestor:

The Honorable David Aken

San Patricio County Attorney

San Patricio County Courthouse, Room 102

Sinton, Texas 78387

Re: Whether a person may set up a plat copying machine in a county clerk's office or another area of the courthouse (RQ-0379-GA)

Briefs requested by September 30, 2005

RQ-0380-GA

Requestor:

Mr. Carl Reynolds

Administrative Director

Office of Court Administration

Post Office Box 12066

Austin, Texas 78711-2066

Re: Confidentiality of grand and petit jury lists (RQ-0380-GA)

Briefs requested by September 30, 2005

RQ-0381-GA

Requestor:

Mr. James R. Hines, Commissioner

Texas Department of Aging and Disability Services

Post Office Box 149030

Austin, Texas 78714-9030

Re: Whether a person who holds a home health care license must obtain an assisted living facility license in order to provide personal care services in a residential setting (RQ-0381-GA)

Briefs requested by September 30, 2005

RQ-0382-GA

Requestor:

Eduardo J. Sanchez, M.D., M.P.H. Commissioner

Texas Department of State Health Services

1100 West 49th Street

Austin, Texas 78756

Re: Whether a hospital licensed under chapter 241 of the Health and Safety Code may charge retrieval and copying fees for certain records (RQ-0382-GA)

Briefs requested by October 1, 2005

RQ-0383-GA

Requestor:

The Honorable Richard E. Glaser

Fannin County and District Attorney

Fannin County Courthouse
101 East Sam Rayburn Drive, Suite 301
Bonham, Texas 75418

Re: Whether an elected constable may simultaneously serve as a full-time deputy sheriff (RQ-0383-GA)

Briefs requested by October 1, 2005

RQ-0384-GA

Requestor:

Mr. Carl Reynolds
Administrative Director
Office of Court Administration
Post Office Box 12066
Austin, Texas 78711-2066

Re: Proper means by which a county clerk may certify a document (RQ-0384-GA)

Briefs requested by October 1, 2005

RQ-0385-GA

Requestor:

The Honorable Joe Nixon
Chair, Committee on Civil Practices
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether a legislator may simultaneously serve as president of a municipal management district operating under chapter 375, Local Government Code (RQ-0385-GA)

Briefs requested by October 1, 2005

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

TRD-200503889
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: September 7, 2005

◆ ◆ ◆

EMERGENCY RULES

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.13, §15.14

The General Land Office adopts on an emergency basis new §15.13, concerning Emergency Provisions for Stabilization and Repair of Damaged Residential Structures and new §15.14, concerning Emergency Measures for Dune Restoration and Temporary Shoreline Protection Measures. The General Land Office recognizes that the Village of Surfside Beach, Texas (the Village) has areas where residential structures are in need of emergency stabilization and repair and where emergency hazard mitigation measures are needed to reestablish the protective barrier provided by natural dunes damaged or destroyed by storm tidal surges in order to prevent imminent peril to the public health, safety, and welfare.

The sections are adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by high tides and erosion resulting from Hurricane Katrina. As a result of Hurricane Katrina, August 28-29, 2005, extreme tides and wave action, which greatly exceeded normal levels, caused substantial coastal flooding and erosion. Although Hurricane Katrina made landfall in Louisiana, its widespread effects impacted the Texas coast. The Village in particular experienced the loss of two feet in elevation of beach sand. The structural integrity of many houses in the Village has been severely impacted as a result of these natural forces. The protective barrier provided by naturally occurring dunes in the Village has been severely impacted. Coastal residents, public beaches, public and private coastal property, and coastal natural resources are extremely vulnerable to injury, damage, and destruction from subsequent tropical storms and hurricanes, as Hurricane Katrina struck before the end of hurricane season.

Following the landfall of Hurricane Katrina, the Village requested immediate assistance from the General Land Office. General Land Office staff conferred with local government officials and determined the necessity for emergency rules which allow emergency stabilization and repair of structures and provide for temporary suspension of the permit and certificate application requirements for these emergency stabilization and repair techniques and methods, as well as other hazard mitigation measures.

Emergency rule §15.13 provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Katrina. The emergency rule is applicable only to the Village. Section 15.13(c) provides definitions applicable to this section. Section 15.13(d) allows the local government to issue authorizations for emergency stabilization and repair of residential structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.13(e) provides that the normal permit process shall not apply to authorizations, and that emergency authorizations are valid for no more than six months from issuance. Section 15.13(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency stabilization and repair actions. They are also required to maintain a written record of the specific activities that have been authorized, including pictures of the structure before and after the repairs are completed. Section 15.13(g) provides requirements and limitations with regard to authorization by the local government of emergency stabilization and repair. Section 15.13(h) provides additional limitations with regard to structures located on the public beach, and requirements related to the placement of beach quality sand. Sections 15.13(i), (j), (k) and (l) provide additional limitations and requirements related to the repair of hard structures and septic and sewage systems, the placement of materials on the public beach, and the removal of beach debris.

Emergency rule §15.14 provides procedures and requirements for issuance of authorization to undertake emergency measures for dune restoration or the construction of temporary geotextile shoreline protection projects for littoral property impacted by Hurricane Katrina. The rule is applicable to the Village. Section §15.14(c) provides definitions applicable to this section. Section 15.14(d) allows the local government with beach/dune permitting jurisdiction to issue authorizations for emergency measures for dune restoration or the construction of temporary geotextile shoreline protection projects as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.14(e) provides that the normal permit process shall not apply to authorizations, and that emergency authorizations are valid only for six months. Section 15.14(f) provides that the local government is required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency dune restoration projects and the construction of geotextile shoreline protection projects. The local government is also required to maintain a written record of the specific activities that have been authorized, including pictures of the dune area before and after the emergency dune restoration or the construction of geotextile shoreline protection projects are completed. Section 15.14(g) provides requirements and limitations with regard to the location of emergency dune restoration projects. Section 15.14(h) provides guidelines for authorized

methods and materials with regard to emergency dune restoration projects. Section 15.14(i) contains limitations on the construction of geotextile shoreline protection projects to ensure that such projects are consistent with policies of the Coastal Coordination Council established for structural shoreline protection projects or are removed within six months. Section 15.14(j) contains prohibitions with regard to dune restoration projects and temporary shoreline protection measures. Section 15.14(k) prohibits a local government from authorizing construction or repair of a bulkhead.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this amendment because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare.

The new sections are adopted on an emergency basis under the Texas Natural Resources Code §§63.121, 61.011, and 61.015(b), which provide the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new sections are also adopted pursuant to the Texas Natural Resources Code §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code §6.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new sections are adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety or welfare.

§15.13 Emergency Provisions for Stabilization and Repair of Damaged Residential Structures.

(a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency stabilization and repair of residential structures which have been damaged as the result of Hurricane Katrina.

(b) Applicability. This section applies only to structures located in the Village of Surfside Beach, Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

- (1) The Code--The Texas Natural Resources Code.
- (2) Habitable--The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.
- (3) House--A single or multi-family structure that serves as living quarters for one or more persons or families.
- (4) Emergency repair--Those immediate response actions that must be undertaken to render a structure habitable or to prevent further damage.
- (5) Emergency stabilization--Those immediate response actions that must be undertaken to stabilize a residential structure

that is subject to imminent collapse or substantial damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(d) Local government authorization. The local government with jurisdiction to issue dune protection permits and beachfront construction certificates in the Village of Surfside Beach, Texas, may, in accordance with this section, authorize emergency stabilization and repair of residential structures that have been damaged by Hurricane Katrina. All authorizations issued under this section must otherwise be in accordance with applicable state and local law. The local government is responsible for assessing damage to such structures, determining whether the structures are eligible for approval of emergency stabilization and repair, and determining appropriate emergency stabilization and repair procedures. Under this section, the local government may only authorize emergency stabilization and repair as necessary to eliminate the danger and threat to public health, safety, and welfare. Any proposed stabilization and repair method or technique must comply with the standards provided in this section and §15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards) or §15.12 of this title (relating to Temporary Order Issued by the Land Commissioner).

(e) Procedure. The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization and repair of residential structures under this rule. However, all property owners eligible to undertake emergency stabilization efforts and repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency stabilization and repair of residential structures will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid for no more than 6 months from the date of issuance. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing emergency stabilization and repair of residential structures shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including pictures of the structure before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized Repairs. The local government may authorize emergency stabilization and repair of a residential structure only if the local government determines that the proposed action:

- (1) is solely to make the house habitable or prevent further damage, including reconnecting the house to utilities;
- (2) does not increase the footprint of the house;
- (3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;
- (4) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;
- (5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

- (6) does not occur seaward of mean high water; and,
- (7) does not include construction underneath, outside or around the house other than for reasonable access to the house.

(h) Existing structures on the public beach.

(1) A local government may grant authorization in accordance with this section for emergency stabilization of structures that encroach on the public beach, but only to the limited extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) A local government may grant authorization in accordance with this section for emergency repair of a residential structure that encroaches on the public beach, but only if the structure is:

(A) a house; and,

(B) not in imminent danger of collapse or other imminent threat to public health and safety.

(3) Beach-quality sand may be placed on the lot in the area twenty feet seaward of a structure where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(i) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads or hard protective structures. However, the construction of a temporary geotextile shoreline protection project is permitted only as provided in §15.14 of this title (relating to Emergency Measures for Dune Restoration and Temporary Erosion Response Measures).

(j) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(k) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach except in conjunction with authorized emergency stabilization and repair of residential structures.

(l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. The local government, therefore, shall coordinate with property owners to remove debris such as pilings, concrete and garbage from the public beach as soon as possible.

§15.14. Emergency Measures for Dune Restoration and Temporary Shoreline Protection Measures.

(a) Purpose. The purpose of this section is to allow a local government to grant property owners the ability to immediately undertake emergency repairs to dunes that have been damaged by the effects of Hurricane Katrina and to construct dune restoration projects and temporary erosion response measures to minimize further threat or damage to coastal residents and littoral property.

(b) Applicability. This section applies only to the emergency dune restoration projects and the construction of temporary geotextile shoreline protection projects located in the Village of Surfside Beach,

Texas. This section shall be in effect for 120 days from the date of filing with the Office of the Secretary of State and may be extended once by the Land Commissioner for not longer than 60 days as necessary to protect public health, safety, and welfare.

(c) Definitions. The following words, terms, and phrases when used in this section, shall have the following meanings:

(1) Emergency dune restoration--those immediate response measures that must be undertaken to construct a dune, repair a damaged dune, or stabilize an existing dune in order to minimize further threat or damage to coastal residents and littoral property.

(2) Temporary shoreline protection measures--those immediate response measures, temporary in nature, that must be undertaken for the construction a geotextile shoreline protection project that will be removed by the local government no later than six months from its construction.

(d) Local government authorization. The local government with jurisdiction to issue dune protection permits and/or beachfront construction certificates in the Village of Surfside Beach, Texas, may, in accordance with this section, authorize emergency dune restoration projects and temporary shoreline protection measures in areas where dunes or existing shoreline protection projects have been damaged by the effects of Hurricane Katrina. All authorizations issued under this section must otherwise be in accordance with applicable state and local laws. Under this section, the local government may only authorize emergency dune restoration projects and temporary shoreline protection measures as necessary to minimize the danger and threat to coastal residents and littoral property. Any proposed emergency dune restoration project or temporary shoreline protection measure must comply with the standards provided in this section.

(e) Procedures. The permit and certificate application requirements and procedures of §15.3(s)(4) of this title (relating to Administration) are not applicable to emergency dune restoration projects and temporary shoreline protection measures. However, any person eligible to undertake a emergency dune restoration project or temporary shoreline protection measure must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency dune restoration project or temporary shoreline protection measure under this section will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid only for six months, after which it will expire. A local government shall not renew an authorization issued under this section.

(f) Written Record. The local government authorizing an emergency dune restoration project or temporary shoreline protection measure shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including pictures of the emergency dune restoration project or temporary shoreline protection measure before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, the local government shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized emergency dune restoration. The local government shall require persons to locate restored dunes in the area extending no more than 20 feet seaward of the post-storm line of vegetation, referred to herein as the restoration area. The local government shall

ensure that the restoration area follows the natural meander or migration of the post-storm vegetation line. The local government may issue permits and certificates to allow the restoration of dunes on the public beach only under the following conditions:

(1) Restored dunes may be located farther seaward than the restoration area only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such dunes shall not substantially restrict or interfere with the public use of the beach at normal high tide;

(2) The local government shall not allow any person to restore dunes, even within the restoration area, if such dunes would effectively prohibit access to or use of the public beach at normal high tide; and

(3) Under no circumstances may sand or other materials be placed below mean high water.

(h) Authorized methods and materials for emergency dune restoration. The local government may allow persons to use the following methods or materials for emergency dune restoration:

(1) piles of sand having similar grain size and mineralogy as the surrounding beach;

(2) clay core dunes with a minimum six-inch cover of sand having similar grain size and mineralogy as the surrounding beach,

(3) organic brushy material such as hay bales; and

(4) sand obtained by scraping accreting beaches only if the scraping is approved by the local government and the project is monitored to determine any effect on the public beach, including, but not limited to, increase erosion of the public beach.

(i) Construction of temporary shoreline protection measures. Notwithstanding the general prohibition on construction of erosion response structures in §15.6(c) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards), a local government may authorize the construction of a temporary geotextile shoreline protection project, subject to the following limitations:

(1) Temporary geotextile shoreline protection project may be located farther seaward than the restoration area referred to in subsection (g) of this section only to the limited extent necessary to minimize further damage to coastal residents and littoral property, provided such temporary shoreline protection measures shall not substantially restrict or interfere with the public use of the beach at normal high tide;

(2) The local government shall not authorize any person to construct a geotextile shoreline protection project that is located below mean high water; and

(3) The temporary geotextile shoreline protection project must either conform with the policies of the Coastal Coordination Council promulgated in §501.26(b) of this title (relating to Policies for Construction in the Beach/Dune System) or be removed by the local government within six months.

(j) Prohibitions. The local government shall not allow any person to undertake dune restoration projects or temporary shoreline protection projects using any of the following methods or materials:

(1) materials such as bulkheads, riprap, concrete, or asphalt rubble, building construction materials, and any non-biodegradable items;

(2) fine or silty sediments;

(3) sediments containing the hazardous substances listed in Appendix A to §302.4 in Volume 40 of the Code of Federal Regulations, Part 302 in concentrations which are harmful to people, flora, and fauna as determined by applicable, relevant, and appropriate requirements for toxicity standards established by the local, state, and federal governments; or,

(4) sand obtained by scraping or grading dunes or beach.

(k) The local government is not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads. This rule does not prohibit a local government from authorizing the removal of portions of damaged bulkheads that threaten public health safety and welfare.

This agency hereby certifies that the emergency adoption 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 September 2, 2005.

TRD-200503839

Trace Finley

Policy Director

General Land Office

Effective Date: September 2, 2005

Expiration Date: December 30, 2005

For further information, please call: (512) 475-1859

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 102. HEALTH SPAS

SUBCHAPTER D. SECURITY

1 TAC §102.32

The Office of the Secretary of State proposes a new §102.32, concerning the amount of security that is required under §702.151 of the Occupations Code. The purpose of the rule is to implement amendments to the Texas Health Spa Act, Chapter 702 of the Occupations Code, enacted by the 79th Regular Legislative Session.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section has determined that for the first five year period that the proposed section is in effect there will be no fiscal implications for state or local governments as a result of enforcing the section.

Mr. Joyner also has determined that for each year of the first five years that the new section is in effect the public benefit anticipated as a result of enforcing the section will be increased protection for the reimbursement of prepaid fees to members of registered health spas that close. The effect on health spa registrants who are required to comply with the section will be the cost of providing a security deposit in an amount that is based on the number of members at the registrant's facility. There is no anticipated impact on local employment.

The amount of the security required was calculated based on historical data relating to the number and amount of prepaid membership claims for the previous five years relating to closed health spas that had filed a security deposit.

Comments on the proposed rule may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The new section is proposed under the Texas Occupations Code, §702.051(b)(1) which provides the Secretary of State with the authority to prescribe and adopt rules to administer Chapter 702 of the Occupations Code.

The new section affects Texas Occupations Code, §702.151.

§102.32. Amount of Security Required under §702.151 of the Act.

(a) The health spa registration application shall include a written statement from the health spa operator that specifies the total number of members at the health spa location.

(b) A health spa operator shall file security for each of the operator's health spa locations in the following amounts based on the location's membership:

Figure: 1 TAC §102.32(b)

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

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

TRD-200503803

Lorna Wassdorf

Director, Business and Public Filings

Office of the Secretary of State

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0775

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.5

The Texas Animal Health Commission proposes to amend Chapter 40, which is entitled "Chronic Wasting Disease" ("CWD"). The proposed amendment creates a new §40.5 entitled "monitoring requirement for elk." The purpose is for ensuring that all Texas premises where commercial elk are maintained register with the Commission's premises identification program. The new section also provides for requirements related to animal identification, recordkeeping and reporting requirements.

CWD is a disease that affects certain susceptible cervid species including white tail deer and elk. In Texas white tailed deer are considered to be indigenous to the state and under the regulatory jurisdiction of Texas Parks and Wildlife. However elk are not considered indigenous to this state and therefore are classified as exotic livestock and under the regulatory jurisdiction of the Commission. Captive white tail deer are under a surveillance program for CWD. This proposed rule will provide a mechanism to ensure that a surveillance system for elk is in place.

The proposed rule will require that all owners of elk are required to obtain from the Commission a premises identification number for any location where elk are handled, kept or managed, unless excepted. This program applies to elk owned by a person and not those elk which are free ranging. The requirement will provide a necessary and valuable tool for disease surveillance and

greatly strengthens the Commission's ability to respond to CWD should it be discovered in the state. The rule also includes a requirement for the seller and buyer to report change of ownership or movement events to ensure that the system is current. The Commission is providing in the proposal that both the buyer and seller have equal reporting responsibility to ensure compliance. However this subsection could be amended based on comments to place the responsibility on only one of the parties. The proposed rule also requires that all elk being transported in this state must be either individually identified or be accompanied by documentation showing that they are not changing ownership or moving to a new location. This requirement also will be an effective compliance tool for any elk which are illegally transported into this state. Lastly the rule contains a requirement to maintain and provide transactional records for all elk sold in Texas or moved to locations with different premise identification numbers.

The standards proposed in this chapter precede implementation of the national animal identification system for all livestock and exotic livestock. The national program and the implementation in Texas is still in the developmental process. As that program develops and evolves there may be changes and additions to this rule to ensure that it does not conflict with the national standard. The rule also contains a recommendation that elk located within the state that die of natural or unnatural causes or are harvested by hunting or slaughter should be tested for Chronic Wasting Disease. This is a recommendation by the Commission and not a requirement. The purpose is to promote testing for CWD in order to ensure adequate on-going surveillance to support CWD surveillance in all susceptible species in the state of Texas.

Subsection (a) provides that each unique geographic physical location on which elk are held, managed, or handled shall be registered with the Commission unless excepted. Subsection (b) provides for a fee for premises identification. Subsection (c) provides for the identification for elk which are moved onto or off of a premises. Subsection (d) provides reporting requirements for elk which move onto or off of a registered premises. Subsection (e) provides that it shall be the responsibility of both the buyer and the seller to assure that reports of transactions are made to the commission. Subsection (f) provides for recordkeeping requirements. Subsection (g) provides for how premises identification is handled for different physical locations with a common owner. Subsection (h) provides that elk located within the state that die of natural or unnatural causes or are harvested by hunting or slaughter should be tested for Chronic Wasting Disease. Subsection (i) provides for violations of this section.

FISCAL NOTE

Mr. Mike Jensen, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the rule is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rule. Implementation of this rule poses no significant fiscal impact on small or micro-businesses that own or transfer ownership of commercial elk. Although the rule makes provision for a premises registration fee in the amount of \$20 good for two years and renewable every other year, such a fee should not pose a significant fiscal impact to producers or animal owners who register their premises. Premises registration benefits the state, producers, and consumers by facilitating the Commission's ability to quickly respond to a disease threat and to trace animals, including elk, that might have been exposed to an animal disease. While this rule proposal is specific to elk, a

similar premises registration fee mechanism will apply to all livestock and exotic livestock in this state when full implementation of NAIS in Texas takes place.

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 that commercial elk will be required located on premises which have Commission issued identification. The rule also provides for reporting, identification and recordkeeping requirements which create a stronger surveillance system and improves our ability to quickly respond and control CWD disease issues related to elk.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, Section 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 Section 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 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

H.B. 1361 implements an animal identification program and provides rulemaking authority through Section 161.056, Agriculture Code. Section 161.056 authorizes the commission to implement an animal identification program that is consistent with the United States Department of Agriculture's National Animal Identification System. It authorizes the commission to require the use of official identification numbers assigned as part of the animal identification program for animal disease control, animal emergency management, and other commission programs and assess a registration fee on all entities that register for a premises identification number. Also it authorizes the commission to adopt rules necessary to implement and enforce this section.

The Commission is vested by statute, Section 161.041 (a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by Section 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 Section 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 Section 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 Section 161.054. That authority is found in Section 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 Section 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 proposal.

§40.5. Monitoring Requirements for Elk.

(a) Each unique geographic physical location on which elk are held, managed, or handled shall be registered with the Commission under the premises identification system and receive a unique premises identification number for each unique premises registered. Owners or managers of such facilities shall be responsible to acquire premises identification numbers for premises under their control. Separate geographic physical locations or units that are under common ownership and management may be identified as part of one registered premises. All locations or units registered under one premises identification number must be identified on the premises registration form. Those owners of elk who do not buy, sell, give, transfer or move elk from one location to another are not required to be registered until the commission requires registration of all livestock premises in the state.

(b) A premises registration fee of ten dollars (\$10.00) per year, to be paid as a biennial fee of twenty dollars (\$20.00) per biennium, shall be paid by each owner or manager of an elk premises at the time the premises is registered with the commission and every two years on the anniversary date for the issuance of the original premises identification number. The premises registration fee may be paid by check submitted at time of registration or by credit card when the Commission has established a mechanism to receive payment by credit card

(c) Elk moved onto or off of a registered premises shall be individually identified, with an official electronic identification devise approved by the Commission, prior to entry onto or exit from the registered premises except as authorized by subsection (g) of this section.

(d) A report, either in hard copy on forms provided or authorized by the Commission, or electronic in the format specified by the Commission, shall be made to the Commission of all elk that are moved onto or off of registered premises. Such report shall be submitted within twenty-four hours of the transaction or no later than the end of the next business day. The transaction report shall include the following information:

- (1) Premises identification of the premises of origin
- (2) Premises identification of the destination premises

- (3) Electronic individual identification devise number
- (4) Other official or unofficial identification numbers
- (5) Age
- (6) Gender

(e) It shall be the responsibility of both the buyer and the seller to assure that reports of transactions are made to the commission.

(f) The buyer and seller must maintain records for all elk purchased, sold, moved, or transported and provide those to commission personnel upon request. Records required to be kept under the provisions of this section shall be maintained for not less than five (5) years. The records shall include the following information.

- (1) Owner's name
- (2) Premise Identification Number
- (3) Official electronic ID and Ranch tag (additional field for retag)
- (4) Gender/age of animal
- (5) Source of animal (if purchased addition)
- (6) Movement to another premise
- (7) Disposition

(g) Owners of registered premises which include more than one unit or location under the same premises identification number may not be required to officially identify elk being moved from one unit to another or to report the movement to the commission. Such elk may be moved without individual identification if accompanied by a written permit or letter from the commission which includes and clearly specifies all units of the registered premises.

(h) Elk located within the state that die of natural or unnatural causes or are harvested by hunting or slaughter should be tested for Chronic Wasting Disease.

(i) Violations

(1) To transport elk in this state from or to any location that is not a registered elk premises.

(2) To buy, sell, move or transport elk that are not identified with an official electronic individual identification devise, except as provided by subsection (g) of this section.

(3) To fail to report the transfer of ownership of elk.

(4) Remove an official identification device from any elk.

(5) Failure to keep and maintain records as required by this section.

(6) Failure or refusal to make records available to commission staff upon request for such records.

(7) Violations can be handled, as appropriate, under Section 161.056 or 161.148 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on September 2, 2005.

TRD-200503846

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TITLE 16. ECONOMIC REGULATION

**PART 4. TEXAS DEPARTMENT OF
LICENSING AND REGULATION**

**CHAPTER 59. CONTINUING EDUCATION
REQUIREMENTS**

16 TAC §59.3

The Texas Department of Licensing and Regulation proposes amendments to 16 Texas Administrative Code, §59.3, regarding continuing education requirements.

Texas Occupations Code, §51.405 requires the Texas Commission of Licensing and Regulation ("Commission") to recognize, prepare, or administer continuing education programs for license holders. In response to this legislative mandate, the Commission has adopted rules at 16 Texas Administrative Code, Chapter 59 to establish general requirements for continuing education providers and courses. The chapter contains rules of general applicability that currently apply to air conditioning and refrigeration contractors; auctioneers and associate auctioneers; and electricians but will eventually apply to all occupations regulated by the Department that are subject to a continuing education requirement. The amendments to §59.3 add cosmetologists, licensed court interpreters, property tax consultants, and registered accessibility specialists to the coverage of Chapter 59. These amendments will allow for providers of continuing education for those programs to begin registering with the Department and, once a specific continuing education rule is in place for the particular program, obtaining approval for courses. The provisions of Chapter 59, including fee provisions, would apply to those programs. Continuing education requirements that are specific to each of these programs will be contained in the rules for the respective programs.

This rule amendment is necessary to implement Texas Occupations Code, §51.405 with respect to the referenced programs.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the amendment is in effect there will be additional costs to the Department from enforcing and administering the rule and additional revenue generated from new fees. Because the number of potential continuing education providers is unknown, the Department is unable to estimate the additional costs or revenue. It is anticipated that there will be no net fiscal impact to state government because revenue from new fees should be sufficient to cover additional costs. There will be no cost to local government as a result of enforcing or administering the amended rule.

Mr. Kuntz also has determined that for each year of the first five-year period the amendment is in effect, the public benefit will be that continuing education taken by license holders will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of license holders, who in turn provide services to the public.

The probable economic costs to persons required to comply with the proposed rule and the effect on small or micro-businesses would be the following. Providers would be required to pay \$250 annually, for each occupation for which the provider offers continuing education. For each course, the provider would be required to pay \$100 annually, for each occupation to which the course is offered for continuing education credit. The total cost to a particular provider would depend on the number of courses offered and the number of occupations served by that provider. In addition, a provider would be charged \$25 for a revised or duplicate registration.

A provider may incur some costs in furnishing copies of course materials to the Department as part of the course approval application. This cost would depend on the amount and dollar value of materials involved, which would vary by course, and so the Department is unable to provide an estimate.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders. In addition, these rules are necessary to implement Texas Occupations Code, §1152.204(a), concerning continuing education for property tax consultants, and Texas Occupations Code, §1602.354, concerning continuing education for cosmetologists. Pursuant to Senate Bill 411, 79th Legislature, the Department is the agency responsible for licensing and regulating cosmetologists, effective September 1, 2005.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1152, 1602, and 1603 and Texas Government Code, Chapters 57 and 469. No other statutes, articles, or codes are affected by the proposal.

§59.3. Purpose and Applicability.

These rules are promulgated to establish continuing education provider and course requirements for the following occupations regulated by the Department of Licensing and Regulation:

(1) Air conditioning and refrigeration contractors, as provided by Texas Occupations Code, Chapter 1302. Additional continuing education requirements relating to air conditioning and refrigeration contractors may be found in Chapter 75 of this title.

(2) Auctioneers and associate auctioneers, as provided by Texas Occupations Code, Chapter 1802. Additional continuing education requirements relating to auctioneers and associate auctioneers may be found in Chapter 67 of this title.

(3) Cosmetologists, as provided by Texas Occupations Code, Chapters 1602 and 1603. Additional continuing education requirements relating to cosmetologists may be found in Chapter 83 of this title.

(4) ~~[(3)]~~ Electricians, as provided by Texas Occupations Code, Chapter 1305. Additional continuing education requirements relating to electricians may be found in Chapter 73 of this title.

(5) Licensed court interpreters, as provided by Texas Government Code, Chapter 57, Subchapter C. Additional continuing education requirements relating to licensed court interpreters may be found in Chapter 80 of this title.

(6) Property tax consultants, as provided by Texas Occupations Code, Chapter 1152. Additional continuing education requirements relating to property tax consultants may be found in Chapter 66 of this title.

(7) Registered accessibility specialists, as provided by Texas Government Code, Chapter 469. Additional continuing education requirements relating to registered accessibility specialists may be found in Chapter 68 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 September 2, 2005.

TRD-200503845

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 463-6208



CHAPTER 80. LICENSED COURT INTERPRETERS

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code, §80.25 and proposes new rules §80.23, concerning license renewal requirements, and §80.25, concerning continuing education requirements, in the licensed court interpreters program.

The repeal of §80.25 is necessary to follow the Department's preferred rule organizational structure concerning continuing education requirements. The new §80.23 is only a renumbering of the previous §80.25. There are no other changes to this rule section.

Under Texas Occupations Code, §51.405 the Texas Commission of Licensing and Regulation ("Commission") is required to recognize, prepare, or administer continuing education programs for license holders and a license holder must participate in the programs to the extent required by the Commission to keep the person's license. The proposed new rule §80.25 implements this statutory requirement in the licensed court interpreters program. General requirements for continuing education providers and courses are contained in 16 Texas Administrative Code, Chapter 59. In addition to those rules, the proposed new §80.25 establishes requirements that are specific to the licensed court interpreters program for licensees, providers, and courses.

The new rule requires a licensed court interpreter to complete eight hours of continuing education in Department-approved courses to renew a license. The continuing education hours must include two hours of instruction in ethics. The continuing education hours must be completed during the term of the current license or, in the case of a late renewal, within the

one-year period prior to the date of renewal. A licensee may not receive credit for attending the same course more than once. A licensee is required to retain a copy of the certificate of completion for one year after the date of completion of the course. The rule requires that a provider's course must cover one or more specified topics to be approved by the Department. The rule applies to providers and courses upon the effective date of the rule. The rule applies to licensed court interpreters licenses that expire on or after September 1, 2006.

The proposed repeal and new rules are necessary to implement Texas Occupations Code, §51.405 which requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the repeal and new rules are in effect there will be some additional costs to the Department in approving courses and enforcing requirements of the rules. It is anticipated that revenue from additional fees established in 16 Texas Administrative Code, Chapter 59 would be sufficient to offset additional costs to the state. Because the number of potential continuing education providers is unknown, the Department is unable to estimate additional costs or revenue. There will be no cost to local government as a result of enforcing or administering the proposed repeal and new rules.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal and new rules are in effect, the public benefit will be that continuing education taken by licensed court interpreters will be subject to minimum standards. The public will benefit from standards that serve to increase or maintain the skills and competence of license holders, who in turn provide services to the public.

There will be some economic costs to persons who are required to comply with the new rules, including small or micro-businesses. License holders will need to obtain the required continuing education hours from a private provider that will likely charge a fee. The amount of the fee charged by the provider is a matter of private contract between the provider and license holder and is not regulated by the Department. Therefore, the Department is unable to provide a precise estimate of the cost to license holders. However, the Department anticipates that the added cost to license holders will not be unduly high relative to the benefits to the public and license holders of the continuing education requirement. There are no anticipated economic costs to persons who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 or facsimile (512) 475-3032, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §80.23, §80.25

The new rules are proposed under Texas Occupations Codes, Chapter 51 and Texas Government Code, Chapter 57 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department. In particular, the rule implements Texas Occupations Code, §51.405.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 57. No other statutes, articles, or codes are affected by the proposal.

§80.23. Licensing Requirements--Renewal.

(a) A complete application for license renewal and all required fees must be filed by the expiration date, or the application will be considered late and the license will expire.

(b) Non-receipt of a license renewal notice from the Department does not exempt a person from any requirements of this chapter.

(c) A person shall not perform work requiring a license under Chapter 57 of the Texas Government Code with an expired license.

§80.25. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a license under Texas Government Code, Chapter 57, Subchapter C, a licensee must complete eight hours of continuing education in courses approved by the department, including two hours of instruction in ethics.

(c) The continuing education hours must have been completed within the term of the current license, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one year period immediately prior to the date of renewal.

(d) A licensee may not receive continuing education credit for attending the same course more than once.

(e) A licensee shall retain a copy of the certificate of completion for a course for one year after the date of completion. In conducting any inspection or investigation of the licensee, the department may examine the licensee's records to determine compliance with this subsection.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) law and rules affecting the practice of a licensed court interpreter;

(2) ethics;

(3) practice topics, such as etiquette, modes, vocabulary, technology, transcription, translation, grammar and spelling, and voice training; or

(4) business practices.

(g) This section shall apply to providers and courses for licensed court interpreters upon the effective date of this section.

(h) This section shall apply to licenses issued under Texas Government Code, Chapter 57, Subchapter C, that expire on or after September 1, 2006.

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 September 2, 2005.

TRD-200503844

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

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For further information, please call: (512) 463-6208



16 TAC §80.25

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

The repeal is proposed under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 57 which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 57. No other statutes, articles, or codes are affected by the proposal.

§80.25. Licensing Requirements--Renewal.

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

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William H. Kuntz, Jr.

Executive Director

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

(Editor's Note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," Figure: 19 TAC §97.1005(b) is not included in the print version of the Texas Register. The Figure is available in the on-line version of the September 16, 2005, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1005, concerning accountability and performance monitoring. The section describes the Performance-Based Monitoring Analysis System (PBMA) and adopts applicable excerpts of the

PBMAS 2004-2005 Manual, dated December 14, 2004. The proposed amendment would adopt applicable excerpted sections of the PBMAS 2005 Manual, dated July 28, 2005.

House Bill 3459, 78th Texas Legislature, 2003, added TEC, §7.027, limiting compliance monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System (PEIMS) and accountability under TEC, Chapter 39. The intent of this change was to limit and redirect monitoring efforts. To meet this requirement, the TEA developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

Agency legal counsel has determined that the commissioner of education should take formal rulemaking action to place into the *Texas Administrative Code* procedures related to the PBMAS. 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System, adopted to be effective June 5, 2005, describes the purpose of the PBMAS and manner in which school district and charter school performance is reported. This rule also adopted applicable excerpts of the PBMAS 2004 Manual. The commissioner establishes specific PBMAS criteria and calculations annually and communicates that information to school districts and charter schools.

The proposed amendment would update the current rule to incorporate provisions for the most recent PBMAS manual by adopting excerpted sections of the PBMAS 2005 Manual. This excerpt describes specific criteria and calculations that will be used to assign 2005 PBMAS performance levels. The proposed amendment would also add language to specify that the PBMAS manual adopted for the previous school year will remain in effect with respect to that school year.

Criss Cloudt, associate commissioner for accountability and data quality, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the amendment.

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be having in place a system to ensure that school districts and charter schools are held accountable for the performance and effectiveness of special programs. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.027, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations.

The amendment implements the Texas Education Code, §7.027.

§97.1005. *Performance-Based Monitoring Analysis System.*

(a) In accordance with Texas Education Code, §7.027(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technology education, special education, and certain Title programs under the federal No Child Left Behind Act. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.

(b) The assignment of performance levels for school districts and charter schools in the [2004-] 2005 PBMAS is based on specific criteria and calculations, which are described in ~~an~~ excerpted sections [section] of the PBMAS [2004-] 2005 Manual provided in this subsection.

Figure: 19 TAC §97.1005(b)

(c) The specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the PBMAS manual adopted for the school year prior to 2005-2006 remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to that school year.

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

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TRD-200503838

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 108. PROFESSIONAL CONDUCT SUBCHAPTER A. PROFESSIONAL RESPONSIBILITY

22 TAC §108.8

The Texas State Board of Dental Examiners (Board) proposes amendments to 22 TAC Chapter 108, §108.8, concerning records of the dentist. The amendments are primarily proposed to clarify existing requirements.

Proposed amendments to subsection (b) would require that: the reviews of medical history and limited medical exams be evidenced in the dental record by the dentist's signature, initials, or notes; that radiographs shall be of diagnostic quality sufficient

to enable one to determine the patient's existing dental condition; and that treatment plans be signed by the patient.

Proposed amendments to subsection (g) would require that a dentist providing copies of dental records not otherwise specifically enumerated in this rule may charge a fee not more than the actual cost of production, reproduction, or duplication of the records, as verified by invoice.

The section as amended contains numerous revisions to clarify and standardize language, and to improve organization.

There are no other substantive changes to the section.

Ms. Sherri Sanders, Interim Executive Director of the Texas State Board of Dental Examiners, has determined that for each year of the first five-year period the section is in effect, there will be no fiscal implications for local or state government as a result of enforcing or administering the section.

Ms. Sanders also has determined that for each year of the first five-years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing or administering the section will be derived from dental patients' being better informed of their treatment options, and being ensured better quality diagnoses from radiographs that are required to be of a reasonable diagnostic quality.

There is no impact on large, small or micro-businesses.

There is no anticipated economic cost to persons as a result of enforcing or administering the section.

Comments on the proposal may be submitted to Sherri Sanders, Interim Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that this amended section is published in the *Texas Register*.

The section is proposed under Texas Government Code §2001.021 et seq., Texas Civil Statutes, and Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

The proposed section affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

§108.8. *Records of the Dentist.*

(a) The term "dental records" includes, but is not limited to:

- (1) identification of the practitioner providing treatment;
- (2) medical and dental history;
- (3) documentation of a limited physical examination;
- (4) radiographs;
- (5) dental and periodontal charting;
- (6) documentation of diagnoses made;
- (7) treatment plans;
- (8) informed consent statements or confirmations;
- (9) study models, casts, molds, and impressions, if applicable;
- (10) cephalometric diagrams;

(11) documentation of narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed;

(12) anesthesia records;

(13) pathology and medical laboratory reports;

(14) progress and completion notes; materials used;

(15) dental laboratory prescriptions;

(16) billing and payment records;

(17) appointment records;

(18) documentation of consultations and recommended referrals; and,

(19) post treatment recommendations.

{(a) The term dental records includes, but is not limited to: identification of the practitioner providing treatment; medical and dental history; limited physical examination; radiographs; dental and periodontal charting; diagnoses made; treatment plans; informed consent statements or confirmations; study models, casts, molds, and impressions, if applicable; cephalometric diagrams; narcotic drugs, dangerous drugs, controlled substances dispensed, administered or prescribed; anesthesia records; pathology and medical laboratory reports; progress and completion notes; materials used; dental laboratory prescriptions; billing and payment records; appointment records; consultations and recommended referrals; and post treatment recommendations.}

(b) A Texas dental licensee practicing dentistry in Texas shall make, maintain, and keep adequate records of the diagnoses made and the treatments performed for and upon each dental patient for reference, identification, and protection of the patient and the dentist. [Records shall be kept for a period of not less than five years. Records must include documentation of the following:]

(1) Records must include documentation of the following:

(A) [(4)] Patients name;

(B) [(2)] Date of visit

(C) [(3)] Reason for visit;

(D) [(4)] Vital signs, including, but not limited to, blood pressure and heart rate, [when applicable] in accordance with §108.7 of this title (relating to Minimum Standard of Care, General), or an explanation of why vital signs were not obtained.

[(5) If not recorded, an explanation why vital signs were not obtained.}

(2) [(e)] Further, records must include documentation of the following when services are rendered:

(A) [(4)] Written review of medical history and limited review of medical exam, evidenced by the dentist's signature, initials, or notes;

(B) [(2)] Findings and charting of clinical and radiographic oral examination;

(i) [(A)] Documentation of radiographs taken and findings deduced from them, including radiographic[radiograph] films or digital reproductions, or an explanation of why radiographs or radiographs of sufficient diagnostic quality were not obtained.

(ii) Radiographs shall be of diagnostic quality sufficient to enable one to determine the patient's existing dental condition.

(iii) [(B)] Use of radiographs at a minimum, should be in accordance with guidelines set forth on "Dental Radiographic

Examinations" published by the United States Department of Health and Human Services, October 1987, as amended or reprinted from time to time.

(C) ~~[(3)] Diagnoses[Diagnosis(es)];~~

(D) ~~[(4)] A treatment [Treatment] plan with [] recommendation[] and treatment options, signed by the patient;~~

(E) ~~[(5)] Treatment provided;~~

(F) ~~[(6)] Medication and dosages given to patient;~~

(G) ~~[(7)] Complications;~~

(H) ~~[(8)] Written informed consent that meets the provisions of §108.7(6);~~

(I) ~~[(9)] The dispensing, administering, or prescribing of all medications to or for a dental patient shall be made a part of such patient's dental record. The entry in the patient's dental record shall be in addition to any record keeping requirements of the DPS or DEA prescription programs.~~

(J) ~~[(10)] All records pertaining to Controlled Substances and Dangerous Drugs shall be maintained in accordance with the Texas Controlled Substances Act.~~

(K) ~~[(11)] Confirmable identification of provider dentist, and confirmable identification of person making record entries if different from provider dentist;~~

(L) ~~[(12)] When any of the items required by this[the] paragraphs (1) - (11) of this] subsection are not indicated, the record must include an explanation why the item is not recorded.~~

(c) Records shall be kept for a period of not less than five years.

(d) Dental records are the sole property of the dentist who performs the dental service. Such records shall be available for inspection by the patient after and upon appointment with a dentist. This shall not prohibit the transfer of a copy of records to the patient, or to an agreed designated consultant for ascertainment of facts, nor transfer of original records to another Texas dental licensee who will provide treatment to the patient. The transferring dentist shall retain a copy of the written record if such original transfer is made.

(e) A dentist who leaves a location or practice, whether by retirement, sale, transfer, termination of employment or otherwise, shall either maintain all dental records belonging to him or her, make a written transfer of records to the succeeding dentist, or make a written agreement for the maintenance of records[; and the State Board of Dental Examiners shall be notified within 15 days of any such event, giving full information concerning the dentists and location(s) involved. A maintenance of records agreement shall not transfer ownership of the dental records, but shall require: that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying. A transfer of records may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.].

(1) The State Board of Dental Examiners shall be notified within 15 days of any such event, giving full information concerning the dentists and location(s) involved.

(2) A maintenance of records agreement shall not transfer ownership of the dental records, but shall require:

(A) that the dental records be maintained in accordance with the laws of the State of Texas and the Rules of the State Board of Dental Examiners; and,

(B) that the dentist(s) performing the service(s) recorded shall have access to and control of the records for purposes of inspection and copying.

(3) A transfer of records may be made by agreement at any time in an employment or other working relationship between a dentist and another entity. Such transfer of records may apply to all or any part of the dental records generated in the course of the relationship, including future dental records.

(f) Dental records shall be made available for inspection and reproduction on demand by the officers, agents, or employees of the State Board of Dental Examiners. The patient's privilege against disclosure does not apply to the Board in a disciplinary investigation or proceeding under the Dental Practice Act.

(g) A dentist shall furnish copies of dental records to a patient who requests his or her dental records.[Requested copies including radiographs shall be furnished within 30 days of the date of the request, provided however, that copies need not be released until payment of copying costs has been made. Records may not be withheld based on a past due account for dental care or treatment previously rendered to the patient.]

(1) Requested copies including radiographs shall be furnished within 30 days of the date of the request, provided however, that copies need not be released until payment of copying costs has been made.

(2) Records may not be withheld based on a past due account for dental care or treatment previously rendered to the patient.

(3) ~~[(4)]~~ A dentist providing copies of patient dental records is entitled to a reasonable fee for copying which shall be no more than \$25 for the first 20 pages and \$0.15 per page for every copy thereafter.

(4) ~~[(2)]~~ Fees for radiographs, [which] if copied by a [an] radiograph duplicating service, [may be equal to] may not exceed the actual cost of duplication, as verified by invoice.

(5) ~~[(3)]~~ Reasonable costs for radiographs duplicated by means other than by a radiograph duplicating service shall not exceed the following charges:

(A) a full mouth radiograph series: \$15.00;

(B) a panoramic radiograph: \$15.00;

(C) a lateral cephalometric radiograph: \$15.00;

(D) a single extra-oral radiograph: \$5.00;

(E) a single intra-oral radiograph: \$5.00.

(6) Fees for any other element of a dental record herein, may be no more than actual cost of production, reproduction, or duplication, as verified by invoice.

(7) ~~[(4)]~~ State agencies and institutions will provide copies of dental health records to patients who request them following applicable agency rules and directives.

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 September 1, 2005.

TRD-200503823

Sherri Sanders

Interim Executive Director

State Board of Dental Examiners

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For further information, please call: (512) 475-0972



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 proposes amendments to §131.81, relating to Definitions. The proposed amendments include a clarification of definitions for ABET and Direct Supervision.

The proposed amendments clarify the definition of ABET and Direct Supervision.

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

Mr. Kinney also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be clarification of definitions used in the board rules.

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.

§131.81. 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--ABET, Inc., formerly the 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--The control over and detailed professional knowledge of the work prepared under the engineer's supervision. The degree of control should be such that the engineer personally makes engineering decisions or personally reviews and approves proposed decisions prior to their implementation. The engineer must have control over the decisions either through physical presence or the use of communications devices. [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 ABET [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 ABET [the Accreditation Board for Engineering and Technology].

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



CHAPTER 133. LICENSING

SUBCHAPTER C. APPLICATION REQUIREMENTS

22 TAC §133.25

The Texas Board of Professional Engineers proposes amendments to §133.25, relating to Applications from Engineering Educators. The proposed amendments clarify the requirements for licensure for engineering.

The proposed amendments clarify the appropriate version of the ABET yearbook to be used for accreditation and the requirements for application for licensure for engineering educators.

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 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.

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 license and registration process.

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.

§133.25. Applications from Engineering Educators.

(a) Persons who are engineering educators instructing engineering courses in an institution of higher education or a private or independent institution of higher education, as defined in the Education Code §61.003, and who began teaching engineering prior to September 1, 2001, are permitted to seek licensure utilizing an alternate application. The minimum qualifications are as follows:

(1) Earned doctoral degree in:

(A) engineering from a college or university that offers an undergraduate or master's degree program in a related branch of engineering that is approved by the EAC/ABET as published in the current version of the [2002] ABET Accreditation Yearbook and the current version of the [2002] ABET International Yearbook or as published in the yearbook applicable to a previous year in which the applicant graduated; or

(B) engineering or another related field of science or mathematics assessed and approved by the board;

(2) To request a waiver of the fundamentals of engineering and principles and practice of engineering examination, the applicant [examination(s);] must have at least four [~~six~~] years of:

(A) teaching experience in an EAC/ABET-approved program, or

(B) other acceptable, creditable engineering experience, including, but not limited to, scholarly activity such as publishing papers in technical and professional journals; making technical and professional presentations; publishing books and

monographs; performing sponsored research; reporting on research conducted for sponsors; supervising research of undergraduate and graduate students, postdoctoral fellows, or other employees; providing counseling, guidance, and advisement for engineering students; and performing certain other types of formal or informal functions in higher education; or

(C) a combination of teaching and acceptable, creditable engineering experience.

(b) An engineering educator, applying under the alternate process, shall submit:

(1) an alternate application form;

(2) a supplementary experience record:

(A) For the faculty approved for promotion or tenure through the Dean of Engineering office level, submit a dossier (comprehensive resume or curriculum vitae) prepared for tenure and/or promotion consideration, OR, for tenured faculty, current resume containing educational experience, engineering courses taught, and description of research and scholarly activities in lieu of the supplementary experience record;

(B) For non-tenured faculty, a standard supplementary experience record with courses taught and/or other engineering experience shall be submitted;

(3) reference statements or letters from currently licensed professional engineers who have personal knowledge of the applicant's teaching and/or other creditable engineering experience. A reference provider may, in lieu of the reference statement, submit a letter of recommendation that, at a minimum, testifies to the credentials and abilities of the educator. The reference statements or letters of recommendation can be from colleagues within the department, college, or university; from colleagues from another university; or professional engineers from outside academia;

(4) college/university transcripts;

(5) a completed Texas Professional Conduct and Ethics Examination;

(6) current application fee as established by the board; [and]

(7) verification of passage of examination(s) from other jurisdictions as required under §133.61(g) of this chapter (relating to Engineering Examinations), if applicable; and

(8) [~~(7)~~] written requests for waivers of the examinations on the fundamentals and/or principles and practices of engineering, if applicable.

(c) Once an alternative application from an engineering educator is received, the board will follow the procedures in §133.85 of this chapter (relating to Board Review of and Action on Applications) to review and approve or deny the application.

(d) This section does not prohibit any engineering educator from applying for licensure under the standard application process.

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

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



SUBCHAPTER D. EDUCATION

22 TAC §133.31

The Texas Board of Professional Engineers proposes amendments to §133.31, relating to Educational Requirements for Applicants. The proposed amendments clarify references to accreditation by ABET.

The proposed amendments clarify references to ABET and ABET accreditation.

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

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

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.

§133.31. 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 current version of the [2002] ABET Accreditation Yearbook and the current version of 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 section but has been evaluated in accordance with §133.33 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 current version of 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 proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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22 TAC §133.33

The Texas Board of Professional Engineers proposes an amendment to §133.33, relating to Proof of Educational Qualifications. The proposed amendment clarifies references to accreditation by ABET.

The proposed amendment clarifies references to ABET.

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 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.

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.

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.

§133.33. Proof of Educational Qualifications--Non-Accredited/Non-Approved Programs.

(a) An applicant for licensure who has graduated from a program other than one in which the undergraduate or graduate degree in the same discipline has been has been accredited or approved by any of the organizations identified in §133.31(a)(1)(A) or (a)(2)(A) of this chapter (relating to Educational Requirements for Applicants) shall furnish both an official transcript and an evaluation for each degree to be relied upon to meet the educational requirements of licensure as a professional engineer or certification as an engineer-in-training. Official transcripts shall include either grades or mark sheets and proof that the degree was conferred. In addition to providing a transcript reflecting the degree(s) earned by an applicant, the applicant shall also provide an official transcript from each school from which more than 15 semester hours were earned towards the degree.

(1) The applicant shall ensure that the required transcript(s) are forwarded from the officially recognized and approved institutional authority of records (e.g., registrar or other authority) of the institution from which the applicant graduated directly to a commercial degree evaluation service approved by the board. The applicant is responsible for ordering and paying for all such transcripts and evaluations. Additional academic information, including but not limited to grades and transfer credit, shall be submitted to the board at the request of the executive director.

(2) The degree evaluation must:

(A) validate the authenticity of the transcript, diploma, and any other supporting documentation;

(B) include a detailed, course-by-course evaluation of courses, including semester hours and grades;

(C) a comparison of the applicant's degree program to criteria of ABET [the Accreditation Board for Engineering and Technology] applicable to the applicant's year of graduation; and a determination whether the curriculum of the degree program being evaluated meets the applicable criteria;

(D) establish that the applicant has received a conferred degree as determined by the placement recommendations approved by the National Council for the Evaluation of Foreign Educational Credentials; and

(E) be sent by the commercial evaluation service directly to the board, accompanied by the applicant's official transcript or a copy of the transcript verified by the commercial evaluation service.

(b) Upon written request by an applicant provided at the time of application, a commercial degree evaluation of a program other than one accredited or approved by the EAC/ABET or the TAC/ABET may be waived by the executive director if:

(1) sufficient resources are available for the board to evaluate it; or

(2) the degree program contains curricula that are deemed by the executive director to not be an integral part of the applicant's engineering education.

(c) Upon receipt or waiver of a commercial degree evaluation, the executive director shall evaluate, under the standards of §133.31(a)(1)(C) or (a)(2)(B) of this chapter (relating to Educational Requirements for Applicants), the curricula of a degree program that has not been accredited or approved by any of the organizations identified in §133.31 (a)(1)(A) or (a)(2)(A) of this chapter.

(d) If a transcript cannot be transmitted directly to the evaluation service from the issuing institution, the executive director may, at his or her discretion, approve an alternative method of evaluating the applicant's educational qualifications, upon written request from the applicant explaining why the transcript cannot be directly transmitted from the issuing institution. An alternative method approved by the executive director may include validation of transcript(s) in the applicant's possession through a commercial evaluation service approved by the board. In the event the executive director approves an alternative method such as validation of a transcript in the applicant's possession by an evaluation service, the evaluation service shall forward to the board the evaluation and all documentation provided by the applicant.

(e) The board will not accept a commercial evaluation of a degree in lieu of an official transcript or a validated transcript that was in the applicant's possession. An official transcript or validated transcript must be submitted to complete the application.

(f) An applicant seeking an educational credential evaluation under this section but wishing to qualify for licensure only under §133.31(a)(2)(B) of this section is exempt from the evaluation requirement in subsection (a)(2)(C) of this section.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



SUBCHAPTER E. EXPERIENCE

22 TAC §133.41

The Texas Board of Professional Engineers proposes an amendment to §133.41, relating to the Supplementary Experience Records. The proposed amendment clarifies the required number of years to be documented for licensure.

The proposed amendment clarifies the number of years that should be documented in a Supplementary Experience Record.

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 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.

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 license and registration process.

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.

§133.41. Supplementary Experience Record.

Applicants shall submit a supplementary experience record to the board as a part of the application. The supplementary experience record is a written summary documenting all of the applicant's engineering experience used to meet the requirements for licensure.

(1) The supplementary experience record shall be written by the applicant and shall:

(A) provide an overall description of the nature and scope of the work with emphasis on detailed descriptions of the engineering work;

(B) clearly describe the engineering work that the applicant personally performed; and

(C) delineate the role of the applicant in any group engineering activity.

(2) The supplementary experience record shall be divided into employment engagements that correspond to those listed in the application and shall be written in sufficient detail to allow a board reviewer to document the minimum amount of experience required and to allow a reference provider to recognize and verify the quality and quantity of the experience claimed.

(3) Experience that is unsupported by references may not be considered. All experience claimed to meet the minimum requirements for licensure shall be verified by one or more currently licensed professional engineer(s) pursuant to §133.51 of this chapter (relating to Reference Providers).

(4) The supplementary experience record must cover at least the minimum amount of time needed by the applicant for issuance of a license.

(A) Applicants applying under §1001.302(a)(1)(A) of the Act shall provide supplementary experience records for at least four years of engineering experience.

(B) Applicants applying under §1001.302(a)(1)(B) of the Act shall provide supplementary experience records for at least eight years of engineering experience.

(C) Applicants seeking a waiver from the examination on the fundamentals of engineering and/or the examination on the principles and practices of engineering requirements shall provide a supplementary experience record for at least the minimum number of years of experience required for a waiver of examinations under §133.69 of this chapter (relating to Waiver of Examinations). [an additional eight years of experience beyond that required in this subsection.]

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers proposes amendments to §133.69, relating to the Waiver of Examinations. The proposed amendments revise the requirements for application for licensure via a waiver of the required examinations.

The proposed rule amendments revise the number of years and basic requirements to apply for a waiver of the Fundamentals of Engineering examination, the Principles and Practice of Engineering examination, or a combination of both examinations. The proposed amendments will limit a waiver of the Principles and Practice of Engineering examination to those applicants that are Ph.D. Educators or are current license holders in another jurisdiction.

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 has determined that there is no additional cost to the agency or to licensees; however, there may be a minor fiscal impact to the board if the number of applications is reduced due to revisions in the waiver process. There is a non-fiscal effect on individuals required to comply with the rule as proposed in that fewer individuals will be eligible for a waiver of the Principles and Practice of Engineering examination. There is no effect to small or micro businesses.

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

as a result of enforcing the proposed amendment will be clarification and strengthening of the license and registration process.

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.

§133.69. Waiver of Examinations.

(a) Examinations are considered an integral part of the licensing process; all applicants are expected to have passed the examinations or to offer sufficient evidence of their qualifications in the absence of passage of the examinations. The board may waive one or both of the examination on the fundamentals of engineering or examination on the principles and practice of engineering for applicants who:

(1) do not pose a threat to the public health, safety, or welfare;

(2) request a waiver in writing at the time the application is filed; and

(3) meet ~~[one of]~~ the ~~[following]~~ requirements of subsections (b), (c), or (d) of this section.[:]

(b) Persons requesting a waiver of the fundamentals of engineering examination must meet one of the following requirements:

(1) ~~[(A) persons who]~~ have ~~8~~ [12] or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(A) of the Act; or

(2) ~~[(B) persons who]~~ have ~~12~~ [46] years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(B) of the Act; or

(3) ~~[(C) persons who]~~ have a Ph.D. degree in engineering from a college or university having an undergraduate or master's degree program in a related branch of engineering that is accredited or approved by ~~[the Engineering Accreditation Commission of the Accreditation Board for Engineering and Technology, United States (EAC/ABET)],~~ and have:

(A) ~~[(i)]~~ taught in an EAC/ABET-accredited or -approved program for at least four years and began teaching engineering prior to September 1, 2001; [:] or

(B) ~~[have]~~ at least four years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and began teaching engineering prior to September 1, 2001; [:]or

(C) ~~[have]~~ at least four years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation). ~~[; to request waiver of the examination on the fundamentals of engineering; or]~~

~~[(ii)]~~ taught in an EAC/ABET-accredited or -approved program for at least six years and began teaching engineering prior to September 1, 2001; or have at least six years of experience

consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and began teaching engineering prior to September 1, 2001, or have at least six years of creditable engineering experience ; as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation); to request waiver of both the examination on the fundamentals of engineering and the examination on the principles and practice of engineering;]

(4) ~~[(D) persons who]~~ have a Ph.D. degree in engineering not qualifying under subsection (b)(3) ~~[Paragraph C]~~ of this section or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process, and have;

(A) taught in an EAC/ABET-accredited or -approved program for at least six ~~[eight]~~ years and who began teaching engineering prior to September 1, 2001; ~~;~~ or

(B) ~~[have]~~ at least six ~~[eight]~~ years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and who began teaching engineering prior to September 1, 2001; ~~;~~ or

(C) ~~[have]~~ at least six ~~[eight]~~ years of creditable engineering experience as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation). ~~;~~ to request waiver of either or both the examination on the fundamentals of engineering and/or the examination on the principles and practice of engineering.]

(5) Persons who meet the requirements to apply for licensure as an Engineering Educator under §133.25(a)(1) of this chapter (relating to Applications from Engineering Educators) and who are requesting a waiver of the fundamentals of engineering examination and permission to take the principles and practice of engineering examination may be granted the waiver with no minimum experience requirement.

(c) Persons currently licensed and in good standing in any U.S. state or territory, Canada, or the United Mexican States, and requesting a waiver of the principles and practice of engineering or a waiver of both the fundamentals of engineering examination and the principles and practice of engineering examination must meet one of the following requirements:

(1) have 12 or more years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(A) of the Act; or

(2) have 16 years of creditable engineering experience, as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation), and meet the educational requirements of §1001.302(a)(1)(B) of the Act.

(d) Persons who meet the requirements to apply for licensure as an Engineering Educator under §133.25(a)(1) of this chapter and who are requesting a waiver of the principles and practice of engineering or a waiver of both the fundamentals of engineering examination and the principles and practice of engineering examination must meet one of the following requirements:

(1) have a Ph.D. degree in engineering from a college or university having an undergraduate or master's degree program in a related branch of engineering that is accredited or approved by the Engineering Accreditation Commission of ABET (EAC/ABET), and have;

(A) taught in an EAC/ABET-accredited or -approved program for at least four years and began teaching engineering prior to September 1, 2001; or

(B) at least four years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and began teaching engineering prior to September 1, 2001; or

(C) at least four years of creditable engineering experience , as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(2) have a Ph.D. degree in engineering not qualifying under subsection (d)(1) of this section or other related field of science or mathematics that is individually assessed and approved by the board during the evaluation process, and have;

(A) taught in an EAC/ABET-accredited or -approved program for at least six years and who began teaching engineering prior to September 1, 2001; or

(B) at least six years of experience consisting of a combination of EAC/ABET teaching experience or other creditable engineering experience and who began teaching engineering prior to September 1, 2001; or

(C) at least six years of creditable engineering experience as evaluated by the board under §133.43 of this chapter (relating to Experience Evaluation).

(e) ~~[(b)]~~ An applicant is not eligible to request a waiver of the examination on the principles and practice of engineering if the applicant has taken and failed any examination on the principles and practice of engineering within the previous four years.

(f) ~~[(e)]~~ Applicants requesting a waiver from any examination(s) shall file any additional information needed to substantiate the eligibility for the waiver with the application, as provided in §133.51 of this chapter (relating to Reference Providers), and §133.52 of this chapter (relating to Reference Statements). The board shall review all elements of the application to evaluate waiver request(s) and may grant a waiver(s) to qualified applicants.

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 September 2, 2005.

TRD-200503855

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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

CHAPTER 135. FIRMS AND SOLE PROPRIETORSHIPS REGISTRATIONS

22 TAC §135.3

The Texas Board of Professional Engineers proposes an amendment to §135.3, relating to the Application for a Certificate of Registration. The proposed amendment relates to the requirements for registration of an engineering firm.

The proposed amendment removes a provision that allows a part-time engineer to meet the requirements for registration of an engineering firm.

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 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.

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 firm registration process.

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.

§135.3. Application for a Certificate of Registration.

(a) The board may issue a certificate of registration only to applicant firms having submitted sufficient information to meet the requirements set forth in §1001.405 of the Act and this section.

(b) The authorized official of the firm shall complete the form furnished by the board including but not limited to the following information listed in paragraphs (1)-(6) of this subsection:

(1) the name, address, and communication number of the firm offering to engage or engaging in the practice of professional engineering for the public in Texas;

(2) the name, position, address, and communication numbers of each officer or director;

(3) the name, address, and current active Texas professional engineer license number of each regular, full-time engineer employee performing engineering for the public in Texas on behalf of the firm;

(4) the name, location, and communication numbers of each subsidiary or branch office offering to engage or engaging in the practice of professional engineering for the public in Texas, if any;

(5) a signed statement attesting to the correctness and completeness of the application; and

(6) a registration fee as established by the board.

~~[(e) For a firm that offers or performs services only on a part-time basis, the professional engineer who has physical presence, is an employee of the firm, and offers or performs the engineering work or who directly supervises the engineering work while the firm is in operation shall satisfy the requirement of the regular, full-time employee.]~~

~~(c) [(d)]~~ The application fee will not be refunded.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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

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CHAPTER 137. COMPLIANCE AND PROFESSIONALISM
SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.7

The Texas Board of Professional Engineers proposes an amendment to §137.7, relating to License Expiration and Renewal. The proposed amendment clarifies methods of payment for license renewals.

The proposed amendment clarifies that license renewal payments may be made through electronic means.

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 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.

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 renewal process for license holders.

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.

§137.7. License Expiration and Renewal.

(a) Pursuant to §1001.352 of the Act, the license holder must renew the license annually to continue to practice engineering under the provisions of the Act. If the license renewal requirements are not met by the expiration date of the license, the license shall expire and the license holder may not engage in engineering activities that require a license until the renewal requirements have been met.

(b) Pursuant to §1001.352 of the Act, the board will mail a renewal notice to the last recorded address of each license holder at least 30 days prior to the date a person's license is to expire. Regardless of whether the renewal notice is received, the license holder has the

sole responsibility to pay the required renewal fee together with any applicable increase in fees or late fees at the time of payment.

(c) A license holder may renew a license by submitting the required annual renewal fee, including applicable increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program) to the board prior to the expiration date of the license. Payment may be made by personal, company, or other checks drawn on a United States bank (money order or cashier's check), or by electronic means, payable in United States currency.

(d) Pursuant to authority in §1001.205(b) and §1001.206(c) of the Act, the board has established the renewal fee for the following categories of licenses to not require the increase in professional fees:

(1) a license holder who is 65 years of age or older;

(2) a license holder who is disabled with a mental or physical impairment that substantially limits the ability of the person to earn a living as an engineer excluding an impairment caused by an addiction to the use of alcohol, illegal drugs, or controlled substance;

(3) a license holder who meets the exemption from licensure requirement of §1001.057 or §1001.058 of the Act but does not claim that exemption;

(4) a license holder who is not practicing engineering and has claimed inactive status with the board in accordance with the requirements of §137.13 of this chapter (relating to Inactive Status).

(e) Licenses will expire according to the following schedule.

(1) Licenses originally approved in the first quarter of a calendar year will expire on December 31.

(2) Licenses originally approved in the second quarter of a calendar year will expire on March 31.

(3) Licenses originally approved in the third quarter of a calendar year will expire on June 30.

(4) Licenses originally approved in the fourth quarter of a calendar year will expire on September 30.

(f) A temporary license may only be renewed twice for a total duration of three years, after which the former license holder may apply for a new temporary or a standard license as provided in the current Act and applicable Board rules.

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

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TRD-200503857

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



22 TAC §137.9

The Texas Board of Professional Engineers proposes amendments to §137.9, relating to Renewal for Expired License. The

proposed amendments include language related to license renewal fees resulting from the enactment of HB 1817, 79th Regular Session (2005).

The proposed amendments clarify the process for determining the fee for a late license renewal payment.

Lance Kinney, P.E., Director of Licensing for the board, has determined that for the first five-year period the proposed amendments are in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Kinney has determined that there is no additional cost to the agency; however, there may be a positive fiscal impact to the agency as a result of modified late fees. There may be a fiscal effect to individuals required to comply with the rule as proposed in relation to fees paid as a result of late renewal payments. There is no effect to small or micro businesses.

Mr. Kinney also has determined that for the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the proposed amendment will be clarification of the license and registration process and increased compliance with license renewal procedures.

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.

§137.9. Renewal for Expired License.

(a) A license holder may renew a license that has expired for 90 days or less by submitting [a renewal fee] to the board the required annual renewal fee, a late renewal fee [that is 1 and 1/2 times the normal renewal fee], any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter.

(b) A license holder may renew a license that has expired for more than 90 days but less than one year by submitting to the board the required annual [a] renewal fee, a late renewal fee [that is 2 times the normal renewal fee], any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter (relating to Continuing Education Program).

(c) A license holder may renew a license that has expired for more than one year but less than two years by submitting to the board the required annual [a] renewal fee, a late renewal fee [that is 2 times the normal renewal fee], any increase in fees as required by §1001.206 of the Act, and the continuing education program documentation as required in §137.17 of this chapter for each delinquent year or part of a year.

(d) A license which has been expired for two years may not be renewed, but the former license holder may apply for a new license as provided in the current Act and applicable board rules.

(e) In strict accordance with the provisions of the Texas Education Code §57.491, pertaining to the loan default proceedings of the Texas Guaranteed Student Loan Corporation (TGS LC), if a license

holder's name has been provided by the TGSCLC as being in default of a loan, the board shall not renew the license of the license holder on the second renewal date following such notification, unless the TGSCLC certifies that the individual has entered into a repayment agreement with TGSCLC, or is not in default on a loan. Such license holder shall be provided an opportunity for an informal hearing, similar to that provided by §139.33 of this title (relating to Informal Proceedings), before any action concerning the denial of a renewal of a license is taken under this paragraph. A defaulted loan shall not bar the board's issuance of an initial license if the applicant is otherwise qualified for licensure; however, the board shall not renew said license unless the TGSCLC certifies the individual has satisfied the requirements of the Texas Education Code §57.491.

(f) Pursuant to Texas Occupations Code §55.002, a license holder is exempt from any increased fee or other penalty imposed in this section for failing to renew the license in a timely manner if the license holder provides adequate documentation, including copies of orders, to establish to the satisfaction of the board that the license holder failed to renew in timely manner because of the license holder was serving on active duty in the United States armed forces outside Texas.

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

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TRD-200503858

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



22 TAC §137.14

The Texas Board of Professional Engineers proposes new §137.14, concerning Voluntary Surrender of License. The Board proposes this action to clarify the process for a license holder to voluntarily surrender a license.

The proposed new rule outlines the process the board will use in when a current license holder in good standing desires to relinquish their license. The license holder must notify the board in writing of their intent to voluntarily surrender the license. Once the request has been received and processed, the license will no longer be active and cannot be renewed. An individual that surrenders a license may reapply under the current rules to obtain a new license.

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 and customer service in 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.

§137.14. Voluntary Surrender of License.

(a) A license holder who does not wish to maintain a license, the legal guardian of the license holder, or other legal representative of the license holder may voluntarily surrender the license by submitting a request in writing and returning the license certificate to the Board provided that the license holder:

(1) is in good standing, and

(2) does not have an enforcement case pending before the Board;

(b) A license that has been voluntarily surrendered may not be renewed. A license holder who has voluntarily surrendered a license may apply for a new license.

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

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TRD-200503859

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



22 TAC §137.17

The Texas Board of Professional Engineers proposes amendments to §137.17, relating to the Continuing Education Program. The proposed amendments clarify the requirements for the Continuing Education Program.

The proposed amendments clarify that activities intended to meet the ethics requirement may not be rolled over into the next year and that a total of 14 hours of activity may be rolled over per renewal 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 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.

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 Continuing Education requirements for license holders.

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.

§137.17. Continuing Education Program.

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

(d) A minimum of 1 PDH per renewal period must be in the area of professional ethics, roles and responsibilities of professional engineering, or review of the Texas Engineering Practice Act and Board Rules. PDH units carried forward may not be counted to meet the professional ethics requirement.

(e) If a license holder exceeds the annual requirement in any renewal period, a maximum of 14 [45] PDH units may be carried forward into the subsequent renewal period. Professional Development Hours must not be anticipated and cannot be used for more than one renewal period.

(f) - (p) (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 September 2, 2005.

TRD-200503860

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.33

The Texas Board of Professional Engineers proposes an amendment to §137.33, relating to Sealing Procedures. The proposed amendment includes language related to sealing procedures resulting from the enactment of HB1817, 79th Regular Session (2005).

The proposed amendment clarifies the requirements for the use of an engineering seal for items to be constructed in Texas or in other jurisdictions.

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 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.

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 sealing requirements for license holders.

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.

§137.33. Sealing Procedures.

(a) The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed or directly supervised by the professional engineer named and to delineate the scope of the engineer's work.

(b) License holders shall only seal work done by them, performed under their direct supervision as defined in §131.81 of this title, relating to Definitions, or shall be standards or general guideline specifications that they have reviewed and selected. Upon sealing, engineers take full professional responsibility for that work.

(c) When a license holder reviews and elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(1) individually sealed by the license holder; or

(2) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

(d) License holders shall take reasonable steps to ensure the security of their physical or computer-generated seals at all times. In the event of loss of a seal, the engineer will immediately give written notification of the facts concerning the loss to board.

(e) Preliminary documents released from a license holder's control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes."

(f) License holders shall affix an unobscured seal and original signature with date or electronic signature as prescribed in §137.35 of this chapter to the originals of all documents containing the final version of any engineering work before such work is released from their control, including the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet

of plans or drawings regardless of size or binding. All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations). A seal may be added on such work if required or at the engineer's discretion. Electronic correspondence of this type shall be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms as described in §137.1 of this chapter (relating to License Holder Designations).

(g) Work performed by more than one license holder shall be sealed in a manner such that all engineering can be clearly attributed to the responsible license holder or license holders. When sealing plans or documents on which two or more license holders have worked, the seal and signature of each license holder shall be placed on the plan or document with a notation describing the work done under each license holder's responsible charge.

(h) Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statements.

(i) A license holder, as a third party, may alter, complete, correct, revise, or add to the work of another license holder when engaged to do so by a client, provided:

(1) the client furnishes the documentation of such work submitted to the client by the first license holder;

(2) the first license holder is notified in writing by the second license holder of the engagement immediately upon acceptance of the engagement; and

(3) any work altered, completed, corrected, revised, or added to shall have a seal affixed by the second license holder. The second license holder then becomes responsible for any alterations, additions or deletions to the original design including any effect or impact of those changes on the original license holder's design.

(j) A local authority may require an original seal and/or signature on reproduced documents.

(k) A plan, specification, plat, or report issued by a license holder for a project to be constructed or used in this state must include the license holder's seal placed on the document. A license holder is not required to use a seal if the project is to be constructed or used in another state or country.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



SUBCHAPTER D. FIRM, SOLE PROPRIETORSHIP AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.77

The Texas Board of Professional Engineers proposes an amendment to §137.77, relating to Firm Registration Compliance. The proposed amendment relates to the requirements for registration of an engineering firm.

The proposed amendment adds a provision that allows an engineer that is a sole proprietor to meet the requirements for registration of an engineering firm.

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 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.

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 firm registration process.

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.

§137.77. Firm Registration Compliance.

(a) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall not offer or perform engineering services to the public unless registered with the board pursuant to the requirements of Chapter 135 (Relating to Firms and Sole Proprietorships) of this title.

(b) Any firm, sole-proprietorship, partnership, association, corporation, or other business entity shall provide that at least one full-time active license holder is employed with the entity and that the active license holder performs or directly supervises all engineering work and activities that require a license that is performed in the primary, branch, remote, or project office(s).

(c) An active license holder who is a sole proprietor shall satisfy the requirement of the regular, full-time employee.

(d) [(e)] No engineering services are to be offered to or performed for the public in Texas by a firm while that firm does not have a current certificate of registration.

(e) [(d)] Pursuant to §1001.405(g) of the Act, a business entity that offers or is engaged in the practice of engineering in Texas and is found to not be registered with the board shall register with the board pursuant to the requirements of Chapter 135 of this title within 30 days of written notice from the board.

(f) [(e)] A business entity that offers or is engaged in the practice of engineering in Texas and that fails to comply with subsection (e) [paragraph (d)] of this section or that has previously been registered with the board and whose registration has expired shall be considered to be in violation of the Act and board rules and will be subject to administrative penalties as set forth in §§1001.501-508 of the Act and §139.35 of this title (relating to Penalties and Sanctions).

(g) [(f)] The board may revoke a certificate of registration that was obtained in violation of the Act and/or board rules including, but not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional engineer for the firm.

(h) [(g)] If a firm has notified the board that it is no longer offering or performing engineer services to the public, including the absence of a regular, full-time employee who is an active professional engineer licensed in Texas, the certificate of registration record will be placed in inactive status until the board is notified of resumed offering and services. If firm certificate of registration is inactive, the certificate of registration will expire under the same requirements of subsections (e) [(d)] and (f) [(e)] of this section unless renewed.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



CHAPTER 139. ENFORCEMENT

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.21

The Texas Board of Professional Engineers proposes an amendment to §139.21, relating to Reporting Complaint Status to the Board. The proposed amendment includes language related to the handling of frivolous complaints or complaints without merit. The proposed amendment is a result of the enactment of HB1817, 79th Regular Session (2005).

The proposed amendment clarifies the procedure to be used when handling cases that are determined to be frivolous or without merit.

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 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.

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 enforcement process and improved handling of confidential information.

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.

§139.21. Reporting Complaint Status to the Board.

(a) The executive director shall provide a summary report on the status of all complaints at the regularly scheduled board meetings. The report shall include:

- (1) number of complaints filed;
- (2) number of complaints received in each category;
- (3) number of complaints initiated by the board;
- (4) number of complaints filed by persons other than the board;
- (5) the average length of time to resolve a complaint by totaling all the days accumulated for all resolved complaints and dividing by the total number of resolved complaints during the reporting period;
- (6) number of complaints that are unresolved, including:
 - (A) by those filed by the board , or
 - (B) by those filed by persons other than the board, and
 - (C) including the average length of time the unresolved complaints have been on file obtained by summing the days accumulated for all unresolved complaints and dividing by the total number of unresolved complaints;
- (7) number of dismissed cases; and
- (8) number of complaints resulting in disciplinary action including the disciplinary action taken and whether the action was imposed by stipulation, agreed settlement, consent order, default, or order following a contested case hearing.

(b) The executive director shall report dismissed complaints to the board and shall include in the report the following information:

- (1) name of the complainant,
- (2) name of the person who is subject of the complaint,
- (3) the basis of the complaint, and
- (4) the reason for the dismissal of the complaint.

(c) If the executive director determines that the complaint filed is frivolous or without merit, the case information will be classified as confidential and as such the information is not subject to discovery, subpoena, and or other disclosure. [in nature and was made for the purpose of harassment and does not demonstrate harm to the public; the executive director shall redact the license holder's name and other personal information from the report to the board and any subsequent requests for information regarding the case.] The board shall approve this action upon acceptance of the report and the case will then be closed. Closed cases will not be reconsidered for classification under this rule.

(1) A "frivolous complaint" means a complaint that the executive director has determined:

(A) was made for the purpose of harassment; and

(B) does not demonstrate harm to any person.

(2) A complaint that is determined by the executive director to be "without merit" would include situations where a:

(A) professional engineer, individual, or firm has been determined to not be responsible or connected in any way with the alleged violative action in the complaint, as it relates to a violation of the Engineering Practice Act and or Board rules; or,

(B) case has been determined to be outside the jurisdiction of the Board; or,

(C) case has been determined to have been administratively opened in error.

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 September 2, 2005.

TRD-200503863

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 16, 2005

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



SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers proposes an amendment to §139.35, relating to Sanctions and Penalties. The proposed amendment includes citation changes and adds a violation related to reporting of criminal convictions by license holders.

The proposed amendment modifies citations in the Sanctions and Penalties table in reference to §137.77, Firm Registration Compliance and includes a violation for failure to report criminal convictions by license holders.

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 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.

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 firm registration process.

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.

§139.35. Sanctions and Penalties.

(a) The board, the executive director, an administrative law judge, and the participants in an informal conference may arrive at a greater or lesser sanction than suggested in these rules. The minimum administrative penalty shall be \$100 per violation. The maximum administrative penalty shall be \$3000 per violation. Pursuant to §1001.502(a) of the Act, each day a violation continues or occurs is considered a separate violation for the purpose of assessing an administrative penalty. Allegations and disciplinary actions will be set forth in the final board order and the severity of the disciplinary action will be based on the following factors:

(1) the seriousness of the violation, including:

(A) the nature, circumstances, extent, and gravity of the prohibited act; and

(B) the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of prior violations of the respondent;

(3) the severity of penalty necessary to deter future violations;

(4) efforts or resistance to efforts to correct the violations;

(5) the economic harm to property or the environment caused by the violation; and

(6) any other matters impacting justice and public welfare, including any economic benefit gained through the violations.

(b) The following is a table of suggested sanctions the board may impose against license holders for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(b)

(c) The following is a table of suggested sanctions that may be imposed against a person or business entity for specific violations of the Act or board rules:

Figure: 22 TAC §139.35(c) (No change.)

(d) The following is a table of suggested sanctions that may be imposed against a person or business entity for violations of the Act or board rules involving firm/sole proprietorship registration:

Figure: 22 TAC 139.35(d)

(e) The following is a table of suggested sanctions that may be imposed against a governmental entity and/or its representative for violations of the Act or board rules:

Figure: 22 TAC 139.35(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 September 2, 2005.

TRD-200503864

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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



SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.43

The Texas Board of Professional Engineers proposes an amendment to §139.43, relating to License Holders with Criminal Convictions. The proposed amendment clarifies the process used in evaluating criminal convictions by license holders.

The proposed amendment clarifies that the board will evaluate criminal convictions by license holders in accordance with Chapter 53 of the Texas Occupations Code.

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 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.

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 compliance and enforcement requirements and procedures for license holders.

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.

§139.43. License Holder with Criminal Convictions.

(a) The Board [board] shall follow the requirements of Chapter 53, Texas Occupations Code, and shall revoke the license of any license holder incarcerated as a result of:

- (1) a felony conviction,
- (2) violation of felony probation or parole, or
- (3) revocation of mandatory supervision after licensure as a professional engineer.

(b) The board, after it considers the factors provided in Texas Occupations Code §53.022 and §53.023, may take any of the actions set out in §139.31 of this chapter when a license holder is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the license holder's duties and responsibilities as a professional engineer.

(c) Any license holder whose license has been revoked under the provisions of this subsection may apply for a new license upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Chapter 53, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on September 2, 2005.

TRD-200503865

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 16, 2005

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



22 TAC §139.49

The Texas Board of Professional Engineers proposes new §139.49, concerning License Suspension or Revocation Based on License Holder's Status Review. The Board proposes this action to clarify the process for a review of the status of a license holder per §1001.453 of the Act.

The proposed new rule outlines the process the board will use when evaluating the status of a license.

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 compliance and enforcement requirements and procedures for license holders.

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.

§139.49. License Suspension/Revocation Based on License Holder's Status Review.

(a) The Board may review the status of a license holder the Board believes:

(1) may have been issued a license through fraud or error;

(2) may constitute a threat to the public health, safety, or welfare.

(b) The Board may, as set out in §139.31, of this chapter (relating to Enforcement Actions for Violations of the Act) suspend or revoke a license held by a person whose status is reviewed under this section.

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

Filed with the Office of the Secretary of State on September 2, 2005.

TRD-200503866

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: October 16, 2005

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

TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 289. RADIATION CONTROL

SUBCHAPTER D. GENERAL

25 TAC §289.202

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §289.202, concerning standards for protection against radiation from radioactive materials.

BACKGROUND AND PURPOSE

The amendment adds respiratory protection definitions and requirements that are designated as compatibility items by the United States Nuclear Regulatory Commission (NRC) and because Texas is an Agreement State, these items must be adopted. The Department of State Health Services is created in Health and Safety Code Chapter 1001; therefore, the amendment changes the department name from "Texas Department of Health" to "Texas Department of State Health Services" on the forms applicable to this section. In addition the amendment corrects references and language inconsistencies

with the Texas Administrative Code. This amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

SECTION-BY-SECTION SUMMARY

The amendment to subsection (c) adds definitions concerning respiratory protection to clarify respiratory protection requirements. These definitions are items of compatibility with NRC. The word "registrant" is changed to "person" in the definition of dosimetry processor because dosimetry processors are no longer registered by the department. They are required to be certified by the National Voluntary Laboratory Accreditation Program, so it is unnecessary to also require them to register with the department. In addition, several definitions are revised to correct text inconsistencies with the Texas Administrative Code. The department added clarifying language to subsection (e)(3) and (5), concerning radiation protection programs (RPP), to clarify that review and implementation of the RPP must include a reevaluation of assessments made by the licensee to determine if individual monitoring is required.

The amendment revises and/or adds new requirements for subsections (f)(1)(B) and (f)(1)(B)(ii), (f)(3) and (4), and (r)(1)(D) to provide technical clarification of the shallow dose equivalent. Subsection (v) is amended to add "decontamination" because licensees should consider decontamination to reduce resuspension of radioactive material in the workplace as a means of controlling internal dose instead of using respirators. Subsection (w)(2) is added to allow the licensee to consider safety factors other than radiological factors when determining whether respirators should be used to keep the radiation dose as low as reasonably achievable. Subsection (x)(1)(A) - (B) is amended to delete obsolete references to extensions of certification and the Mine Safety and Health Administration. All such extensions have expired. The amendment revises or adds subsection (x)(1)(C)(i) and (iii) - (vi), new (x)(1)(E) - (I), new (x)(2), (y)(2), and (ggg)(1) concerning respiratory protection. The revisions make the requirements consistent with the philosophy of controlling the sum of internal and external radiation exposure, reflect current guidance on respiratory protection from the American National Standards Institute, and are consistent with the Occupational Safety and Health Administration's respiratory protection rule. The revisions ensure worker dose will be maintained as low as reasonably achievable. The above revisions are items of compatibility with the NRC.

Current subsection (p)(3)(C) is deleted because the department no longer registers dosimetry processors. New subsection (p)(4), relating to general surveys and monitoring, is added to ensure that the personnel monitoring devices can withstand the environment in which they are used, for example, extreme hot, cold, wet, etc. The department adds language to subsection (ff)(1)(B) to recognize an existing requirement in §289.256 of this title (relating to Medical and Veterinary Use of Radioactive Material) that allows radioactive material with a half-life less than 65 days to be held in storage for decay and then disposed of without regard to its radioactivity. The amendment revised subsection (ff)(2) by changing "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality" to reflect the new department name. The amendment adds language to subsection (fff)(4) to exclude those licensed in accordance with §289.254 of this title from using the provisions of this paragraph. Subsection (ggg)(5) is revised to change

"TRC Form 21-2" to "BRC Form 202-2" and "TRC Form 21-3" to "BRC Form 202-3" to state the correct form number. Subsection (ggg)(8) is revised to change the reference "subsection (ddd)" to "subsection (eee)" to state the correct reference. The department name is changed from "Texas Department of Health/Bureau of Radiation Control" to "Texas Department of State Health Services/Radiation Control" on both forms for subsections (ggg)(9) and (10) to reflect the new department name. Subsection (ggg)(10), item 10B of the instructions, deletes the words "as listed in Appendix B to Part D (D, W, Y, V, or O for other)" and replaces them with "subsection (ggg)(2)(F) of this subsection" to state the correct reference citation. The amendment revises several subsections to correct text inconsistencies with the Texas Administrative Code. Other minor grammatical changes and reference citations are corrected throughout the section for clarification.

FISCAL NOTE

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

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the amended 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 amended section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the section is to ensure continued protection of the public, workers, and the environment from unnecessary exposure to radiation by ensuring adequate requirements relative to the risk associated with radioactive material.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed 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 Cindy Cardwell, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688, extension 2239, or by e-mail to cindy.cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web site (www.tdh.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6688, extension 2239, or cindy.cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies 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 401 and 1001; and Government Code, Chapter 531.

§289.202. *Standards for Protection Against Radiation from Radioactive Materials.*

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

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

(1) Air-purifying respirator--A respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

(2) [(4)] Annual limit on intake (ALI)--The derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by Reference Man that would result in a committed effective dose equivalent of 5 rems (0.05 sievert (Sv)) or a committed dose equivalent of 50 rems (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Columns 1 and 2 of Table I of subsection (ggg)(2) of this section.

(3) Assigned protection factor (APF)--The expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

(4) Atmosphere-supplying respirator--A respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

(5) [(2)] Class--A classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which apply to a range of clearance half-times: for Class D, Days, of less than 10 days; for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days. For purposes of this section, lung class and inhalation class are equivalent terms.

(6) Debris--The remains of something destroyed, disintegrated, or decayed. Debris does not include soils, sludges, liquids, gases, naturally occurring radioactive material regulated in accordance with §289.259 of this title (relating to Licensing of Naturally Occurring Radioactive Material (NORM)), or low-level radioactive waste received from other persons.

(7) [(3)] Declared pregnant woman--A woman who has voluntarily informed the licensee, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman voluntarily withdraws the declaration in writing or is no longer pregnant.

(8) Demand respirator--An atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

(9) [(4)] Derived air concentration (DAC)--The concentration of a given radionuclide in air that, if breathed by Reference Man for a working year of 2,000 hours under conditions of light work, results in an intake of 1 ALI. For purposes of this section, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Column 3 of Table I of subsection (ggg)(2) of this section.

(10) [(5)] Derived air concentration-hour (DAC-hour)--The product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent ALI, equivalent to a committed effective dose equivalent of 5 rems (0.05 Sv).

(11) Disposable respirator--A respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus.

(12) [(6)] Dosimetry processor--A person [registrant] that processes and evaluates personnel monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

(13) Filtering facepiece (dust mask)--A negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, not equipped with elastomeric sealing surfaces and adjustable straps.

(14) Fit factor--A quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

(15) Fit test--The use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

(16) Helmet--A rigid respiratory inlet covering that also provides head protection against impact and penetration.

(17) Hood--A respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

(18) [(7)] Inhalation class (see definition for Class).

(19) Loose-fitting facepiece--A respiratory inlet covering that is designed to form a partial seal with the face.

(20) [(8)] Lung class (see definition for Class).

(21) Negative pressure respirator (tight fitting)--A respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

(22) [(9)] Nonstochastic effect--A health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of this section, deterministic effect is an equivalent term.

(23) [(10)] Planned special exposure--An infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

(24) Positive pressure respirator--A respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

(25) Powered air-purifying respirator--An air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

(26) Pressure demand respirator--A positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

(27) Qualitative fit test--A pass/fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

(28) Quantitative fit test--An assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

(29) [(11)] Quarter--A period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(30) [(12)] Reference man--A hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers [researchers] and public health employees to standardize results of experiments and to relate biological [relatebiological] insult to a common base. A description of Reference Man is contained in the International Commission on Radiological Protection Report [report], ICRP Publication 23, "Report of the Task Group on Reference Man."

(31) [(13)] Respiratory protective equipment--An apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

(32) [(14)] Sanitary sewerage--A system of public sewers for carrying off waste water and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

(33) Self-contained breathing apparatus--An atmosphere-supplying respirator for which the breathing air source is designed to be carried by the user.

(34) [(15)] Stochastic effect--A health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of this section probabilistic effect is an equivalent term.

(35) Supplied-air respirator or airline respirator--An atmosphere-supplying respirator for which the source of breathing air is not designed to be carried by the user.

(36) Tight-fitting facepiece--A respiratory inlet covering that forms a complete seal with the face.

(37) User seal check (fit check)--An action conducted by the respirator user to determine if the respirator is properly seated to the face. Examples include negative pressure check, positive pressure check, irritant smoke check, or isoamyl acetate check.

(38) [(16)] Weighting factor w_T [wT] for an organ or tissue (T)--The proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects when the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of w_T [wT] are:

Figure: 25 TAC §289.202(c)(38)

[Figure: 25 TAC §289.202(e)(16)]

(d) (No change.)

(e) Radiation protection programs.

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

(3) The licensee shall, at intervals not to exceed 12 months, ensure the radiation protection program content and implementation is reviewed. The review shall include a reevaluation of the assessments made to determine monitoring is not required in accordance with subsection (q)(1) and (3) of this section in conjunction with the licensee's current operating conditions.

(4) (No change.)

(5) If monitoring is not required in accordance with subsection (q)(1) and (3) of this section, the licensee shall document assessments made to determine the requirements of subsection (q)(1) and (3) of this section are not applicable. The licensee shall maintain the documentation in accordance with subsection (rr)(5) of this section.

(f) Occupational dose limits for adults.

(1) The licensee shall control the occupational dose to individuals, except for planned special exposures in accordance with subsection (k) of this section, to the following dose limits.

(A) (No change.)

(B) The annual limits to the lens of the eye, to the skin of the whole body, and to the skin of the extremities shall be:

(i) (No change.)

(ii) a shallow dose equivalent of 50 rems (0.5 Sv) to the skin of the whole body or to the skin of any extremity.

(2) (No change.)

(3) The assigned deep dose equivalent [~~and shallow dose equivalent~~] shall be for the portion of the body receiving the highest exposure. The assigned shallow-dose equivalent shall be the dose averaged over the contiguous 10 square centimeters (cm²) of skin receiving the highest exposure.

(4) The deep dose equivalent, lens dose equivalent and shallow dose equivalent may be assessed from surveys, [~~calculations,~~] or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

(5) - (7) (No change.)

(g) Compliance with requirements for summation of external and internal doses.

(1) (No change.)

(2) If the only intake of radionuclides is by inhalation, the total effective dose equivalent limit is not exceeded if the sum of the deep dose equivalent divided by the total effective dose equivalent limit, and one of the following, does not exceed unity:

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

(C) the sum of the calculated committed effective dose equivalents to all significantly irradiated organs or tissues (T) calculated from bioassay data using appropriate biological models and expressed as a fraction of the annual limit. For purposes of this requirement, an organ or tissue is deemed to be significantly irradiated if, for that organ or tissue, the product of the weighting factors, w_T [wT], and the committed dose equivalent, $H_{T,50}$ [HT,50], per unit intake is greater than 10% of the maximum weighted value of $H_{T,50}$ [HT,50], that is, $\frac{w_T}{H_{T,50}}$ [wT HT, 50], per unit intake for any organ or tissue.

(3) - (4) (No change.)

(h) - (o) (No change.)

(p) General surveys and monitoring.

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

(3) All individual monitoring devices, except for direct and indirect reading pocket dosimeters, electronic personal dosimeters, and those individual monitoring devices used to measure the dose to any extremity, that require processing to determine the radiation dose and that are used by licensees to comply with subsection (f) of this section, with other applicable provisions of this chapter, or with conditions specified in a license, shall be processed and evaluated by a dosimetry processor:

(A) (No change.)

(B) approved in this accreditation process for the type of radiation or radiations included in the NVLAP program that most closely approximates the type of radiation or radiations for which the individual wearing the dosimeter is monitored. [~~; and~~]

~~[(C) holding a current certificate of registration from the agency authorizing dosimetry processing.]~~

(4) All individual monitoring devices shall be appropriate for the environment in which they are used.

(q) (No change.)

(r) Location and use of individual monitoring devices.

(1) Each licensee shall ensure that individuals who are required to monitor occupational doses in accordance with subsection (q)(1) of this section wear and use individual monitoring devices as follows.

(A) - (C) (No change.)

(D) An individual monitoring device used for monitoring the dose to the skin of the extremities, to demonstrate compliance with subsection (f)(1)(B)(ii) of this section, shall be worn on the skin of the extremity likely to receive the highest exposure. Each individual monitoring device, to the extent practicable, shall be oriented to measure the highest dose to the skin of the extremity being monitored.

(E) - (F) (No change.)

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

(s) - (u) (No change.)

(v) Use of process or other engineering controls. The licensee shall use, to the extent practicable, process or other engineering controls, such as containment, decontamination, or ventilation, to control the concentrations of radioactive material in air.

(w) Use of other controls.

(1) When it is not practicable to apply process or other engineering controls to control the concentrations of radioactive material in air to values below those that define an airborne radioactivity area, the licensee shall, consistent with maintaining the total effective dose equivalent ALARA, increase monitoring and limit intakes by one or more of the following means:

- (A) ~~[(4)]~~ control of access;
- (B) ~~[(2)]~~ limitation of exposure times;
- (C) ~~[(3)]~~ use of respiratory protection equipment; or
- (D) ~~[(4)]~~ other controls.

(2) If the licensee performs an ALARA analysis to determine whether respirators should be used, the licensee may consider safety factors other than radiological factors. The licensee shall also consider the impact of respirator use on workers' industrial health and safety.

(x) Use of individual respiratory protection equipment.

(1) If the licensee uses respiratory protection equipment to limit intakes of radioactive material in accordance with subsection (w) of this section, the licensee shall do the following.

(A) Except as provided in subparagraph (B) of this paragraph, the licensee shall use only respiratory protection equipment that is tested and certified ~~[or had certification extended]~~ by the National Institute for Occupational Safety and Health (NIOSH) ~~[and the Mine Safety and Health Administration (MSHA)]~~.

(B) If the licensee wishes to use equipment that has not been tested or certified by the NIOSH ~~[and the MSHA, or has not had certification extended by the NIOSH and the MSHA]~~, or for which there is no schedule for testing or certification, the licensee shall submit an application to the agency for authorized use of that equipment, including a demonstration by testing, or a demonstration on the basis of test information, that the material and performance characteristics of the equipment are capable of providing the proposed degree of protection under anticipated conditions of use.

(C) The licensee shall implement and maintain a respiratory protection program that includes:

(i) air sampling sufficient to identify the potential hazard, permit proper equipment selection, and estimate doses ~~[exposures]~~;

(ii) (No change.)

(iii) testing of respirators for operability (user seal check for face sealing devices and functional check for others) immediately prior to each use;

(iv) written procedures regarding the following: ~~[selection, fitting, issuance, maintenance, and testing of respirators, including testing for operability immediately prior to each use; supervision and training of personnel; monitoring, including air sampling and bioassays; and recordkeeping; and]~~

(I) monitoring, including air sampling and bioassays;

(II) supervision and training of respirator users;

(III) fit testing;

(IV) respirator selection;

(V) breathing air quality;

(VI) inventory and control;

(VII) storage, issuance, maintenance, repair, testing, and quality assurance of respiratory protection equipment;

(VIII) recordkeeping; and

(IX) limitations on periods of respirator use and relief from respirator use;

(v) determination by a physician prior to initial fitting of a face sealing respirator and the first field use of non-face sealing respirators ~~[respirators]~~, and either every 12 months thereafter or periodically at a frequency determined by a physician, that the individual user is medically fit ~~[physically able]~~ to use the respiratory protection equipment; and ~~[-]~~

(vi) fit testing, with fit factor > 10 times the APF for negative pressure devices, and a fit factor > 500 for any positive pressure, continuous flow, and pressure-demand devices, before the first field use of tight fitting, face-sealing respirators and periodically thereafter at a frequency not to exceed 1 year. Fit testing shall be performed with the facepiece operating in the negative pressure mode.

~~[(D)]~~ The licensee shall issue a written policy statement on respirator usage covering:

~~[(i)]~~ the use of process or other engineering controls, instead of respirators;

~~[(ii)]~~ the routine, nonroutine, and emergency use of respirators; and

~~[(iii)]~~ the length of periods of respirator use and relief from respirator use.

(D) ~~[(E)]~~ The licensee shall advise each respirator user that the user may leave the area at any time for relief from respirator use in the event of equipment malfunction, physical or psychological distress, procedural or communication failure, significant deterioration of operating conditions, or any other conditions that might require such relief.

(E) ~~[(F)]~~ The licensee shall use respiratory protection equipment within the equipment manufacturer's expressed limitations for type and mode of use and shall provide for vision correction, adequate ~~[proper visual,]~~ communication, low-temperature work environment, and the concurrent use of other safety or radiological protection equipment. The licensee shall use equipment in such a way as not to interfere with the proper operation of the respirator ~~[and other special capabilities, such as adequate skin protection, when needed]~~.

(F) Standby rescue persons are required whenever one-piece atmosphere-supplying suits, or any combination of supplied air respiratory protection device and personnel protective equipment are used from which an unaided individual may have difficulty extricating himself or herself. The standby persons shall be equipped with respiratory protection devices or other apparatus appropriate for the potential hazards. The standby rescue persons shall observe or otherwise maintain continuous communication with the workers (visual, voice, signal line, telephone, radio, or other suitable means), and be immediately available to assist them in case of a failure of the air supply or for any other reason that requires relief from distress. A sufficient number of standby rescue persons must be immediately available to assist all users of this type of equipment and to provide effective emergency rescue if needed.

(G) Atmosphere-supplying respirators shall be supplied with respirable air of grade D quality or better as defined by the Compressed Gas Association in publication G-7.1, "Commodity Specification for Air," 1997 and included in the regulations of the Occupational Safety and Health Administration (Title 29, CFR, §1910.134(i)(1)(ii)(A) through (E)). Grade D quality air criteria include:

- (i) oxygen content (volume/volume) of 19.5-23.5%;
- (ii) hydrocarbon (condensed) content of 5 milligrams per cubic meter of air or less;
- (iii) carbon monoxide (CO) content of 10 parts per million (ppm) or less;
- (iv) carbon dioxide content of 1,000 ppm or less; and
- (v) lack of noticeable odor.

(H) the licensee shall ensure that no objects, materials or substances, such as facial hair, or any conditions that interfere with the face-facepiece seal or valve function, and that are under the control of the respirator wearer, are present between the skin of the wearer's face and the sealing surface of a tight-fitting respirator facepiece.

(I) In estimating the dose to individuals from intake of airborne radioactive materials, the concentration of radioactive material in the air that is inhaled when respirators are worn is initially assumed to be the ambient concentration in air without respiratory protection, divided by the assigned protection factor. If the dose is later found to be greater than the estimated dose, the corrected value must be used. If the dose is later found to be less than the estimated dose, the corrected value may be used.

(2) The agency may impose restrictions in addition to those in paragraph (1) of this subsection, subsection (w) of this section, and subsection (ggg)(1) of this section, in order to:

(A) ensure that the respiratory protection program of the licensee is adequate to limit doses to individuals from intakes of airborne radioactive materials consistent with maintaining total effective dose equivalent ALARA; and

(B) limit the extent to which a licensee may use respiratory protection equipment instead of process or other engineering controls.

{(2) When estimating exposure of individuals to airborne radioactive materials, the licensee may make allowance for respiratory protection equipment used to limit intakes in accordance with subsection (w) of this section, provided that the following conditions, in addition to those in paragraph (1) of this subsection, are satisfied.}

{(A) The licensee selects respiratory protection equipment that provides a protection factor, as specified in subsection

(ggg)(1) of this section, greater than the multiple by which peak concentrations of airborne radioactive materials in the working area are expected to exceed the values specified in Column 3 of Table I of subsection (ggg)(2) of this section. However, if the election of respiratory protection equipment with a protection factor greater than the peak concentration is inconsistent with the goal specified in subsection (w) of this section of keeping the total effective dose equivalent ALARA, the licensee may select respiratory protection equipment with a lower protection factor provided that such a selection would result in a total effective dose equivalent that is ALARA. The concentration of radioactive material in the air that is inhaled when respirators are worn may be initially estimated by dividing the average concentration in air, during each period of uninterrupted use, by the protection factor. If the exposure is later found to be greater than initially estimated, the corrected value shall be used; if the exposure is later found to be less than initially estimated, the corrected value may be used.}

(3) ~~{(B)}~~ The licensee shall obtain authorization from the agency before assigning respiratory protection factors in excess of those specified in subsection (ggg)(1) of this section. The agency may authorize a licensee to use higher protection factors on receipt of an application that:

(A) ~~{(i)}~~ describes the situation for which a need exists for higher protection factors; and

(B) ~~{(ii)}~~ demonstrates that the respiratory protection equipment provides these higher protection factors under the proposed conditions of use.

{(3) In an emergency, the licensee shall use as emergency equipment only respiratory protection equipment that has been specifically certified or had certification extended for emergency use by the NIOSH and the MSHA.}

{(4) The licensee shall notify the agency in writing at least 30 days before the date that respiratory protection equipment is first used in accordance with either paragraphs (1) or (2) of this subsection.}

(y) Security and control of licensed sources of radiation.

(1) (No change.)

(2) The licensee shall maintain constant surveillance, using devices and/or administrative procedures to prevent unauthorized access to use of radioactive material that is in an unrestricted area and that is not in storage.

(z) - (dd) (No change.)

(ee) Procedures for receiving and opening packages.

(1) (No change.)

(2) Each licensee shall:

(A) monitor the external surfaces of a labeled package, labeled with a Radioactive White I, Yellow II, or Yellow III label as specified in DOT regulations Title 49, CFR, §§172.403 and 172.436-440, for radioactive contamination unless the package contains only radioactive material in the form of gas or in special form as defined in §289.201(b) of this title; [and]

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

(3) (No change.)

(4) The licensee shall immediately notify the final delivery carrier and, by telephone and telegram, mailgram, or facsimile, the agency when removable radioactive surface contamination or external

radiation levels exceed the limits established in subparagraphs (A) and (B) of this paragraph.

(A) (No change.)

(B) Limits for external radiation levels.

(i) External radiation levels around the package and around the vehicle, if applicable, will not exceed 200 millirems per hour (mrem/hr) (2 millisieverts [millisiveerts] per hour (mSv/hr)) at any point on the external surface of the package at any time during transportation. The transport index shall not exceed 10.

(ii) (No change.)

(5) - (6) (No change.)

(ff) General requirements for waste management.

(1) Unless otherwise exempted, a licensee shall discharge, treat, or decay licensed material or transfer waste for disposal only:

(A) (No change.)

(B) by decay in storage with prior approval from the agency, except as authorized in §289.256(x) of this title (relating to Medical and Veterinary Use of Radioactive Material);

(C) - (D) (No change.)

(2) Upon agency approval, emission control dust and other material from electric arc furnaces or foundries contaminated as a result of inadvertent melting of cesium-137 or americium-241 sources may be transferred for disposal to a hazardous waste disposal facility authorized by the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] (Commission) or its successor, another state's regulatory agency with jurisdiction to regulate hazardous waste as classified under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or the EPA. The material may be transferred for disposal without regard to its radioactivity if the following conditions are met.

(A) - (L) (No change.)

(3) (No change.)

(gg) - (kk) (No change.)

(ll) General provisions for records.

(1) Each licensee shall use the International System of Units (SI) [SI] units becquerel, gray, sievert, and coulomb per kilogram, or the special units curie, rad, rem, and roentgen, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this section. Disintegrations per minute may be indicated on records of surveys performed to determine compliance with subsections (ee)(4) and [subsection] (ggg)(6) of this section. To ensure compatibility with international transportation standards, all limits in this section are given in terms of dual units: The SI units [International System of Units (SI)] followed or preceded by United States (U.S.) standard or customary units. The U.S. customary units are not exact equivalents, but are rounded to a convenient value, providing a functionally equivalent unit. For the purpose of this section, either unit may be used.

(2) - (5) (No change.)

(mm) - (eee) (No change.)

(fff) Exemption of specific wastes.

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

(4) Any licensee, except those licensed in accordance with §289.254 of this title, may, upon agency approval of procedures required in paragraph (6) of this subsection, discard licensed material included in subsection (ggg)(7) of this section, provided that it does not exceed the concentration and total curie limits contained therein, in a Type I municipal solid waste site as defined in the Municipal Solid Waste Regulations of the authorized regulatory agency (30 [34] Texas Administrative Code Chapter 330), unless such licensed material also contains hazardous waste, as defined in §3(15) of the Solid Waste Disposal Act, Health and Safety Code, Chapter 361. Any licensed material included in subsection (ggg)(7) of this section and which is a hazardous waste as defined in the Solid Waste Disposal Act may be discarded at a facility authorized to manage hazardous waste by the authorized regulatory agency.

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

(ggg) Appendices.

(1) Assigned protection [~~Protection~~] factors for respirators. The following table contains assigned protection factors for respirators^a [~~respirators~~]:

Figure: 25 TAC §289.202(ggg)(1)

[Figure: 25 TAC §289.202(ggg)(1)]

(2) Annual limits on intake (ALI) and derived air concentrations (DAC) of radionuclides for occupational exposure; effluent concentrations; concentrations for release to sanitary sewerage.

(A) Introduction.

(i) (No change.)

(ii) The values in Tables I, II, and III of subparagraph (F) of this paragraph are presented in the computer "E" notation. In this notation a value of 6E-02 represents a value of 6×10^{-2} [6×10^{-2}] or 0.06, 6E+2 represents 6×10^2 [6×10^2] or 600, and 6E+0 represents 6×10^0 [6×10^0] or 6.

(B) Occupational values.

(i) (No change.)

(ii) The ALIs in subparagraph (F) of this paragraph are the annual intakes of given radionuclide by "Reference Man" that would result in either a committed effective dose equivalent of 5 rems (0.05 Sv), stochastic ALI, or a committed dose equivalent of 50 rems (0.5 Sv) to an organ or tissue, non-stochastic ALI. The stochastic ALIs were derived to result in a risk, due to irradiation of organs and tissues, comparable to the risk associated with deep dose equivalent to the whole body of 5 rems (0.05 Sv). The derivation includes multiplying the committed dose equivalent to an organ or tissue by a weighting factor, w_T [w_T]. This weighting factor is the proportion of the risk of stochastic effects resulting from irradiation of the organ or tissue, T, to the total risk of stochastic effects when the whole body is irradiated uniformly. The values of w_T [w_T] are listed under the definition of "weighting factor" in subsection (c) of this section. The non-stochastic ALIs were derived to avoid non-stochastic effects, such as prompt damage to tissue or reduction in organ function.

(iii) A value of w_T [w_T] = 0.06 is applicable to each of the five organs or tissues in the "remainder" category receiving the highest dose equivalents, and the dose equivalents of all other remaining tissues may be disregarded. The following portions of the GI tract; stomach, small intestine, upper large intestine, and lower large intestine, are to be treated as four separate organs.

(iv) - (xii) (No change.)

(C) Effluent concentrations.

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

(iii) The air concentration values listed in Column I of Table II of subparagraph (F) of this paragraph were derived by one of two methods. For those radionuclides for which the stochastic limit is governing, the occupational stochastic inhalation ALI was divided by 2.4×10^2 [~~2.4~~ $\times 10^2$], relating the inhalation ALI to the DAC, as explained in subparagraph (B)(viii) of this paragraph, and then divided by a factor of 300. The factor of 300 includes the following components:

(I) - (III) (No change.)

(iv) (No change.)

(v) The water concentrations were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^2 [~~7.3~~ $\times 10^2$]. The factor of 7.3×10^2 [~~7.3~~ $\times 10^2$] milliliters (ml) includes the following components:

(I) (No change.)

(II) a factor of 7.3×10^5 [~~7.3~~ $\times 10^5$] (ml) which is the annual water intake of "Reference Man."

(vi) (No change.)

(D) Releases to sewers. The monthly average concentrations for release to sanitary sewerage are applicable to the provisions in subsection (gg) of this section. The concentration values were derived by taking the most restrictive occupational stochastic oral ingestion ALI and dividing by 7.3×10^6 [~~7.3~~ $\times 10^6$] (ml). The factor of 7.3×10^6 [~~7.3~~ $\times 10^6$] (ml) is composed of a factor of 7.3×10^5 [~~7.3~~ $\times 10^5$] (ml), the annual water intake by "Reference Man," and a factor of 10, such that the concentrations, if the sewage released by the licensee were the only source of water ingested by a "Reference Man" during a year, would result in a committed effective dose equivalent of 0.5 rem.

(E) - (F) (No change.)

(3) (No change.)

(4) Classification and characteristics of low-level radioactive waste (LLRW).

(A) Classification of radioactive waste for land disposal.

(i) - (vi) (No change.)

(vii) The sum of the fractions rule for mixtures of radionuclides. For determining classification for waste that contains a mixture of radionuclides, it is necessary to determine the sum of fractions by dividing each radionuclide's concentration by the appropriate limit and adding the resulting values. The appropriate limits must all be taken from the same column of the same table. The sum of the fractions for the column must be less than 1.0 if the waste class is to be determined by that column. Example: A waste contains Sr-90 in a concentration of 50 curies per cubic meter (Ci/m^3 [~~Ci/m~~ 3]) (1.85 terabecquerels per cubic meter (TBq/m^3 [~~TBq/m~~ 3])) and Cs-137 in a concentration of $22 \text{ Ci}/\text{m}^3$ [~~22 Ci/m~~ 3] (814 gigabecquerels per cubic meter (GBq/m^3 [~~GBq/m~~ 3])). Since the concentrations both exceed the values in Column 1 of clause (iv)(VI) of this subparagraph, they must be compared to Column 2 values. For Sr-90 fraction, $50/150 = 0.33$, for Cs-137 fraction, $22/44 = 0.5$; the sum of the fractions = 0.83. Since the sum is less than 1.0, the waste is Class B.

(viii) (No change.)

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

(5) Time requirements for record keeping.

Figure: 25 TAC §289.202(ggg)(5)

[Figure: 25 TAC §289.202(ggg)(5)]

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

(8) Soil contamination limits for selected radionuclides (for use in subsection (eee) [~~ddd~~] of this section).

Figure: 25 TAC §289.202(ggg)(8) (No change.)

(9) Cumulative occupational exposure form. The following, BRC Form 202-2, is to be used to document cumulative occupational exposure history: (Please find BRC Form 202-2 at the end of this section.)

Figure: 25 TAC §289.202(ggg)(9)

[Figure: 25 TAC §289.202(ggg)(9)]

(10) Occupational exposure form. The following, BRC Form 202-3, is to be used to document occupational exposure record for a monitoring period: (Please find BRC Form 202-3 at the end of this section.)

Figure: 25 TAC §289.202(ggg)(10)

[Figure: 25 TAC §289.202(ggg)(10)]

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 August 31, 2005.

TRD-200503811

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 16, 2005

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



SUBCHAPTER F. LICENSE REGULATIONS

25 TAC §289.253

The Executive Commissioner of the Health and Human Services Commission on behalf of the Department of State Health Services (department) proposes an amendment to §289.253, concerning Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

BACKGROUND AND PURPOSE

The amendment is the result of a petition for rulemaking filed by a licensee and a subsequent agreement by the department to amend the rules to allow an alternate method for discarding radioactive tracer materials used in oil and gas well fracturing procedures. Because this involves Class II disposal wells that are under the jurisdiction of the Texas Railroad Commission (RRC), the RRC's input and coordination has been obtained in formulating the rule amendment. A subsection on security has been amended for compatibility with the United States Nuclear Regulatory Commission (NRC) and because Texas is an agreement state with NRC, this item must be adopted. The Department of State Health Services is created in Health and Safety Code, Chapter 1001; therefore, the amendment changes the department name from "Texas Department of Health" to "Department of State Health Services" in the text. The amendment is part of the department's continuing effort to update, clarify, and simplify its rules regarding the control of radiation based upon technological advances, public concerns, legislative directives, or other factors.

SECTION-BY-SECTION SUMMARY

The words "licensees and registrants" were changed to "persons" in subsection (b) to clarify the intent that the rule applies to all persons who use sources of radiation and not just licensees and registrants. A definition of screenout is added in subsection (c) to clarify requirements relating to oil and gas well returns. The definition of wireline service operation is revised to clarify that an electronic service, as well as a mechanical service, may be performed in the wellbore. Language is added to subsection (d)(2)(B)(i) to clarify that in the event of a screenout, material must be reversed into a preconstructed steel or lined pit. Subsection (s) concerning security at temporary job sites is revised because it is an item of compatibility with the NRC and Texas must adopt this. Subsection (u) is amended to allow the injection of oil and gas well returns containing radioactive material into Class II disposal wells that have been approved to accept non-hazardous oil and gas waste by the RRC. In addition, language is added that requires the well operator to notify the licensee when a decision is made to reverse the radioactive tracer material out of a well. The requirement also states that the licensee shall be onsite and present at the well when radioactive tracer material is reversed out of the well. The department changed the agency name from "Texas Department of Health/Bureau of Radiation Control" to "Department of State Health Services/Radiation Control" to state the new department name in the text in subsection (cc)(6)(B)(viii)(III). In the plaque example in subsection (dd)(3), the department changed the agency name from "Texas Department of Health/Bureau of Radiation Control" to "Texas Department of State Health Services/Radiation Control." Other minor grammatical changes are made and reference citations are corrected for clarification.

FISCAL NOTE

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

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Tennyson has also determined that there will be no effect on small businesses or micro-businesses required to comply with the amended 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. Those persons who choose to inject oil and gas well returns into Class II wells will be required to amend their permit from the RRC. The RRC fee for such amendment is \$200 for a Class II disposal well. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson has also determined that for each year of the first five years the amendment is in effect, the public will benefit from adoption of the amended section. The public benefit anticipated as a result of enforcing or administering the section is to protect public health and safety by disposing oil and gas well returns containing radioactive material downhole rather than above ground, thereby reducing exposures to the public and workers.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code,

§2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed 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 Cindy Cardwell, Radiation Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division of Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6688, extension 2239, or by e-mail to cindy.cardwell@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be scheduled after publication in the *Texas Register* and will be held at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas 78754. The meeting date will be posted on the Radiation Control web site (www.tdh.state.tx.us/radiation). Please contact Cindy Cardwell at (512) 834-6688, extension 2239, or cindy.cardwell@dshs.state.tx.us if you have questions.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by Health and Safety Code, §401.051, which provides the Executive Commissioner of the Health and Human Services Commission with authority to adopt rules and guidelines relating to the control of radiation, and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies 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 401 and 1001; and Government Code, Chapter 531.

§289.253. *Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.*

(a) (No change.)

(b) Scope. This section applies to all persons [~~licensees or registrants~~] who use sources of radiation for well logging service operations, radioactive markers, mineral exploration and tracer studies. In addition to the requirements of this section, persons [~~licensees and registrants~~] are subject to the requirements of §289.201 of this title (relating to General Provisions for Radioactive Material), §289.202 of

this title (relating to Standards for Protection Against Radiation from Radioactive Material), §289.203 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.204 of this title (relating to Fees for Certificates of Registration, Radioactive Material Licenses, Emergency Planning and Implementation, and Other Regulatory Services), §289.205 of this title (relating to Hearing and Enforcement Procedures), §289.226 of this title (relating to Registration of Radiation Machine Use and Services), §289.229 of this title (relating to Radiation Safety Requirements for Accelerators, Therapeutic Radiation Machines, and Simulators), §289.231 of this title (relating to General Provisions and Standards for Protection Against Machine-Produced Radiation), §289.252 of this title (relating to Licensing of Radioactive Material), and §289.257 of this title (relating to Packaging and Transportation of Radioactive Material).

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

(1) Energy compensation source (ECS)--A small sealed source with an activity not exceeding 100 microcurie (μCi)(3.7 megabecquerel (MBq)), used within a logging tool or other tool components, to provide a reference standard to maintain the tool's [tøøls] calibration when in use.

(2) - (11) (No change.)

(12) Screenout--A situation in which radioactive tracer material is reversed out of an oil or gas well (well returns).

(13) [(12)] Service company--Any contracted or subcontracted company that is present at the temporary job site, specifically, that company to which the licensee's equipment is connected and that is exposed to radioactive material.

(14) [(13)] Source holder--A housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(15) [(14)] Storage container--A container designed to provide radiation safety and security when sources of radiation are being stored.

(16) [(15)] Temporary job site--A location where well logging or tracer studies are performed other than the specific location(s) listed on a license or certificate of registration.

(17) [(16)] Tracer study--The release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the wellbore, at the wellhead, or adjacent formation.

(18) [(17)] Transport container--A container that meets the requirements of the United States Department of Transportation (DOT) and is designed to provide radiation safety and security when sources of radiation are being transported.

(19) [(18)] Tritium neutron generator target source--A tritium source used within a neutron generator tube to produce neutrons for use in well logging applications.

(20) [(19)] Uranium sinker bar--A weight containing depleted uranium used to aid in the descent of a logging tool down toward the bottom of a wellbore.

(21) [(20)] Wellbore--A drilled hole in which wireline service operations are performed.

(22) [(21)] Well logging--All operations involving the lowering and raising of measuring devices or logging tools (that may or may not contain sources of radiation) into wellbores or cavities for the

purpose of obtaining information about the well and/or adjacent formations.

(23) [(22)] Wireline--An armored steel cable containing one or more electrical conductors used to lower and raise logging tools in the wellbore.

(24) [(23)] Wireline service operation--Any mechanical or electronic service that is performed in the wellbore using devices that are lowered into the well on a wireline for purposes of evaluation.

(d) Prohibitions.

(1) (No change.)

(2) No licensee shall perform tracer study operations with a substance tagged with radioactive material in any well or wellbore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor or land owner, and the service company to which the licensee's equipment is connected, as applicable, that specifies who will be responsible for ensuring the following requirements are met:

(A) in the event the service company's personnel or equipment are contaminated with radioactive material, they shall be decontaminated in accordance with §289.202(n) or (ddd) [(eee)] of this title before release from the job site or release for unrestricted use;

(B) in the event the well head or job site is contaminated with radioactive material, it shall be decontaminated in accordance with §289.202(ddd) [§289.202(eee)] of this title; and

(C) in the event radioactive material is to be reversed from the well or the well screens out, the licensee shall have established procedures and equipment or facilities to do the following:

(i) reverse material into a preconstructed steel or lined pit that is specifically established in the event of a screen out; or

(ii) (No change.)

(3) (No change.)

(e) (No change.)

(f) Storage precautions.

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

(3) Sources of radiation, except accelerators, shall be stored downhole or in a bunker in order to minimize the danger from explosion and/or fire.

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

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

(n) Inspection and maintenance.

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

(3) Any operation, such as drilling, cutting, or chiseling on a source holder containing a sealed source, shall be performed on the source holder only by persons specifically licensed to do so by the agency, another agreement or licensing state, or the NRC. The provisions of this paragraph do not apply to logging tool recovery (fishing) operations conducted in accordance with the provisions of subsection (cc)(4) [(ee)(3)] of this section.

(4) (No change.)

(o) - (r) (No change.)

(s) Security. [During each well logging or tracer application, the logging supervisor or other employee who is authorized by the specific licensee for that activity, is responsible for protecting against

~~unauthorized and/or unnecessary entry into a restricted area, as defined in §289.201(b) of this title, or §289.231 of this title, as applicable.]~~

(1) A logging supervisor must be physically present at a temporary jobsite whenever radioactive material is being handled or is not stored and locked in a vehicle or storage place. The logging supervisor may leave the jobsite in order to obtain assistance if a sealed source becomes lodged in a well.

(2) During well logging, except when sealed sources are below ground or in shipping or storage containers, the logging supervisor or other individual designated by the logging supervisor shall maintain direct surveillance of the operation to prevent unauthorized entry into a restricted area, as defined in §289.201(b) of this title, or §289.231(c) of this title, as applicable.

(t) (No change.)

(u) Tracer studies.

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

(3) A licensee may discard well-logging screenouts (well returns) containing residual radioactive materials into Class II disposal wells authorized by the Texas Railroad Commission (RRC) for such residuals, provided that the following requirements are met:

(A) the total radioactive concentration of all isotopes involved in the screenout is 1000 picocuries per gram (pCi/g) or less, and the physical half-life of the radioactive material is 120 days or less;

(B) the well is licensed by the RRC to accept non-hazardous oil and gas waste; and

(C) the licensee maintains an agreement with the owner or operator to control access to the Class II disposal well until the radioactivity has decayed to unrestricted release levels.

(4) The well operator shall contact the licensee when a decision is made to reverse the radioactive tracer material out of a well. The licensee shall be on site and present at the well when radioactive tracer material is reversed out of a well.

(v) (No change.)

(w) Radioactive markers. The licensee may use radioactive markers in wells only if the individual markers contain quantities of radioactive material not exceeding the quantities specified in §289.251(m)(2) [~~§289.251(q)(2)~~] of this title. The use of markers is subject only to the provisions of this subsection and subsection (j) of this section.

(x) (No change.)

(y) Energy compensation source.

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

(3) For well logging applications without a surface casing for protecting fresh water aquifers, use of the ECS is only subject to the requirements of subsections (d), (i), (j), (k), ~~(bb)(4)~~ [(~~bb~~)(4)(A);] and (cc) of this section.

(z) Tritium neutron generator target source.

(1) Use of a tritium neutron generator target source, containing quantities not exceeding 30 curies [~~curie~~] (Ci) (1,110 MBq) and in a well with a surface casing to protect fresh water aquifers, is subject to the requirements of this section, except subsections (d), (l), and (cc) of this section.

(2) (No change.)

(aa) - (bb) (No change.)

(cc) Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

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

(5) When efforts to recover the radioactive source are not successful, the licensee shall do the following:

(A) (No change.)

(B) advise the well operator of the RRC [~~Texas Railroad Commission~~] requirements regarding abandonment and an appropriate method of abandonment, that shall include the following:

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

(iii) the mounting of a permanent identification plaque, containing information required by paragraph (6) [(5)] of this subsection, at the surface of the well;

(C) - (D) (No change.)

(6) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque (an example of a suggested plaque is shown in subsection (dd)(3) of this section) for posting on the well or wellbore. This plaque shall meet the following requirements:

(A) (No change.)

(B) contain the following engraved information on its face:

(i) - (vii) (No change.)

(viii) an appropriate warning, depending on the specific circumstances of each abandonment, such as the following:

(I) - (II) (No change.)

(III) "Do not re-enter hole before contacting Radiation Control, Department of State Health Services [~~Bureau of Radiation Control, Texas Department of Health~~]."

(7) - (8) (No change.)

(dd) Appendices.

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

(3) The following is an example of a plaque for identifying wells containing sealed sources of radioactive material abandoned downhole:

Figure: 25 TAC §289.253(dd)(3)

[Figure: 25 TAC §289.253(dd)(3)]

(4) - (5) (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 August 31, 2005.

TRD-200503810

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: October 16, 2005

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER D. OPERATION GAME THIEF FUND

31 TAC §§55.111, 55.113, 55.114

The Operation Game Thief Committee proposes amendments to §§55.111, 55.113, and 55.114, concerning Operation Game Thief (OGT). OGT is a type of crime-stopper program designed to encourage the public to assist the Texas Parks and Wildlife Department (TPWD) in enforcing conservation laws by reporting unlawful conduct. Created in 1981 by the 67th Texas Legislature, the program offers rewards of up to \$1,000 for information leading to the arrest and conviction of persons who commit crimes involving wildlife resources. The program is privately funded but administered by TPWD under the provisions of Parks and Wildlife Code, Chapter 12, Subchapter C.

House Bill 2032, enacted by the 79th Texas Legislature, Regular Session, altered the provisions of Parks and Wildlife Code, §12.203, to increase the scope of its applicability with respect to violations of both the Parks and Wildlife Code and other statutes. Prior to the enactment of H.B. 2032, the provisions of Parks and Wildlife Code, §12.203, provided that rewards could be paid by the OGT committee only for a flagrant violation of the Parks and Wildlife Code or a regulation adopted under the Parks and Wildlife Code related to the take, possession, or sale of an animal, bird, reptile, or fish.

H.B. 2032 amends the provisions of Parks and Wildlife Code, §12.203, to remove the requirement that a violation be flagrant in order to meet the standards for qualifying for reward and extends the applicability of the section to include violations of specific provisions of statutes other than the Parks and Wildlife Code that are routinely enforced by TPWD law enforcement personnel, such as statutes governing water pollution, solid waste dumping, antiquities destruction or damage, arson, criminal mischief, criminal trespass, theft, tampering with identification numbers, tampering with a governmental record, intoxication assault, and intoxication manslaughter.

The amendment to §55.111, concerning Definitions, removes all references to 'flagrant' violations and rewords the provisions of paragraph (11), regarding the definition of 'line of duty.' The current definition of 'line of duty' can be misinterpreted to mean that a peace officer of the department who dies while discharging his or her lawful duties at a time that he or she was not actually scheduled for work is not eligible for benefits. The amendment clarifies that the family of a department peace officer is eligible for OGT death benefits if the peace officer died while acting as a peace officer. The amendment is necessary to eliminate the use of a term that is no longer meaningful as a result of H.B. 2032, and to prevent confusion and misunderstanding concerning the circumstances under which death benefits can be paid by the OGT committee.

The amendment to §55.113, concerning Reporting Violations; Eligibility of Applicant, eliminates references to 'flagrant' violations, repeats the statutory provision that a person is eligible for reward only for reporting the specific violations listed in Parks and Wildlife Code, §12.203, and regulations adopted under those statutes. The amendment is necessary to eliminate the

use of a term that is no longer meaningful as a result of H.B. 2032.

The amendment to §55.114, concerning Rewards; Payment, eliminates references to 'flagrant' violations and stipulated that the amount of a reward will be based on a formula, rather than on 'the degree of flagrancy of each violation' as is currently stipulated. The amendment is necessary to create a mechanism utilizing some other standard than flagrancy, which was eliminated as a criterion by H.B. 2032.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the enhanced protection of public resources and public safety by increasing the scope of the OGT program's ability to reward citizens for furnishing information leading to the arrest and conviction of persons who violate natural resource laws.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The proposed rules affect only the OGT program, which operates solely on private funds.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Lawson Turner, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4626 (e-mail: lawson.turner@tpwd.state.tx.us).

The amendments are proposed under Parks and Wildlife Code, §12.201, which authorizes the Operation Game Thief Committee to adopt rules for the implementation of the Operation Game Thief program and maintenance of the Operation Game Thief fund.

The proposed new rule and amendments affect Parks and Wildlife Code, Chapter 12, Subchapter C.

§55.111. Definitions.

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

- (1) Chairman--Chairman of the Operation Game Thief Committee.
- (2) Committee--The Operation Game Thief Committee.
- (3) Coordinator--The staff member appointed by the director to coordinate the operation game thief program.
- (4) Death benefits--A monetary amount determined by the committee and paid to an eligible recipient.
- (5) Department--The Texas Parks and Wildlife Department.

(6) Director--The executive director of the Parks and Wildlife Department.

(7) Donation--Something of value, negotiable or convertible, and shall include, but not be limited to, currency, stocks, bonds, or property, whether real or personal.

(8) Eligible applicant--A person making application for a reward for furnishing information to the department which leads to an arrest and conviction of a [flagrant] violation.

(9) Eligible recipient--The individual(s) designated as the deceased department peace officer's beneficiary of benefits on records maintained by the Employees Retirement System of Texas.

~~{(10) Flagrant violation--Shall be as defined in Parks and Wildlife Code, §12.203.}~~

(10) [(11)] Information--Specific information of a [flagrant] violation furnished to the department that leads to the arrest and conviction of the violator.

(11) [(12)] Line of duty--That period of time when a peace officer of the department is lawfully acting in an official capacity as an employee of the department [officially on duty and discharging their assigned duties and responsibilities].

(12) [(13)] Operation game thief fund--Monies collected and deposited in a special fund outside the state treasury.

(13) [(14)] Reward--A monetary amount determined by the committee and disbursed to an eligible applicant.

§55.113. Reporting Violations; Eligibility of Applicant.

(a) No person other than a person furnishing information to the department that leads to the arrest and conviction of a person for committing a [flagrant] violation of a statute listed in [the] Parks and Wildlife Code, §12.203, or a regulation adopted under any of those statutes may be eligible for receiving a reward.

(b) A person shall be eligible for receiving a reward if information required in subsection (a) of this section is forwarded to a designated office established by the department for the reporting of such information, or to a game warden employed by the department, provided the person seeking eligibility for a reward thereafter forwards the information, as soon as practicable, to the designated office established by the department for the reporting of such information.

(c) The designated office defined in subsection (b) of this section shall provide:

(1) employees on duty 24 hours a day;

(2) a toll-free telephone number for use by the public for reporting [flagrant] violations; and

(3) assignment of a specific operation game thief report code number for persons reporting a [flagrant] violation.

(d) A person furnishing information required by subsection (a) of this section to a game warden employed by the department, but who does not as soon as is practicable thereafter report the information to the office established by the department for the reporting of such information, may apply in writing to the committee for a reward to be paid from the Operation Game Thief Fund. The request may then be considered in the same manner as other applications for award.

(e) The director shall prescribe the documentation to be furnished to substantiate the information provided.

(f) Informants shall have the option of furnishing his name, address and telephone number or requesting only a code number for

anonymity which shall be used in lieu of applicant's name in all subsequent transactions with the informant.

§55.114. Rewards: Payment.

(a) The amount of reward granted to eligible applicants may not exceed \$1,000 and shall be determined on an individual basis by the coordinator, with the approval of the director of law enforcement, according to a multiple-factor formula approved by the Committee[the degree of flagraney of each violation].

(b) In the event two or more eligible applicants furnish information pertaining to a specific [flagrant] violation, the reward may be divided among the eligible applicants in an amount determined by the coordinator, with the approval of the director of law enforcement.

(c) At each meeting, the committee shall review all disbursements of rewards made by the coordinator since the last committee meeting and may increase the amount of any reward paid or approve additional rewards.

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 September 1, 2005.

TRD-200503827

Gene McCarty

Chief of Staff

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 389-4775



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER D. APPRAISAL REVIEW BOARD

34 TAC §9.804

The Comptroller of Public Accounts proposes new §9.804, concerning arbitration of appraisal review board determinations. The new section addresses the creation of a statewide registry of qualified arbitrators, the appointment of arbitrators, and the payment of arbitrators' fees or deposit refunds by the Comptroller of Public Accounts, as well as prescribes three forms.

The new section is proposed to implement legislation enacted during the 79th Legislative Session, Regular Session, by House Bill 182 and Senate Bill 1351. The section is proposed for adoption in compliance with the mandates of Tax Code, §§41A.04, 41A.09(e), and 41A.13.

The new section establishes the procedures for qualified arbitrators to register with the Comptroller of Public Accounts for appointment to conduct binding arbitrations at the request of property owners who are dissatisfied with appraised or market value determinations by county appraisal review boards. The section

also prescribes how the arbitrator registry will be maintained and made accessible to property owners and appraisal districts.

The new section creates a process for the Comptroller of Public Accounts to appoint arbitrators and substitute arbitrators. It provides a process for making payments of arbitrators' fees and for refunding deposits as provided by law.

The new section provides for the contents of two forms required by law to be prescribed by rule: one for property owners to request binding arbitration of disputes with county appraisal review boards, and the other for arbitrators to use in making arbitration awards. It also prescribes the contents of an application form for persons to complete in order to be listed in the comptroller's registry of qualified arbitrators.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman 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 would benefit the public by facilitating the arbitration process for property appraisal review board determinations. The proposed section would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the new section may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under and implements Tax Code, Chapter 41A.

§9.804. Arbitration of Appraisal Review Board Determinations.

(a) Definitions. In this section:

(1) "Owner" means a person or entity having legal title to property. It does not include lessees who have the right to protest property valuations before county appraisal review boards.

(2) "Agent" means an attorney licensed by the State of Texas; a real estate broker or salesperson licensed under Occupations Code, Chapter 1101; a real estate appraiser licensed or certified under Occupations Code, Chapter 1103; or a property tax consultant registered under Occupations Code, Chapter 1152. In order for an agent to represent an owner, a written statement signed by the owner authorizing the agent to act specifically in requesting arbitration, receiving deposit refunds, and representing the owner in arbitration proceedings shall be submitted with the request for arbitration. The written statement must include the agent's license or certification number and identify the appropriate licensing board.

(3) "Binding arbitration" means a forum in which each party to a dispute presents the position of the party before an impartial third party who is appointed by the comptroller as provided by Tax Code, Chapter 41A, and who renders a specific award that is enforceable in law and may only be appealed as provided by Civil Practices and Remedies Code, §171.088, for purposes of vacating an award.

(4) "Appraised value" has the meaning included in Tax Code, §1.04(8).

(5) "Market value" has the meaning included in Tax Code, §1.04(7).

(6) "Appraisal district" has the meaning included in Tax Code, §6.01.

(7) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.

(b) Request for Arbitration.

(1) The appraisal review board of an appraisal district shall include a notice of the owner's right to binding arbitration and a copy of the request for binding arbitration form prescribed by this section with the notice of issuance and the order determining a protest filed pursuant to Tax Code, §41.41(a)(1), if the value determined by the order is \$1 million or less.

(2) An owner may appeal through binding arbitration an appraisal review board order determining a protest filed pursuant to Tax Code, §41.41(a)(1), concerning the appraised or market value of real property if the value determined by the order is \$1 million or less. A protest concerning unequal appraisal or a motion for correction of an appraisal roll is not a protest concerning the appraised or market value of real property. A protest concerning the qualification of property for exemption or special appraisal is also not a protest concerning the appraised or market value of real property.

(3) A request for binding arbitration must be made on the form prescribed by this section and signed by an owner or agent. If an agent represents an owner, a written authorization signed by the owner must be attached to the request for binding arbitration. Failure to attach a complete authorization disqualifies the agent from requesting the arbitration. The request for binding arbitration form must be filed with the appraisal district responsible for appraising the real property not later than the 45th calendar day after the date the owner receives the order determining protest from the appraisal review board as evidenced by certified mail receipt. A deposit of \$500 in the form of a money order or a cashier's check payable to the Comptroller of Public Accounts must accompany the request for binding arbitration. Personal check, cash, or other form of payment shall not be accepted.

(4) The appraisal district shall reject a request for binding arbitration if the owner or agent fails to attach the required deposit in the manner required by this section. In such event, the appraisal district shall return the request for binding arbitration with a notification of the rejection to the owner or agent by regular first-class mail or other form of delivery requested by the owner or agent.

(5) The chief appraiser of the appraisal district must submit requests for binding arbitration with the required deposits to the comptroller not later than the 10th calendar day after the date the appraisal district receives the requests. The chief appraiser must assign an arbitration number to each request in accordance with procedures and utilizing forms developed by the comptroller. The chief appraiser must certify receipt of the request and state in the certification whether or not the request was timely filed; the request was made on the form prescribed by this section; the deposit was submitted according to this section; and any other information required by the comptroller. In addition, the chief appraiser must submit to the comptroller a copy of the order determining protest with each request. The chief appraiser must submit the requests for arbitration to the comptroller by hand delivery or certified first-class mail, and must simultaneously deliver a copy of the submission to the owner by regular first-class mail.

(6) Failure by the owner to file the request for arbitration timely with the appraisal district shall result in the denial of the request by the comptroller. Failure by the owner to pay taxes on the property subject to the appeal in an amount equal to the amount of taxes due on the portion of the taxable value of the property that is not in dispute before the delinquency date shall result in the denial of the request for arbitration by the comptroller. Failure by the owner to provide all information required by the prescribed form, including but not limited to the signature of the owner or agent and the written authorization of the

owner designating an agent, may result in the denial of the request by the comptroller if the information is not provided in a timely manner, not to exceed 10 calendar days, after a written or verbal request by the comptroller to the person requesting arbitration to supplement or complete the form has been made.

(7) On receipt of the request for arbitration, the comptroller shall determine whether to accept the request, deny the request, or request additional information. The comptroller shall notify the owner or agent and appraisal district of the determination. If the comptroller accepts the request, the comptroller shall notify the owner or agent and the appraisal district of the Internet address of the comptroller's website at which the comptroller's registry of arbitrators is maintained and may be accessed. The comptroller shall request in the notice that the parties attempt to select an arbitrator from the registry of arbitrators. The notice shall be delivered electronically, by facsimile transmission, or by regular first-class mail. If requested by the owner or appraisal district, the comptroller shall deliver promptly a copy of the registry of arbitrators in paper form to the owner or the appraisal district by regular first-class mail.

(c) Registry of Arbitrators.

(1) A person seeking to be listed in the comptroller's registry of arbitrators must submit a completed application on a form provided by the comptroller on or before each renewal date for the license or certificate issued to the applicant under Occupations Code, Chapter 1101 or Chapter 1103. By submitting the application and any documentation required on the prescribed form, the applicant attests that he or she has completed at least 30 hours of training in arbitration and alternative dispute resolution procedures from a university, college, or legal or real estate trade association; is licensed as a real estate broker or salesperson under Occupations Code, Chapter 1101, or is licensed or certified as a real estate appraiser under Occupations Code, Chapter 1103; agrees to conduct an arbitration for a fee that is not more than 90% of the amount of the \$500 arbitration deposit; and agrees to notify the comptroller of any change in the applicant's qualifications. The attestation shall remain in effect until the following license or certificate renewal date. A new application must be submitted on or before each renewal date for an arbitrator to continue to be named in the registry.

(2) A person applying for inclusion in the comptroller's registry of arbitrators must agree to conduct arbitration hearings as required by Tax Code, §41A.08 and §41A.09, and in accordance with the limitations indicated in the application and by this section. The application must state that false statements provided by applicants may result in misdemeanor or felony convictions. The application must also state that the comptroller may remove a person from the registry of arbitrators at any time due to failure to meet statutory qualifications or to comply with requirements of this section, or for good cause as determined by the comptroller.

(3) The comptroller shall deny an application if it is determined that the applicant does not qualify for listing in the arbitration registry or if inclusion of the applicant in the arbitration registry would otherwise not be in the interest of impartial arbitration proceedings. A person is ineligible to be listed as an arbitrator if the person is a member of a board of directors of any appraisal district or an appraisal review board in the state; an employee or officer of any appraisal district in the state; a current employee of the comptroller; or a member of a governing body, officer, or employee of any taxing unit in the state.

(4) If the application is approved, the applicant's name and other pertinent information provided in the application and the applicant's professional resume or vitae shall be added to the comptroller's registry of arbitrators. The registry may include the arbitrator's experience and qualifications, the geographic areas in which the arbitrator

agrees to serve, and other information useful for property owners and county appraisal district personnel in selecting an arbitrator. The arbitrator may be required to conduct arbitrations regionally in order to be included in the registry.

(5) The comptroller must notify the applicant of the approval or denial of the application or the removal of the arbitrator from the registry as soon as practicable and must provide a brief explanation of the reasons for denial. The applicant may provide a written statement of why the denial should be reconsidered by the comptroller within 30 calendar days of the applicant receiving the denial. The comptroller may approve the application if the applicant provides information to justify the approval. If the application is subsequently approved, the comptroller shall notify the applicant as soon as practicable.

(6) Each person who is listed as an arbitrator in the comptroller's registry must report to the comptroller in writing any material change in the information provided in the application within 30 calendar days of the change. A material change includes, but is not limited to a change in address, telephone number, e-mail address, website, loss of required licensure, incapacity, or other condition that would prevent the person from professionally performing arbitration duties. Failure of the arbitrator to report a material change may result in the immediate removal of the arbitrator from the current registry upon its discovery and the denial of future applications for inclusion in the registry. An arbitrator's failure to report a material change as required by this paragraph shall not affect the determinations and awards made by the arbitrator during the period that the arbitrator is listed in the registry.

(7) Owners, agents, and appraisal districts are responsible for verifying the accuracy of the information provided in the arbitrator registry in attempting to agree on an arbitrator. If the information is found to be inaccurate by the owners, agents, or appraisal districts, such fact must be communicated to the comptroller as soon as practicable in order that the registry may be corrected. Inclusion of an arbitrator in the comptroller's registry is not and shall not be construed as a representation by the comptroller that all information provided is true and correct and shall not be construed or represented as a professional endorsement of the arbitrator's qualifications to conduct arbitration proceedings.

(8) The registry shall be maintained on the comptroller's Internet website or in non-electronic form and will be updated within 30 calendar days of the date that arbitrator applications are approved or updated and processed by the comptroller.

(d) Appointment of Arbitrators.

(1) The comptroller shall promptly appoint an arbitrator selected by the owner or agent and the appraisal district. The notification of the appointment must be transmitted electronically, by facsimile transmission, or by regular first-class mail, as requested by each of the parties.

(2) If an appraisal district notifies the comptroller that the owner or agent and the appraisal district have been unable to agree to an arbitrator, the comptroller shall appoint an arbitrator from the registry within 20 business days from such notification and so inform the parties electronically, by facsimile transmission, or by regular first-class mail, as requested by each of the parties.

(3) If the appraisal district fails to notify the comptroller of the selection of an arbitrator or the failure to agree to an arbitrator according to the requirements of Tax Code, §41A.07(b), the comptroller shall appoint an arbitrator from the registry within 20 business days of the date the comptroller becomes aware of the failure of the appraisal district and owner or agent to comply with the requirements of law.

(4) The appointment of an arbitrator by the comptroller shall be made according to preferences included in arbitrator applications geographically and by random selection. The parties shall be informed of the appointment electronically, by facsimile transmission, or by regular first-class mail, as requested by each of the parties.

(5) At the time of notification to the owner or agent and the appraisal district of the appointment of the arbitrator by the comptroller, the arbitrator will be informed by the comptroller electronically, by facsimile transmission, or by regular first-class mail, as requested by the arbitrator.

(6) An arbitrator may not accept an appointment and may not continue an arbitration after appointment if the arbitrator has an interest in the outcome of the arbitration or if the arbitrator is related to the owner, an officer or employee of the appraisal district, or a member of the appraisal district board of directors or appraisal review board by affinity within the second degree or by consanguinity within the third degree as determined under Government Code, Chapter 573. The owner or appraisal district may request a substitute arbitrator before the arbitration proceedings begin for good cause shown, including but not limited to demonstrated conflicts of interest as defined by Local Government Code, Chapter 171, or for other reasons that could affect the impartial treatment of the parties to the arbitration.

(7) The comptroller must be notified, in writing, within 5 business days of the arbitrator's receipt of the appointment that the arbitrator is unable or unwilling to conduct the arbitration because of a conflict of interest described by paragraph (6) of this subsection, or for any other reason; or that the appointment is accepted. The comptroller must be notified electronically, by facsimile transmission, or by regular first-class mail. If an acceptance or request for substitute appointment is not received within 5 business days, the comptroller shall presume that the appointment has been refused. If the arbitrator refuses the appointment, the comptroller shall appoint a substitute arbitrator from the registry within 10 business days of the receipt of the arbitrator's refusal. The process of appointment of substitute arbitrators shall continue in this fashion until an acceptance is obtained. A refusal to accept an arbitration appointment may be considered by the comptroller in evaluating subsequent requests for arbitration and appointments.

(e) Provision of Arbitration Services.

(1) The appraisal district must provide to the arbitrator and the owner or agent a copy of the appraisal review board record on the protest that is the subject of the arbitration, including all evidence and the hearing tape(s). Such materials must be provided as soon as practicable after the appraisal district is notified of the appointment of the arbitrator. No costs shall be assessed for providing such materials.

(2) The arbitrator may require written agreements with the appraisal district and the owner concerning provision of arbitration services, including but not limited to the time, place, and manner of conducting and concluding the arbitration. If the arbitration is conducted in person, the proceeding must be held in the county where the appraisal district office is located and from which the appraisal review board order determining protest was issued, unless the parties agree to another location. The arbitrator must give notice and conduct arbitration proceedings in the manner provided by Civil Practice and Remedies Code, §§171.044, 171.045, 171.046, 171.047, 171.049, 171.050, and 171.051, and shall continue a proceeding if both parties agree to the continuance and may continue a proceeding for reasonable cause, including but not limited to representation of an owner by an agent who was not identified in the request for binding arbitration at the arbitration proceeding. The arbitrator may request that the parties produce evidence and additional documents not included in the appraisal review board record.

(3) The parties to an arbitration proceeding may represent themselves or may be represented by an employee of the appraisal district or an agent as defined by this section. If an agent was not identified in the request for binding arbitration, a written authorization from the owner may be presented at the time of the arbitration proceeding in order for the agent to represent the owner at the proceeding.

(4) The confidentiality provisions of Tax Code, §22.27, concerning information provided to an appraisal office, apply to information provided to arbitrators. The information may not be disclosed except as provided by law.

(5) The arbitrator shall not communicate with the owner or the appraisal district prior to the arbitration hearing concerning specific evidence, argument, facts, merits, or the property subject to arbitration. Such communications may be grounds for the removal of the arbitrator from the comptroller's registry of arbitrators.

(6) The arbitrator shall dismiss a pending arbitration action with prejudice if it is determined during the proceedings that taxes on the property subject to the appeal are delinquent or if the owner files an appeal with the district court under Tax Code, Chapter 42, concerning the value of property for which a request for arbitration has been made.

(7) The arbitrator must complete an arbitration proceeding in a timely manner and will make every effort to complete the proceeding within 120 days from the acceptance of the appointment by the arbitrator. Failure to comply with the timely completion of arbitration proceedings may result in the removal of the arbitrator from the comptroller's registry of arbitrators.

(f) Arbitration Determinations and Awards.

(1) The arbitrator shall determine the appraised or market value of the property that is the subject of the arbitration and may only include in the award the remedy provided by Tax Code, §42.25.

(2) If the arbitrator makes a determination of the appraised value of property to be valued under Tax Code, Chapter 23, Subchapters C, D, E, or H, these statutory provisions and the comptroller's rules must be followed in making the appraised value determination.

(3) If the arbitrator makes a determination of the value of a residence homestead that has an appraised value that is less than its market value due to the appraised value limitation required by Tax Code, §23.23, the appraised value may not be changed unless:

(A) the arbitrator determines that the formula for calculating the appraised value of the property under Tax Code, §23.23, was incorrectly applied and the change correctly applies the formula;

(B) the calculation of the appraised value of the property reflected in the appraisal review board order includes an amount attributable to new improvements and the change reflects the arbitrator's determination of the value contributed by the new improvements; or

(C) the arbitrator determines that the market value of the property is less than the appraised value indicated on the appraisal review board order and the change reduces the appraised value to the market value determined by the arbitrator.

(4) Within 20 calendar days of the conclusion of the arbitration hearing, the arbitrator shall make a final determination and award on the form prescribed by this section and signed by the arbitrator. A copy of the determination and award form shall be delivered to the owner or agent and the appraisal district by facsimile transmission or regular first-class mail, as requested by the parties, and to the comptroller by regular first-class mail.

(5) All post-appeal administrative procedures provided by Tax Code, Chapter 42, Subchapter C, shall apply to arbitration awards.

(g) Payment of Arbitrators' Fees and Refund of Property Owner Deposit.

(1) Deposits submitted with requests for arbitration by owners or agents, and submitted by appraisal districts to the comptroller, shall be deposited into individual accounts for each owner and according to assigned arbitration numbers.

(2) The provisions of Government Code, Chapter 2251, shall apply to the payment of arbitrator fees by the comptroller, if applicable, beginning on the date that the comptroller receives a copy of the arbitrator's determination and award by regular first-class mail.

(3) If the arbitrator's award is nearer to the owner's opinion of the appraised or market value of the property as stated on the owner's request for arbitration, the comptroller must refund as soon as practicable the deposit in the owner's account, less the 10% retained by the comptroller for administrative costs, to the owner or agent at the address shown on the request for arbitration. The appraisal district shall be responsible for payment of the arbitrator's fee, and any claim for payment by the arbitrator shall be made against the appraisal district.

(4) If the award is not nearer to the owner's opinion as stated in the owner's request for arbitration, the comptroller shall pay the fee charged by the arbitrator to the address shown on the arbitrator's registry application. The fee will be paid from the deposit in the owner's account. If the arbitrator fee is less than \$450, the comptroller shall refund to the owner or agent any remaining deposit. The comptroller shall retain 10% of the deposit for administrative costs in either event. An award that determines an appraised or market value at an amount exactly one-half of the difference in value is deemed to be nearer the appraisal district's opinion of value.

(5) If an arbitrator dismisses a pending arbitration as provided by subsection (e)(6) of this section, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. In such event, the arbitrator must seek payment from the owner or agent for the services rendered prior to the dismissal of the proceeding.

(6) If the owner or agent withdraws a request for arbitration in writing 14 or more calendar days before the arbitration proceeding is first scheduled, the comptroller shall refund to the owner or agent the deposit, less the 10% retained by the comptroller for administrative costs. If the owner or agent withdraws a request for arbitration less than 14 calendar days before the arbitration proceeding is first scheduled, the comptroller shall make payments as provided by paragraph (4) of this subsection.

(7) A refund to an owner or agent or a payment to an arbitrator is subject to the provisions of Government Code, §403.055. The comptroller shall not issue a warrant for payment to a person who is indebted to the state or has a tax delinquency owing to the state until the indebtedness or delinquency has been fully satisfied.

(h) The model forms in paragraphs (1), and (2) of this subsection are adopted by reference by the Comptroller of Public Accounts. Copies of these forms are available for inspection at the office of the *Texas Register* or can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528. Copies may also be requested by calling the toll-free number 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(1) Request for Binding Arbitration, and

(2) Arbitration Determination and Award.

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 September 1, 2005.

TRD-200503822

Tim Mashburn

General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0387

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SUBCHAPTER E. TAX OFFICE ADMINISTRATION

34 TAC §9.1001

The Comptroller of Public Accounts proposes amendments to §9.1001, concerning current and delinquent tax receipts. Tax Code, §31.075(a) requires that collectors for a taxing unit issue a receipt showing the taxable value and the amount of tax imposed by the unit on the property in one or more tax years for which the information is requested by a property owner or a property owner's agent. The receipt must describe the property in a manner prescribed by the comptroller.

The section is being amended in response to House Bill 3101, 79th Legislature, Regular Session, effective September 1, 2005. The new law states that if the amount of the tax for the current year has not been calculated when the request for a tax receipt is made, the collector shall issue a statement indicating that taxes for the current year have not been calculated. The section is being amended to add this statement in the list of information required to be shown on tax receipts.

The section is also being amended to include requirements of temporary tax receipts presently found in §9.3043, in response to agency rule review. Temporary tax receipts are created because of payment of taxes under protest and are a form of tax receipt as authorized by Tax Code, §31.075(a). In order to consolidate these rules on tax receipts, §9.3043 is being repealed and its provisions incorporated into §9.1001.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section would be standardizing and streamlining the transmittal of property tax information. The proposed amendments would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposed amendments may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amended section is proposed under and implements Tax Code, §31.075(a).

§9.1001. Current and Delinquent Tax Receipts and Temporary Tax Receipts.

(a) All offices collecting ad valorem taxes ~~[for purposes of ad valorem taxation]~~ shall prepare and issue current and delinquent tax receipts, as well as temporary tax receipts, as applicable, and, as requested, for the payment of current and delinquent taxes.

(b) Current tax receipts ~~shall include~~~~[for the payment of current taxes shall make provision for]~~ the following items of information:

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

(9) the date the taxes are paid; ~~[and]~~

(10) in cases of split payment, indication that the amount paid is a split payment; ~~and~~~~[-]~~

(11) a statement that if a request by a property owner or agent is made before the current year taxes have been calculated, no such calculation is available for inclusion on the receipt.

(c) Delinquent tax receipts ~~shall include~~ ~~[for the payment of delinquent taxes shall make provision for]~~ the following items of information:

(1) each item of information specified in subsection (b)(1) - (9) of this section, except that the information specified in subsection (b)(6) and (7) of this section shall be shown ~~[include the required information]~~ for each year for which the taxes are paid; ~~and~~

(2) the amount of penalty and interest collected.~~[-; and]~~

(d) ~~[(3)]~~ At ~~[at]~~ the option of the collecting office, more than one year of delinquent taxes paid may appear on one delinquent tax receipt.

(e) Temporary tax receipts shall be issued at the request of the taxpayer for the full or partial amount of taxes paid when appraisal review protests or judicial appeals are pending and must state that the receipts are temporary pending the determination of the protests or appeals. Temporary tax receipts shall be issued at the request of the taxpayer if a collector accepts partial payments of taxes as provided by law and must state that the payments are partial without providing the amount of taxes still due. Temporary tax receipts shall be issued to the taxpayer without the necessity of a taxpayer request when conditional tax payments are made pursuant to Tax Code, §31.071.

(f) ~~[(4)]~~ Current, temporary, [Collecting offices failing to prepare current and delinquent tax receipts as required in this section may be judged to be in compliance upon a showing to the board that current] and delinquent tax receipts substantially equivalent to that required in this section are deemed to be in compliance if challenged by a taxpayer or a governmental entity [have been prepared].

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 August 31, 2005.

TRD-200503806

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0387

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SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3038

The Comptroller of Public Accounts proposes amendments to §9.3038, concerning current, delinquent, and special valuation rollback tax bills or statements. Tax Code, §31.01(c)(1), requires certain information to be included in tax bills or separate statements accompanying tax bills. New Tax Code, §33.045, requires specific language to be included on tax bills.

The section is being amended in response to House Bill 1984, 79th Legislature, Regular Session, effective January 1, 2006, and Senate Bill 18, 79th Legislature, Regular Session, effective June 18, 2005. Tax bills must include the percentage difference in appraised value of real property that is the subject of the tax and the percentage difference in taxes imposed on the real property for the current tax year as compared to the fifth tax year before that tax year. Tax bills must also state for the current tax year and the five preceding years for real property the appraised and taxable values of the property, the total tax rate for the unit, and the amount of taxes imposed on the property by the unit. If any of the information is not available for the preceding six years, a statement of its unavailability must be included.

The section is also being amended in response to House Bill 2491, 79th Legislature, Regular Session, effective September 1, 2005, to require rendition penalties authorized by Tax Code, §22.28, to be included on tax bills. It also requires that tax bills include specific language concerning a taxpayer's right to have payment of taxes postponed.

The section is also being amended in response to Senate Bill 898, 79th Legislature, Regular Session, effective September 1, 2005, to require that tax bills be mailed to each person in whose name the property is listed on the tax roll and to the person's agent.

The section is also being amended in response to agency rule review to require other information as authorized by Tax Code, §31.01(c) and to correct technical errors.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section would be standardizing and streamlining the transmittal of property tax information. The proposed amendments would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposed amendments may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amended section is proposed under and implements Tax Code, §31.01 and §22.28(b).

§9.3038. Current, Delinquent, and Special Valuation Rollback Tax Bills or Statements.

(a) (No change.)

(b) Current tax bills or statements shall be prepared as follows:~~[-]~~

(1) Current tax bills shall be issued to each person in whose name the property is listed, and ~~to~~ to his authorized agent, by October 1, or as soon thereafter as practicable. In the case of mortgaged property where taxes are paid from an escrow account controlled by the mortgagee (mortgage holder), the notice requirements shall be satisfied by sending the tax bill to the mortgagee. Written authorization by the property owner is not required in order to deliver the tax bill to the mortgage company when the mortgage company acknowledges that it has authority for payment of taxes on the property.

(2) The items of information to be included on the current tax bill are those set forth in ~~the~~ Tax Code, §31.01(c), ~~(c-1)~~, and (d); Tax Code, §33.045; the amount of the penalty authorized by Tax Code, §22.28 and §22.29; and any other information required by interlocal agreement between taxing units and their collectors ~~and (d)~~.

(3) (No change.)

(c) Delinquent tax bills or statements shall be prepared as follows:[-]

(1) As outlined in ~~the~~ Tax Code, §33.04, delinquent tax bills shall be delivered to each person whose name appears on the current and cumulative delinquent tax rolls.

(2) The following items of information shall be included on each delinquent tax bill:

(A) - (G) (No change.)

~~(H) if applicable, a statement that a protest or request for correction is pending before an appraisal review board or that an appeal to district court or binding arbitration is pending; and~~

~~(I) if applicable, a statement that a tax deferral or abatement applies to the account.~~

~~[(H) at the option of the collecting office, more than one year of delinquent taxes may be included on one delinquent tax bill.]~~

(3) (No change.)

(d) Special valuation rollback tax bills shall be prepared as follows:[-]

(1) Special valuation rollback tax bills shall be issued as provided in ~~the~~ Tax Code, Chapter 23, specifically §23.46(c) for the rollback taxes under agricultural-use valuation; §23.55(e) for the rollback taxes under open-space agricultural land valuation; §23.76(e) for the rollback taxes under open-space timber land valuation; §23.86(c) for the rollback taxes for recreational, park, and scenic land valuation; and §23.96(c) for the rollback taxes for public access airport property.

(2) The following minimum items of information shall be included on the special valuation rollback tax bills:

(A) - (I) (No change.)

(J) a statement indicating that the taxes due are for rollback tax purposes; and

(K) ~~include~~ the name and telephone number of the assessor for the taxing unit and if different, of the collector for the unit.

(e) Offices assessing and collecting taxes for purposes of ad valorem taxation that fail to prepare and issue current, delinquent, and special valuation rollback tax bills as required in this section will be deemed to be in compliance if the bills or statements have substantially the same information as required by this section [may be judged to be in compliance upon a showing to the board that such statements substantially equivalent to those required in this section have been prepared].

(f) At the option of the collecting office, more than one year of delinquent taxes may be included on one delinquent tax bill.

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 August 31, 2005.

TRD-200503807

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0387

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34 TAC §9.3040

The Comptroller of Public Accounts proposes amendments to §9.3040, concerning tax certificates. Tax Code, §31.08 provides that a collector for a taxing unit must issue a certificate, at the request of any person, showing the amount of delinquent taxes, penalties, and interest due on a property according to the unit's current tax records.

The section is being amended in response to House Bill 2491, 79th Legislature, Regular Session, effective September 1, 2005. The new law states that certificates must also include any known costs and expenses under Tax Code, §33.48, in addition to the amount of delinquent taxes, penalties, and interest due on a property.

The section is also being amended in response to Senate Bill 898, 79th Legislature, Regular Session, effective September 1, 2005. The new law provides that if a person transfers property accompanied by a tax certificate that erroneously fails to include property because of its omission from an appraisal roll, the unit's tax lien is extinguished and the purchaser is not liable for taxes on the omitted property. The person who was liable for the tax for the tax year for which the property was omitted from the appraisal roll remains personally liable for taxes, penalties, or interest.

The section is also being amended in response to agency rule review to clarify wording in the rule and omit a reference to the State Property Tax Board.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amended section would be standardizing and streamlining the transmittal of property tax information. The proposed amendments would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposed amendments may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amended section is proposed under and implements Tax Code, §31.08.

§9.3040. Tax Certificates.

(a) All offices collecting ad valorem taxes [~~for purposes of ad valorem taxation~~] shall prepare and issue tax certificates [~~showing the amount of delinquent taxes, penalties, and interest due on any specified property~~], upon the request of any person, as provided by [~~the Texas Property~~] Tax Code, §31.08.

(b) The tax certificate shall include [~~make provision for~~] the following items of information:

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

(3) the description of the property for which the tax certificate is issued;

(4) the account number of the property for which the tax certificate is issued;

(5) (No change.)

(6) if the specified property has received or is receiving special valuation based on its use, a statement that additional rollback taxes may become due as provided by Tax Code, Chapter 23: These special valuations include the provisions under the Texas Constitution, Article VIII, §1-d and §1-d-1; recreational, park, and scenic land; and public access airport property];

(7) the amount of delinquent taxes, penalties, [~~and~~] interest, and any known costs and expenses as provided by Tax Code, §33.48, due for each taxing unit;

(8) the date of the tax certificate; and

(9) (No change.)

(c) The tax certificate shall include [~~also make provision for~~] an affirmation by the authorized officer of the collecting office that a careful check of the tax records of the office has been made on the specified property and the tax certificate indicates the amount of delinquent taxes. The tax certificate shall also include a statement that property omitted from the appraisal roll as described under Tax Code, §25.21 is not included in the certificate and that a purchaser is absolved of liability for the taxes based on omitted property.

(d) A tax certificate form must substantially comply with the requirements of this section [~~Collecting offices failing to prepare tax certificates as required in this section may be judged to be in compliance upon a showing to the board that tax certificates substantially equivalent to that required in this section have been prepared~~].

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 August 31, 2005.

TRD-200503808

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0387



34 TAC §9.3043

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

The Comptroller of Public Accounts proposes the repeal of §9.3043 concerning temporary tax receipts. The comptroller is repealing the existing rule to consolidate its provisions with §9.1001 concerning current and delinquent tax receipts. A proposed amendment to §9.1001 will incorporate the requirements for issuance of temporary tax receipts, as well as add the requirement for a statement about circumstances when taxes have not been calculated in a current tax year as required by an amendment to Tax Code, §31.075, enacted by the 79th Legislature and effective September 1, 2005.

John Heleman, Chief Revenue Estimator, has determined that the repeal of this rule will have no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that the public benefit anticipated as a result of repealing the rule would be consolidating administrative rules. The repeal would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the repeal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

This repeal is proposed under and implements Tax Code, §31.075.

§9.3043. *Temporary Tax Receipts.*

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 August 31, 2005.

TRD-200503809

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 475-0387



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 81. INTERACTION WITH THE PUBLIC

37 TAC §81.70

The Texas Youth Commission (the commission) proposes new §81.70, concerning Agency Acceptance of Gifts of \$500 or More. The new section will set forth the commission's rule regarding acceptance of gifts valued at \$500 or more.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be public acknowledgment of sizable gifts to the agency. There will be no

effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Government Code, §575.003, which provides the commission with the authority to accept a gift of \$500 or more if the board acknowledges acceptance of the gift in an open meeting not later than the 90th day after the date of acceptance.

The proposed rule affects the Human Resources Code, §61.034.

§81.70. Acceptance of Gifts of \$500 or More.

(a) Purpose. The Texas Youth Commission (TYC) is authorized to accept gifts, grants, or donations of money or property to carry out its duties. The Board is required to acknowledge the acceptance of such gifts having a value of \$500 or more not later than the 90th day after the date the gift is accepted. Legislative approval is required for the acceptance of gifts of real property.

(b) Applicability. The Board acknowledgment requirement does not apply to gifts that are made by private individuals to volunteer councils, but does apply to gifts that are made directly to the agency by volunteer councils. Volunteer councils are separate legal entities and gifts to them are not covered by this policy. It applies only to gifts of money or property, not volunteer services. It applies to gifts that support a youth activity, but not to gifts that are made to individual youth. It applies to gifts that are to be administered or distributed by the agency or that are to be used by the agency to operate or improve agency programs or facilities.

(c) Procedures.

(1) A gift that has a value of \$500 or more shall not be accepted from a person(s) who is involved in a contested case before the agency until the 30th day after the date the decision in the case becomes final.

(2) Gifts of cash to the agency should not be accepted unless the check is made payable to "Texas Youth Commission".

(3) Upon TYC's receipt of a gift having a value of \$500 or more, TYC shall send to the donor written acknowledgement of receipt of the gift and conditional acceptance, subject to Board acknowledgement of acceptance.

(4) The Board's acknowledgement of the gift is by a majority vote of the Board in an open meeting. The minutes of the Board meeting shall reflect the name of the donor, a description of the gift, and the purpose of the gift.

(5) TYC shall send written notification to the donor of the Board's action regarding the gift.

(6) The executive director shall approve the planned use of estate gifts having a value of \$500 or more.

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 September 2, 2005.

TRD-200503842

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 424-6301



CHAPTER 85. ADMISSION, PLACEMENT, AND PROGRAM COMPLETION

The Texas Youth Commission (the commission) proposes amendments §85.3 and §85.25, concerning Admission and Placement.

The amendment to §85.3 will add to the parents notification list that contraband money found in possession of a youth in a residential program will be deposited in the student benefit fund and providing a TYC youth alcohol, drugs, tobacco or a cellular phone is a third degree felony and could be subject to prosecution. Pursuant to House Bill 1068, TYC is required to secure DNA samples from all youth with a felony conviction or adjudication; therefore the section was amended to include all youth with a felony conviction or adjudication.

The amendment to §85.25 will correct the rule title regarding disciplinary consequences.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

SUBCHAPTER A. COMMITMENT AND RECEPTION

37 TAC §85.3

The amendment is proposed under the Human Resources Code, §61.0385, which provides the commission with the authority to contract with another entity for the use of services, and §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

The proposed rules affect the Human Resources Code, §61.034.

§85.3. Admission Process.

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

(e) Parents are notified:

(1) of youth's admission;

(2) of TYC's medical consent authority;

(3) contraband money as defined in §91.7 of this title (relating to Youth Personal Property) found in possession of a TYC youth in a residential program will be deposited in the student benefit fund;

(4) that providing a TYC youth alcohol, drugs, tobacco or a cellular phone is a third degree felony and could be subject to prosecution;

(5) [(3)] of procedures for mail and visits; and

(6) [(4)] that TYC will use the chemical agent Oleoresin Capsicum, also known as OC spray, [agents], as necessary to control conduct if certain behavior criteria are met.

(f) Orientation to the admissions process and the TYC system is provided and documented as required in ~~[(GAP)]~~ §91.15 of this title (relating to Youth Orientation).

(g) Routine admission procedures include, but are not limited to the following:

(1) Each youth and his/her ~~[his]~~ possessions are searched.

(2) - (9) (No change.)

(10) A youth is required to provide a blood sample for the DPS DNA database if the youth:

(A) has a felony conviction or adjudication [for capital murder, murder, aggravated assault, burglary of a habitation,] or any offense for which the youth must register as a sex offender; or

(B) is ordered by the juvenile court to provide a sample.

(h) - (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.

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TRD-200503812

Dwight Harris

Executive Director

Texas Youth Commission

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SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.25

The amendment is proposed under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its function.

§85.25. *Minimum Length of Stay.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) A disciplinary assigned length of stay of up to six (6) months may be assigned in accordance with §95.11 of this title (relating to Disciplinary Consequences ~~[Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence]~~).

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

(h) Waivers and Reductions.

(1) (No change.)

(2) The ~~[the]~~ disciplinary assigned minimum length of stay may be reduced in accordance with §95.11 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.

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CHAPTER 87. TREATMENT

SUBCHAPTER B. SPECIAL NEEDS

OFFENDER PROGRAMS

37 TAC §87.85

The Texas Youth Commission (the commission) proposes an amendment to §87.85, concerning Sex Offender Registration. The amendment to the section will add the new offense found in the Texas Penal Code Online Solicitation of a Minor to the list of reportable adjudications for youth whose duty to register as a sex offender has not been excused. The amendment will also delete the subsection regarding DNA language.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Code of Criminal Procedure, §62.02, which provides the commission with the authority to register certain youth as a sex offender.

The proposed rule affects the Human Resources Code, §61.034.

§87.85. *Sex Offender Registration.*

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) See ~~[(GAP)]~~ §87.87 of this title (relating to Sex Offender Risk Assessment).

(c) Explanation of Terms Used.

(1) Reportable Adjudication--an adjudication of delinquent conduct for any of the following offenses found in the Texas Penal Code:

(A) Indecency With a Child (§21.11 [of the Texas Penal Code]);

(B) - (J) (No change.)

(K) The attempt, conspiracy, or solicitation to commit any of the offenses listed above; ~~and~~

(L) Indecent Exposure (§21.08), if it is the second or more conviction or adjudication; ~~and~~[-]

(M) Online Solicitation of a Minor (§33.021).

(2) - (6) (No change.)

(d) - (i) (No change.)

~~[(j) DNA Records.]~~

~~[(1) A youth with a "reportable adjudication" shall provide one or more blood samples or other specimens for the purpose of creating a DNA record.]~~

~~[(2) The appropriate staff shall obtain and preserve blood samples or other specimens from the youth.]~~

~~[(3) The appropriate staff shall keep a record of the collection of the sample and send the blood sample or other specimen to the director of TDPS or designee.]~~

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

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CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §§95.3, 95.11, 95.17

The Texas Youth Commission (the commission) proposes amendments to §§95.3, 95.11, and 95.17, concerning disciplinary practices.

The amendment to §95.3 will add certain prohibited items to the types of items or substances which are considered a Category I rule violation for youth in residential placements to possess. Additionally, clarification will be made to the definition of the Category II rule violation entitled "Contraband".

The amendment to §95.11 describes the disposition of contraband money found in the possession of youth.

The amendment to §95.17 will include "chucking bodily fluids" as a behavior offense which would make a youth eligible for placement in the Behavior Management Program. A reference to §93.12, Visitation, which was proposed for adoption in the July

29, 2005, issue of the *Texas Register* will also be added to address the rules governing visitation of youth in the Behavior Management Program.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, 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 increased safety of staff and youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendments are proposed under the Human Resources Code, §61.075, which provides the commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public, and §61.076, which provides the commission with the authority to require the modes of life and conduct that seem best adapted to fit the child for return to full liberty without danger to the public.

The proposed rules affect the Human Resources Code, §61.034.

§95.3. Rules of Conduct.

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

(f) Category I Rule Violations. A Category ~~[category]~~ I rule violation is an act of misconduct that constitutes a crime, involves harm to the youth or others, or threatens facility safety, security, and order. These are the baseline rules which, when crossed, result in the most severe consequences. These consequences include referral to criminal court, disciplinary movement, reclassification, multi-phase demotion, and/or assignment of a disciplinary minimum length of stay. Category I rule violations are as follows:

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

(7) Assault on Staff/Volunteer (Bodily Injury)--youth intentionally, knowingly, or recklessly causes bodily injury to [staff] a staff or volunteer. Staff is defined as a TYC employee, contract program employee, ~~[contract program employee,]~~ or any person who is providing contract services at a contract program or TYC-operated facility.

(8) - (12) (No change.)

(13) Possession of a Weapon--youth is found to be in possession of a weapon or item(s) which has been made[-] or adapted for use as a weapon. This includes cigarette lighters or matches in a residential placement.

(14) Possession of Prohibited Items or Use of Unauthorized Substance or Intoxicant--youth is found to be using or possessing any of the following: ~~[unauthorized substance or intoxicant. This also includes tobacco for youth in a residential placement.]~~

(A) an unauthorized substance;

(B) prescription and over-the-counter medications that are "cheeked" or otherwise intentionally not consumed by a youth (in a residential placement) at the time they are dispensed and that the youth removes or tries to remove from the dispensing area;

(C) a tobacco product (residential placement only);

(D) an intoxicant; or

(E) a cellular telephone (residential placement only).

(15) - (21) (No change.)

(22) Chunking Bodily Fluids--with the intent to harass, alarm, or annoy another person, a youth causes a person to contact the blood, seminal fluid, vaginal fluid, urine, and/or feces of another person. This does [Does] not include saliva.

(23) - (25) (No change.)

(26) Attempting, Aiding, or Abetting Commission of a Category I Rule Violation--youth attempts to commit a Category [category] I rule violation, or assists or helps another youth to commit a Category [category] I rule violation.

(27) (No change.)

(g) Category II Rule Violations. A Category [category] II rule violation is an act of misconduct that reflects a youth's immaturity, lack of responsibility, and intractability which, if unchecked, could lead to more serious Category [category] I violations. It is willful behavior that breaks rules for which minor consequences, called on-site disciplinary consequences, may be levied. Minor consequences include [loss of privileges;] restriction of privileges[;] or confiscation of contraband. Category II rule violations are as follows:

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

(3) Contraband--youth possesses an item, other than an item that it is a Category I rule violation to possess, which is considered contraband pursuant to [item(s) that is considered improper for children to see or possess or that may threaten the safety, security, or order of the facility. Consult] §91.7 of this title (relating to Youth Personal Property) [for definition of contraband].

(4) - (12) (No change.)

(13) Attempting, Aiding, or Abetting Commission of a Category II Rule Violation--youth attempts to commit a Category [category] II rule violation, or assists or helps another youth to commit a Category [category] II rule violation.

(14) - (21) (No change.)

{(h) Contraband: Consistent with the Rules of Conduct, youth in a residential program which is under contract to TYC or operated by TYC shall not have contraband. Contraband items will be confiscated and disposed of in accordance with §97.11 of this title (relating to Control of Unauthorized Items Seized). Contraband is defined in §91.7 of this title (relating to Youth Personal Property).}

§95.11. Disciplinary Consequences [Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence].

(a) Purpose. The purpose of this rule is to establish criteria for [provide for the movement of a Texas Youth Commission (TYC) youth to an appropriate placement, assignment of a minimum length of stay, and/or demotion of one or more behavior phases as] disciplinary consequences imposed in a Level II due process hearing for behavior that violates rules. [Disciplinary transfer, assignment of a disciplinary minimum length of stay, and demotion of one or more behavior phases are considered major consequences.]

(b) Applicability.

(1) (No change.)

(2) Additional procedures and restrictions are applied prior to any movement of a sentenced offender youth. See §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19), [and] §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older), §85.65 of this title (relating to Transfer/Discharge of Sentenced Offenders Without Program Completion or Completion of Sentence to TDCJ), and §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(c) Criteria and Disposition [for Disciplinary Transfer, Disciplinary Assigned Minimum Length of Stay, and Demotion of One or More Behavior Phases for Youth on Institutional Status].

(1) Disciplinary Transfer, Disciplinary Assigned Minimum Length of Stay, and Demotion of One or More Behavior Phases for Youth on Institutional Status.

(A) [(1)] If it is found at a Level II hearing that the youth has failed on two (2) or more occasions to comply with a written reasonable request of staff that is either present in the Individual Case Plan (ICP) or is validly related to previous high risk behavior, a youth may receive only one of the following consequences:

(i) [(A)] transferred to a placement of equal or more restriction than the youth's most recent permanent placement; or

(ii) [(B)] assigned a disciplinary minimum length of stay but only at the present placement; or

(iii) [(C)] demoted one or more Resocialization phases in the behavior area.

(B) [(2)] If it is found at a Level II hearing that the youth has committed any other Category [category] I rule violation, the youth may receive one or more of the following consequences:

(i) [(A)] transferred to a placement of equal or more restriction than the youth's most recent permanent placement; and/or

(ii) [(B)] assigned a disciplinary minimum length of stay; and/or

(iii) [(C)] demoted one or more Resocialization phases in the behavior area.

(2) [(d)] Additional Disposition Options for Youth on Institutional Status. Pursuant to a Level II hearing herein, certain youth in TYC institutions or secure contract programs, who are assessed a disposition under this rule may also be assessed placement in the below disciplinary programs, but only if specific criteria have been met and if specifically requested (with notice to the youth) in the Level II hearing request pursuant to this policy.

(A) [(1)] Aggression Management Program. A placement in the Aggression Management Program (AMP) may be requested for a youth who is currently assigned to a TYC operated institution under requirements of §95.21 of this title (relating to Aggression Management Program). All policy and program requirements of §95.21 of this title will apply to the assignment in AMP.

(B) [(2)] Behavior Management Program.

(i) [(A)] A placement in the Behavior Management Program (BMP) may be requested for certain youth under requirements of §95.17 of this title (relating to Behavior Management Program). All policy and program requirements of §95.17 of this title will apply to the assignment in a BMP.

(ii) ~~[(B)]~~ A maximum length of stay in BMP shall run concurrently with any new assigned minimum length of stay under this policy.

(3) ~~[(e)] [Criteria and Disposition for]~~ Disciplinary Transfer and Disciplinary Assigned Minimum Length of Stay for Youth on Parole Status. A youth on parole status may be transferred into a placement of medium restriction and/or assigned a minimum length of stay only if it is found at the Level II hearing that the youth has committed one of the following Category I rule violations as defined in §95.3 of this title (relating to Rules of Conduct):

- (A) ~~[(4)]~~ Violate any Law;
- (B) ~~[(2)]~~ Escape, Attempted Escape, or Abscond;
- (C) ~~[(3)]~~ Injury to Self;
- (D) ~~[(4)]~~ Possession of a Weapon;
- (E) ~~[(5)]~~ Possession or Use of Unauthorized Substance or Intoxicant;
- (F) ~~[(6)]~~ Refusing a Drug Screen;
- (G) ~~[(7)]~~ Participation in a Riot; or
- (H) ~~[(8)]~~ Two (2) or More Failures to Comply with Written Reasonable Request.

(4) Seizure of Contraband Money for Youth in Residential Placement. If found at a Level II hearing that the youth possessed contraband money as defined in §91.7 of this title (relating to Youth Personal Property), absent extenuating circumstances, the contraband money must be deposited into the student benefit fund. See §99.71 of this title (relating to Student Benefit Fund). When extenuation is found, the hearing manager determines the disposition of the contraband money as appropriate.

(5) ~~[(f)]~~ If the hearing manager determines there are extenuating circumstances incident to the violation(s) proved at a Level II hearing, the youth shall not be assigned a disciplinary length of stay. However, if more than one disposition option was requested (with appropriate and specific notice to the youth), such dispositions may be assessed if the hearing manager determines that such dispositions are appropriate despite the finding of extenuation.

(d) ~~[(g)]~~ Restrictions.

(1) A youth on parole status shall not be moved or transferred into a placement of high restriction under this rule.

(2) An assigned disciplinary minimum length of stay under this policy shall only be for offenses that meet criteria and shall not exceed six (6) months.

(3) When local authorities make a written request to defer an allegation to their jurisdiction for prosecution, TYC will cancel the directive, unless a due process hearing will be scheduled on other allegation(s). A due process hearing on any allegation(s) shall be scheduled within seven (7) days (excluding weekends and holidays).

(4) A Level II hearing should be held prior to a disciplinary transfer. When good cause compels a pre-hearing movement of the youth, the hearing shall be held within three (3) consecutive days after the movement.

(5) A youth assigned a disciplinary minimum length of stay may remain in the current program or be transferred and remain in the new placement until the assigned disciplinary length of stay and other program completion criteria are completed.

(6) The minimum length of stay assigned under this policy may be reduced based on the youth's behavior and progress toward goals.

§95.17. *Behavior Management Program.*

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

(c) Applicability.

(1) The BMP is administered in the security unit except as noted herein. All standard security unit requirements and services as set forth in §97.36 of this title (relating to Standard Security Unit Program Requirements), unless otherwise noted herein, shall be observed while the youth is in the security unit.

(2) For visitation procedures, see §93.12 of this title (relating to Visitation).

(3) ~~[(2)]~~ This rule does not apply to:

(A) the use of the same or adjacent space when used specifically as security intake. See §97.37 of this title (relating to Security Intake);

(B) the use of the same or adjacent space when used specifically as a security program. See §97.40 of this title (relating to Security Program);

(C) the use of the same or adjacent space when used specifically as detention in a TYC institution. See §97.43 of this title (relating to Institution Detention Program);

(D) the use of the same or adjacent space when used specifically as protective custody. See §97.45 of this title (relating to Protective Custody);

(E) the use of same or adjacent space when used specifically as temporary admission. See §85.31 of this title (relating to Temporary Admission Awaiting Transportation);

(F) the Aggression Management Program. See §95.21 of this title (relating to Aggression Management Program).

(d) (No change.)

(e) Program Eligibility. A youth who knowingly engages in, aids, or abets someone else to engage in one or more of the following high risk behaviors is eligible for placement in a BMP:

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

(9) chunking bodily fluids as defined in §95.3 of this title;

(10) ~~[(9)] [unauthorized]~~ possession or use of an unauthorized [a controlled] substance or intoxicant [marijuana];

(11) ~~[(10)]~~ self-harm or threatening self-harm, which has been clinically assessed by a mental health professional as not motivated by mental illness pursuant to assessment procedures as set forth in §91.88 of this title (relating to Suicide Alert for Secure Programs);

(12) ~~[(11)]~~ chronic disruptive behavior, as demonstrated by:

(A) five (5) or more admissions or extensions to the security program in a 30-day period, or ten (10) or more admissions or extensions to the security program in a three (3)-month period; and

(B) release within the previous six (6) months from a PIP or BMP; or

(13) ~~[(12)]~~ behavior which is found in a due process hearing to be eligible for placement in the AMP pursuant to §95.21 of this title and the youth is subsequently denied admission to AMP.

(f) - (m) (No change.)

(n) Impact on Length of Stay.

(1) (No change.)

(2) Pursuant to a Level II hearing, certain youth who are assessed a disposition under this rule may also be assigned a disciplinary minimum length of stay disposition, but only if criteria have been met and if the youth was given notice of the specific disposition request. All policy and program requirements of §95.11 of this title (relating to Disciplinary Consequences [Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence]) will apply to the assignment of such.

(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.

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SUBCHAPTER B. DUE PROCESS HEARINGS PROCEDURES

37 TAC §95.55

The Texas Youth Commission (the commission) proposes an amendment to §95.55, concerning Level II Hearing Procedure. The amendment to the section will add deposit of contraband money into the Student Benefit Fund as a potential disposition in such hearings.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth in the Student Benefit Fund.

The proposed rule affects the Human Resources Code, §61.034.

§95.55. *Level II Hearing Procedure.*

(a) Purpose. The purpose of this rule is to establish a procedure to be followed when the second highest level of due process is afforded a youth. The Level II hearing procedure is appropriate due process in the following instances:

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

(7) deposit of contraband money into the student benefit fund found in possession of a youth while in a residential program.

(b) Applicability.

(1) (No change.)

(2) See §95.11 of this title (relating to Disciplinary Consequences [Disciplinary Transfer/Assigned Minimum Length of Stay/Demotion of Phase Consequence]).

(3) - (6) (No change.)

(7) See §87.3 of this title (relating Resocialization Phase Requirements and Assessment).

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

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

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CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.10, §97.11

The Texas Youth Commission (the commission) proposes amendments to §97.10 and §97.11, concerning Security and Control. The amendment to §97.10 will correct a reference for the definition of contraband as used in agency rules. The amendment to §97.11 will clarify that disposal of contraband money is subject to different procedures than other types of contraband.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Neil Nichols, General Counsel, 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 compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North

Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendments are proposed under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth in the Student Benefit Fund, and §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rules affect the Human Resources Code, §61.034.

§97.10. Entry Searches.

(a) - (i) (No change.)

(j) The following items are prohibited in secure facilities except with specific permission from the facility administrator:

(1) - (11) (No change.)

(12) Contraband as defined in §91.7 of this title (relating to Youth Personal Property) [~~§97.11 of this title (relating to Control of Unauthorized Items Seized)~~]; or

(13) (No change.)

(k) - (o) (No change.)

§97.11. Control of Unauthorized Items Seized.

(a) Purpose. The purpose of this policy is to provide for the preservation, control, and/or disposition of all contraband including physical evidence obtained in connection with a violation of law and/or ~~[category I] rule violations~~[violation].

(b) Applicability. This rule applies to contraband items, as defined in §91.7 of this title (relating to Youth Personal Property), related to youth in TYC residential facilities.

(c) Contraband [~~Category II Rule Violation~~]. Seized contraband consisting of sexually explicit pictures, or items which advocate delinquent subculture values shall be either destroyed or forwarded to the youth's parents or managing conservator, at the youth's option unless an investigation is initiated. If an investigation is initiated, the evidence shall be retained by the evidence custodian until the completion of all investigations.

(d) Contraband - Potential Evidence.

(1) Seized contraband [~~which constitutes a category I rule violation~~] that may be used as evidence in a due process proceeding will be properly identified, documented, and maintained [~~stored~~] until properly disposed of pursuant to policy [~~no longer needed as evidence~~].

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

(5) After all administrative/legal proceedings have been concluded, one of the following must occur: [~~the items shall be destroyed in the presence of at least two staff members; sent to the youth's home or returned to the owner if other than a TYC youth.~~]

(A) destroyed contraband item(s), other than contraband money, in the presence of at least two staff members; or

(B) send contraband item(s), other than contraband money, to the youth's home; or

(C) return contraband item(s) to include contraband money (if applicable) to the owner; or

(D) deposit contraband money possessed by a youth to the student benefit fund pursuant to §95.11 of this title (relating to Disciplinary Consequences).

(e) (No change.)

~~[(f) Money as Contraband: Money seized as contraband will be deposited in the trust fund of the youth from whom it is taken, unless other ownership can be established. If ownership cannot be established, it will be deposited in the student benefit fund.]~~

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

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CHAPTER 99. GENERAL PROVISIONS

SUBCHAPTER B. YOUTH FUNDS

37 TAC §99.31

The Texas Youth Commission (the commission) proposes an amendment to §99.31, concerning Youth Banking. The amendment to the section will delete the language regarding unauthorized money being placed in the Student Trust Fund. Under House Bill 1575, unauthorized money which is considered contraband money will be deposited in the Student Benefit Fund. The amendment will also rename the rule to more accurately describe its content.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be compliance with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The amendment is proposed under the Human Resources Code, §61.0432, which provides the commission with the authority to deposit contraband money found in the possession of a youth in the Student Benefit Fund.

The proposed rule affects the Human Resources Code, §61.034.

§99.31. Student Trust Fund~~[Youth Banking]~~.

(a) - (g) (No change.)

~~[(h) A youth may have no more cash in his personal possession than the amount authorized by the program rules. All money belonging to a youth in excess of the amount authorized for personal possession is placed in his/her student trust fund at the youth's institution or halfway house placement.]~~

(h) [(4)] A youth may withdraw money for specific purposes according to need and level of responsibility.

(i) [(4)] TYC may not withdraw money from a youth's trust fund without the youth's consent except the exact amount which may be deducted for a charge to TYC by a bank for a problem related to the youth's deposit, e.g., for insufficient funds.

(j) [(4)] Youth with adequate balances are given the opportunity to establish a savings account when their remaining length of stay in the facility would justify the amount of staff time required to set up the individual savings account. Youth must maintain a minimum balance equal to or greater than the lowest minimum balance required without a service charge by a bank located within a reasonable distance from the facility. Interest on personal funds accrues to the youth.

(k) [(4)] If the youth is moved between TYC residential programs [program] or contract care residential programs [program], the youth's check must be mailed to the new placement location.

(l) [(4)] When a youth is released from a TYC residential program with the expectation that he/she will not be returning, the youth's trust fund is [funds are] withdrawn and given to the youth, unless the youth has a large sum in his/her trust fund or youth's account cannot be closed when the youth departs. If the youth has a large sum in his/her trust fund, the youth is given a small amount upon his/her departure and the remaining balance will be mailed to the youth's parole officer. If the youth's account cannot be closed when the youth departs, because of holds, etc., a check will be mailed to the parole officer once the account is cleared of any questions. The parole officer will provide the youth the remaining balance from the trust fund during the youth's scheduled visit to the parole officer.

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

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §99.71

The Texas Youth Commission (the commission) proposes new §99.71, concerning Student Benefit Funds. The new section will establish procedures for the deposit of funds such as donations, fund raising projects or any proceeds from TYC facilities into the Student Benefit Fund. The Student Benefit Fund is only to be used for the education, recreation or entertainment of youth in residential placements or contract care programs.

Robin McKeever, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Neil Nichols, General Counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section is compliance with

state purchasing rules and regulations and other laws and regulations regarding general revenue fund expenditures. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted within 30 days of the publication of this notice to DeAnna Lloyd, Chief of Policy Administration, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or email to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.043, which provides the commission with the authority to accept donations of money to be placed in the Student Benefit Fund and expended as other state money is expended, and §61.0431, which provides the commission with the authority to deposit the proceeds from the operation of canteens and vending machines at facilities under the jurisdiction of the commission into the Student Benefit Fund. Donations and proceeds may be used only to provide education, recreation, and entertainment to youth committed to the commission.

The proposed rule affects the Human Resources Code, §61.034.

§99.71. Student Benefit Fund.

(a) Purpose. The purpose of this rule is to establish procedures for the deposit of funds into the student benefit fund. The student benefit fund is only to be used for the education, recreation or entertainment of the youth in residential placements or contract care programs.

(b) Funds from the following sources are designated as benefit funds:

(1) all proceeds from canteens or vending machines at TYC facilities in excess of the amount required to pay the expense of operating those canteens or vending machines;

(2) donations for youth activities;

(3) proceeds from youth fund raising projects; and

(4) contraband money deposited as a consequence of a Level II due process hearing.

(c) Funds which cannot be accepted in compliance with state law and this rule must be returned to the donor.

(d) For acceptance of gifts that have a value of \$500 or more, see §81.70 of this title (relating to Agency Acceptance of Gifts of \$500).

(e) Proceeds may be used only to:

(1) Provide education, recreation, or entertainment to youth committed to TYC.

(2) Reimburse youth, under certain circumstances, for personal property lost or damaged as a result of negligence by staff. See §91.7 of this title (relating to Youth Personal Property).

(f) Expenditures of funds must be justified to show no preferential treatment of certain individuals or groups of youth. However, expenditures do not have to benefit every youth each time. Funds donated for a specific purpose may be used to reward individual youth for their work or public service activities performed off campus.

(g) Donations must be used for the purpose designated by the donor unless state law prohibits such expenditure.

(h) These funds are maintained in the Comptroller of Public Accounts - Treasury Operations (Fund Consolidation Appropriation

Act) and all expenditures must conform to state purchasing rules and regulations.

(i) All expenditures must conform to state purchasing rules and regulations and other laws and regulations regarding general revenue fund expenditures except as necessary to reimburse youth under subsection (c) of this section.

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

Filed with the Office of the Secretary of State on September 2, 2005.

TRD-200503841

Dwight Harris

Executive Director

Texas Youth Commission

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 424-6301



PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.11

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §146.11, concerning releasee's motion to reopen hearing or reinstate supervision. The amendment is proposed for the purpose of clarifying the procedures for submission of a releasee's motion to reopen hearing or reinstate supervision.

Rissie Owens, Chair of the Board, has determined, that for the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of the amendment to this section will be to bring the rules into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 211 W. 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, or revoke parole, or revoke mandatory supervision. Sections 508.281 and 508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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

§146.11. *Releasee's Motion To Reopen Hearing or Reinstate Supervision*

(a) The releasee or releasee's attorney shall have 60 days from the date of the board panel's revocation decision to request a reopening of the case for any substantial error in the revocation process or upon newly discovered information.

(b) A request to reopen the revocation hearing or reinstate supervision submitted later than 60 days from the date of the board panel's revocation decision will not be considered unless under exceptional circumstances including but not limited to:

(1) judicial reversal of a judgment of conviction of a criminal offense where the offense constituted an underlying factor in the initial revocation decision;

(2) judicial order requiring a hearing;

(3) initial revocation effected without opportunity for a hearing or waiver as required under law.

(c) Any such request for reopening made under this section must be in writing and delivered to the board or placed in the United States mail [~~certified, return receipt requested~~] and addressed to the Texas Board of Pardons and Paroles, Board Administrator, P.O. Box 13401, Austin, Texas 78711.

(d) On transmittal, a board panel designated by the chair other than the original panel shall dispose of the motion by:

(1) granting of the motion and ordering that the hearing be reopened for a stated specified and limited purpose;

(2) denial of the motion; or

(3) reversal of the panel decision previously entered and withdrawal of the board's revocation warrant, under the same terms and provisions as provided in §146.10 of this title (relating to Final Board Disposition).

(e) The releasee and attorney, if any, shall be notified in writing of the board panel's decision.

(f) When a releasee's motion to reopen the hearing under this section is granted, the releasee shall be deemed to have consented to such further reasonable delay in the final disposition of his or her case as shall be required for the procedure described in §146.12 of this title (relating to Procedure after Motion To Reopen Is Granted; Time; Rights of the Releasee; Final Disposition).

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 September 2, 2005.

TRD-200503868

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: October 16, 2005

For further information, please call: (512) 406-5480



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 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.62

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the Texas Parks and Wildlife Department has been automatically withdrawn. The amended section as proposed appeared in the February 25, 2005 issue of the *Texas Register* (30 TexReg 1041).

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

TRD-200503826

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text 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 1. ADMINISTRATION

PART 10. DEPARTMENT OF INFORMATION RESOURCES

CHAPTER 201. PLANNING AND MANAGEMENT OF INFORMATION RESOURCES TECHNOLOGIES

1 TAC §201.18

The Department of Information Resources (department) adopts the repeal of §201.18, concerning Purchases of Commodity Software Items without changes to the proposal as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4085).

The repeal is being adopted because it will be replaced by new Chapter 212, Purchases of Commodity Items. The Department intends to adopt Chapter 212 by separate action.

The Department received no comments from the public during the comment period.

The repeal is adopted pursuant to §2157.068(f), Government Code, as amended by H.B. No. 1516, 79th Legislature, which authorizes the department to adopt rules regulating the purchase by a state agency of commodity items, and §2054.052(a), Government Code, the department's general rulemaking authority.

Texas Government Code, Chapter 2157 is affected by the repeal.

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

Filed with the Office of the Secretary of State on September 2, 2005.

TRD-200503867

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: September 22, 2005

Proposal publication date: July 15, 2005

For further information, please call: (512) 936-6448



CHAPTER 212. PURCHASES OF COMMODITY ITEMS

SUBCHAPTER A. DEFINITIONS

1 TAC §212.1

The Department of Information Resources (department) adopts 1 TAC Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, as the new rules necessary to implement Section 1.08, H.B. 1516, 79th Legislature, which amends §2157.068, Texas Government Code. Sections 212.1, 212.10 - 212.12, 212.20 and 212.23 are adopted without change to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4087). Sections 212.21 and 212.22 are adopted with changes to the proposed text as published in the July 15, 2005 issue of the *Texas Register* (30 TexReg 4088). The text changes are in response to public comments received in order to clarify the intent of the published text. The changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the published sections. Therefore the rule adoption comports with the substantial compliance standard of §2001.035, Texas Government Code.

The rule chapter is adopted to implement the requirements of Section 1.08, H.B. 1516, 79th Legislature, Regular Session, which amends §2157.068, Texas Government Code. This act of the 79th Legislature has become law, but has not yet taken effect. Currently, §2157.068, Texas Government Code, limits state agency purchases of commodity items to software. The legislative amendment expands the state agency purchase of commodity items to also include hardware and technology services. The department intends to publish repeal of existing Software Commodity Rule §201.18 by separate action. In adopted Chapter 212, there are three subchapters. Subchapter A, §212.1 is a definition section. Subchapter B, §§212.10 through 212.12, govern required purchases and the establishment and maintenance of a list of the commodity items. Subchapter C, §§212.20 through 212.23, establish a commodity purchase rule exemption application and approval process.

The department received comments on the proposed rules from TIBH Industries, Inc. (TIBH) in a letter dated August 8, 2005, the Texas Workforce Commission (TWC) in a letter dated August 9, 2005, and Adrienne O'Keefe (O'Keefe) via E-mail dated August 12, 2005 from E-mail address adrienne@batesinvestigations.com.

Preamble to the proposed rules

TWC disagreed with the statement in the rule preamble by Brian Rawson that the department has determined that there will be no different effect on small businesses than there is on large businesses if the rules are adopted. TWC expressed its belief that there may be an adverse effect on small, minority-owned and woman-owned businesses by adoption of the proposed rules. TWC also expressed its belief that the effect may be disproportionate to the effect on large businesses. TWC suggested that volume contracting could result in fewer contracts to fewer businesses. TWC proposed that the department commit in rule

to make good faith efforts that provide contracting opportunities and increase contract awards to HUBs consistent with Section 1.08 of H.B. 1516 (79th Legislature, Regular Session).

Department Response

The department respectfully disagrees with the proposal to incorporate in its rules a reference to the legislative language of Section 1.08 of H.B. 1516. The department has an existing statutory duty to contract with HUBs under the good-faith effort program set forth in Chapter 2161, Texas Government Code. The department envisions continuing multiple vendor contracts per commodity product or services, thus not adversely affecting the absolute number of opportunities for all businesses. The department is also exploring methods to streamline the bidding process and thus lower barriers to contracting with DIR. Finally, the department's good-faith effort contracting achievement under Chapter 2161, Texas Government Code, for the cooperative contracting program (contracts available for use by state agencies and local governments without the mandate of H.B. 1516), has been:

FY 04 - \$164,543,211.00. DIR had prime or reseller contracts with 86 HUB firms during FY 04. Some firms have more than one contract.

FY 05 through June, 2005: \$164,053,939.00. DIR has 91 prime or reseller contracts with HUB firms this fiscal year. Some HUB firms have more than one contract. DIR anticipates a higher total pay out to HUB firms when final FY 05 contract numbers become available.

DIR is proud that state agencies and local governments have found the DIR contracts to be useful. The operation of the expanded commodity program should create even more demand from state agencies to use the DIR contracts. DIR does not anticipate a negative impact on HUB firms from the expanded mandate of H.B. 1516.

No changes to the preamble statement are required.

1 TAC §212.1

O'Keefe stated that the IT industry defines commodity technology as off-the-shelf technology purchased in large quantities. The proposed rule would define all technology, including emerging technologies, as commodity. O'Keefe recommended that the department focus its rule on technology that is truly commodity and ensure that an open competitive procurement process is followed when establishing commodity contracts. O'Keefe further recommended that the department, on an ongoing basis, evaluate emerging technologies to determine viability in the government marketplace. Once viability and demand merit it, the department should then add an emerging technology to the commodity category.

Department Response

The department agrees and will continue following the required procurement procedures, rules, and statutes that ensure an open competitive procurement process is followed when establishing its contracts. The definition of "commodity items" in 1 TAC §212.1(1) includes demand elements which are associated with volume discounts. It is DIR's position that 1 TAC §212.12, as published, sufficiently provides for a continuous updating of the commodity items list to apply to emerging information technologies. No changes in the published text are required.

1 TAC §212.1(4)

O'Keefe requested clarification as to why the definition of technology services has been expanded to include staff augmentation, training, maintenance and subscription services when these items were not specifically mentioned in H.B. 1516.

Department Response

The legislative amendment to §2157.068, Texas Government Code, did not limit the category of "technology service" to seat management. The technology procurement system, called the Catalog Information System Vendor (CISV) program administered by the Texas Building and Procurement Commission (TBPC), includes technology service categories that are commercially available and are procured by government in quantities sufficient for volume discounts. These other technology service categories therefore meet the legislative standard for commodity technology services. No changes to the published text are required.

1 TAC §212.12

O'Keefe recommended that the department document the process to be utilized when adding emerging technologies in the marketplace to the commodity list.

Department Response

The department agrees and intends to document the process in the guidelines authorized by 1 TAC §212.12. No changes to the published text are required.

1 TAC §§212.20 through 212.23

TWC recommended that the department specify in the rules a minimum dollar threshold of \$5,000 for the written exemption process. TWC suggests that this minimum threshold would permit agencies to contract for items less than \$5,000 to HUB vendors not under contract with the department, thus providing opportunities for a larger pool of small businesses to do business with the State.

Department Response

The department respectfully disagrees that a minimum dollar threshold should be specified in the rules. 1 TAC §212.12 instructs the Executive Director to promulgate program guidelines to assist in the flexible implementation of the commodity purchase program, as now structured through amendment by the legislature. 1 TAC §212.23 states how the department is to provide instructions on the use of exemptions via the world wide web. The department proposes that creation and use of thresholds, as an exemption mechanism, in the commodity purchase program await operation of the program to determine if they are needed. If the case for the need for exemptions is demonstrated then the rules, as published, allow for the approval of an individual agency exemption and, if the department makes the appropriate determination, the issuance of a blanket exemption that would apply to all agencies. Since the rule covers three areas of commodities which may require different thresholds, programmatic flexibility would dictate that the formulation of such thresholds should be left to the administration of the program. Also, the intent of the commodity purchasing program under H.B. 1516 is to aggregate the purchasing power of the State and large minimum thresholds may prove to run counter to this legislative intent. Should the department implement a dollar threshold exemption, it will require due diligence and careful management in order to fulfill legislative intent. No changes to the published text are required.

1 TAC §212.20(d)

O'Keefe requested that each exemption be responded to in writing regardless of approval or denial. O'Keefe suggested that approval of the exemption by lack of written notification may lead to confusion by the agency and questions in the future concerning actions on each request for exemption.

Department Response

The department agrees. In accordance with 1 TAC §212.20(c), the department will issue, in writing, either an approval or denial. No changes to the published text are required.

1 TAC §212.21(a)

TWC recommended using Texas Building and Procurement Commission's written definition of an emergency procurement because a written definition of an emergency has not been proposed within the rule.

Department Response

The department did not intend by 1 TAC §212.21, as published, to confuse the exemption process with "emergency procurements" as regulated by the Commission. Rather, the department's intent was to provide for an expedited exemption review process for state agencies using the commodity purchasing program. For adoption, 1 TAC §212.21 has been renamed "Expedited Requests". The text of 1 TAC §212.21(a) would be changed to read "In the event a state agency experiences an unforeseeable circumstance that requires immediate attention, but is not considered an Emergency Procurement as defined in 1 TAC §113.2(21), the state agency may submit an expedited exemption request.". All subsequent references in subsection (b) and (c) of 1 TAC §212.21 have been revised to read "expedited exemption request".

1 TAC §212.21(b)

TWC recommended that the phrase "or his/her designee" be added after "head" of the requesting state agency. The expanded approval authority would provide for an emergency authorization that occurs when an agency head is unavailable.

Department Response

The department agrees. 1 TAC §212.21(b) has been restated as follows "The expedited exemption request must include a statement from the head of the requesting state agency, or his/her designee, describing the circumstances and justification for expedited review by the department.".

1 TAC §212.21(c)

TWC suggested that the proposed three (3) business day review an approval period for an expedited exemption in the case of an emergency, in the TBPC "Emergency Procurement" context, would create an unreasonable delay. TWC suggested one (1) full business day be substituted for three (3) business days in the proposed rule.

Department Response

The change to the text of 1 TAC §212.21 (a) makes clear that this expedited exemption process is not related to Emergency Procurements as regulated by TBPC. The exemption process requires a reasonable period of time to conduct due diligence on each request. The department has determined that three (3) business days is reasonable for an expedited exemption request. The expedited exemption request process was created to accommodate pressing matters that do not constitute an Emergency Procurement. According to Section 2.4 of the

State of Texas Procurement Manual, Emergency Procurement situations take precedence over other procurement methods. Therefore, the department proposes, at a programmatic level, to grant Emergency Procurements as a blanket exemption category. No changes to the published text are required.

1 TAC §212.22

1) TIBH expressed its concern that the proposed rule chapter does not recognize the purchasing preference granted to State Use-approved commodity purchases in Chapter 122, Human Resources Code, and further, that the proposed rules do not incorporate the language of Section 1.08 of H.B. 1516. TIBH requests that proposed 1 TAC §212.22 contain language that: 1) includes a blanket exemption for the Chapter 122, Human Resources Code disabilities products and services set-aside program and 2) purchasers not be required to report purchases of these products and services in exception reports to the department.

2) O'Keefe recommended that specific examples of circumstances that would trigger a blanket exemption be included in the rule. O'Keefe also recommended that such blanket exemptions require a written explanation and follow the same steps outlined in §212.20.

Department Response

1) The department respectfully disagrees that the legislative language of Section 1.08 of H.B. 1516 mandates a blanket exemption. The language references the Chapter 122, Human Resources Code program only in the context of the department "...contracting for commodity items under [§1.08]...". The exemption process is a post-contracting activity. Further, the department's commodity purchase program is simply one of several special purchasing programs authorized by statute and shall, in the universe of all programs, be administered in accordance with the Texas Building and Procurement Commission's State of Texas Procurement Manual. Section 2.4 of the State of Texas Procurement Manual sets forth the hierarchy among special purchasing programs for selecting a contract from which to make a purchase as follows: first, Council on Competitive Government contracts, second, TIBH Industries, Inc. catalog (the Chapter 122, Human Resources Code program), third, Texas Correctional Industries, Inc. catalog, and then fourth, the Department of Information Resources commodity purchasing program. The department's commodity purchasing program will not be utilized in the first instance if a product or service has been set-aside under the Chapter 122, Human Resources Code program. Reporting requirements are going to be addressed in the commodity guidelines authorized in 1 TAC §212.12. No changes to the published text are required.

2) The department agrees that blanket exemptions should be in writing and the text of 1 TAC §212.22, has been revised to so provide. The department disagrees that specific examples of when the department may determine a blanket exemption is warranted is required to be in the published version of 1 TAC §212.22. Only the department may grant a blanket exemption and the legal standard for granting blanket exemptions is the "reasonable under the circumstances" standard. As the adopted rule states that all such determinations shall be in writing, the reasons for each blanket exemption granted will be known. No additional change to the published text is required.

The rules are adopted under §2157.068(f), Texas Government Code, as amended in Section 1.08, H.B. No. 1516, 79th Legislature, effective September 1, 2005, and §2001.006 (b), Texas

Government Code, which authorizes necessary rulemaking actions for legislation that has become law but has not yet taken effect.

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 September 2, 2005.

TRD-200503847

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: September 22, 2005

Proposal publication date: July 15, 2005

For further information, please call: (512) 936-6448



SUBCHAPTER B. REQUIRED PURCHASES

1 TAC §§212.10 - 212.12

The Department of Information Resources (department) adopts 1 TAC Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, as the new rules necessary to implement Section 1.08, H.B. 1516, 79th Legislature, which amends §2157.068, Texas Government Code. Sections 212.1, 212.10 - 212.12, 212.20, and 212.23 are adopted without change to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4088). Sections 212.21 and 212.22 are adopted with changes to the proposed text as published in the July 15, 2005 issue of the *Texas Register* (30 TexReg 4088). The text changes are in response to public comments received in order to clarify the intent of the published text. The changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the published sections. Therefore the rule adoption comports with the substantial compliance standard of §2001.035, Texas Government Code.

The rule chapter is adopted to implement the requirements of Section 1.08, H.B. 1516, 79th Legislature, Regular Session, which amends §2157.068, Texas Government Code. This act of the 79th Legislature has become law, but has not yet taken effect. Currently, §2157.068, Texas Government Code, limits state agency purchases of commodity items to software. The legislative amendment expands the state agency purchase of commodity items to also include hardware and technology services. The department intends to publish repeal of existing Software Commodity Rule §201.18 by separate action.

The rules are adopted under §2157.068(f), Texas Government Code, as amended in Section 1.08, H.B. No. 1516, 79th Legislature, effective September 1, 2005, and §2001.006 (b), Texas Government Code, which authorizes necessary rulemaking actions for legislation that has become law but has not yet taken effect.

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 September 2, 2005.

TRD-200503848

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: September 22, 2005

Proposal publication date: July 15, 2005

For further information, please call: (512) 936-6448



SUBCHAPTER C. EXEMPTIONS

1 TAC §§212.20 - 212.23

The Department of Information Resources (department) adopts 1 TAC Chapter 212, §§212.1, 212.10 - 212.12, and 212.20 - 212.23, as the new rules necessary to implement Section 1.08, H.B. 1516, 79th Legislature, which amends §2157.068, Texas Government Code. Sections 212.1, 212.10 - 212.12, 212.20, and 212.23 are adopted without change to the proposed text as published in the July 15, 2005, issue of the *Texas Register* (30 TexReg 4087). Sections 212.21 and 212.22 are adopted with changes to the proposed text as published in the July 15, 2005 issue of the *Texas Register* (30 TexReg 4088). The text changes are in response to public comments received in order to clarify the intent of the published text. The changes affect no new persons, entities, or subjects other than those given notice and that compliance with the adopted sections will be less burdensome than under the published sections. Therefore the rule adoption comports with the substantial compliance standard of §2001.035, Texas Government Code.

The rule chapter is adopted to implement the requirements of Section 1.08, H.B. 1516, 79th Legislature, Regular Session, which amends §2157.068, Texas Government Code. This act of the 79th Legislature has become law, but has not yet taken effect. Currently, §2157.068, Texas Government Code, limits state agency purchases of commodity items to software. The legislative amendment expands the state agency purchase of commodity items to also include hardware and technology services. The department intends to publish repeal of existing Software Commodity Rule §201.18 by separate action.

The rules are adopted under §2157.068(f), Texas Government Code, as amended in Section 1.08, H.B. No. 1516, 79th Legislature, effective September 1, 2005, and §2001.006 (b), Texas Government Code, which authorizes necessary rulemaking actions for legislation that has become law but has not yet taken effect.

§212.21. Expedited Requests.

(a) In the event a state agency experiences an unforeseeable circumstance that requires immediate attention but is not considered an Emergency Procurement as defined in Texas Administrative Code, Title 1, Part 5, Chapter 113, Subchapter A, Section 113.2(21), the state agency may submit an expedited exemption request. The department shall issue a written approval or denial of an exemption request within a maximum of three (3) business days of receipt of the expedited exemption request.

(b) The expedited exemption request must include a statement from the head of the requesting state agency, or his/her designee, describing the circumstances and justification for expedited review by the department.

(c) If the department has not issued a written denial of the expedited exemption request within three (3) business days following the

date of its receipt of the request, the expedited request for the exemption shall be deemed to have been approved for an amount equal to the total dollar amount of the proposed purchase or for the period of time described in the expedited exemption request.

§212.22. Blanket Exemptions.

The department may determine that under certain circumstances it is reasonable to grant a blanket exemption to state agencies from the commodity items purchasing requirements described in Subchapter B of this Chapter. All blanket exemptions shall be issued in writing.

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 September 2, 2005.

TRD-200503849

Renée Mauzy

General Counsel

Department of Information Resources

Effective date: September 22, 2005

Proposal publication date: July 15, 2005

For further information, please call: (512) 936-6448



TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 105. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAM

22 TAC §§105.1 - 105.4

The Texas State Board of Dental Examiners (Board) adopts the repeal of 22 TAC, Chapter 105, §§105.1 - 105.4, concerning the Alternative Dental Hygiene Training Program, without change to the proposal as published in the May 20, 2005, issue of the *Texas Register* (30 TexReg 2970).

Pursuant to House Bill 3507, §3.03, 77th Legislature, 2001, the Program expired on December 31, 2004.

The repeal is adopted under Texas Government Code §2001.021 et seq; Texas Civil Statutes, the Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and House Bill 3507, §3.03, 77th Legislature, 2001, which provides for the expiration of the Alternative Dental Hygiene Training Program.

The adopted repeal affects Title 3, Subtitle D of the Occupations Code and Title 22, Texas Administrative Code, Chapter 101-125.

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 September 1, 2005.

TRD-200503824

Sherri Sanders

Interim Executive Director

State Board of Dental Examiners

Effective date: September 21, 2005

Proposal publication date: May 20, 2005

For further information, please call: (512) 475-0972



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

The Texas Youth Commission (the commission) adopts new §87.2, Resocialization Program, without changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1898).

The commission simultaneously adopts the repeal of §87.3, Resocialization Program, without changes to the proposal as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1904).

The commission also adopts new §87.3, Resocialization Phase Requirement and Assessment, with changes to the proposed text as published in the April 1, 2005, issue of the *Texas Register* (30 TexReg 1898). Changes to the proposed text were made in subsection (f)(3) to clarify that youth returned to high restriction through any type of due process hearing will receive a phase re-assessment. Minor grammatical changes were made as well.

The justification for the repeal of §87.3 and its adoption under new §87.2 is to allow for the sections in this chapter to follow a logical sequence. The justification for new §87.3 is to enable youth to demonstrate positive behavioral changes which can be sustained when they return to the community. The new section outlines a system of assessment covering the three areas of Resocialization (Academic/Workforce Development, Behavior, and Correctional Therapy), in which youth progress by demonstrating competence. Youth can earn release or transition to placements of lesser restriction by progressing through the phases of the system.

No comments were received regarding the adoption of the new sections and repeal.

37 TAC §87.2, §87.3

The new sections are adopted under the Human Resources Code, §61.076, which provides the commission with the authority to require youth in its care to participate in academic and correctional training and activities.

The adopted rules implement the Human Resources Code, §61.034.

§87.3. Resocialization Phase Requirements and Assessment.

(a) Purpose. A Texas Youth Commission (TYC) youth earns release/transition from high and medium restriction placements by progressing through a Phases system that has been developed to measure progress in the Resocialization program. The purpose of this rule is to outline the specific criteria in the areas of Academic/Workforce Development, Behavior and Correctional Therapy in which a youth

must demonstrate competency to be promoted and to identify how the process of assessment is conducted on a monthly basis.

(b) **Applicability.** Provisions of this policy do not apply to youth in contract care programs that are not required to provide Re-socialization treatment.

(c) **Explanation of Terms Used.**

(1) **Academic/Workforce Development (A)**--Youth are assessed on their ability to participate in programs related to academic and vocational skills development and participation in actual work. This may occur from the elementary school level to the college level. Youth engaged in work training and/or paid employment are assessed in this area.

(2) **Behavior (B)**--Youth are assessed on their ability to manage their behavior and follow a set of established and reasonable rules in accordance with §95.1 of this title (relating to Discipline System Overview) and §95.3 of this title (relating to Rules of Conduct).

(3) **Correctional Therapy (C)**--Youth are assessed on their progress through a treatment program that requires they develop an understanding of the motivators of their delinquent behaviors, and develop alternative non-delinquent behaviors and values as well as a detailed plan to succeed in the community after release.

(4) **Indicators**--Each main and sub-objective is broken down into several smaller parts that clarify and define the objective. When all indicators are mastered, the objective is considered complete for that phase. There are indicators in the Academic/Workforce Development and Correctional Therapy areas.

(5) **Main Objective**--Specific objectives related to the most important concept or skill necessary to complete a phase in the Academic/Workforce Development and Correctional Therapy areas. In the Academic/Workforce Development area, there may be two (2) main objectives per phase if the youth is in school and employed at a job. In Correctional Therapy there is one main objective per phase.

(6) **Phase Assessment Team (PAT)**--The PAT is responsible for conducting the youth's phase assessment on a monthly basis. It includes staff members who are knowledgeable of the youth's performance. The chief local administrator appoints the PAT members. The members must include a juvenile corrections officer (JCO) supervisor, an education representative and the youth's primary service worker (PSW).

(7) **Phases**--The measure of progress in each of the three areas beginning with Phase 0 and ending with Phase 4 in the A, B, and C areas as defined above. Phases are progressive and competency-based. Youth may progress in each area at different rates. Phase-related privileges are calculated based upon the lowest earned phase in the three (3) areas. Increases in phase are associated with increases in privileges. A completed phase is defined as completion of all main and sub objectives in the Academic/Workforce Development, Behavior and Correctional Therapy areas.

(8) **Qualified Professional Staff**--A qualified professional staff is considered a psychologist, psychiatrist or other licensed health care professional and an educational diagnostician. Other educational professional staff can be considered as a qualified professional staff only with the approval from the director of clinical services.

(9) **Remediate**--After earning an indicator(s) for specific identified Academic/Workforce Development or Correctional Therapy objectives, a youth will be expected to continue to demonstrate competence in that area over time. Youth who do not continue to demonstrate competence on specific indicators may be placed on remediation. If

placed on remediation, youth must meet the criteria for that indicator during the subsequent monthly assessment period to avoid losing credit for that indicator and possible demotion. Youth on remediation will have specific objectives incorporated in their Individual Case Plan (ICP) to assist them in meeting the specific indicator criteria.

(10) **Special Circumstances**--Special conditions allow the PAT to exercise discretion and to consider individual circumstances when making decisions in the Behavior area. These circumstances may be applied when the number of documented rule violations in a monthly period would require a youth be retained or demoted in the Behavior area. By using special circumstances, the PAT would allow a youth to be retained or promoted instead of demoted because of specific mitigating circumstances. There are five (5) special circumstances that may be applied at the PAT's monthly meeting. The PAT may use special circumstances 1-4, if all members of the team agree. The fifth special circumstance is reserved for qualified professional staff and allows retention or promotion based upon clinical assessment of the needs of the youth. This special circumstance must be used if recommended by the qualified professional staff and does not require the consensus of the PAT. Special circumstances are used only for the Behavior area and may be used when the PAT determines that the youth has:

(A) made efforts to improve, as indicated by a decrease in the frequency and/or severity of rule violations during the current assessment period;

(B) demonstrated the use of skills in most areas, as indicated by the occurrence of rule violations only in isolated areas;

(C) attempted to change problem behaviors, as indicated by the youth's responsiveness to staff interventions in Behavior Groups, huddle-ups, disciplinary actions and the like; and

(D) contributed to a positive culture despite the rule violations, as indicated by the youth's doing more than expected in other areas, such as making amends, helping staff and other youth, being receptive to feedback. The fifth special circumstance is applied when it is determined by a qualified professional staff that the youth: Acted under conditions that make it relatively more difficult for the youth to meet the criteria, as indicated by the existence of emotional disturbance, impulse control disorder, learning disability, attention deficit disorder, language barrier, immaturity, but only when the youth has complied with specific treatment recommendations. This circumstance may also be used to mitigate the effect of a Category I rule violation under certain circumstances.

(11) **Sub-Objectives**--Specific objectives that contribute to or broaden the understanding of the main objectives for a given phase. There may be several sub-objectives associated with a main objective. There are sub-objectives in the Academic/Workforce Development and Correctional Therapy areas.

(d) **Phase Requirements for Promotion.**

(1) **Academic/Workforce Development.** To successfully complete Phases 1-4, the youth is required to complete the following main and sub-objectives during each monthly phase assessment period.

(A) **Main Objective.** The youth will:

(i) complete all required tests when scheduled. This includes, but is not limited to, completing the Test of Adult Basic Education (TABE) pre-test, Workforce/Career & Technology aptitude and interest surveys, other assessments appropriate for students needing special education or English as a second language (ESL) and appropriate General Educational Development (GED) tests based upon youth's

age and ability. Takes other classroom tests or quizzes as assigned by the classroom teacher;

(ii) follow all test administration instructions as defined or interpreted by the test administrator;

(iii) perform on all tests consistent with expectations as determined by teachers and the educational diagnostician or an appropriate educational staff. Expected performance is based upon comparison with prior test results and current functioning as observed by teachers and the educational diagnostician or an appropriate educational staff; and

(iv) if employed in compensated work programs, perform all expected job duties and work objectives as defined by the work supervisor, demonstrate positive work behavior on the job by following work and break schedules, following supervisors instructions and working as part of a team when necessary, make reasonable efforts to learn job requirements and require decreasing direct work supervision over time.

(B) Sub-Objectives. The youth will:

(i) show progress on all daily Academic/Workforce Development tasks and assignments by staying on task in all classes a minimum of 70% of the time;

(ii) show progress toward Academic/Workforce Development curriculum (elementary or secondary TEKS, GED, CATE, college or work daily assignments) by mastering specific curriculum objectives so that the youth will achieve educational six (6) week objectives; and

(iii) achieve passing grades of at least 70% on all classroom assignments based upon each classroom teacher's judgment of the youth's individual ability.

(2) Behavior.

(A) To successfully complete Behavior Phases 1-4, during each monthly assessment period the youth is required to have no Category I rule violations, as defined in §95.3 of this title, and have no more than the following number of Category II rule violations as defined in §95.3 of this title:

(i) Phase 1--no more than seven (7) Category II rule violations if in a high restriction placement and no more than six (6) Category II rule violations if in a medium restriction facility.

(ii) Phase 2--no more than five (5) Category II rule violations if in a high restriction placement and no more than four (4) Category II rule violations if in a medium restriction facility.

(iii) Phase 3--no more than three (3) Category II rule violations if in a high restriction placement and no more than two (2) Category II rule violations if in a medium restriction facility.

(iv) Phase 4--no more than one Category II rule violation if in a high restriction placement and no more than one Category II rule violation if in a medium restriction facility.

(B) Youth may be retained or promoted in Behavior phase with an excessive number of Category II rule violations if the PAT elects to apply special circumstances during the monthly PAT meeting.

(3) Correctional Therapy. Requirements for completion of Correctional Therapy Phases vary with each Phase.

(A) Phase 1. To successfully complete this Phase, during any monthly assessment period, the youth is required to complete

all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective. The youth will:

(I) discuss from memory in Core Group the definition of a Life Story and state why it is a required part of treatment;

(II) discuss from memory in Core Group the definition of the Offense Cycle and state how it can be used to prevent delinquent behaviors;

(III) discuss from memory in Core Group the definition of a Success Plan and state what changes need to be made to be successful and why it makes sense to plan for the future; and

(IV) recite from memory the major program rules in Core Group and state the reasons for having rules.

(ii) Sub-Objectives.

(I) Thinking Errors--define the nine (9) "Thinking Errors" in Core Group and state how Thinking Errors are associated with delinquent behaviors.

(II) Empathy.

(-a-) Define "Empathy" in Core Group.

(-b-) Identify and uses personal feeling words.

(III) Values.

(-a-) Define the meaning of "Values" in Core Group.

(-b-) Give personal examples of personal values.

(IV) Layout--present, from memory, in Core Group the Basic Layout; explain the three (3) reasons for completing a Layout.

(V) Positive Skills.

(-a-) report personal strengths and weaknesses (in Behavior Group);

(-b-) evaluate the costs and benefits of decisions made (in Core Group);

(-c-) identify feelings related to receiving staff feedback and disagreements in Core Group;

(-d-) discuss how staff and peer feedback can be helpful; and

(-e-) identify a skill that would help them address a problem area.

(B) Phase 2. To successfully complete this Phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main and sub-objectives:

(i) Main Objective. The youth will:

(I) present from memory to the Core Group their Life Story that accurately describes significant events and feelings from birth through commitment to TYC;

(II) use feeling words to describe reactions to situations involving other youth, victims, family members and others;

(III) identify significant unmet needs and how these needs developed; and

(IV) state the connection between unmet needs and how they related to delinquent and criminal patterns of behavior.

(ii) Sub-Objectives.

(I) Thinking Errors.

(-a-) describe in Core Group how Thinking Errors were used to protect themselves from unpleasant feelings while growing up; and

(-b-) identify the ongoing use of Thinking Errors in both self and others on a daily basis by appropriately confronting others and accepting appropriate confrontation from others.

(II) Empathy.

(-a-) use feeling words in Core Group to describe reactions to situations occurring in the Life Story as well as in day-to-day functions; and

(-b-) identify and discuss in Core Group the thoughts and feelings of others mentioned in the presentation of the Life Story and in day-to-day activity.

(III) Values--in Core Group and during the presentation of the Life Story, identify how values were learned.

(IV) Layout.

(-a-) present, from memory, in Core Group a Life Story Layout that includes the Basic Layout plus specific historical information from the Life Story; and

(-b-) explain to Core Group why the Life Story information is added.

(V) Positive Skills.

(-a-) identify strengths and weaknesses in Behavior Group and describe how they relate to success;

(-b-) identify the cost and benefits of specific decisions made in their lives and discuss why considering costs and benefits is important in Core Group;

(-c-) discuss how positive skills assist in handling feedback and disagreements in Core Group; and

(-d-) identify two (2) positive skills to be practiced during the following month and presented for discussion in Behavior Group.

(C) Phase 3. To successfully complete this Phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main and sub-objectives:

(i) Main Objective.

(I) Present from memory to Core Group a seven (7) step Offense Cycle for the committing and/or classifying offense. The Offense Cycle is presented from memory and meets specific criteria as follows:

(-a-) includes all seven (7) steps in the Offense Cycle, accurately stated, adequately detailed, and in the correct sequence;

(-b-) includes an unmet need from the Life Story;

(-c-) includes an accurate critical situation that is connected to the unmet need;

(-d-) states the thoughts and feelings involved in the internal reaction step;

(-e-) states the choices that could have been made in place of the offense;

(-f-) states actions, thoughts, and feelings involved in the preparing to offend step;

(-g-) describes the committing and/or classifying offense in detail; and

(-h-) states actions, thoughts, and feelings involved in the avoiding consequences step.

(II) After completing an Offense Cycle for the committing/classifying offense, the youth must construct at least two (2) Offense Cycles for recent behavioral problems. The Offense Cycle must:

(-a-) identify a specific problem;

(-b-) identify where in the cycle the youth might have interrupted the cycle;

(-c-) identify specific strategies or positive skills that might have been used to interrupt the cycle; and

(-d-) include a plan for using these strategies or positive skills when faced with similar high-risk situations or "trigger" in the future.

(III) After completing Offense Cycles on actual ongoing behavior problems, the youth will demonstrate an ongoing ability to interrupt the cycle to avoid the problem by:

(-a-) identifying in Core Group at least five (5) occasions where the cycle was interrupted before the negative behavior occurred;

(-b-) identifying in Core Group at what step the cycle was interrupted;

(-c-) describing the positive skills or strategies that were used to interrupt the cycle; and

(-d-) responding appropriately to confrontation or feedback from the Core Group or staff.

(ii) Sub-Objectives.

(I) Thinking Errors.

(-a-) state in Core Group the thinking error(s) used in each step of the Offense Cycle; and

(-b-) state how the use of each thinking error allowed the avoidance of responsibility for the behavior or avoidance of unpleasant feelings associated with the behavior.

(II) Empathy.

(-a-) discuss in Core Group feelings and thoughts and long and the short-term effects of the offense from the victim's perspective;

(-b-) discuss in Core Group the impact of the offense on extended victims, including the youth's own family; and

(-c-) discuss in Core Group how empathy might prevent similar behavior in the future.

(III) Values.

(-a-) discuss in Core Group how personal values will be used to interrupt future Offense Cycles; and

(-b-) discuss in Core Group how values were used to help interrupt at least two (2) Offense Cycles in the past month.

(IV) Layout.

(-a-) present, from memory, in Core Group an Offense Cycle layout by adding the victim information to the Life Story Layout; and

(-b-) modify the layout based upon feedback from the group and explain to the group why the victim information is added to the Layout.

(V) Positive Skills.

(-a-) in Behavior Group, identify strengths and weaknesses and describe how they relate to success;

(-b-) in Core Group, identify the costs and benefits of the committing offense to the youth, his/her family, the victim, the victims family, the community and himself/herself;

(-c-) make decisions based upon the costs and benefits for behaviors to the youth, peers and family;

(-d-) discuss in Core Group feelings and reactions to feedback and disagreements in the prior month and how Positive Skills were used to handle the feelings; and

(-e-) identify three (3) positive skills to be practiced during the following month and presented for discussion in Behavior Group.

(D) Phase 4. To successfully complete this Phase, during any monthly phase assessment period, the youth is required to complete all assigned exercises in a Resocialization Workbook and all of the following main objective and sub-objectives:

(i) Main Objective. Develop and present, from memory, to Core Group a Success Plan that includes:

(I) individualized and realistic education, family, social, personal and work goals that: reflect the knowledge, skills, and abilities of the youth, and that link to specific and relevant unmet needs, support values in pro-social ways; and address any ongoing psychiatric, medical, or other specialized treatment needs;

(II) a set of detailed, realistic specific plans to meet each goal that includes multiple steps to reach the goal and identifies specific resources available in the community; and

(III) a description of barriers to success that includes specific People, Places, Situations and Feelings that are likely to be encountered, and a plan to avoid these situations if possible or specific positive skills to be used if they cannot be avoided.

(ii) Sub-Objectives.

(I) Thinking Errors.

(-a-) self-identify in Core Group any Thinking Errors;

(-b-) explain how the use of Thinking Errors may lead to re-offending; and

(-c-) develop a plan to handle situations without the use of Thinking Errors.

(II) Empathy.

(-a-) demonstrate care and concern for others by providing positive feedback to other youth in a positive manner;

(-b-) identify and confront in an appropriate manner the Thinking Errors used by other youth;

(-c-) accept confrontation and feedback from other youth and staff;

(-d-) make amends for behaviors that victimize others by stating how the victim felt as a result of the youth's behavior, apologizing and making restitution when possible, stating how to prevent the victimizing behavior in the future; and making a commitment and plan to stop the victimizing behavior; and

(-e-) state and give examples of subtle ways of victimizing others, and state ways the youth has made amends for it.

(III) Values.

(-a-) state and give examples in Core Group of how values fit into the Success Plan and how they support success in the community;

(-b-) demonstrate on a daily basis how pro-social values guide behavior on the campus; and

(-c-) participate in community service if required by the facility.

(IV) Layout.

(-a-) present, from memory, in Core Group a Success Plan Layout by adding Success Plan information to the Offense Cycle Layout;

(-b-) modify the layout based upon feedback from the group; and

(-c-) explain to the Core Group why the success planning information is added to the Layout.

(V) Positive Skills.

(-a-) review in Behavior Group how individual strengths and weaknesses impact the success of his/her transition;

(-b-) review in Core Group the costs and benefits to transition of daily decisions;

(-c-) identify how personal reactions to situations can be a barrier to success; and

(-d-) select and practice four (4) skills designed to improve success after transition.

(e) Phase Assessment Team. Members of the PAT make Phase decisions in their respective areas of expertise. The PAT confirms awarding of Phases C3 and C4 by reviewing progress and interviewing the youth. The PSW serves as the PAT facilitator. Level II hearing examiners may make decisions regarding demotion in the area of Behavior in accordance with provisions of this rule and §95.55 of this title (relating to Level II Hearing Procedure). The PAT will address and make treatment recommendations that also reflect:

(1) specialized treatment needs of the youth to include chemical dependency, mental health, cognitive, aggressive, sexual behavior and language proficiency regardless of where they are placed;

(2) any other relevant specialized needs not identified specifically in this policy; and

(3) any adaptations to the standard Resocialization curriculum based upon the presence of special needs.

(f) Frequency of Phase Assessment.

(1) The phase assessment is conducted by the PAT on a monthly basis after the initial placement from the Marlin Orientation and Assessment Unit (MOAU). For purposes of this rule, monthly is defined as between 28 and 35 days from the prior phase assessment.

(2) For youth placed in a Behavior Management Program (BMP), in accordance with provisions of §95.17 of this title (relating to a Behavior Management Program), phase assessment is suspended during the time a youth is on BMP stages 1-4.

(3) A phase reassessment shall be conducted for youth who are returned to high restriction or recommitted as a result of a due process hearing within 30 days of the date of the hearing.

(g) Documentation and Youth Interview. A phase assessment is conducted on the basis of documentation related to the youth's performance during the previous 30-day period. The PAT conducts a face-to-face interview with the youth:

(1) within 30 days of admission to a new program;

(2) within 30 days of admission to a new dorm;

(3) prior to movement to a less restrictive placement;

(4) upon the request of administration;

(5) prior to release or discharge;

(6) within 30 days of release from a BMP;

(7) if the PAT determines a face-to-face interview is required;

(8) prior to assignment of Phase C3; and

(9) prior to assignment of Phase C4.

(h) Opportunity to Demonstrate Completion of Requirements.

(1) Phase promotion in the Academic/Workforce Development and the Behavior areas may be completed in a single month. Promotion in the Correctional Therapy area is not designed to be completed in a single month. Completion of requirements in Correctional Therapy is demonstrated primarily through participation in scheduled activities with the youth's caseworker, Core Group and Behavior Group. The phase requirements are generally sequential.

(2) During each monthly assessment period, the youth is provided an equal opportunity, as the youth's behavior warrants, to participate in the scheduled activities needed to progress. With reasonable effort by the youth, the requirements of Phase C4 will be completed by the time of the youth's projected date of release under parole supervision. For youth whose minimum length of stay or minimum period of confinement exceeds 12 months, the schedule must provide an opportunity for completion of Phase C4 requirements within one year.

(i) Promotion, Retention, Maintenance, and Demotion. Youth may be promoted, demoted, retained or maintained by the PAT in any of the three (3) areas based upon criteria noted below.

(1) Academic/Workforce Development Phase Assessment Criteria.

(A) Promote--Youth are promoted to the next phase in the Academic/Workforce Development area when they meet all indicators that are related to the main objective and the sub-objectives.

(B) Retain--Youth are retained in the Academic/Workforce Development area if they do not continue to meet all of the indicators in the main objective and the sub-objectives. Youth will receive special attention to address deficits identified in the subsequent 30-day period.

(C) Maintain--Youth are maintained at Phase A4 if they continue to meet the criteria for that phase. Youth are maintained in lieu of promotion when they are at the highest phase possible in that area.

(D) Demote--Youth are demoted to the next lower phase in the Academic/Workforce Development area when they fail to meet the requirements of the main objective and the sub-objectives after a 30-day period of remediation.

(2) Behavior Phase Assessment Criteria.

(A) Promote--Youth are promoted to the next phase in the Behavior area when they meet all requirements or when a sufficient number of Category II rule violations are excused for special circumstances. Under unusual circumstances, youth may be promoted with a Category I rule violation if excused by Special Circumstance number 5.

(B) Retain--Youth are retained in the Behavior area if they do not meet the criteria for promotion or for demotion based upon the number of Category II rule violations obtained during the 30-day period. Youth may also be retained if they have a sufficient number of Category II rule violations to warrant demotion, but special circumstances are applied to retain at that phase. Under unusual circumstances, youth may be retained with a Category I rule violation if excused by Special Circumstance number 5.

(C) Maintain--Youth are maintained at Phase B4 if they continue to meet the criteria for that phase. Youth are maintained in lieu of promotion when they are at the highest phase possible in that area.

(D) Demote--Youth are demoted to the next lower phase in the Behavior area when they fail to meet all requirements and special

circumstances either do not exist or are insufficient to excuse the rule violations. Youth may be demoted more than one phase as a result of a disciplinary action at a Level I or Level II Hearing; see §95.55 of this title. A youth who has been demoted as a result of a disciplinary action during the assessment period may not be demoted again at the phase assessment based on the same misconduct.

(3) Correctional Therapy.

(A) Promote--Youth are promoted to the next phase in the Correctional Therapy area when they meet all indicators that are related to the main objective and the sub-objectives for the higher phase.

(B) Retain--Youth are retained in the Correctional Therapy area if they have not met all indicators for the next higher phase during the assessment period.

(C) Maintain--Youth are maintained at Phase C4 if they continue to meet the criteria for that phase. Youth are maintained in lieu of promotion when they are at the highest phase possible in that area.

(D) Demote--Youth are demoted to the next lower phase in the Correctional Therapy area when they fail to meet the requirements of one or more indicators of the main objective or sub-objectives after a period of remediation as defined in accordance with the explanation of terms used in this policy. However, no youth shall be demoted to a phase lower than C2 based only on a failure to remediate.

(j) Documentation and Youth Notification of Results of Phase Assessment. The following activities are required of the PSW after a phase assessment:

(1) within two (2) working days of the phase assessment, the PSW meets with the youth to report the results of the assessment. The PSW reports the strengths and specific areas needing improvement. If the youth's demotion or failure to progress in an area extends the youth's projected release to parole supervision, the caseworker will notify the youth of a new projected release date that is premised on the youth reasonably applying himself/herself to completion of the requirements;

(2) within three (3) working days, the PSW enters the phase assessment results into the automated data entry system; and

(3) within seven (7) calendar days, the PSW attempts to contact the youth's family by telephone to share the outcome of the phase assessment.

(k) Development of the Individual Case Plan. The following case planning activities are required of the PSW after a phase assessment:

(1) within seven (7) calendar days of the phase assessment, the PSW completes the monthly Individual Case Plan (ICP) for the youth and reviews its content and obtains the youth's signature; and

(2) youth completing Phase A2, B2, C3 and who are within 90 days of their minimum length of stay or minimum period of confinement will have a transition ICP initiated. The plan will be developed based upon the youth's individualized risk factors, strengths and needs and TYC classification.

(l) Appeal of Assessment. The youth may appeal the results of a phase assessment, or of the lack of opportunity to demonstrate completion of requirements, by filing a complaint under the complaints resolution procedure according to §93.31 of this title (relating to Complaint Resolution System). The person assigned to respond to the appeal must be a staff member who is not a member of the PAT or a person who has been involved in the youth's current assessment.

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 September 1, 2005.

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Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



37 TAC §87.3

The repeal is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted repeal implements the Human Resources Code, §61.034.

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

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Dwight Harris

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SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.67

The Texas Youth Commission (the commission) adopts an amendment to §87.67, concerning Corsicana Stabilization Unit without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4321).

The justification for amending the section is agency-wide awareness and protection of youth rights.

The amendment adds a reference to §93.1 of this title (relating to Basic Youth Rights).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted amendment implements the Human Resources Code, §61.034.

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

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CHAPTER 91. PROGRAM SERVICES SUBCHAPTER D. HEALTH CARE SERVICES

37 TAC §91.99

The Texas Youth Commission (the commission) adopts an amendment to §91.99, concerning Medical Admissions for Al Price State Juvenile Correctional Facility, with changes to the proposed text as published in the June 3, 2005, issue of the *Texas Register* (30 TexReg 3197). Changes to the proposed text were made in subsection (g)(1)(D) and consist of clarifying that the placement decision for youth who no longer warrant placement in the Medical Recovery Dorm (MRD) will be made by the Centralized Placement Unit only in situations where youth were initially referred to the Medical MRD from the commission's assessment center.

The justification for amending the section is to avoid the transfer of a youth back to a facility which may be experiencing an over-population condition.

The amendment will allow for youth whose medical condition no longer warrants placement in the Medical Recovery Dorm to be transferred to a facility other than the facility from which they were transferred.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

§91.99. Medical Admissions for Al Price State Juvenile Correctional Facility.

(a) Purpose. The purpose of this rule is to establish criteria and procedures for medical admission of youth to the Al Price State Juvenile Correctional Facility (APSJCF) Medical Recovery Dorm (MRD). The MRD is a male-only dorm for Texas Youth Commission (TYC) youth who have chronic illnesses requiring frequent monitoring by medical staff or youth with acute conditions requiring frequent care. Youth may be referred to the MRD from TYC-operated institutions or high restriction contract care programs.

(b) Applicability. When a youth is placed in the MRD for medical reasons, this policy must be read in conjunction with:

- (1) §91.81 of this title (relating to Medical Consent).
- (2) §91.83 of this title (relating to Criteria for Health Care).
- (3) §91.85 of this title (relating to Medical Care).
- (4) §91.92 of this title (relating to Psychotropic Medication-Related Emergencies).
- (5) §87.1 of this title (relating to Case Planning).

(c) Explanation of Terms Used.

(1) Admission Review Team--is a team that reviews referrals for medical admission to the MRD. At a minimum, the admission review team consists of a program administrator (PA), facility nurse manager or designee, primary service worker (PSW), juvenile corrections officer VI (JCO) and a psychologist.

(2) Phase Assessment Team (PAT)--is responsible for monitoring and assessing a youth's progress through the Resocialization program. At a minimum, the PAT consists of the PA or designee, PSW, JCO, facility nurse manager or designee and designated education staff.

(d) Admission Criteria. Youth from a residential setting may be eligible for placement to the MRD for medical reasons according to the following criteria:

(1) youth with a chronic condition who need more frequent health counseling to manage their disease upon release, youth whose chronic condition is uncontrolled, or youth whose condition requires frequent medical monitoring. Examples include, but are not limited to, uncontrolled diabetes, hepatitis B or C, sickle cell disease or multiple sclerosis; or

(2) youth with acute conditions that require more frequent care. Examples include, but are not limited to, severe fractures or post-operative care. These youth would be considered to be in need of transitional care; or

(3) youth requiring frequent trips to University of Texas Medical Branch (UTMB) for any reason. Examples include, but are not limited to, extensive diagnostic testing or chemotherapy.

(e) Admission Process.

(1) Youth may be referred from the Marlin Orientation and Assessment Unit (MOAU) or from another facility or high restriction contract care program to the MRD. If referred from another facility or high restriction contract care program, the action is considered an administrative transfer under §85.45 of this title (relating to Movement Without Program Completion). Youth may contest such a transfer by filing a complaint under §93.31 of this title (relating to Complaints Resolution System).

(A) A referral packet is completed and forwarded with the appropriate signature from the sending superintendent or the quality assurance administrator to the MRD admissions review team at APSJCF.

(B) The admission review team will review the referral packet to determine if the MRD placement is appropriate for the youth.

(2) Emergency Referrals. If an emergency exists, the sending superintendent or the quality assurance administrator may request of the APSJCF superintendent immediate placement in the MRD.

(f) MRD Requirements.

(1) The MRD focus will be on the coordination and provision of health care services.

(2) Health care services will be provided in the MRD and the APSJCF infirmary, whichever is most appropriate.

(3) Parents or guardians of youth under the age of 18 will be notified of all movements to or from the MRD, any significant change in medical condition, or if their child is on psychotropic medication. Youth 18 or older must give consent to disclose any of the information listed above to parents or guardians.

(4) An Individual Case Plan (ICP) reflecting treatment goals shall be developed for and with each youth. Refer to §87.1 of this title.

(5) The facility nurse manager or designee will provide updates at the monthly PAT meeting regarding medical treatment goals and objectives. The PSW will incorporate the medical treatment goals and objectives into the youth's ICP.

(6) The PAT shall conduct a review of the youth's progress at least every 30 days in conjunction with the ICP review until the youth's placement in the MRD has ended. The review must:

- (A) find that the admission criteria continue to be met;
- (B) find that the treatment needs are appropriate; and
- (C) update the ICP to include reasons for continued stay in the MRD.

(g) Transition, Release or Transfer from the MRD. A youth can be transitioned, released or transferred from MRD because the youth's medical condition no longer warrants continued placement or the youth has otherwise qualified for transition, release or transfer according to the appropriated rules listed below.

(1) Youth's Medical Condition No Longer Warrants MRD Placement.

(A) Upon a determination by the youth's physician that the youth's medical condition is stable enough to be transitioned or transferred from the MRD, the PAT recommends to the APSJCF superintendent the transition or transfer of a youth from the MRD.

(B) The APSJCF superintendent consults with the facility nurse manager or designee when medical questions arise regarding the transition or transfer.

(C) The APSJCF superintendent must approve the transition or transfer of youth from the MRD. The TYC medical director may be consulted before making final decisions regarding the transition or transfer of youth from the MRD.

(D) If the youth has not met transition, release or transfer criteria according to paragraph (2) of this subsection, the youth will be returned to his/her originally assigned facility. If the youth was referred from MOAU to the MRD, the administrator of centralized placement unit (CPU) will determine the youth's placement.

(2) Youth Who Meet Criteria for Transition to Medium Restriction, Release to TYC Parole or Transfer to Texas Department of Criminal Justice (TDCJ).

(A) Upon a determination by the PAT that the youth has met release or transfer criteria, the youth will be released or transferred under the appropriate rule:

(i) §85.55 of this title (relating to Program Completion for Other Than Sentenced Offenders).

(ii) §85.59 of this title (relating to Program Completion for Sentenced Offenders Under Age 19).

(iii) §85.61 of this title (relating to Program Completion for Sentenced Offenders Age 19 or Older).

(iv) §85.69 of this title (relating to Program Completion for Sentenced Offenders Adjudicated for Capital Murder).

(B) Upon a determination by the PAT that the youth meets criteria pursuant to §85.41 of this title (relating to Maximum Length of Stay), the youth will be released to TYC parole (home or home substitute).

(C) Upon a determination by the PAT that the youth meets criteria pursuant to §85.45 of this title (relating to Movement Without Program Completion), the youth may be transitioned to a medium restriction placement if appropriate.

(3) When a youth is transitioned, released, or transferred, the PSW will ensure that a summary of pertinent medical information and required follow-up care is included in the transition ICP in the special needs section.

(h) Transportation.

(1) The referring facility will make the transportation arrangements to APSJCF for initial admission referrals.

(2) When a youth is medically released and needs to be transported, APSJCF will request transportation through statewide transportation. See §117.7 of this title (relating to Terminations/Discharges (Article VII, NAJCA)).

(3) When required by a youth's condition, the APSJCF medical van will be used to transport the youth to and from APSJCF.

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

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Dwight Harris

Executive Director

Texas Youth Commission

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For further information, please call: (512) 424-6014



CHAPTER 93. YOUTH RIGHTS AND REMEDIES

37 TAC §93.1

The Texas Youth Commission (the commission) adopts an amendment to §93.1, concerning Basic Youth Rights, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4321).

The justification for amending the section is protection of youth rights. The amendment adds a reference to §93.12, concerning Visitation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to

make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

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

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Dwight Harris

Executive Director

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37 TAC §93.12

The Texas Youth Commission (the commission) adopts new §93.12, concerning Visitation, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4322).

The justification for the new rule is to provide for safe, orderly visitation which contributes to rehabilitation. The new rule sets forth the commission's rules regarding visitation conditions, times, and duration, as well as complaints regarding visitation.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.045, which assigns to the commission responsibility for the welfare, custody, and rehabilitation of the children in a school, facility, or program operated or funded by the commission.

The adopted rule implements the Human Resources Code, §61.034.

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

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37 TAC §93.33

The Texas Youth Commission (the commission) adopts an amendment to §93.33, concerning Alleged Abuse, Neglect and Exploitation, with changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4325).

The justification for amending the section is protection of youth committed to the commission's custody. The amended rule allows investigators to make findings on misconduct other than abuse, neglect, or exploitation, and provides for the release of an investigation report to various entities, upon request. The amendment also requires that a medical health provider (MHP) who reports an allegation under this rule be provided with the findings of the ensuing investigation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which assigns to the commission the responsibility for the welfare, custody, and rehabilitation of youth in its care.

The adopted rule implements the Human Resources Code, §61.034.

§93.33. *Alleged Abuse, Neglect and Exploitation.*

(a) Purpose. This rule provides for the investigation of allegations of abuse, neglect or exploitation in programs and facilities under Texas Youth Commission (TYC) jurisdiction. This rule provides standards for investigations and for the compilation of investigation information. The purpose of all provisions in this rule is the protection of youth.

(b) Applicability.

(1) This rule applies to all programs and facilities under TYC jurisdiction including institutions, halfway houses, contracted residential services, and parole services.

(2) For procedures regarding the resolution of youth complaints, refer to §93.31 of this title (relating to Complaint Resolution System).

(3) For procedures regarding appeals to the executive director, refer to §93.53 of this title (relating to Appeal to Executive Director).

(4) For procedures regarding reporting the death of a youth, refer to §99.51 of this title (relating to Death of a Youth).

(c) Explanation of Terms Used.

(1) Abuse--an intentional, knowing, or reckless act or omission that causes or may cause emotional harm or physical injury to, or death of, a youth.

(2) Neglect--a negligent act or omission, including failure to comply with an individual case plan, that causes or may cause substantial emotional harm or physical injury to, or death of a youth.

(3) Exploitation--the illegal or improper use of a youth or the resources of a youth, for monetary or personal benefit, profit, or gain.

(4) Chief local administrator (CLA)--the person employed in a TYC facility or district office that is responsible for overseeing the operations of a facility, contract program or parole services. For institutions, halfway houses, boot camps, the Corsicana Residential Treatment Center and the Marlin Orientation and Assessment Unit (MOAU), the CLA is the superintendent. For contract programs the quality assurance administrator (QAA) is the CLA and for TYC supervised parole, the parole supervisor is CLA.

(5) Deputy Chief Inspector General--the person employed in TYC's Office of General Counsel who is responsible for overseeing investigations of allegations of abuse, neglect or exploitation and compiling investigation information.

(6) Inspector General--the person employed in TYC's Office of General Counsel and located in a TYC facility or district office who is responsible for conducting investigations.

(d) Reporting Requirements.

(1) Any person having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer or contractor in programs or facilities under TYC jurisdiction will report the matter in accordance with the provisions of this rule. The report may be made also to an appropriate law enforcement agency or to the Department of Family and Protective Services (DFPS).

(2) The CLA will report the following incidents and injuries in accordance with the same provisions of this rule that are applicable to reports of persons having cause to believe that a youth has been or may be adversely affected by abuse, neglect, or exploitation by an employee, volunteer, or contractor:

(A) A communication or activity that suggests an inappropriate adult-youth relationship of a sexual nature involving a staff member, volunteer, or contractor;

(B) A youth's suicide attempt;

(C) Discovery of contraband drugs or cash in a facility;

(D) A youth's escape from a high-security facility;

(E) A sexual contact between youth under circumstances suggesting the possibility that it was not consensual or that it involved penetration of the anus, mouth, or sex organ;

(F) A serious medical incident that requires emergency treatment or that results in exacerbation or complication or pre-existing symptoms; or

(G) Any of the following youth injuries that are not clearly accidental (such as sports injuries):

(i) eye injury;

(ii) broken bones;

(iii) loss of consciousness;

(iv) loss of teeth or portions of teeth;

(v) cuts requiring stitches;

(vi) internal bleeding;

(vii) eardrum injury;

(viii) loss of skin or hair;

(ix) joint injury; and

(x) extensive welts and bruises.

(3) A report under subsection (d)(1) of this section will be made immediately or no later than by the end of the current work shift if the person making the report is an employee, volunteer, or contractor. A report under subsection (d)(2) of this section will be made immediately upon the CLA's first knowledge of the incident or injury prompting the report.

(4) The requirement to report under this section applies without exception to a person whose personal communications may otherwise be privileged, including an attorney, a member of the clergy, a medical practitioner, a social worker, or a mental health professional.

(5) Except for investigation purposes, the identity of a person making a report is confidential.

(e) Reporting Contents.

(1) A report under subsection (d)(1) of this section will be made orally or in writing to the facility's CLA or any TYC staff member. A youth or parent may also make the report by filing a complaint under the complaint resolution procedures in §93.31 of this title. A TYC staff member who receives a report made under subsection (d)(1) of this section will refer it immediately to the facility's CLA.

(2) The person making a report will provide as much detailed information as possible regarding the circumstances of the report, including the identity of persons involved, the location and time of relevant events, and the identity of others who may provide further information.

(3) The person receiving a report under this section will take whatever immediate steps the person believes are necessary to protect the youth and to preserve evidence that may be pertinent to an investigation of the matter.

(f) Actions of the Chief Local Administrator Regarding Report. Upon receipt of a report under subsection (d)(1) of this section or upon the CLA's first knowledge of an incident or injury under subsection (d)(2) of this section, the CLA will immediately take the following actions:

(1) notify the appropriate law enforcement agency, the youth, and the youth's parents or guardian of the report;

(2) notify any employee, volunteer, or contractor accused of wrongdoing of the nature of the investigation and of the person's duty to cooperate with it; and

(3) take any action necessary to ensure that the investigation or review is conducted with the full cooperation of staff and youth, that adequate resources are provided, and that the youth is protected.

(g) Referral of the report to the Deputy Chief Inspector General. By the end of the workday in which a report is received, the facility's CLA will refer the report to the deputy chief inspector general who will take the following actions before the end of the next working day:

(1) record all reports for tracking; and

(2) assign an investigator.

(h) Standards for Investigations.

(1) In this subsection:

(A) "Physical injury" means an injury that normally requires examination or treatment by a trained health care professional, whether or not examination or treatment is actually received.

(B) "Emotional harm" means an impairment in the youth's growth, development, or psychological functioning that normally requires evaluation or treatment by a trained mental health or health care professional, whether or not evaluation or treatment is actually received. Sexual conduct in residential facilities is presumed to cause substantial emotional harm.

(C) "Sexual conduct" means a lewd exhibition or a sexual contact with another person, including orifice penetration, fondling or sexual stimulation, whether or not the conduct is consensual.

(2) The person assigned to conduct an investigation will be qualified by experience and training to conduct quality investigations.

(3) A report that alleges an immediate risk of physical or sexual abuse of a youth that could result in the death or serious harm to the youth will be investigated jointly with a peace officer from the local law enforcement agency. The initial response by the assigned

investigator and the peace officer will take place not later than 24 hours after the law enforcement agency is notified of the report. In the event a law enforcement agency has assumed the investigation of a report, a person who has been assigned to conduct the investigation in this section will cooperate and assist with the law enforcement agency's investigation and not take any action that might be detrimental to it.

(4) A preliminary investigation will be conducted regarding all reports to determine whether there is any evidence to corroborate the report or to provide cause to believe that any abuse, neglect, or exploitation has occurred. An abbreviated investigation report will be prepared in cases where no such evidence is found.

(5) A thorough investigation shall be conducted regarding all reports that are not disposed of following the preliminary investigation. All evidence that is relevant and reasonably available will be gathered and preserved, including documents, physical evidence, witness interviews and statements, photographs, and security videos.

(6) The investigation will be directed at resolving all the relevant issues raised by the report.

(A) With regard to a report of alleged abuse, the investigator will find whether the:

(i) alleged act or failure to act occurred;

(ii) act or failure to act caused emotional harm or physical injury to the youth; and

(iii) person who took the action or who failed to act did so intentionally, knowingly, or recklessly.

(B) With regard to a report of alleged neglect, the investigator will find:

(i) whether there was substantial emotional harm or physical injury of the youth as alleged;

(ii) the standard of care or duty expected under the circumstances that are alleged;

(iii) whether the actions or failure to act under the circumstances violated the standard of care or duty; and

(iv) whether the actions or failure to act caused the substantial emotional harm or physical injury of the youth.

(C) With regard to a report of alleged exploitation, the investigator will find whether:

(i) a youth or a youth's resources were used by the accused person in the manner alleged;

(ii) the use was for monetary or personal benefit, profit, or gain; and

(iii) the use was illegal or improper.

(7) The investigator's findings will be based on a preponderance of the evidence. In the event a finding based on a preponderance of the evidence cannot be made regarding an issue, the investigator will indicate that the evidence is inconclusive.

(8) The investigator will prepare a written report of the findings, including a summary and analysis of the evidence relied upon in reaching the findings. Copies of relevant documents and photographs will be attached to the report.

(9) The investigator may make findings on misconduct other than abuse, neglect or exploitation that is established by the evidence. However, the absence of such findings should not be regarded as exoneration of the respondent or other employees as to policy violations or other misconduct indicated by the evidence.

(i) Investigation Report - Submission and Closure.

(1) Within 15 workdays following the assignment, the investigator will submit the completed investigation report to the deputy chief inspector general. The deputy chief inspector general may approve an extension in the time for submission for good cause.

(2) Within five (5) workdays following receipt of the report, the deputy chief inspector general will review the report and consult with the investigator regarding any necessary additions or clarifications. The deputy chief inspector general may extend the time for this review if it is required for a thorough and complete report.

(3) The deputy chief inspector general will indicate whether the report of mistreatment is confirmed or not as follows:

(A) if all the requisite findings for abuse, neglect, or exploitation are affirmed by the evidence, the deputy chief inspector general will indicate that the report is confirmed as alleged;

(B) if all the requisite findings for abuse, neglect, or exploitation are not affirmed, the deputy chief inspector general will indicate that the report is not confirmed as alleged. However, if the findings constitute a violation of agency policy or standards of care, even though they do not constitute abuse, neglect, or exploitation, the deputy chief inspector general may confirm the report as a violation of agency policy or standards of care.

(4) The deputy chief inspector general will indicate approval of the investigation findings by officially closing the report as confirmed or not confirmed, and referring it to the CLA of the program or facility that generated the allegation.

(5) If the allegation was reported by a medical health provider (MHP) who is employed by or contracts with University of Texas Medical Branch (UTMB) or the Texas Tech University Health Sciences Center (TTUHSC), the MHP will be notified in writing by the deputy chief inspector general or designee of the results of the investigation and the MHP's right to appeal the findings of the investigation report pursuant to §93.53 of this title.

(j) Actions of the Chief Local Administrator Regarding Investigation Report.

(1) Within five (5) working days of receiving a closed investigation report, the CLA will review the report and:

(A) notify the appropriate law enforcement agency, the youth, the youth's parents or guardian, and the respondent of the results of the investigation and the right to appeal the investigation findings (see subsection (k) of this section); and

(B) if the report is confirmed, take whatever actions are necessary and appropriate to rectify the wrong and prevent future harm under the same or similar circumstances.

(2) The CLA will appeal to the executive director under subsection (k)(2) of this section any investigation findings with which the administrator is not satisfied.

(k) Complaints Regarding the Conduct of Investigations and Periodic Audits.

(1) Youth and parent complaints regarding the conduct of investigations and appeals of investigation findings will be handled in accordance with the provisions of §93.53 of this title.

(2) Any employee, volunteer, or contractor who is found to have engaged in wrongdoing or the CLA may appeal the investigation findings to the executive director within ten (10) working days of receipt of notice of the outcome of the investigation.

(3) Appeals to the executive director will be made in writing and clearly describe the grounds for the appeal. The executive director will consider the recommendations of the Office of General Counsel in reaching a decision on the appeal, including any additional findings or information that may result from its further investigation into the matter.

(4) The complaint or appeal, and the executive director's decision regarding the complaint or appeal, will be referred to the TYC Board for its review at the next regularly scheduled meeting.

(5) The TYC Board will take whatever action it determines appropriate with regard to the complaint to ensure the investigations are conducted properly.

(6) The TYC Board will ensure there is a periodic internal audit of procedures in the section related to alleged abuse, neglect, and exploitation investigations.

(l) Standards for Compiling Investigation Information and Confidentiality of Reports.

(1) Accurate and timely investigation information will be compiled related to the number and nature of reports filed and confirmed, the dates and locations of reported incidents, the average length of time required for investigations and the identification of significant trends. This information will be compiled at least twice each year and be available for public inspection.

(2) Additional information including a summary of the findings and corrective actions taken with regard to all confirmed reports will be prepared for periodic review and analysis by the TYC executive staff and the TYC Board.

(3) The identity of the person making an allegation, and the files, reports, records, tapes, communications, and working papers used or developed in an investigation, or in providing services as a result of the investigation, are confidential and not open for public inspection under the provisions of §261.201 of the Family Code, Chapter 552 of the Government Code, and §61.073 of the Human Resources Code.

(4) A report will be provided to a law enforcement agency or other criminal justice agency for purposes of investigation and prosecution upon request.

(5) A report will be provided to a parent, managing conservator or other legal representative of a youth upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(6) A report will be provided to the MHP employed by or who contracts with UTMB or the TTUHSC who reported the allegation upon request. The information contained in the report will be redacted to protect the identity of the person making the report, other youth, and any other person who may be harmed by the disclosure.

(7) Evidence gathered in the course of an investigation may be provided, upon request, to an employee having a right to the information in order to appeal the investigation findings or defend against a disciplinary action arising from the investigation findings.

(A) Investigation reports are confidential youth records and the information contained therein may be used by the employee only for the appeal of investigation findings or to defend against a disciplinary action arising from an investigation.

(B) The CLA has the discretion to delete names when the CLA determines the names are not necessary for the fair resolution of contested facts. The CLA must ensure that any information which is confidential by law is deleted prior to delivery to the respondent.

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

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37 TAC §93.53

The Texas Youth Commission (the commission) adopts an amendment to §93.53, concerning Appeal to Executive Director, with changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4327). Changes to the proposed text consist of a terminology correction in subsection (f)(3) to reflect that this rule covers reported complaints, not employee grievances.

The justification for amending the section is provision of appropriate levels of administrative review for decisions which affect youth committed to the commission's custody. The amended rule provides greater detail with regard to the executive director's actions upon receipt of an appeal, and ensures that staff assist youth in understanding appeal decisions.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045, which assigns to the commission the responsibility for the welfare, custody, and rehabilitation of the youth in its care.

The adopted rule implements the Human Resources Code, §61.034.

§93.53. Appeal to Executive Director.

(a) Purpose. The purpose of this rule is to permit Texas Youth Commission (TYC) youth and their parents or guardians to appeal decisions made by TYC or contract program employees to the TYC executive director.

(b) Appeal of Youth Complaint Resolutions to the Executive Director. Any disposition of any complaint made under §93.31 of this title (relating to Complaint Resolution System) may be appealed to the executive director, only after all levels of appeal have been exhausted locally.

(c) Direct Appeals to the Executive Director. A direct appeal to the executive director may be filed in matters limited to:

- (1) parole revocation;
- (2) reclassification;
- (3) classification;
- (4) a disciplinary transfer or assigned disciplinary length of stay under §95.11 of this title (relating to Disciplinary Consequences);
- (5) Behavior Management Program length of stay under §95.17 of this title (relating to Behavior Management Program);

(6) Aggression Management Program length of stay under §95.21 of this title (relating to Aggression Management Program);

(7) a disapproved home evaluation;

(8) an appeal of a Level IV hearing when a youth is being detained in a location other than a TYC operated institution;

(9) a result of the second and subsequent Level IV hearing pursuant to §95.59 of this title (relating to Level IV Hearing Procedure) when a youth is in an institution detention program;

(10) a decision to extend the youth's stay in the Security Program, if the youth has already been in the Security Program for 240 continuous hours or longer;

(11) a decision from a mental health status review hearing pursuant to §95.71 of this title (relating to Mental Health Status Review Hearing Procedure);

(12) a decision from a Title IV-E hearing;

(13) the findings of an alleged mistreatment investigation pursuant to §93.33 of this title (relating to Alleged Abuse, Neglect, and Exploitation).

(d) Filing Deadline. All appeals to the executive director must be submitted in writing and clearly describe the grounds for the appeal and filed within six (6) months of the decision being appealed. Appeals filed after that time may be considered at the discretion of the executive director.

(e) Action of the Executive Director.

(1) The executive director responds in writing to each appeal. Failure to respond to an appeal within 30 working days will constitute an exhaustion of administrative remedies for purposes of appeal to the courts, but will not be construed as acceptance or rejection of any contention made in the appeal.

(2) The executive director will consider the recommendations of the Office of General Counsel in reaching a decision on appeals of investigation findings, including any additional findings or information that resulted from further investigation.

(3) The executive director may uphold, reverse or modify the complaint resolution or return the complaint to the CLA with directions. The executive director's disposition of a youth complaint may also be in the form of a determination that the complaint involves operational issues that have been adequately addressed and resolved at the facility level.

(4) The executive director or his/her designee may determine that an issue has not been sufficiently developed to render an informed appeal resolution. If so, the executive director or his/her designee may, prior to the issuance of a response:

(A) conduct further investigation;

(B) provide specific direction or instruction about information needed concerning the investigation and state a time frame in which to comply with the direction or instruction; or

(C) re-open the investigation, and if the investigation finding(s) are changed, the parties entitled to notification will be notified of their right to appeal the new finding(s).

(f) Distribution of Appeal Decisions. Appeal decisions are distributed to the following:

- (1) the complainant;
- (2) the complainant's attorney or representative, if any;

(3) the chief local administrator (CLA) where the report is filed and

(4) other persons as deemed appropriate.

(g) Appropriate TYC staff shall assist youth in interpreting appeal decisions from TYC's executive director.

(h) The appeal decision of the executive director is the final administrative resolution of an issue appealed and constitutes an exhaustion of administrative remedies for purposes of appeal to the courts.

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

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Dwight Harris

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CHAPTER 95. YOUTH DISCIPLINE

SUBCHAPTER A. DISCIPLINARY PRACTICES

37 TAC §95.21

The Texas Youth Commission (the commission) adopts an amendment to §95.21, concerning Aggression Management Program, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4328).

The justification for amending the section is provision of an incentive for youth to make progress in the treatment program designed to address aggressive behaviors. The amended rule provides for increasing periods of time allowed for visitation as youth earn promotion to higher stages of the program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.045 which assigns to the commission the responsibility for the welfare, custody, and rehabilitation of the youth in its care.

The adopted rule implements the Human Resources Code, §61.034.

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

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CHAPTER 97. SECURITY AND CONTROL

SUBCHAPTER A. SECURITY AND CONTROL

37 TAC §97.36

The Texas Youth Commission (the commission) adopts an amendment to §97.36, concerning Standard Security Unit Program Requirements, without changes to the proposed text as published in the July 29, 2005, issue of the *Texas Register* (30 TexReg 4331).

The justification for amending the section is agency-wide awareness and protection of youth rights. The amendment adds a reference to §93.1 of this title, relating to Basic Youth Rights.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The adopted rule implements the Human Resources Code, §61.034.

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 September 1, 2005.

TRD-200503837

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: September 21, 2005

Proposal publication date: July 29, 2005

For further information, please call: (512) 424-6014



REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Board of Pardons and Paroles

Title 37, Part 5

Under the 1997 General Appropriations Act, Article IX, Section 167, Review of Agency Rules, the Texas Board of Pardons and Paroles files this notice of intent to review and consider for readoption, revision, or repeal, Texas Administrative Code, Title 37, Public Safety and Corrections, Part 5, Chapter 146 (Revocation of Parole or Mandatory Supervision).

The Board undertakes its review pursuant to Government Code, §2001.039, Government Code. The Board will accept comments for 30 days following the publication of this notice in the *Texas Register* and will assess whether the reasons for adopting the sections under review continue to exist. Proposed changes to the rule as a result of the rule review will be published in the Proposed Rules section

of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption by the Board, in accordance with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001.

Any questions or written comments pertaining to this notice of intention to review should for the next 30-day comment period be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, TX 78701, or by e-mail to laura.mcelroy@tdcj.state.tx.us.

TRD-200503869

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Filed: September 2, 2005

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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: 1 TAC §102.32(b)

Number of Members	Amount of Security
0 - 100	\$20,000
101 - 125	\$25,000
126 - 150	\$30,000
151 - 175	\$35,000
176 - 200	\$40,000
201 - 225	\$45,000
Over 225	\$50,000

Figure: 22 TAC §139.35(b)

Classification	Violation	Citation	Suggested Sanctions
Ethics Violation	Failure to report; change of address or employment, <u>or of any convictions</u>	§137.5	Reprimand/\$500.00

Figure: 22 TAC §139.35(d)

VIOLATION	CITATION	SUGGESTED SANCTION		
		FIRST OCCURRENCE	SECOND OCCURRENCE	THIRD OCCURRENCE
Offer and perform consulting engineering services without being registered	§1001.405; §137.77(a), <u>(e), (f)</u> [(d), (e)]	Voluntary Compliance. If not corrected within 30 days, \$250.00	\$500	\$750
Offer and perform consulting engineering services while registration was expired	§1001.405; §137.77(d), <u>(f)</u> [(e), (e)]	\$500.00	\$750.00	\$1,200.00
Offer only (no consulting engineering services were performed) without being registered or while registration was expired	§1001.405; §137.77(a), <u>(e), (f)</u> [(d), (e)]	\$100.00	\$500.00	\$1,000.00

Figure: 25 TAC §289.202(c)(38)

ORGAN DOSE WEIGHTING FACTORS

Organ or Tissue	w _T
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	0.30*
Whole Body	1.00**

* 0.30 results from 0.06 for each of five "remainder" organs, excluding the skin and the lens of the eye, that receive the highest doses.

** For the purpose of weighting the external whole body dose, for adding it to the internal dose, a single weighting factor, w_T = 1.0, has been specified. The use of other weighting factors for external exposure will be approved on a case-by-case basis until such time as specific guidance is issued.

Figure: 25 TAC §289.202(ggg)(1)

	Operating Mode	Assigned Protection Factors
I. Air Purifying Respirators (Particulate ^b only) ^c :		
Filtering faceplate disposable ^d	Negative Pressure	(^d)
Facepiece, half ^e	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Powered air-purifying respirators	50
Facepiece, full	Powered air-purifying respirators	1000
Helmet/hood	Powered air-purifying respirators	1000
Facepiece, loose-fitting	Powered air-purifying respirators	25
II. Atmosphere Supplying Respirators (particulate, gases and vapors ^f):		
1. Air-line respirator		
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Facepiece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	(^g)
2. Self-contained breathing apparatus (SCBA):		
Facepiece, full	Demand	100
Facepiece, full	Pressure Demand	ⁱ 10,000
Facepiece, full	Demand, Recirculating	^h 100
Facepiece, full	Positive Pressure Recirculating	ⁱ 10,000
III. Combination Respirators		
Any combination of air-purifying atmosphere-supplying respirators	Assigned protection factor for type and mode of operation as listed above	

^aThese assigned protection factors apply only in a respiratory protection program that meets the requirements of this section. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances shall also comply with Department of Labor regulations.

Radioactive contaminants for which the concentration values in Table 1, Column 3 of subsection (ggg)(2)(F) of this section are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

^bAir purifying respirators with APF < 100 must be equipped with particulate filters that are at least 95% efficient. Air purifying respirators with APF = 100 shall be equipped with particulate filters that are at least 99% efficient. Air purifying respirators with APFs > 100 shall be equipped with particulate filters that are at least 99.97% efficient.

^cThe licensee may apply to the agency for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radioiodine).

^dLicensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use seal check on this type of device. All other respiratory protection program requirements listed in subsection (x) of this section apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

^eUnder-chin type only. No distinction is made in this paragraph between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95% efficient and all other requirements of this section are met.

^fThe assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant respiratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

^gNo NIOSH approval schedule is currently available for atmosphere supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met, for example, subsection (x) of this section.

^hThe licensee should implement institutional controls to assure that these devices are not used in areas immediately dangerous to life or health (IDLH).

ⁱThis type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

Figure: 25 TAC §289.202(ggg)(5)

Specific Section	Name of Record	Time Interval Required for Record Keeping
subsection (ll)(4) of this section	Records at Additional Authorized Use/Storage Sites	While site is authorized on license/registration
subsection (mm)(1)(A) of this section	Radiation Protection Programs	Until termination of license/registration
subsection (mm)(1)(B) of this section	Program Audits	3 years
subsection (nn)(1) of this section	Routine Surveys, Instrument Calibrations and Package Surveys	3 years
subsection (nn)(2) of this section	Surveys, Measurements, Calculations Used for Dose Determination; Results of Air Sampling, Bioassays; Measurements, Calculations Used to Determine Release of Radioactive Effluents	Until termination of license/registration
subsection (oo) of this section	Tests for leakage/ contamination of sealed sources	5 years
subsection (pp) of this section	Lifetime Cumulative Occupational Radiation Dose, BRC Form 202-2	Until termination of license
subsection (pp) of this section	Records Used to Prepare BRC Form 202-2	3 years
subsection (qq)(B) of this section	Planned Special Exposures	Until termination of license
subsection (rr)(1) - (3) of this section	Individual Monitoring Results; BRC Form 202-3	Update annually; Maintain until termination of license/registration
subsection (rr)(5) of this section	Records Used to Prepare BRC Form 202-3	3 years
subsection (rr)(4) of this section	Embryo/Fetus Dose	Until termination of license/registration
subsection (ss) of this section	Dose to Individual Members of the Public	Until termination of license/registration
subsection (tt) of this section	Discharge, Treatment, or Transfer for Disposal	Until termination of license/registration
subsection (uu) of this section	Entry Control Device Testing for Very High Radiation Areas	3 years

Figure: 25 TAC §289.202(ggg)(9)

BRC Form 202-2		Texas Department of State Health Services/Radiation Control		CUMULATIVE OCCUPATIONAL EXPOSURE HISTORY					
1. NAME (LAST, FIRST, MIDDLE INITIAL)		2. IDENTIFICATION NUMBER		3. ID TYPE		4. SEX		5. DATE OF BIRTH	
5. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
6. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
7. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
8. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
9. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
10. MONITORING PERIOD		7. LICENSEE OR REGISTRANT NAME		8. LICENSE OR REGISTRATION NUMBER		9. RECORD ESTIMATE NO RECORD		10. ROUTINE PSE	
11. DDE	12. LDE	13. SDE, WB	14. SDE, ME	15. CEDE	16. CDE	17. TEDE		18. TODE	
11. SIGNATURE OF MONITORED INDIVIDUAL		20. DATE SIGNED		21. CERTIFYING ORGANIZATION		22. SIGNATURE OF DESIGNEE		23. DATE SIGNED	

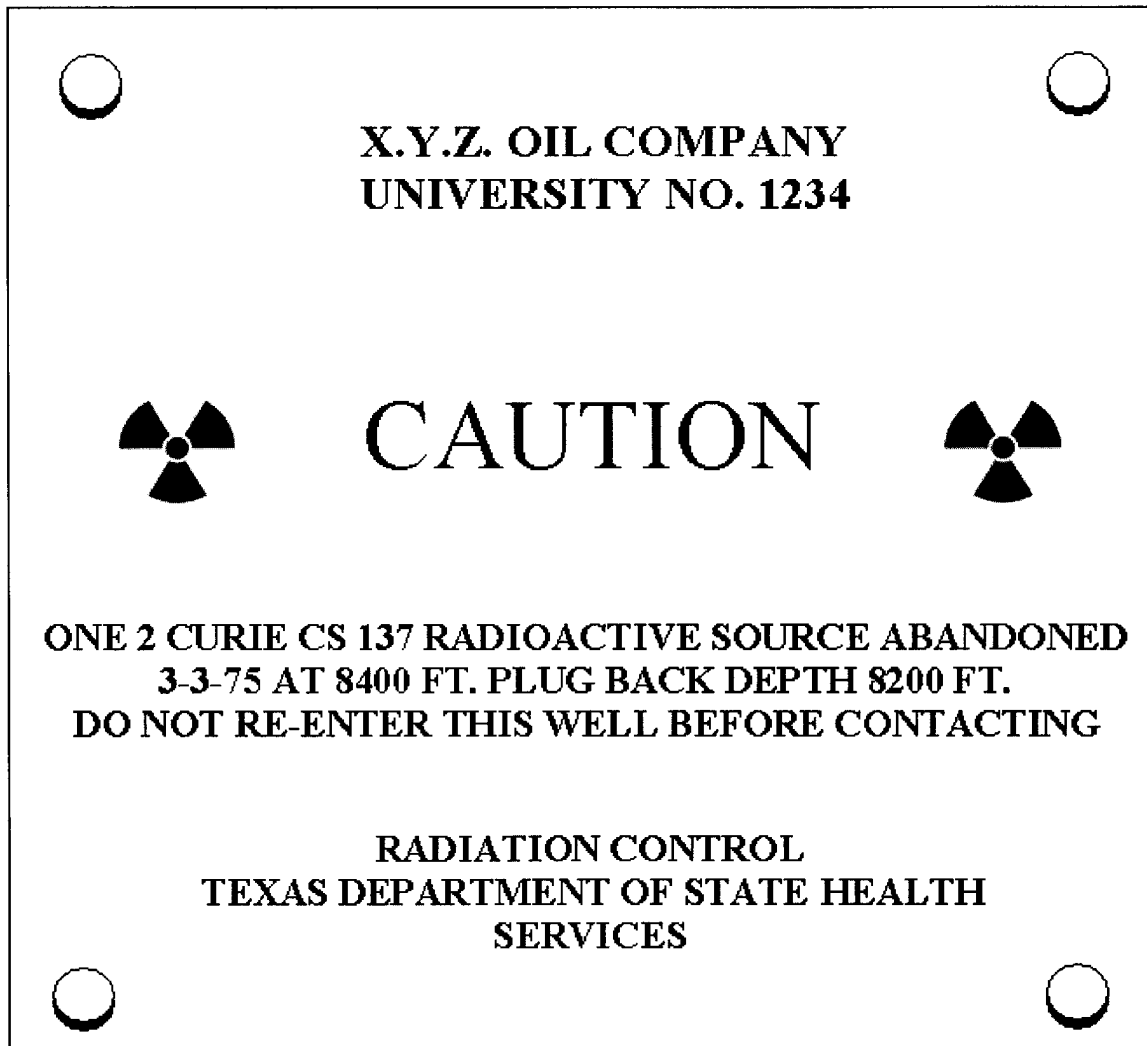
INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF BRC FORM 202-2 (All doses should be stated in rems)	
<p>1. Type or print the full name of the monitored individual in the order of last name (include "Jr," "Sr," "III," etc.), first name, middle initial (if applicable).</p> <p>2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.</p> <p>3. Enter the code for the type of identification used as shown below:</p> <p>CODE ID TYPE SSN U.S. Social Security Number PPN Passport Number CSI Canadian Social Insurance Number WPN Work Permit Number IND INDEX Identification Number OTH Other</p> <p>4. Check the box that denotes the sex of the individual being monitored.</p> <p>5. Enter the date of birth of the individual being monitored in the format MM/DD/YY.</p> <p>6. Enter the monitoring period for which this report is filed. The format should be MM/DD/YY - MM/DD/YY.</p> <p>7. Enter the name of the licensee, registrant, or facility not licensed by the Agency that provided monitoring.</p> <p>8. Enter the Agency license or registration number or numbers.</p> <p>9. Place an "X" in Record, Estimate, or No Record. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee or registrant intends to assign the record dose on the basis of TLD results that are not yet available.</p>	<p>10. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represent the results of monitoring of planned special exposures received during the monitoring period. If more than one PSE was received in a single year, the licensee should sum them and report the total of all PSEs.</p> <p>11. Enter the deep dose equivalent (DDE) to the whole body.</p> <p>12. Enter the eye dose equivalent (EDE) recorded for the lens of the eye.</p> <p>13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE-WB).</p> <p>14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE-ME).</p> <p>15. Enter the committed effective dose equivalent (CEDE).</p> <p>16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ.</p> <p>17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.</p> <p>18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.</p> <p>19. Signature of the monitored individual. The signature of the monitored individual on this form indicates that the information contained on the form is complete and correct to the best of his or her knowledge.</p> <p>20. Enter the date this form was signed by the monitored individual.</p> <p>21. [OPTIONAL] Enter the name of the licensee, registrant, or facility not licensed by the Agency, providing monitoring for exposure to radiation (such as a DOE facility) or the employer if the individual is not employed by the licensee or registrant and the employer chooses to maintain exposure records for its employees.</p>
	<p>22. [OPTIONAL] Signature of the person designated to represent the licensee, registrant or employer entered in item 21. The licensee, registrant or employer who chooses to countersign the form should have on the documentation of all the information on the Agency Form Y being signed.</p> <p>23. [OPTIONAL] Enter the date this form was signed by the designated representative.</p>

Figure: 25 TAC §289.202(ggg)(10)

BRC Form 202-3 Texas Department of State Health Services/Radiation Control <h2 style="margin: 0;">OCCUPATIONAL EXPOSURE RECORD FOR A MONITORING PERIOD</h2>			
1. NAME (LAST, FIRST, MIDDLE INITIAL)	2. IDENTIFICATION NUMBER	3. ID TYPE	4. SEX <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
6. MONITORING PERIOD	7. LICENSEE OR REGISTRANT NAME	8. LICENSE OR REGISTRATION NUMBER(S)	
		9A. RECORD ESTIMATE	9B. ROUTINE PSE
INTAKES			
10A. RADIONUCLIDE	10B. CLASS	10C. MODE	10D. INTAKE IN µCi
			11. DEEP DOSE EQUIVALENT (DDE)
			12. EYE DOSE EQUIVALENT TO THE LENS OF THE EYE (LDE)
			13. SHALLOW DOSE EQUIVALENT, WHOLE BODY (SDE,WB)
			14. SHALLOW DOSE EQUIVALENT, MAX EXTREMITY (SDE,ME)
			15. COMMITTED EFFECTIVE DOSE EQUIVALENT (CEDE)
			16. COMMITTED DOSE EQUIVALENT, MAXIMALLY EXPOSED ORGAN (CDE)
			17. TOTAL EFFECTIVE DOSE EQUIVALENT (BLOCKS 11+15) (TEDE)
			18. TOTAL ORGAN DOSE EQUIVALENT, MAX ORGAN (BLOCKS 11+16) (TODE)
19. COMMENTS			
20. SIGNATURE - LICENSEE OR REGISTRANT			21. DATE PREPARED

INSTRUCTIONS AND ADDITIONAL INFORMATION PERTINENT TO THE COMPLETION OF BRC FORM 202-3 (All doses should be stated in rems)		
1. Type or print the full name of the monitored individual in the order of last name (include "Jr.", "Sr.", "III," etc.), first name, middle initial (if applicable).	period. If more than one PSE was received in a single year, the licensee or registrant should sum them and report the total of all PSEs.	19. COMMENTS. In the space provided, enter additional information that might be needed to determine compliance with limits. An example might be to enter the note that the SDE/ME was the result of exposure from a discrete hot particle. Another possibility would be to indicate that an overexposed report has been sent to the Agency in reference to the exposure report. 20. Signature of the person designated to represent the licensee or registrant. 21. Enter the date this form was prepared.
2. Enter the individual's identification number, including punctuation. This number should be the 9-digit social security number if at all possible. If the individual has no social security number, enter the number from another official identification such as a passport or work permit.	10A. Enter the symbol for each radionuclide that resulted in an internal exposure recorded for the individual, using the format "Xx-###X", for instance, Cs-137 or Tc-99m.	
3. Enter the code for the type of identification used as shown below: CODE ID TYPE SSN U.S. Social Security Number PPN Passport Number CSI Canadian Social Insurance Number WPN Work Permit Number IND INDEX Identification Number OTH Other	10B. Enter the lung clearance class as listed in subsection (ggg)(2)(F) of this section for all intakes by inhalation.	
4. Check the box that denotes the sex of the individual being monitored.	10C. Enter the mode of intake. For inhalation, enter "H." For absorption through the skin, enter "B." For oral ingestion, enter "G." For injection, enter "J."	
5. Enter the date of birth of the individual being monitored in the format MMDDYY.	10D. Enter the intake of each radionuclide in µCi.	
6. Enter the monitoring period for which this report is filed. The format should be MMDDYY - MMDDYY.	11. Enter the deep dose equivalent (DDE) to the whole body.	
7. Enter the name of the licensee or registrant.	12. Enter the eye dose equivalent (LDE) recorded for the lens of the eye.	
8. Enter the Agency license or registration number or numbers.	13. Enter the shallow dose equivalent recorded for the skin of the whole body (SDE,WB).	
9A. Place an "X" in Record or Estimate. Choose "Record" if the dose data listed represent a final determination of the dose received to the best of the licensee's or registrant's knowledge. Choose "Estimate" only if the listed dose data are preliminary and will be superseded by a final determination resulting in a subsequent report. An example of such an instance would be dose data based on self-reading dosimeter results and the licensee intends to assign the record dose on the basis of TLD results that are not yet available.	14. Enter the shallow dose equivalent recorded for the skin of the extremity receiving the maximum dose (SDE,ME).	
9B. Place an "X" in either Routine or PSE. Choose "Routine" if the data represent the results of monitoring for routine exposures. Choose "PSE" if the listed dose data represents the results of monitoring of planned special exposures received during the monitoring	15. Enter the committed effective dose equivalent (CEDE) or "NR" for "Not Required" or "NC" for "Not Calculated".	
	16. Enter the committed dose equivalent (CDE) recorded for the maximally exposed organ or "NR" for "Not Required" or "NC" for "Not Calculated".	
	17. Enter the total effective dose equivalent (TEDE). The TEDE is the sum of items 11 and 15.	
	18. Enter the total organ dose equivalent (TODE) for the maximally exposed organ. The TODE is the sum of items 11 and 16.	

Figure: 25 TAC §289.253(dd)(3)



IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Request for Proposals: Urban Schools Grant Program

Pursuant to the Texas Agriculture Code, §§48.001 - 48.005 and the Texas Administrative Code, Title 4, §§1.800 - 1.804, the Texas Department of Agriculture (TDA) hereby requests proposals from certain Texas urban school districts for agricultural projects designed to foster an understanding and awareness of agriculture in elementary students for the period of January 1, 2006, through December 31, 2006. A total amount of up to \$2,500 may be awarded to an eligible elementary school in a single school year.

Eligibility. Proposals must be submitted by a Texas public elementary school from an urban school district with an enrollment of at least 49,000 students. According to Texas Education Agency's (TEA) 2004 - 2005 records, the eligible school districts are:

Aldine Independent School District;
Arlington Independent School District;
Austin Independent School District;
Cypress-Fairbanks Independent School District;
Dallas Independent School District;
El Paso Independent School District;
Fort Bend Independent School District;
Fort Worth Independent School District;
Garland Independent School District;
Houston Independent School District;
North East Independent School District;
Northside Independent School District;
Plano Independent School District; and
San Antonio Independent School District.

If your school district is not listed above and you feel it meets the minimum student enrollment of 49,000, you will need to submit TEA verification of enrollment in addition to your application.

Proposal Requirements. Each proposal may not exceed six pages and must include the following:

1. a cover page with the project title, name of the school district and elementary school, both the principal's and project coordinator's names along with their contact information (e-mail, telephone and fax numbers);
2. a detailed project description including the number of grade levels that will participate in the project;
3. a statement of the educational benefits of the project, including how the project will improve the students' understanding of agriculture;
4. a project budget including a detailed schedule of anticipated costs for the project.

Proposals should be submitted to: Catherine Wright, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701. The Department must receive applications no later than 5:00 p.m. Central Daylight Time, October 14, 2005.

Please send one original with ten additional copies.

Proposal Evaluations. Proposals will be evaluated based on the requirements set forth above by a panel appointed by the Texas Commissioner of Agriculture. The panel shall review the proposals and make funding recommendations to the Commissioner. The panel shall consist of representatives from the following: TDA, the education profession, livestock industry, specialty crop industry, row crop industry, horticulture industry and the Texas Cooperative Extension.

Approved Projects. The announcement of the grant awards will be made by December, 2005. All approved projects will have a start date of January 1, 2006, and must be completed by December 31, 2006. Project Coordinators will be required to submit quarterly progress reports and budget reports. Upon completion of the project, a project summary of the educational results of the project and photographs to document such results will be due within six weeks. All awards will be subject to audit by the TDA and the Texas State Auditor.

TRD-200503900

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: September 7, 2005

Office of the Attorney General

Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: *State of Texas v. Four Seasons Mobile Home Park, L.C.*, Cause no. GV-201209, in the 201st District Court of Travis County, Texas.

Nature of Defendant's Operations: At the time of filing of this lawsuit, Defendant Four Seasons Mobile Home Park operated a sewage treatment facility serving residents of the park of the same name in Bexar County, Texas. The State's lawsuit alleges that Four Seasons discharged untreated sewage into a pond without the required authorization from the State.

Proposed Agreed Judgment: The State and Four Seasons propose to enter into a binding agreement that calls for Four Seasons to sample the sewage pond for hazardous waste. If the pond does not contain levels

of hazardous waste that trigger regulatory action, an agreed judgment is automatically entered. The judgment calls for Four Seasons to pay an administrative penalty of \$15,000, civil penalties of \$15,000, and attorney's fees of \$15,000. Four Seasons can receive credits against a portion of the civil penalties and attorney's fees for timely execution of the sampling plan. The judgment also requires that Four Seasons close out the sludge pond in accordance with State rules. In the event that the sampling shows that the sewage pond contains hazardous waste in actionable levels, either party may withdraw from the settlement agreement.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200503892

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: September 7, 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 August 26, 2005, through September 1, 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's web site. The notice was published on the web site on September 7, 2005. The public comment period for these projects will close at 5:00 p.m. on October 7, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Teppco Seaway Crude Pipeline; Location: The project is located at the Teppco Seaway Pipeline facility, in the Old Brazos River Channel, in Freeport, in Brazoria County, Texas. The project can be located on the U.S.G.S. quadrangle map titled: Freeport, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 273796; Northing: 3202953. Project Description: The applicant proposes to perform maintenance dredging of their dock under an amended Department of the Army Permit 10863 for a period of ten years. The applicant will hydraulically dredge an existing terminal to the previously authorized depth of 50 feet below MLT. This will include the removal of no greater than 90,000 cubic yards of dredge material per cycle to be placed in an existing upland disposal area designated by the Port of Freeport. The choices for placement areas are indicated on the project

plans and are included in the applicant's original dredging permit. CCC Project No.: 05-0406-F1; Type of Application: U.S.A.C.E. permit application #10863(09) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Robert Ford, Jr.; Location: The project is located on two water bodies referenced as Crystal Lakes. Crystal Lakes are dissected by the North Fork of Taylor Bayou and are located south of State Highway 124, northeast of Winnie, south of Fannett, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Fannett West, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 378475; Northing: 3307906. Project Description: The applicant proposes to place material in the east and west Crystal Lake "Reservoirs." The purpose of the project is to construct two home sites on the applicant's existing property tract that measures an overall 528 acres. The tract is divided by the North Fork of Taylor's Bayou. The principal features of this tract are the two lake "reservoirs:" the west reservoir is 160 acres, and the east reservoir is 140 acres. The applicant states that the reservoirs are surrounded by low-lying land that floods often. The applicant states that property outside the both reservoirs is not suitable to construct residential homes, and so proposes to place fill in both lakes in order to construct private residences within the lakes themselves. The applicant states that the Jefferson County Drainage District No. 6 is planning to widen and deepen the North Fork of Taylor's Bayou between the reservoirs; and wishes to utilize the associated material from the dredging for proposed fill material in his reservoir lakes. The applicant also proposes to place approximately 30,000 cubic yards of fill material within the West Lake Reservoir in order to enlarge and improve an existing access road and a former oil well pad which sits within the lake. The total amount of fill (including the 10-acre existing pad and road) within West Lake Reservoir would be 12.3 acres (7.7 percent of the total west lake area). For the East Lake Reservoir, the applicant proposes to place 15,000 cubic yards of fill within the reservoir in order to build a new road and new house pad. The road will be approximately 600 feet long by 75 feet wide. The proposed house pad would be 8 acres in size. The combined fill, including the new road and house site pad, will be 9 acres (6.4 percent of the total east lake area). The applicant states that no mitigation is proposed for this project due to a lack of financial resources in order to participate in such programs. However, the applicant is willing to place portions of a bottomland hardwood forest he currently owns to an appropriate conservation reserve program. The applicant states that no sewage will be generated during the construction phase of the houses. The needs of the construction workers will be met by using approved jobsite portable toilets. Residential sewage from the two proposed single-family homes at each lake will be handled by a normal underground sewage treatment system. Short-term turbidity will be controlled using levees and staked fabric barriers during the fill placement and compaction process. The fill material consists of heavy clay to sand-clay mix. No hydraulic dredged material will be used at the project site. The fill material will be excavated using a track hoe and will not produce a slurry. This material will be hauled by dump truck to the fill site, and will be compacted by the trucks themselves as the material is placed during construction. Containment structures and sediment fences will be used as needed. On completion of the pads and levees, soil stabilization will be achieved using vegetative cover. No alternative site analysis is offered by the applicant at this time. The applicant states that no other property is available to him that meets his specific residential criteria and financial abilities. The applicant states he wishes to construct a personal home site that he can access via a road across each lake that he owns. His future prospects for the property include utilizing the pads for a farm, and using one of the roads for a potential airstrip. The applicant intends to minimize any adverse effects to the surface water of the lakes, as needed. A jurisdictional determination was issued for the subject

project area on December 30, 2003. Based on site-specific information (including historic information), we determined that the Crystal Lakes (West and East Reservoirs) and their fringe wetlands are waters of the United States. Crystal Lakes have historically impacted/impounded several tributaries of the North Fork of Taylor Bayou and, as such, now exhibit an ordinary high water mark as waters of the U.S. Historically, both reservoirs were originally excavated in the late 1950's when the property was the site of Texas Gulf Sulphur Company mining operations in Fannett. The plant continued operations until 1977 when the property then became used by subsequent oil and gas well operations affiliated with the Fannett Oil Fields situated immediately south of the subject property. Also, at about this same time, the Jefferson County Drainage District undertook overall water control management and associated drainage improvements along the North Fork of Taylor Bayou area. CCC Project No.: 05-0434-F1; Type of Application: U.S.A.C.E. permit application #23688 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Yuma E & P Company; Location: The project site is located in Trinity Bay, in State Tract (ST) 86, approximately 5.2 miles northeast of Smith Point, offshore, Chambers County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Smith Point, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 323070; Northing: 3277089. Project Description: The applicant is requesting authorization to amend Department of the Army Permit No. 23791 to install and maintain a 100-foot-long by 3-foot-wide walkway, a 45-foot by 45-foot platform, and mooring clusters to facilitate production of the Royal Prospect well in ST 86. These structures will be added on to the existing drilling platform. The well and other appurtenant structures were previously authorized under the original permit. CCC Project No.: 05-0448-F1; Type of Application: U.S.A.C.E. permit application #23791(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: KM Liquids Terminals, L.P.; Location: The project is located on the north side of the Houston Ship Channel, approximately 5,500 feet west of the Washburn Tunnel, at 906 Clinton Drive, in Galena Park, Harris County, Texas. 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: 283695; Northing: 3289984. Project Description: The applicant proposes to modify Department of the Army Permit 23227 by adding Ship Dock No. 2 to the previously authorized dredging project. Permit 23227 authorized dredging and upgrades to Ship Dock 1. Ship Dock 2 is currently dredged to -36 feet mean low tide (MLT) and the new dredging will be to -38 feet MLT plus an additional 1 foot of over dredge. The proposed hydraulic dredging will remove 13,500 cubic yards of material. The existing breasting line is approximately 367 feet from the centerline of the Houston Ship Channel. The applicant plans to use the previously authorized Dynegy placement area for the placement of the dredged material. CCC Project No.: 05-0451-F1; Type of Application: U.S.A.C.E. permit application #23227(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

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 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-200503877

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: September 6, 2005

Comptroller of Public Accounts

Notice of Contract Amendment to Renew

The Texas Comptroller of Public Accounts (Comptroller) announces this notice of intent to renew contract in connection with the Request for Proposals for Collection Services to assist the Comptroller in the collection of delinquent state taxes (RFP #140e). The Comptroller announces that a contract is awarded as follows:

OSI Collection Services, Inc., 800 Wilcrest, Suite 300, Houston, Texas 77042. The total contract amount is based on a percentage of the amounts collected on delinquent tax accounts referred to the contractor.

The notice of issuance of this RFP #140e was published in the *Texas Register* on May 17, 2002 (27 TexReg 4404) and also posted on the Texas Marketplace on May 17, 2002.

The term of the contract is September 1, 2005 through August 31, 2006.

TRD-200503820

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 1, 2005

Notice of Contract Award

Pursuant to Chapter 2156, §2156.121, Texas Government Code; Chapter 403, Subchapter B, §403.023, Texas Government Code; and 34 TAC §§17.1-17.3, the Comptroller of Public Accounts (Comptroller) announces under its Request for Proposals 172f (RFP) the award of the following contract:

A contract is awarded to Global Payments Direct, Inc., 3755 S. Capital of Texas Hwy, Suite 292, Austin, Texas 78704-7908 (Contractor). The total contract amount is based on usage but estimated to be a maximum of \$1,000,000 for the contract term based on anticipated volume of charge card purchases with participating state agencies that are processed by the Contractor. No minimum amount is guaranteed. The term of the contract is September 1, 2005 through August 31, 2008.

The Comptroller's RFP 172f related to this contract award was published in the May 13, 2005, *Texas Register* (30 TexReg 2919).

TRD-200503870

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 2, 2005

Notice of Contract Renewal

The Comptroller of Public Accounts (Comptroller) announces this notice of intent to renew a contract for automated clearinghouse services. The Comptroller announces that the contract is renewed with JP Morgan Chase Bank, N.A., Successor in Interest to Bank One Texas, National Association, 700 Lavaca, Austin, Texas 78767.

The total amount of the contract is dependent on the use of automated clearing house services at the rates set out in the contract. The original term of the contract was October 12, 2000, through August 31, 2003 and was subsequently extended by prior amendments. The proposed term of the renewed contract is September 1, 2005 through August 31, 2006.

The notice of request for proposals (RFP #107c) was originally issued on June 20, 2000.

TRD-200503871

William Clay Harris

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: September 2, 2005

Telecommunications Infrastructure Fund Assessment Notice

Senate Bill 1863, enacted by the 79th Legislature and effective September 1, 2005, requires the Comptroller of Public Accounts to publish in the *Texas Register* the date on which the total amount deposited to the credit of the Telecommunications Infrastructure Fund, excluding interest and loan payments, is equal to \$1.5 billion. Texas Utilities Code, §57.048(g). Pursuant to legislative directive, the Comptroller of Public Accounts hereby provides notice that the Telecommunications Infrastructure Fund assessment reached \$1.5 billion, excluding interest and loan payments, on August 2, 2004.

Inquiries should be directed to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

TRD-200503821

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Filed: September 1, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of September 12, 2005 - September 18, 2005 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 September 12, 2005 - September 18, 2005 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-200503880

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: September 6, 2005

Texas Commission on Environmental Quality

Notice of Meeting on October 27, 2005 at 7:00 p.m., Midland County Public Library

Notice of meeting on October 27, 2005 at 7:00 p.m., Midland County Public Library, 301 West Missouri Avenue, Midland, Texas concerning the City View Road Groundwater Plume site.

The purpose of the meeting is to obtain public comments and information concerning the site and the proposal of the site to the state registry of Superfund sites and the identification of potentially responsible parties.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under Texas Solid Waste Disposal Act, Health and Safety Code (the Act), Chapter 361, as amended to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these areas was published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2583).

In accordance with the Act, §361.184(a), the commission must publish in the *Texas Register*, and in a newspaper of general circulation in the county in which a site is located, a notice of intent to list the area on the state registry of Superfund sites. The notice of intent to list this site was published in the April 22, 2005, issue of the *Texas Register* and the *Midland Reporter-Telegram*.

After the initial notice of intent to list this site was published, the TCEQ received a request for a public meeting regarding the proposal. A public meeting will be held October 27, 2005, at 7:00 p.m., Midland County Public Library, 301 West Missouri Avenue, Midland, Texas. The City View Road Groundwater Plume is contaminated by tetrachloroethylene, also known as perchloroethylene (PCE) from an unidentified source. The site is located northwest of the intersection of Interstate Highway 20 and State Highway 158 in the City View Road area of Midland. The purpose of the meeting is to obtain public comments and additional information concerning the site and its proposal to the state registry of Superfund sites and the identification of potentially responsible parties. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. October 26, 2005, and should be sent in writing to Subhash C. Pal, P.E., Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087, or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on October 27, 2005.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Midland College Library, Murray Fasken Learning Resource Center, 3600 North Garfield, or at the Midland County Public Library, 301 West Missouri Avenue, Midland, Texas, during regular

business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-5674. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call John Flores, TCEQ Community Relations, at (800) 633-9363, extension 5674. Information is also available regarding the state Superfund program on the commission's Web site at www.tnrc.state.tx.us/permitting/remed/superfund/.

TRD-200503878

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 6, 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 **October 17, 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 October 17, 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: Airtex Investments, Inc. dba Time Mart 10; DOCKET NUMBER: 2005-0081-PST-E; TCEQ ID NUMBERS: 72618 and

RN101849693; LOCATION: 8250 Telephone Road, Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); PENALTY: \$2,180; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Alto Corner Market, Inc.; DOCKET NUMBER: 2004-1662-PST-E; TCEQ ID NUMBERS: 45663 and RN101846525; LOCATION: 101 North Marcus, Alto, Cherokee County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of four petroleum USTs for a one-year period preceding November 7, 2002; PENALTY: \$4,280; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Buford West dba Genie Car Care Center of Hewitt and Leah West dba Genie Car Care Center of Hewitt; DOCKET NUMBER: 2004-1557-PST-E; TCEQ ID NUMBERS: 64955 and RN102719846; LOCATION: 915 North Hewitt, Hewitt, McLennan County Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$2,140; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Dhanani Investment, Inc. dba Yale Shamrock; DOCKET NUMBER: 2004-0369-PST-E; TCEQ ID NUMBERS: 33094 and RN103160743; LOCATION: 202 West Crosstimbers, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control at the station; 30 TAC §334.50(b)(1)(A), (2)(A)(iii), and (d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to monitor the USTs in a manner which would detect a release at a frequency of at least once every month not to exceed 35 days between each monitoring, by failing to conduct monthly reconciliation of inventory control records as required in conjunction with automatic tank gauging, and by failing to perform a tightness test for pressured piping at least once per year; 30 TAC §334.8(c)(4)(B) and §334.7(a)(1) and TWC, §26.346(a), by failing to ensure that its UST registration and self-certification form was fully and accurately completed and that it was submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b), by failing to make records available for a UST inspection; 30 TAC §334.6(b)(2)(A) and (C), by failing to provide written notice at least 30 days prior to initiating a major UST construction activity and by failing to confirm the activity with the appropriate regional office within 24 - 72 hours before initiating construction; and 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees for Financial Account Number 0057992U; PENALTY: \$24,500; STAFF ATTORNEY: Kathleen

Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Joe Jenkins dba J & M Total Land Care; DOCKET NUMBER: 2003-1396-LII-E; TCEQ ID NUMBER: RN103125985; LOCATION: 2139 Stradivarius Lane, Carrollton, Dallas County, Texas; TYPE OF FACILITY: landscaping and irrigation system installation; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a) and TWC, §34.007(a), by representing to the public that he was able to perform services for which an irrigator's license was required without first obtaining a license issued by the commission to sell or install an irrigation system on or before the date the system was installed; and 30 TAC §30.5(b) and §344.58(a) and (b), by representing to the public that he was the holder of a landscape irrigator license that was issued to someone else; PENALTY: \$3,313; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: Lacefield Investments, Inc. dba Don's Port Marina; DOCKET NUMBER: 2005-0195-PST-E; TCEQ ID NUMBERS: 47186 and RN101853364; LOCATION: 1937 Island Circle, Kemp, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$1,900; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(7) COMPANY: Ruben's Vacuum and Hydrojetting Services, Inc.; DOCKET NUMBER: 2002-1131-SLG-E; TCEQ ID NUMBER: 22386; LOCATION: Trosper Road, approximately 0.25 miles north of the intersection of Trosper Road and State Highway 107, Alton, Hidalgo County, Texas; TYPE OF FACILITY: sludge transportation service; RULES VIOLATED: 30 TAC §312.144(a)(3) and (f), by failing to properly mark and identify all vacuum pump trucks, tanks, or containers used for the collection and/or over-the-road transportation of waste, by failing to apply the authorization stickers on the motor vehicles and by failing to prominently mark all discharge valves and ports; 30 TAC §312.144(d), by failing to properly maintain the site gauges on containers used to transport liquid wastes in a manner which can be used to determine whether or not a vehicle is loaded and the approximate capacity; 30 TAC §312.145(a), by failing to include in the trip tickets, the accurate date and place where the waste was deposited, identification of the facility where the waste was deposited, and the name and signature of a facility on-site representative acknowledging receipt of the waste and the amount of waste received; 30 TAC §312.142(c) and (e)(2), by failing to maintain a copy of the registration authorization, as annotated by the executive director, with an assigned registration number, at the designated place of business and in each vehicle operated under that registration, and by failing to submit a new registration application within 15 days of changes in operation or management methods; and 30 TAC §312.145(b)(4)(C), by failing to submit to the executive director an annual summary of activities for the previous period showing the amounts and types of waste delivered to each facility; PENALTY: \$15,510; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200503884

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 6, 2005

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**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 **October 17, 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 October 17, 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: Brant-STA Inc. DbA Max A Mart; DOCKET NUMBER: 2004-1147-PST-E; TCEQ ID NUMBERS: 60014 and RN101799757; LOCATION: intersection of Highway 69 and Highway 19, Emory, Rains 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 financial responsibility 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: \$5,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(2) COMPANY: John Popma dba Marketing Interface Company; DOCKET NUMBER: 2004-0083-IHW-E; TCEQ ID NUMBERS: 37333 and RN103146049; LOCATION: East Mountain Road and Municipal Drive in East Mountain, Upshur County, Texas; TYPE OF FACILITY: facility that refurbishes and resells electroplating equipment; RULES VIOLATED: 30 TAC §§335.62, 335.503(a)(4), 335.513, and 335.431(c), by failing to complete waste classification, hazardous waste determination, and land disposal restrictions on each solid waste generated; 30 TAC §335.6(c), by failing to update the facility's notice of registration and thereby notify the executive director of the generation of hazardous waste; 30 TAC §335.2(b) and §335.10(a),

by failing to properly manifest, transport, and dispose of industrial hazardous waste at a permitted facility; 30 TAC §335.9(a)(1), by failing to maintain records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on site or shipped off site for storage, processing, or disposal; 30 TAC §§336.69(a)(4)(A), 335.474, and 335.479, and 40 Code of Federal Regulations §265.16 and Part 265, Subpart D, by failing to maintain records that document personnel training activities, a contingency plan, and a pollution prevention plan; PENALTY: \$4,254; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Smartway, Inc. dba Road Runner Food Mart; DOCKET NUMBER: 2004-1149-PST-E; TCEQ ID NUMBERS: 17073 and RN101747780; LOCATION: 5397 Medina Base Road, San Antonio, Bexar County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(a), by failing to monitor the UST system for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to equip the UST system at the facility with corrosion protection; and 30 TAC §334.7(d)(3) and TWC, §26.346(a), by failing to amend its registration within 30 days of any change; PENALTY: \$8,800; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: West Side Salvage, Inc.; DOCKET NUMBER: 2004-1404-MSW-E; TCEQ ID NUMBER: RN104192182; LOCATION: one mile north of the intersection of Highway 359 and J. C. Perez Road, Oilton, Webb County, Texas; TYPE OF FACILITY: salvage operation; RULES VIOLATED: 30 TAC §330.5(a) and §330.32(b)(1), by failing to transport and dispose of waste at an authorized disposal facility; PENALTY: \$2,520; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

TRD-200503885

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 6, 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 **October 17, 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 October 17, 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: Aqua Utilities, Inc. dba Aqua Texas, Inc.; DOCKET NUMBER: 2005-0739-MWD-E; IDENTIFIER: Regulated Entity Number (RN) 101513729; LOCATION: near Buda, Hays County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 13293001, and the Code, §26.121(a), by failing to maintain compliance with permitted effluent limits for five-day biochemical oxygen demand (BOD5) and total suspended solids (TSS) and by failing to submit an annual sludge report; and 30 TAC §305.125(17) and TPDES Permit Number 13293001, by failing to include all parameter data on discharge monitoring reports (DMRs); PENALTY: \$4,488; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Azteca Milling, L.P.; DOCKET NUMBER: 2005-1080-IWD-E; IDENTIFIER: RN102166758; LOCATION: Dawn, Deaf Smith County, Texas; TYPE OF FACILITY: corn flour processing; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04052, and the Code, §26.121(a), by failing to prevent an unauthorized discharge from the permitted irrigation area; PENALTY: \$776; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(3) COMPANY: John Boykin Jr. dba Boykin Homes & Land Sales; DOCKET NUMBER: 2005-1115-MSW-E; IDENTIFIER: RN103915633; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.4(b), by failing to properly dispose of municipal solid waste; PENALTY: \$640; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Cleereco Services, Inc. dba Halbert LPG, Inc.; DOCKET NUMBER: 2005-0971-PST-E; IDENTIFIER: RN101842169; LOCATION: Eldorado, Schleicher County, Texas; TYPE OF FACILITY: propane sales and service store; RULE VIOLATED: 30 TAC §334.6(a) and (b)(2)(C), by failing to provide written notification at least 30 days prior to initiating a major underground storage tank (UST) construction activity and by failing to confirm the initiation of a proposed UST construction activity; 30 TAC §334.401(a), by failing to have a licensed on-site supervisor present during installation, repair, or removal of a UST; and 30 TAC §334.55(a)(3), by failing to have qualified personnel possessing the appropriate skills, experience, competence, and required license to permanently remove the UST; PENALTY: \$2,856; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(5) COMPANY: Coil Tubing Services, L.L.C.; DOCKET NUMBER: 2005-1034-MWD-E; IDENTIFIER: RN103934329; LOCATION:

Alice, Jim Wells County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04589, and the Code, §26.121(a), by failing to comply with oil & grease daily average and daily maximum permitted effluent limits; PENALTY: \$680; ENFORCEMENT COORDINATOR: Merrill Hupp, (512) 239-4490; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Dupre' Transport, Inc.; DOCKET NUMBER: 2005-1024-PST-E; IDENTIFIER: RN100648096; LOCATION: Seguin, Guadalupe 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: \$400; ENFORCEMENT COORDINATOR: Sandra Anaya, (512) 239-0572; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(7) COMPANY: Jesus Escobedo; DOCKET NUMBER: 2005-0786-LII-E; IDENTIFIER: RN104542923; LOCATION: near Gun Barrel City, Henderson County, Texas; TYPE OF FACILITY: landscape irrigation; RULE VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Occupations Code, §1905.251, and the Code, §37.003, by failing to hold an irrigation license issued prior to selling, designing, consulting, installing, maintaining, altering, and repairing or servicing an irrigation system; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Golden Prizm Inc. dba Fuel Food and More; DOCKET NUMBER: 2005-0909-PST-E; IDENTIFIER: RN101493237; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to regularly inspect the cathodic protection system; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; PENALTY: \$5,400; ENFORCEMENT COORDINATOR: Chad Blevins, (512) 239-6017; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Griff's Grill Inc. dba Valley View Store; DOCKET NUMBER: 2004-1482-PST-E; IDENTIFIER: Petroleum Storage Tank Registration Number 59319; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §334.48(c) and §334.50(d)(1)(B)(iii)(I) and the Code, §26.3475(a), by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amounts still remaining in the tanks; PENALTY: \$2,625; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(10) COMPANY: Hardin Independent School District Public Facility; DOCKET NUMBER: 2005-1000-MWD-E; IDENTIFIER: RN101525764; LOCATION: Hardin, Liberty County, Texas; TYPE OF FACILITY: domestic wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13135001, and the Code, §26.121(a), by failing to comply with the permit limits for TSS and pH; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Hooks Independent School District; DOCKET NUMBER: 2005-0900-MWD-E; IDENTIFIER: RN101514412; LOCATION: Hooks, Bowie County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(17) and TPDES Permit Number 136340901, by failing to report the

daily maximum flow on the DMRs, by failing to timely submit the DMR, and by failing to submit the annual sludge report; and 30 TAC §305.125(1), TPDES Permit Number 13634001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for TSS; PENALTY: \$6,552; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(12) COMPANY: Industrial Spray Painting, Inc.; DOCKET NUMBER: 2003-1361-AIR-E; IDENTIFIER: RN102645090; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: parts coating; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain proper authorization before constructing an industrial paint booth; PENALTY: \$2,850; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: City of Iredell; DOCKET NUMBER: 2005-0763-PWS-E; IDENTIFIER: RN101386167; LOCATION: Iredell, Bosque County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(ii) and (F) and (3)(A)(ii), by failing to take routine monthly bacteriological samples, by failing to collect and submit the proper number of additional bacteriological samples, and by failing to collect and submit repeat bacteriological samples; and 30 TAC §290.122(c)(2)(A), by failing to provide public notification for the microbial monitoring violations; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Jamestown Water Supply Corporation; DOCKET NUMBER: 2005-0473-PWS-E; IDENTIFIER: RN101200467; LOCATION: Burkeville, Newton County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(f)(1) and (q)(1) and THSC, §341.0315(c), by failing to keep the water system records organized and readily accessible and by failing to issue a boil water notice for water outages; PENALTY: \$898; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: Jatra International, Inc.; DOCKET NUMBER: 2005-0685-MWD-E; IDENTIFIER: RN101516037; LOCATION: Dew, Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11578001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for dissolved oxygen (DO), BOD5, pH, and TSS; PENALTY: \$4,448; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: City of Kemp; DOCKET NUMBER: 2005-1135-PWS-E; IDENTIFIER: RN101244457; LOCATION: Kemp, Kaufman County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for total trihalomethanes (TTHM) and haloacetic acids; PENALTY: \$645; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Poshia King dba Limestone Marine & Campground; DOCKET NUMBER: 2005-1059-PWS-E; IDENTIFIER: RN102684321; LOCATION: near Waco, Limestone County, Texas;

TYPE OF FACILITY: marina and campground site; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain a free chlorine residual; 30 TAC §290.42(e)(5), by failing to properly secure the hypochlorination solution container; 30 TAC §290.46(f)(2) and (v), by failing to keep on file, and make available for review, operating records for the water system, and by failing to install all water system electrical wiring in compliance with a local or national electrical code; 30 TAC §290.41(c)(3)(J) - (L), by failing to provide a concrete sealing block, by failing to provide a 16-mesh or finer corrosion resistant screen, and by failing to ensure that the well blow-off line is turned in a downward direction; and 30 TAC §290.45(c)(1)(A)(i) and (ii) and THSC, §341.0315(c), by failing to provide a well capacity of one gallon per minute per connection and by failing to provide a minimum pressure tank capacity of ten gallons per connection; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Lyondell-Citgo Refining LP; DOCKET NUMBER: 2005-0754-AIR-E; IDENTIFIER: RN100218130; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: oil refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.715(a), Flexible Air Permit Number 2167/PSD-TX-985, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$13,120; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: City of Mount Vernon; DOCKET NUMBER: 2005-1121-PWS-E; IDENTIFIER: RN101391399; LOCATION: Mount Vernon, Franklin County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the MCL limit for TTHM; PENALTY: \$343; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(20) COMPANY: Edward Fenoglio dba Oakshores Community; DOCKET NUMBER: 2005-0432-PWS-E; IDENTIFIER: Public Water Supply Number 1690011, RN104210885; LOCATION: Montague, Montague County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(2), by failing to maintain monthly operating reports and make accessible for review; 30 TAC §290.43(c)(2) and (8), by failing to design roof openings in accordance with current American Water Works Association (AWWA) standards and by failing to design ground storage tanks in accordance with AWWA standards; and 30 TAC §290.110(e)(4), by failing to submit a quarterly distribution report for public water systems each quarter; PENALTY: \$504; ENFORCEMENT COORDINATOR: Joseph Daley, (512) 239-3308; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: Paint Rock Independent School District; DOCKET NUMBER: 2005-0504-PST-E; IDENTIFIER: RN101864007; LOCATION: Paint Rock, Concho County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor the UST for releases; and 30 TAC §334.10(b), by failing to have records immediately available for inspection; PENALTY: \$2,080; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(22) COMPANY: Port of Beaumont; DOCKET NUMBER: 2005-0682-PST-E; IDENTIFIER: RN102866837; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: maritime

shipping center; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method, or combination of methods, of release detection; 30 TAC §334.49(c)(4)(C) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system; 30 TAC §334.10(b)(1)(A), by failing to maintain all records pertaining to the UST system; 30 TAC §334.7(d)(3), by failing to file with the agency a notice of any change or additional information; and 30 TAC §334.47(a)(2) and §334.54(c)(2) and (d)(2), by failing to permanently remove from service any existing UST system that was not brought into timely compliance with upgrade requirements and by failing to ensure residue from a temporarily out-of-service UST does not exceed 2.5 centimeters at the deepest point; PENALTY: \$4,560; ENFORCEMENT COORDINATOR: Sandy Van Cleave, (512) 239-0667; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: Quality Concrete & Materials Company, Limited; DOCKET NUMBER: 2005-1029-MWD-E; IDENTIFIER: RN102601390; LOCATION: Bridge City, Orange County, Texas; TYPE OF FACILITY: dredging operation; RULE VIOLATED: the Code, §26.121(c), by failing to comply with permitted effluent limitations for TSS; PENALTY: \$2,100; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: City of Rogers; DOCKET NUMBER: 2005-0605-MWD-E; IDENTIFIER: TPDES Permit Number 10804001, RN102184678; LOCATION: Rogers, Bell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10804001, and the Code, §26.121(a), by failing to comply with permitted effluent limits for BOD5 and DO, by failing to submit the required sludge reports, and by failing to report the pH minimum results on the DMR; PENALTY: \$4,960; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(25) COMPANY: Safety-Kleen Systems, Inc.; DOCKET NUMBER: 2005-0636-MWD-E; IDENTIFIER: TPDES Permit Number 04336, RN103896387; LOCATION: near Plano, Denton County, Texas; TYPE OF FACILITY: recycling center; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04336, and the Code, §26.121(a), by failing to comply with permitted effluent limits for chemical oxygen demand and by failing to submit the quarterly biomonitoring report; and 30 TAC §330.32 and §335.224 and the Code, §5.702, by failing to pay hazardous waste facility fees; PENALTY: \$3,000; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: Texas Parks & Wildlife Department; DOCKET NUMBER: 2005-1068-PWS-E; IDENTIFIER: RN101215184; LOCATION: near Concan, Uvalde County, Texas; TYPE OF FACILITY: recreation area with public water supply; RULE VIOLATED: 30 TAC §290.43(c)(6), by failing to maintain all water storage facilities in a watertight condition; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system; and 30 TAC §290.42(l), by failing to compile and maintain a current and thorough plant operations manual; PENALTY: \$228; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

TRD-200503874

Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: September 6, 2005

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Department of State Health Services

**Designation of Children's Clinic of Richardson as a Site
Serving Medically Underserved Populations**

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: Children's Clinic of Richardson, 580 West Arapaho, Suite 208, Richardson, Texas 75080. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state, or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200503887
Cathy Campbell
General Counsel
Department of State Health Services
Filed: September 7, 2005

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**Notice of Public Hearings Schedule for Development and
Review of Block Grant Funds**

Under the authority of the Preventive Health Amendments of 1992 (see 42 United States Code §§300w et seq), the Department of State Health Services (DSHS) is making application to the U.S. Public Health Service for funds to continue the Preventive Health and Health Services Block Grant (PHHSBG) during federal fiscal year (FFY) 2006. Provisions in the Act require the chief executive officer of each state to annually furnish a description (a state plan) of the intended use of block grant funds in advance of each FFY. A proposal of this description is to be made public within each state in such a manner as to facilitate comments.

In FY 2006, nine activities are proposed to be funded under the block grant. These include sexual assault prevention and crisis services, border health and colonias, birth defects registry, behavioral risk factor surveillance system, dental health/fluoridation, trauma registry, pesticide exposure surveillance, local health departments, and public health regions.

The PHHS Block Grant award for FFY 2005 was \$4,962,387. Of this amount, \$510,620 was required to be used for sexual assault prevention and crisis services.

DSHS has prepared the following schedule for the development and review of the FFY 2006 State Plan for the PHHSBG. In September of 2005, DSHS will hold public hearings in four public health regions (PHRs):

September 27, 2005

Public Health Region 7, 1100 West 49th Street, Room K100, Austin, Texas 4:00 - 6:00 p.m.

September 28, 2005

Public Health Region 1, 1109 Kemper, Conference Room 1, Lubbock, Texas 2:00 p.m.

September 28, 2005

Public Health Region 2/3, 1301 S. Bowen, Suite 200, Arlington, Texas 4:00 - 6:00 p.m.

September 28, 2005

Public Health Region 6/5, 5425 Polk Street, Room 4-BC, Houston, Texas 10:30 a.m.

Following these hearings, DSHS will summarize and consider the impact of the public comments received. DSHS will then notify the public of the availability of a published summary of these hearings. In October of 2005, the department will prepare the final FFY 2006 State Plan for the PHHSBG and forward it to the federal government.

Please note that DSHS will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the PHHSBG may be submitted through October 3, 2005, to Martha McGlothlin, Block Grant Coordinator, Community Preparedness Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, or via E-mail at Martha.mcglathlin@dshs.state.tx.us. For further information, call (512) 458-7111 ext. 6376.

TRD-200503825
Cathy Campbell
General Counsel
Department of State Health Services
Filed: September 1, 2005

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**Texas Department of Housing and Community
Affairs**

Board Mortgage Revenue Bond Workshop

**Texas Department of Housing and Community Affairs' Board
Room**

507 Sabine, Austin, Texas 78701

September 16, 2005 at 9:00 AM

The Texas Department of Housing and Community Affairs Board will solicit Public Comment at the beginning of the Board Mortgage Revenue Bond Workshop and will also provide for Public Comment on each agenda item after the presentation made by staff.

The Board of the Texas Department of Housing and Community Affairs (TDHCA) will meet to consider the following:

1. Welcome and Introductions
2. Review of Strategies and Factors affecting TDHCA's single family bond indentures
3. Adjourn

To access this agenda and details on each agenda item in the board book, please visit our website at www.tdhca.state.tx.us or contact Susan Woods, TDHCA, 507 Sabine, Austin, Texas 78701, (512) 475-3934 and request the information.

Individuals who require auxiliary aids, services or sign language interpreters for this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Non-English speaking individuals who require interpreters for this meeting should contact Susan Woods, (512) 475-3934 at least three days before the meeting so that appropriate arrangements can be made.

TRD-200503899

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 7, 2005

Multifamily Housing Revenue Bonds (Ennis Senior Estates) 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 Sam Houston Elementary, 1701 S. Hall, Ennis, Ellis County, Texas 75119, at 6:00 p.m. on October 11, 2005 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$10,000,000 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 LRI IV, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily senior housing development (the "Development") described as follows: 248-unit multifamily senior residential rental development to be located at approximately the 6000 block of Rudd Road, south of Highway 287 and approximately 650 feet north of the northeast intersection of Rudd Road and Blazek Road, Ellis 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-200503893

Edwina P. Carrington

Executive Director

Texas Department of Housing and Community Affairs

Filed: September 7, 2005

Texas Department of Insurance

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

American Medical Security Life Insurance Company, formerly known as United Wisconsin Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of American Medical Security Life Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200503840

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: September 2, 2005

Notice of Application by a Small Employer Health Benefit Plan Issuer to be a Risk-Assuming Health Benefit Plan Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under §1501.312, Texas Insurance Code. A small employer health benefit plan issuer is defined by §1501.002(16), Texas Insurance Code, as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Subchapters C - H of Chapter 1501, Texas Insurance Code. A risk-assuming health benefit plan issuer is defined by §1501.301(4), Texas Insurance Code, as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

Union Security Insurance Company, formerly known as Fortis Benefits Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Legal & Compliance Division - Archie Clayton, 333 Guadalupe, Tower I, Room 860, Austin, Texas.

If you wish to comment on the application of Union Security Insurance Company to be a risk-assuming health benefit plan issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. Upon consideration of the application and comments, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the applicant to be a risk-assuming health benefit plan issuer.

TRD-200503879
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 6, 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 OMEGA ADMINISTRATORS, INC., a foreign third party administrator. The home office is LITTLE ROCK, ARKANSAS.

Application for incorporation in Texas of VFS FINANCIAL SERVICES, L.L.C., a domestic third party administrator. The home office is AUSTIN, TEXAS.

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-200503921
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 7, 2005

North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1699). The selected consultant will perform technical and professional work for the development and implementation of an Air Quality Public Awareness Campaign for the Dallas-Fort Worth Nonattainment Area.

The consultant selected for this project is Tuerff-Davis EnviroMedia Inc., 1717 West 6th Street, Suite 400, Austin, Texas 78703. The maximum amount of this contract is \$273,262.

TRD-200503886
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 7, 2005

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the April 22, 2005, issue of the *Texas Register* (30 TexReg 2470). The selected consultant will conduct a System-Wide Boarding and Alighting Study for the Fort Worth Transportation Authority (FWTA).

The consultant selected for this project is GeoStats, 530 Means Street NW, Suite 310, Atlanta, GA 30318. The maximum amount of this contract is \$114,975.

TRD-200503890
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 7, 2005

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3168). The selected consultant will conduct a review of Emission Reduction Control Strategies for Nitrogen Oxides (NOx) and Volatile Organic Compounds (VOCs) for the North Central Texas Ozone Nonattainment Area.

The consultant selected for this project is ENVIRON International Corporation, Golden Gate Plaza, 101 Rowland Way, Novato, CA 94945-5010. The maximum amount of this contract is \$125,349.

TRD-200503888
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 7, 2005

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the May 27, 2005, issue of the *Texas Register* (30 TexReg 3168). The selected consultant will develop an Intelligent Transportation System (ITS) Data Archiving Software Plug-In to Communicate with Center-to-Center Communication System.

The consultant selected for this project is OZ Engineering LLC, 3230 E. Broadway Road, Suite 216, Phoenix, AZ 85040. The maximum amount of this contract is \$181,674.

TRD-200503891
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: September 7, 2005

Public Utility Commission of Texas

Notice of Application for a Certificate of Convenience and Necessity for Service Area Boundaries within Lamb County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on August 30, 2005, for service area exception within Lamb County, Texas.

Docket Style and Number: Application of Southwestern Public Service Company d/b/a Xcel Energy for a Certificate of Convenience and Necessity for Service Area Boundary for a Service Area Exception within Lamb County. Docket Number 31572.

The Application: Southwestern Public Service Company d/b/a Xcel Energy (Xcel Energy) requested a service area exception to allow Lamb County Electric Cooperative, Inc. (LCEC) to provide electric service to a single customer. Xcel Energy has agreed to release this customer to LCEC because LCEC has facilities closest to the site. LCEC and Xcel Energy agree to the service area exception.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than September 26, 2005 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31572.

TRD-200503875

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 6, 2005



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On August 31, 2005, Tele-One Communications, Incorporated filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60126. Applicant intends to reflect change in ownership/control whereby Tele-One Communications, Incorporated has purchased Utel's client base and all interest in their telephone service business; change in service area to include the entire State, and relinquishment of Certificate Number 60125 held by Utel.

The Application: Application of Tele-One Communications, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 31574.

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 September 21, 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 31574.

TRD-200503876

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 6, 2005



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas on September 2, 2005, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 1998 & Supplement 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities, Docket Number 31585.

The Application: On September 2, 2005, AEP Texas Central Company (AEP Central) and the LCRA Transmission Services Corporation (LCRA TSC) (collectively, Applicants) filed a joint application for approval of their proposal to transfer from AEP Central to LCRA TSC three transmission facilities and associated certificate of convenience and necessity (CCN) rights. AEP Central holds CCN Number 30028 and LCRA TSC holds CCN Number 30110. The Applicants stated that AEP Central owns two existing 69-kV transmission lines located in Starr County, the Rio Grande City to Garceno line and the Rio Grande City to LaGrulla line, which will be rebuilt to 138-kV design standards and will be capable of 138-kV operation, although both facilities will continue to be operated initially at 69-kV. Both of these projects will be completed on September 30, 2005. The third transmission line is the extension of the existing Bates to Goodwin 138-kV transmission line for a new delivery point into the Frontera Power Station in Hidalgo County. This project, which was expedited at the request of the Electric Reliability Council of Texas (ERCOT), was energized on May 12, 2005. All three transmission facilities are with the agreement titled *Rio Grande 69 kV to 138 kV Conversion Project between AEP Central and LCRA TSC* (Project Agreement) executed on July 19, 2002.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 31585.

TRD-200503882

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 6, 2005



Public Notice of Request for Comments

The staff of the Public Utility Commission of Texas (commission) requests comments on a draft statement of the functions of the Independent Market Monitor (IMM) for the Electric Reliability Council of Texas. The staff of the commission has developed a draft rule dealing with the IMM and has posted it on the commission's web site. Several subsections of the draft rule set out the objectives of market monitoring and the responsibilities and authority of the IMM. The staff also plans to hold a workshop regarding the draft IMM rule at a date and time to be determined in the commission's offices in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31111, *Rulemaking to Address an Independent Market Monitor for the Wholesale Electricity Market in ERCOT*, has been established for this proceeding. This rulemaking addresses an amendment to the Public Utility Regulatory Act that was enacted by Senate Bill 408.

Comments may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 not later than September 30, 2005. All responses should refer to Project Number 31111. This notice is not a formal notice of proposed rulemaking, but the comments submitted in response to this notice and at the workshop will assist the commission in developing a proposed rule that will be the subject of a formal notice of proposed rulemaking.

Questions concerning this notice should be referred to Danielle Jausaud, Electric Division, at (512) 936-7396 or by email at danielle.jausaud@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200503894

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 7, 2005



Public Notice of Workshop on Advanced Metering

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding customer and retail electric provider benefits of advanced metering on Friday, October 7, 2005, at 10:00 am in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31418, *Rulemaking Relating to Advanced Metering*, has been established for this proceeding. In this workshop, the commission intends to explore customer and retail electric provider expectations of advanced meters.

Any person desiring to make a presentation at this workshop should contact Shawnee Claiborn-Pinto, at (512) 936-7388 by Monday, October 3, 2005, to be included in the agenda.

Questions concerning the workshop or this notice should be referred to Shawnee Claiborn-Pinto, Sr. Retail Market Analyst, (512) 936-7388. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200503881

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 6, 2005



Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Arlington, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Arlington, Arlington Municipal Airport. TxDOT CSJ No.:0602ARLNG. Scope: Provide engineering/design services to reconstruct hangar access TW between hangars 2E, 2F, & 2G, and between hangars 3 & 4; rehabilitate hangar access TW areas between hangars 2A & 2B, 2B & 2C, 2C & 2D, 2D & 2E, 2F & 2G,

4 & 2H, north of hangar 2A, east of hangar 2F, and north of hangar 3; reconstruct apron south of hangar 2H; construct new south holding pad; pave grass island between hangars 7 & 2A; reconstruct N-S TW on west side of hangars from 2A to 2H; install ILS critical area signs; mark RW 16-34; mark as unusable the existing south holding pad; install slotted drain; install inlet & culvert west of hangar 2B; improve RSA RW 34 end; and reconstruct pavement interface between taxiway & hangars.

The DBE goal is set at 6%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Arlington Municipal Airport."

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 AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Five completed, unfolded copies of Form AVN-550 must be post-marked by U. S. Mail by midnight Tuesday, October 11, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on Wednesday, October 12, 2005 (CDT). Overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Wednesday, October 12, 2005 (CDT). 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 Amy Slaughter.

The consultant selection committee will be composed of Aviation Division staff members and one local government member. 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/avnconsult-info.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. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503895

Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 7, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

The City of Dalhart, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Dalhart, Dalhart Municipal Airport. TxDOT CSJ No.:0604DALHT. Scope: Provide engineering/design services to rehabilitate and mark RW 3-21; rehabilitate and mark RW 17-35; rehabilitate and mark taxiways; install erosion/sedimentation controls; reconstruct TW "B" from TW "A" to RW 3 end; reconstruct TW "A" from RW 3-21 to RW 35 end; and for concrete section replacement.

The DBE goal is set at 6%. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Dalhart Municipal Airport."

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. The Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Four completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight Tuesday, October 11, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. on Wednesday October 12, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Wednesday October 12, 2005 (CDT). 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 Amy Slaughter.

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. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, P.E., Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503897
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: September 7, 2005



Aviation Division - Request for Proposal for Aviation Engineering Services

Presidio County, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Presidio County, Presidio Lely International Airport. TxDOT CSJ No.:0624PRSDO. Scope: Provide engineering/design services to overlay RW 17-35, mark RW 17-35, overlay apron, construct concrete refueling area, overlay stub TW and install signage.

The HUB goal is set at 6%. TxDOT Project Manager is Charles Graham.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Presidio Lely International Airport."

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 AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

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October 12, 2005 (CDT). 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 Amy Slaughter.

The consultant selection committee will be composed of TxDOT Aviation Division staff 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. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Charles Graham, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200503898

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 7, 2005



Aviation Division - Request for Proposal for Professional Services

The City of Beaumont, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Beaumont, Beaumont Municipal Airport. TxDOT CSJ 0620BAMNT. Scope: Prepare an Airport Development Plan which includes, but is not limited to information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to development, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Development Plan should be tailored to the individual needs of the airport.

The DBE goal is set at 0%. TxDOT Project Manager is Chris Munroe.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning 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/avn551.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 AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Five unfolded copies of Form AVN-551 must be postmarked by U. S. Mail by midnight, October 11, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. October 12, 2005 (CDT). Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. October 12, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Edie Stimach. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals then rate and rank each one. The criteria for evaluating planning proposals can be obtained at the Aviation website, www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified of the results and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Chris Munroe, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200503896

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: September 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 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (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 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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***Note:** Back issues of the *Texas Register*, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (800) 226-7199.

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