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Maegan Reichert

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

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

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IN THIS ISSUE

ADOPTED RULES

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.

Opinions

Opinion No. GA-0380

The Honorable Joe Black

Harrison County Criminal District Attorney

Post Office Box 776

Marshall, Texas 75671-0776

Re: Whether a county commissioners court must determine whether a publication is a newspaper of general circulation (RQ-0356-GA)

SUMMARY

There is no express statutory or judicial mandate placing a legal obligation on the Harrison County Commissioners Court to determine whether a publication is a newspaper of general circulation. Because county actions are subject to challenge based on defects in notice, the Harrison County Commissioners Court could benefit by engaging in some method or process by which to make the determination with regard to one or both of the newspapers in Harrison County.

The Harrison County Commissioners Court has broad discretion in the conduct of county business and may decide from among many options what method or process by which to make the determination that best serves the needs of Harrison County.

Opinion No. GA-0381

The Honorable Tim Curry

Tarrant County Criminal District Attorney

Justice Center

401 West Belknap

Fort Worth, Texas 76196-0201

Re: Pretrial release practices in a county subject to chapter 1704 of the Occupations Code, which governs bail bond sureties (RQ-0352-GA)

SUMMARY

Chapter 1704 of the Occupations Code concerning certain bail bond sureties does not prohibit a county from posting signs in county detention facilities informing defendants about statutory provisions for executing a bail bond secured by money or a personal bond and further providing the telephone number of the personal bond office. A county may only post the telephone number of a bail bond referral service in county detention facilities if it can do so in a manner that does not constitute a prohibited referral under Occupations Code section 1704.304(b); such a sign would not satisfy the requirement to post a list of bail bond sureties in certain locations required by section 1704.105. Article 26.04 of the Code of Criminal Procedure concerning indigent defense does not authorize judges of criminal courts to order city jails to post signs concerning release on bail bonds and personal bonds. Generally, employees or agents of a personal bond office may interview prisoners in a city holding facility for information gathering purposes on a voluntary basis.

Opinion No. GA-0382

The Honorable Suzanna Gratia Hupp

Chair, Committee on Human Services

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Standards applicable to the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments in conducting examinations (RQ-0353-GA)

SUMMARY

A licensing examination given by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments must be validated by an independent testing professional in its entirety, including the practical as well as written components of the examination.

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

TRD-200505812
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: December 14, 2005

♦ ♦ ♦

TEXAS ETHICS COMMISSION

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

Advisory Opinion Requests

AOR-529. Whether a member of the legislature is subject to any restrictions or reporting requirements in connection with his or her efforts to raise the profile and raise funds, including the solicitation of funds from potential private donors, for a Texas non-profit corporation and whether the corporation may pay the legislator's expenses related to those efforts.

The request letter provides the following facts. The non-profit corporation has applied to be exempt from income taxation under §501(a), Internal Revenue Code of 1986 by being listed under §501(c)(3) of that code. The corporation has made the election under §501(h) of the Internal Revenue Code of 1986 related to lobbying and will likely lobby the Texas Legislature.

The legislator is not on the board of the corporation, is not an employee of the corporation, does not contract with the corporation, and has no official ties to the corporation. The legislator occasionally provides informal advice to the corporation.

The legislator and corporation promote what is essentially the same public policy position on particular state fiscal solutions. The legislator gives speeches without compensation around the state to various academic, political, and civic groups promoting these state fiscal policies. At these events, the legislator wants to raise the profile and raise funds for the corporation. Additionally, the legislator would like to accompany the corporation's staff and board members to solicit funds personally from potential private donors. All funds will be given directly to the corporation and would not be controlled by the legislator. Lastly, while promoting his or her policies to editorial boards, the legislator wants to promote the corporation and be accompanied by the representatives of the corporation.

The corporation wants to pay the legislator's travel costs to these events as well as pay costs associated with printing and postage for event invitations.

The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-200505785
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: December 13, 2005

♦ ♦ ♦

AOR-531 The Texas Ethics Commission has been asked to consider whether corporate expenditures for minimal time spent by a corporate employee to deliver a political committee check in person at a local campaign event held in the same locale as the employee lives and during normal working hours are permissible under title 15 of the Election Code.

The Texas Ethics Commission is authorized by section 571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government Code; (6) Title 15, Election Code; (7) Chapter 36, Penal Code; and (8) Chapter 39, Penal Code.

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

TRD-200505685
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: December 9, 2005

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 50. PREMISES AND ANIMAL IDENTIFICATION

4 TAC §§50.1 - 50.5

The Texas Animal Health Commission (commission) proposes a new Chapter 50 entitled "Premises and Animal Identification," §§50.1 - 50.5. In order to ensure that all interested parties have adequate time to review and comment the Commission will accept comments for forty-five (45) days from publication of this Chapter in the *Texas Register*.

The number and severity of animal disease outbreaks that have occurred around the globe over the past decade have greatly intensified the need for and the public interest in development and implementation of a national animal identification program for the purpose of protecting animal health. The European Union, Canada, and Australia already have animal identification systems in place. A strong United States animal identification system is in increasing demand as a necessary component of our nation's agricultural infrastructure. The United States Department of Agriculture (USDA) is currently developing a national animal identification system that will be phased in as the National Animal Identification System (NAIS). During the 79th Texas Legislative Session House Bill (HB) 1361 was passed and signed into law authorizing the commission to develop and implement an animal identification system in the state of Texas that is consistent with the NAIS being developed and implemented nationally by USDA.

The National Animal Identification System (NAIS) is a national program intended to identify locations where animals are kept, handled or managed; identify certain animals in the United States; and record and track animal movements. It is being developed by USDA and state agencies with the collaboration and cooperation of associated livestock industries and stakeholders. The purpose is to enable identification and traceback of all animals that may be infected with or exposed to a serious animal disease within 48-hours after identification of the disease. Such capability would help to ensure rapid disease containment and maximum protection of America's animals.

The first priority of the NAIS is to identify locations or premises that hold and manage livestock with a nationally unique, 7-character Premises Identification Number (PIN). States and Tribes administer and manage the premises registration component of the animal identification system. Producers who have registered their premises may obtain identification devices with the official Animal Identification Number (AIN) as this aspect of the national program is phased in. This part of the system will enable animal health officials to determine the location of the animals at the time the AIN was applied. The AIN provides a unique lifetime number for each animal identified as an individual. Producers with species identified as groups or lots may use their premises number in combination with a date to establish official Group/Lot Identification numbers for groups of their animals.

HB 1361 authorizes TAHC to determine when components of the animal identification system would be required rather than voluntary. The proposed rule will address this provision. Additionally, HB 1361 provides authority for TAHC to assess fees for registration of premises and for the commission, by rule, to establish the amount of the premises registration fee. The proposed rule establishes a premises registration fee and establishes a date on which the fee will be applicable.

The new chapter is comprised of five sections as provided below.

Section 50.1 is entitled "Definitions" and contains definition of terms used in this chapter.

Section 50.2 is entitled "Registration Information." This section states the purpose of the program and provides that the commission recognizes certain official identification numbers for this state. This section also provides that a geographic physical location on which animals 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 premises registered as well as how the numbers are assigned.

Section 50.3 is entitled "Registration Requirements and Fee" and provides for a premises registration fee of ten dollars ($10) per year, to be assessed as a biennial fee of twenty dollars ($20.00) The section identifies the information that shall be included on a premises registration application as well as a process through which the commission may deny a registration application. It also provides timeframes for compliance with this chapter and renewal timeframes and access by an authorized agent for the purpose of premises registration.

Section 50.4 is entitled "Public Information" and provides that information collected by the commission is exempt under the Texas Public Information Act.

Section 50.5 is entitled "Violations" and states specific violations of this chapter.

FISCAL NOTE

Mr. Mike Jensen, Deputy Director for Administration and Finance, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be fiscal implications for state government as well as to private individu-

als and business entities that register premises or track animal movements as a result of enforcing or administering the rules. During the 79th Texas Legislative Regular Session, the Texas Legislative Budget Board on May 2, 2005 published a fiscal note for HB 1361 which is published at the Texas Legislature Online at http://www.capitol.state.tx.us/ by typing "HB 1361" and selecting "79th Regular Session-2005" from the drop down menu in the "Bill Action and Vote History" box by clicking the "Go" button. A webpage opens that includes a link at the top titled "Text" which will open a page containing the final enrolled version of the bill, fiscal notes, analysis, and a witness list.

The text of the LBB Fiscal Note is directly applicable and related to the rule proposal to implement HB 1361 and is accessible online at http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=01361&VERSION=3&TYPE=F which states:

Based on a rate of $10 per year and assuming 10,000 premises are registered in 2006, 20,000 in 2007; 90,000 registrations and 10,000 renewals in 2008; 80,000 registrations and 20,000 renewals in 2009, the agency anticipates generating $200,000 in fiscal year 2006, $400,000 in fiscal year 2007 and approximately $2,000,000 per fiscal year thereafter. Fees collected will be deposited into the General Revenue Fund.

The TAHC estimates costs per year for the program to be $301,556 in 2006; $237,516 in 2007; $764,581 in 2008; $727,206 in 2009, and $336,516 in 2010. Some of these costs could potentially be covered with federal funds should federal funds become available for this program. These costs include four FTEs in fiscal years 2006 and 2007 to run the new animal identification program and provide the necessary technological support for the program and seven FTEs in the subsequent years in order to accommodate the higher registration volume. These costs also include other operating costs for the program, estimated to be $101,230 in fiscal year 2006 and $26,460 in fiscal year 2007.

The estimated fiscal impact for technology is $149,314 in fiscal year 2006 and $74,544 in fiscal year 2007. These costs include one FTE for technology support and other one-time technology start-up expenses.

SMALL AND MICRO BUSINESSES

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 which might have been exposed to an animal disease. In order for the commission to implement and maintain a premise identification system it is necessary to utilize a fee to recover the cost for such a system. Also the commission has included in the rule a requirement date of July 1, 2006 in order for a person to register, prior to that date, without a fee. This will allow those required to register to do so without incurring a fiscal impact for the first two years of the registration.

The legislative intent of HB 1361 is to establish a Texas animal identification system consistent with NAIS and to establish a premise registration fee associated with the program. Therefore, the fiscal impact to government is evident above in the costs associated with developing and administering the program; concomitantly, there will be fiscal impact to industries and entities regulated by this rule as the result of the registration fee and the need to collect and manage data related to animal movements in order to derive the public benefit described below.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be compliance with the national program to identify premises which will then facilitate mechanisms for collecting and reporting animal movements to eventually enable 48-hour traceback of movements of any diseased or exposed animal. Such tracking will help identify animals exposed to disease allowing quick detection, containment, and elimination of disease threats. Full implementation of NAIS promotes public health by safeguarding animal health; safeguarding animal health promotes economic trade of Texas animals in national and international commerce.

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 and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed governmental action will not affect private real property. These adopted 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 rules may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us." As previously stated, in order to ensure that all interested parties have adequate time to review and comment the Commission will accept comments for forty-five (45) days from publication of this Chapter in the *Texas Register*.

STATUTORY AUTHORITY

Chapter 50 is proposed under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. During the 79th Legislative Session House Bill (HB) 1361 was passed and signed into law authorizing TAHC to develop and implement a premises and animal identification program. That legislation was codified and can be found in Chapter 161.056 of the Texas Agriculture Code. That section provides that [i]n order to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, the commission may develop and implement an animal identification program that is consistent with the United States Department of Agriculture's National Animal Identification System.

Also 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, as authorized under Section 161.061, shall establish a quarantine on the affected animals or on the affected place.

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. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

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

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

§50.1. Definitions.

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

(1) "Address" means either or both of the following:

(A) A complete street address, either a mailing address issued by the US Postal Service or a physical 911 address.

(B) Global positioning system (GPS) coordinates of the premises headquarters or main entrance and detailed directions, if the location has no assigned street address.

(2) "Animal Identification Number (AIN)" means a unique individual animal identification number assigned by the national numbering system for the official identification of individual animals in the United States. The format contains 15 digits: the first three are the country code (840 for the United States), and the following 12 digits are the animal's unique national number.

(3) "AIN Allocator" means the system administered by APHIS that generates, releases and maintains a record of AINs provided to AIN tag manufacturers.

(4) "AIN Tag Manufacturers" means companies that would be authorized by USDA/APHIS to manufacture approved identification devices and would be responsible for the overall production of the official identification devices that contain AIN. AIN Tag Manufacturers could also be AIN Tag Managers.

(5) "Animal" includes livestock, exotic livestock, domestic fowl, poultry and exotic fowl.

(6) "Caretaker of an Animal" means a person who exercises care or control over an animal or who is the owner, lessee, or manager of a pen, pasture, facility, conveyance or other place in which the animal is located and has control of that place or conveyance.

(7) "Dealer" means a person engaged in the business of buying or selling livestock in commerce as an employee or agent of the vendor, purchaser, or both, or all persons engaged in the business of buying or selling livestock in commerce on a commission basis.

(8) "Exotic livestock" means grass-eating or plant-eating, single-hooved or cloven-hooved mammals that are not indigenous to this state and are known as ungulates, including animals from the bovine, swine, horse, tapir, rhinoceros, elephant, deer, and antelope families.

(9) "Exotic fowl" means any avian species that is not indigenous to this state. The term includes ratites.

(10) "Feedlot" means a confined drylot area for finish feeding of cattle on concentrated feed with no facilities for pasturing or grazing. All cattle in a feedlot are considered a "herd" for purposes of these regulations.

(11) "Group Identification Number (GIN)" means the number used to identify a unit of animals of the same species that is held and managed together throughout the pre-harvest production chain. The GIN consists of a 7-character Premises Identification Number and a digital representation, in the format of MMDDYY, of the date that the group or lot of animals was assembled.

(12) "Livestock" includes cattle, horses, mules, asses, sheep, goats and hogs.

(13) "Livestock market" means a stockyard, sales pavilion, or sales ring where livestock, exotic livestock, or exotic fowl are assembled or concentrated at regular or irregular intervals for sale, trade, barter, or exchange.

(14) "NAIS" means the National Animal Identification System developed by the United States Department of Agriculture (USDA).

(15) "Nonproducer Participant" means a person or other legal entity who engages in NAIS activity in a designated role/s where that role/s is not associated with a specific premises. Nonproducer Participants may provide data to the national animal identification database.

(16) "Officially Identified" means the application of, or the presence of, an official identification number to an animal by means of an identification method or device approved by the commission or by the APHIS Administrator for purposes related to disease surveillance, disease control, or other commission programs or animal movements in intrastate, interstate or international commerce.

(17) "Person" means an individual, corporation, partnership, cooperative, limited liability company, trust or other legal entity.

(18) "Poultry" means domestic fowl, including chickens, turkeys, and game birds.

(19) "Premises" means a physical location, or locations that are under common ownership or management, that represent a unique and describable geographic entity where activity affecting the health and/or traceability of animals may occur. The executive director, in conjunction with the area veterinarian in charge, and/or the affected producer, where appropriate, determines which geographic entities in the state constitute premises under this chapter. Separate geographic physical locations that are under common ownership and management and on which co-mingling of animals occurs may be registered as one premises.

(20) "Premises identification number (PIN)" means a unique official seven (7) character alpha numeric identification code issued under this chapter to identify a specific and unique premises.

(21) "Premises Number Allocator" means the APHIS computer system that assigns PINs to specific locations through interfaces with Standardized or Compliant Premises Registration Systems.

(22) "Radio Frequency Identification Device (RFID)" means unique individual animal identification with an identification device that utilizes radio frequency technology. The RFID devices include ear tags, boluses, implants (injected), and tag attachments (transponders that work in concert with ear tags).

(23) "Register" means to apply for and obtain from the commission a premises registration certificate under this chapter.

(24) "Show, fair, or exhibition" means a show, fair, or exhibition that permits livestock, exotic livestock, domestic fowl, poultry and exotic fowl to enter for the purpose of showing or exhibiting.

§50.2. Registration Information.

(a) Purpose. The purpose of this chapter is to provide for disease control and enhance the ability to trace disease-infected animals or animals that have been exposed to disease, through the development and implementation of an animal identification system that is consistent with the United States Department of Agriculture's (USDA) National Animal Identification System ("NAIS").

(b) Premises and Animal Identification. The commission recognizes the following as official identification numbers in the state:

(1) Premises identification numbers as provided for by this chapter;

(2) Animal identification numbers as provided for by this chapter;

(A) For cattle, elk and elk hybrids an AIN consisting of an RFID device contained in a "button" type ear tag is an official identification device.

(B) AIN consisting of an RFID device is official identification when applied to livestock, exotic livestock, domestic fowl and exotic fowl.

(3) Group identification numbers as provided by this chapter; and

(4) Location, herd, flock or animal identification numbers and devices that are defined as official identification devices and numbers by other commission rules or by USDA.

(c) Premises Registration. Geographic physical locations on which animals 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 premises registered. Owners, managers or caretakers of animals at a premises shall acquire premises identification numbers for premises under their control.

(d) Premises Identification Number. When the commission obtains or receives a completed registration application under this chapter, the commission shall assign a unique code to be known as the Premises Identification Number (PIN), to the location identified in that application. The PIN will be randomly generated and issued by the Commission, an authorized agent of the Commission or United States Department of Agriculture (USDA) through an electronic premises number allocator system. A premises identification number may not be transferred to another location.

§50.3. Registration Requirements and Fees.

(a) Premises Registration without a fee. Prior to July 1, 2006, any person, except as provided by Volume 4 of the Texas Administrative Code (TAC) Chapter 40 and entitled Chronic Wasting Disease ("CWD"), who is the owner, manager or caretaker of a premises in the state of Texas may register that premises and obtain an official premises identification number for the premises without payment of a fee. The premises registration as provided by this subsection shall be valid through June 30, 2008.

(b) Compulsory Premises Registration with Fee. Beginning July 1, 2006, each person who is the owner, manager or caretaker of a premises in the state of Texas, shall register that premises with the Commission. 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 at the time of the registration and every two years on the anniversary date for the issuance of the original premises identification number.

(c) Information required. A registration application shall include all of the following information:

(1) The primary contact's legal name, and any business names under which the registrant keeps livestock on the registered premises.

(2) The primary contact's mailing address.

(3) The primary contact's telephone number.

(4) The physical address of a premises headquarters location.

(5) The types of livestock operations conducted on the premises. The registrant shall designate all of the following that are applicable:

(A) Production unit (ranch, farm, feedlot, etc.).

(B) Livestock market.

(C) Slaughter establishment.

(D) Rendering or carcass collection point.

(E) Veterinary clinic.

(F) Livestock show, fair or exhibition (facility or site).

(G) Quarantine facility.

(H) Laboratory.

(I) Port of entry.

(J) Other. The registrant shall specify the type or types of operations.

(6) The types of animals kept on the premises. The registrant shall designate one or more of the following that are applicable:

(A) Cattle or other bovine animals.

(B) Swine.

(C) Sheep.

(D) Goats.

(E) Horses or other equine animals.

(F) Captive (domestic) cervidae.

(G) Poultry.

(H) Ostriches, emus or other ratites.

(I) Captive game birds.

(J) Llamas, alpacas or other camelids.

(K) Other exotic livestock.

(L) Other. The registrant shall specify the type or types of animals.

(7) Other information that may be required by the Premise Number Allocator System.

(d) The commission may withhold registration of a premises if the application is incorrect or incomplete or the premises is already registered, until all required information is provided and discrepancies are addressed.

(e) Registration timeframes. The premises identification number shall be valid for a two year period from the date that the premises was registered with the commission. Any premises not issued a premises identification number by July 1, 2006 shall be registered in accordance with this chapter. Premises registration issued prior to July 1, 2006 will remain in effect through June 30, 2008, on which date they shall expire. On and after July 1, 2008 these premises registrations shall be renewed in accordance with this chapter, including payment of the premises registration fee.

(f) Renewal. An application for renewal of a premises identification number shall be made by submitting a completed application and biennial fee to the commission. All certificates of registration shall be issued for a period of two (2) years and shall expire twenty four (24) months from the date of the original premises registration, or for those premises registrations which expire on June 30, 2008, the renewal date shall be July 1, 2008 and on each succeeding two year period. Renewal applications shall be completed and submitted 30 days prior to the expiration date.

(g) Nonproducer Participants may provide information, data, or services to the animal identification system as authorized agents of the commission or as provided by USDA in the NAIS. The commission or USDA shall be responsible for assignment of unique nonproducer participant numbers to such individuals or entities. Data supplied to commission or NAIS databases by a nonproducer participant will be associated with that person or entity's nonproducer participant number so that proper data controls and data integrity measures can be maintained. The enrollment of nonproducer participants in the NAIS will be administered through the commission or by USDA on behalf of the commission.

(h) Any subsequent changes to information contained on the premises registration or renewal application shall be reported to the commission within thirty days (30) of the change. These changes can be made online at http://www.tahc.state.tx.us or provided to the commission in writing.

§50.4. Public Information.

(a) Information collected by the commission under this chapter is exempt from the public disclosure requirements of Chapter 552, Government Code. The commission may provide information to another person, including a governmental entity, without altering the confidential status of the information.

(b) The commission may release information to:

(1) A person who owns or controls animals and seeks information regarding those animals, if the person requests the information in writing;

(2) The attorney general's office, for the purpose of law enforcement;

(3) The secretary of the United States Department of Agriculture, for the purpose of animal health protection;

(4) The secretary of the Department of Homeland Security, for the purpose of homeland security;

(5) The Department of State Health Services, for the purpose of protecting the public health from zoonotic diseases;

(6) Any person, under an order of a court of competent jurisdiction;

(7) A state, municipal, or county emergency management authority, for the purpose of management or response to natural or man-made disasters; or

(8) Any person the executive director of the commission considers appropriate, if the executive director determines that:

(A) Livestock may be threatened by a disease, agent, or pest; and

(B) The release of the information is related to actions the commission may take under this section.

(c) Notwithstanding the provisions of subsection (a) of this section, the commission shall release information collected under this section if the release is necessary for emergency management purposes under Chapter 418, Government Code. The release of information under this subsection does not alter the confidential status of the information.

§50.5. Violations.

Violations include:

(1) Persons found to be in violation of the regulations between July 1, 2006, and January 1, 2007, will be issued a warning from the TAHC and will be provided premises registration materials.

(2) Persons who do not register their premises after receiving the warning are in violation and are subject to penalties, as provided under Section 161.056 or 161.148 of the Texas Agriculture Code.

(3) Persons who have not registered their premises by January 1, 2007, are subject to penalties, as provided 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 December 7, 2005.

TRD-200505643
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 719-0700

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.1, §255.11

The Office of Rural Community Affairs (Office) proposes amendments to 10 Texas Administrative Code (TAC), to revise §255.1 and §255.11 concerning general provisions, eligible activities, selection procedures, and selection criteria required to receive Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP).

The proposed amendments add language to 10 TAC §255.1 and 255.11 to identify program years, specify additional ineligible activities, introduce additional threshold criteria, and present new selection criteria.

Charles S. (Charlie) Stone, Executive Director of the Office, 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.

Charles S. (Charlie) Stone, Executive Director of the Office, also has determined that for the period the section is in effect, the public benefit as a result of enforcing the section will be the equitable allocation of CDBG non-entitlement area funds to eligible units of general local government in Texas, and that there will be no cost to small business or individuals.

Comments on the proposals may be submitted in writing to Jerry Hill, General Counsel, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, telephone (512) 936-6701. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

No other code, article, or statute is affected by the proposed amendments.

§255.1. General Provisions.

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

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Program TCDP funds in the format required by the Office or by the TDA for Texas Capital Fund TCF applications

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended, (42 United States Code §§5301 et seq.) and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Office, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office or the TDA has executed a contract.

(7) Office--The Office of Rural Community Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.

(17) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TCDP to eligible units of general local government in the following program areas:

(1) community development fund and community development supplemental fund;

(2) Texas Capital fund. The Texas Capital Fund TCF is administered by the TDA under an interagency agreement with the Office. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) Young v. Martinez fund (discontinued after 2003 program year);

(8) housing fund (discontinued after 2004 program year);

(9) small towns environment program fund;

(10) microenterprise fund (program income);

(11) small business fund (program income);

(12) section 108 loan guarantee pilot program;

(13) community development supplemental fund;

(14) non-border colonia fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TCDP fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefitting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefitting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP fund category.

(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TCDP fund category.

(D) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TCDP application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TCDP fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TCDP requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (D) [~~(C)~~] of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TCDP. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TCDP.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TCDP application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TCDP contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefitting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefitting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TCDP funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TCDP, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TCDP funds, and the use of past TCDP contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) The second public hearing for a housing infrastructure fund application must include a discussion with citizens on the proposed project, including the locations and the project activities, the amount of funds being requested, and the estimated amount of funds proposed for activities that will benefit low and moderate income persons. The published notice for this public hearing must include the location and hours when the application is available for review.

(G) Any public hearing held prior to submission of the application must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TCDP funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TCDP funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TCDP may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office staff and, in the case of TCF applications, by TDA staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office and, in the case of TCF applications, by the TDA due to human or computer error.

(C) Other procedural error. The application is not processed by the Office and, in the case of TCF applications, by the TDA, in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TCDP of the Office no later than 30 days after the date the announcement of community development fund, community development supplemental fund and planning/capacity building fund contract awards is published in the Texas Register. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director of the Office is final. If the appeal concerns a TCF application, the appeal must be submitted in writing to the TDA no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a disaster relief fund or urgent need fund application, the appeal must be submitted in writing to the Office no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, housing fund, colonia fund or Young v. Martinez fund application, the appeal must be submitted in writing to the Office no later than 30 days after the date the announcement of contract awards is published in the Texas Register. The staff of either the Office or the TDA, when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, TCF, housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) Appeals not submitted in accordance with this subsection are dismissed and may not be refiled.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TCDP:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TCDP contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the application due date) within prescribed times as indicated in the Office's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Office regarding a request for repayment of funds to TCDP; or

(D) By not having at least one outstanding delinquent response to a written request from the Office regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TCDP contracts and any other Office contracts. The applicant can meet this threshold if the applicant is ac-

tively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Office.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the state review committee meets to review funding recommendations for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the executive director approves funding recommendations, or in the case of funding recommendations over $300,000, on the date that the Executive Committee reviews the funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Legislative Budget Board for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Executive Committee for review and consideration.

(7) TCDP funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TCDP funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TCDP funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TCDP contracts, unsatisfactory management and administration of previous TCDP contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TCDP contracts, the Office or TDA, in the case of the Texas Capital Fund application may determine that an applicant is ineligible to apply for TCDP funding even though at the application deadline date it meets the threshold and past performance requirements. The Office or TDA, in the case of the Texas Capital Fund applications will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office where the Office finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TCDP funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, colonia fund, disaster relief fund, housing fund, small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the executive director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TCDP funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TCDP funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households.

(5) A survey that was completed on or after January 1, 1993, or January 1, 1994, or January 1, 1995, for a previous TCDP application may be accepted by the Office for a new application to the

extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Office for eligible TCDP activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TCDP Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office Executive Director, or when applicable, approved by the Office Executive Committee or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the Texas Register, TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Office Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Office Executive Committee. Should the TCDP be required to make payments to HUD to cover any loan payments not made by any recipient of a TCDP Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Office may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Office finds that compelling circumstances exist outside the control of the applicant or contractor which justify the approval of such a waiver. The Office shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Office. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TCDP funds awarded under an open TCDP contract within 12 months from the start date of the contract or prior to the application deadlines. This threshold is applicable to TCDP contracts with an original 24-month contract period. To meet this threshold, 50% of the TCDP funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TCDP contract activities do not have to be 50% completed, nor do 50% of the TCDP contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TCDP contracts under the community development fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(2) Submit to the Office the certificate of expenditures (COE) report showing the expended TCDP funds and a final drawdown for any remaining TCDP funds as required by the most recent edition of the TCDP Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TCDP staff. To meet this threshold "expended" means that the construction and services covered by the TCDP funds are complete and a drawdown for the TCDP funds has been submitted prior to the application deadlines. This threshold will apply to an open TCDP contract with an original 24-month contract period and to TCDP contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TCDP contracts under the community development fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microentreprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TCDP funds and a final drawdown for any remaining TCDP funds as required by the most recent edition of the TCDP Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TCDP staff. To meet this threshold "expended" means that the construction and services covered by the TCDP funds are complete and a drawdown for the TCDP funds has been submitted prior to the application deadlines. This threshold will apply to an open TCDP contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 26 months, and to TCDP contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TCDP contracts under the housing infrastructure fund (when the applicant is applying for the [~~current~~] housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 365 months. This threshold is not applicable to previously awarded TCDP contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, [~~and~~] the disaster recovery initiative program the microentreprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TCDP disaster relief fund.

(o) State review committee. The committee shall consult with and advise the Office's executive director on the administration and enforcement policies of the TCDP; review funding recommendations for applicants under the community development fund, community development supplemental fund, and planning/capacity building fund and assist the Office's executive director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's executive director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's executive director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office to encourage minority employment and participation among all applicants under the TCDP. All applicants to the TCDP are required to submit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TCDP contract must meet the requirements for Revolving Loan Funds described in the TCDP Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TCDP contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office.

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based including failure to maintain compliance with application thresholds in paragraphs (h)(1) through (h)(4) of this section, within a period ending 90 days after the date of the TCDP's award letter to the applicant, the award will be immediately withdrawn by the TCDP (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Office's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Office.

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(3) Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(4) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title (relating to General Provisions).

(5) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures in §255.1(l) of this title (relating to General Provisions).

(6) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then

subject to the procedures in §255.1(l) of this title (relating to General Provisions).

(7) Funds recaptured under the housing infrastructure fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(8) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(9) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two [~~three~~] competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TCDP fund categories. Any unallocated STEP funds are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(10) Funds recaptured under the microenterprise loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(11) Funds recaptured under the small business loan fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(12) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(13) Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development supplemental fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TCDP fund categories and, if unallocated to another fund, are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions). This process would also apply to an application under the community development supplemental fund that received a portion of its funds from community development marginal funds. The community development marginal funds would be provided to the replacement application.

(14) For both the community development fund and community development supplemental fund (including applications funded with a portion from each of the two funds), if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(15) Funds recaptured under the Non-border Colonia Fund from the withdrawal of an award remain available to potential Non-Border Colonia Fund applicants during that program year and, if unallocated within the non-border colonia fund, may be used for other TCDP fund categories. Remaining unallocated funds are then subject to the procedures described in §255.1(l) of this title (relating to General Provisions).

(t) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(u) Performance measures. Each applicant for TCDP funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TCDP project implementation manual that is required by the Office to report on Community Development Block Grant program performance measures promulgated by the Executive Committee, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TCDP funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(w) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocated not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the wa-

ter or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and §255.1(n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2005 and 2006 Community Development Fund/Community Development Supplemental Fund grant awards for [~~submitting 2003 community development fund~~] applications that do not include water, sewer, or housing activities are not eligible to receive a 2006 [~~2003~~] grant award from this fund. However, the Office may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2005 or 2006 Community Development Fund/Community Development Supplemental Fund [~~2003 community development fund~~] grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Equipment for installation of water or sewer if justification is provided.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TCDP. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TCDP will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted three times a year as long as funds are available. Funds will be divided among the three application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TCDP will not accept an application for STEP fund assistance until TCDP staff and representatives of the potential applicant have evaluated the self-help process and TCDP staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and [~~. And~~] one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

(A) A strong local perception of the problem exists.

(B) The community has the perception that local implementation is the best and maybe only solution to the problem.

(C) The residents of the community have confidence that they can adequately complete the project.

(D) The community has no strong competing priority.

(E) The local government is supportive of the effort and understands the urgency.

(F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.

(G) Some effort and attention have already been given to local assessment of the problem.

(H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project. The capacity and skills to complete the project include the following:

(A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.

(B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.

(C) The community has equipment that will be needed to complete the project.

(D) The community has letters stating support from local businesses in form of donation of supplies or manpower.

(E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.

(F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The information provided to the TCDP to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(f) Selection procedures.

(1) During each of the two application rounds, the Office staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Office staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Office staff determine that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline. [~~On or before each of the three application deadlines, each eligible applicant may submit one application for the STEP fund. An applicant may not submit an application under this fund and also under any other TCDP fund category if the proposed activity under each application is the same or substantially similar.~~]

(2) The Office will not accept an application under the STEP Fund unless this assessment and invitation process is followed. [~~Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.~~]

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking. [~~The Office then scores the STEP fund applications to determine rankings. Scores on the selection factors are assigned from the information provided by the applicant.~~]

(4) Following a final technical review, the Office staff makes funding recommendations to the executive director of the Office.

(5) The executive director of the Office reviews the final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(6) Upon announcement of contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring applications under the STEP fund. One hundred twenty (120) points are available.

(1) Project impact (total--60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TCDP funds requested minus the TCDP funds requested for engineering and administration, a percentage of the total TCDP construction dollars for each activity will be calculated. The percentage of the total TCDP construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TCDP staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

(A) first time water and/or sewer service--50 [~~60~~]

(B) water activities addressing drought conditions--50 [~~60~~]

(C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--50 [~~60~~]

(D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Texas Department of Health--50 [~~60~~]

(E) activities addressing documented severe water pressure problems--40 [~~50~~]

(F) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) through (E) of this paragraph--30 [40]

(G) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) through (F) of this paragraph--20 [30]

(2) STEP Characteristics, Merits of the Project, and Local Effort [Dollar value of volunteer work to total work] (total--30 [10] points). The TCDP staff will assess the proposal for the following STEP characteristics not scored in other factors: [This score will be based on the percentage of the dollar value of volunteer work to total dollar value of the work performed in the STEP application based on the following scoring levels:]

(A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work; [80% or more - dollar value of volunteer work to total dollar value of the work performed-10]

(B) Local leaders (sparkplugs) willing to both lead and sustain the effort; [70% to 79.99% - dollar value of volunteer work to total dollar value of the work performed-7]

(C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it; [60% to 69.99% - dollar value of volunteer work to total dollar value of the work performed-5]

(D) Capacity--the manpower required for the proposal including skills required to solve the problem; [51% to 59.99% - dollar value of volunteer work to total dollar value of the work performed-2]

(E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TCDP dollars requested per beneficiary, etc.; and

(F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--15 points). An applicant receives up to 15 points on the following two factors.

(A) Ten of the 15 points available are awarded to applicants that do not have a current TCDP STEP grant.

(B) An applicant can receive from zero to five (5) points based on the applicant's past performance on previously awarded TCDP contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two (2) most recent TCDP contracts that have reached the end of the original contract period stipulated in the contract. The TCDP may also assess the applicant's performance on existing TCDP contracts that have not reached the end of the original contract period. Applicants that have never received a TCDP grant award will automatically receive these points. The TCDP will assess the applicant's performance on TCDP contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (total--2 points).

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports (total-1 point).

(iii) [(ii)] The applicant's submission of the required close-out documents within the period prescribed for such submission (total--1 point).

(iv) [(iii)] The applicant's timely response to monitoring findings on previous TCDP contracts especially any instances when the monitoring findings included disallowed costs and [(total--1 point).] the

(iv) [The] applicant's timely response to audit findings on previous TCDP contracts (total--1 point).

(4) Percentage of savings off the retail price (total--10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--9

(iii) 45% - 49.99% savings--7

(iv) 41% - 44.99% Savings--5

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--8

(iii) 45% - 49.99% savings--6

(iv) 41% - 44.99% Savings--3

(C) Communities with populations above 3,000 [3,500] but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--7

(iii) 45% - 49.99% savings--5

(iv) 41% - 44.99% Savings--2

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--6 [8]

(iii) 45% - 49.99% savings--3

(iv) 41% - 44.99% Savings--1

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--5 [6]

(iii) 45% - 49.99% savings--2

(iv) 41% - 44.99% Savings--0

(5) Benefit to low/moderate income persons (total--5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TCDP funds benefit low/moderate-income persons will receive 5 points.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505779
Charles S. Stone
Executive Director
Office of Rural Community Affairs
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 936-6734

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 64. TEMPORARY COMMON WORKER EMPLOYERS

16 TAC §§64.10, 64.20, 64.70, 64.72, 64.80

The Texas Department of Licensing and Regulation ("Department") proposes amendments to 16 Texas Administrative Code Chapter 64, §§64.10, 64.20, 64.70, 64.72, and 64.80, regarding the Temporary Common Worker Employers program.

The proposed rule changes are necessary to update statutory references and conform rule requirements to current law. In addition, the rule changes are needed to reorganize certain provisions for greater clarity and readability and to delete unnecessary provisions. The Department in a separate concurrent rulemaking will propose the repeal of certain rules in 16 Texas Administrative Code Chapter 64, some of which are replaced by these amended rules.

In §64.10, the definition of "consumer" has been amended and a definition of the term "place of business" has been added to clarify the terms. Also, a definition of the term "temporary common worker employer" has been deleted because the term in defined in statute.

Section 64.20 has been amended to remove the requirement that an applicant request an application from the Department and to update rule cross-references.

The title of §64.70 has been clarified by removing the words "Rights and." Other changes to §64.70 include using the term "license holder" in place of "temporary common worker employer" and removing references to "labor hall," since that term is included in the definition of "place of business." Section 64.70(e) is deleted because it established a mostly unenforceable requirement that license holder and consumers attempt to resolve complaints. New subsections (e) - (h) are taken from former §64.71, which is proposed for repeal in a separate rulemaking.

The title of §64.72 has been amended to clarify that it contains licensee labor hall responsibilities. Language in §64.72(a) has been deleted that required service of process on both the license holder and the license holder's agent.

Section 64.80 has been amended to indicate that application fees are non-refundable.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no costs to the state or local government.

Mr. Kuntz also has determined that for each year of the first five-year period the amendments are in effect, the public benefit will be that the rule requirements for temporary common worker employers will be clearer and better organized.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code, Chapter 92 and 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.

The statutory provisions affected by the proposal are those set forth in Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§64.10. Definitions.

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

(1) Consumer--A common worker and/or a [~~third party~~] user of common workers as defined in Texas Labor Code, Chapter 92.

(2) Place of Business--A location, including a labor hall at which a person operates as a temporary common worker employer.

(3) [~~(2)~~] Registered agent--The individual or entity, designated by the temporary common worker employer to which all departmental communications or correspondence will be addressed.

[~~(3) Temporary Common Worker Employer--A person that provides common worker employees to a third party user and includes both a temporary common worker agent and a temporary common worker agency.~~]

§64.20. Licensing Requirements General.

(a) [~~Each person desiring a state of Texas temporary common worker employer license shall request an application from the department.~~] A separate application and fee must be submitted for each place of business [~~or labor hall~~] operated in the state.

(b) All applications shall be submitted on a department-approved [~~the~~] form [~~approved by the executive director and provided by the department,~~] and must be completed.

(c) The application for a license must include a certificate of insurance showing coverage as required in §64.70(f) [~~§64.71(c) of this title (relating to Other Duties of License Holder)~~].

§64.70. [~~Rights and~~] Duties of a License Holder.

(a) A license holder must display the license in a conspicuous place in each place of business [~~or labor hall~~] operated by the license holder in the state.

(b) A license holder [~~Each temporary common worker employer~~] must notify the department, in writing, of any changes in information regarding location or ownership,[~~. The notification must be received by the department~~] no later than 30 days after the change occurs.

(c) A license holder [~~Each temporary common worker employer~~] shall provide employees and consumers with access to the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department.

(d) A [~~The~~] license holder must allow department representatives, as part of an inspection or investigation, to enter the business premises during regular business hours and examine and copy any records that relate directly or indirectly to the inspection or investigation being conducted. The department representatives may inspect all records, books, and documents, whether paper or electronic, pertaining to the business operation.

(e) A license holder shall comply with the terms and provisions of, including payment of the common workers, of contracts entered into between the license holder and consumers. [~~Each license holder must respond within two working days from its receipt of a written complaint from a consumer, and must attempt to resolve the complaint not later than the 10th day after the date of receipt. If the license holder is unable to resolve the complaint within the specified 10 days, the complaint shall be referred to the department.~~]

(f) A license holder shall maintain a policy of insurance with an insurance carrier authorized to do business in the State of Texas in the amount of at least $100,000 per occurrence and $300,000 aggregate, which insures the license holder against liability for damage to persons or property arising out of the license holder's operation, or ownership of any motor vehicle for the transportation of individuals in connection with their business, activities or operations as a temporary common worker employer.

(g) All vehicles used by a license holder for the transportation of common workers shall:

(1) have displayed prominently on the vehicle the name of the temporary common worker employer and the number of their license issued by the department;

(2) be equipped with one 10 pound BC fire extinguisher or two 5 pound BC fire extinguishers; and

(3) comply with all applicable Texas vehicle inspection and safety regulations.

(h) Each license holder shall, semimonthly or at the time of each payment of wages, furnish each client/worker employed by the labor hall either a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing in detail each and every deduction made from the wages.

§64.72. Licensee [~~Additional Provisions for~~] Labor Hall Responsibilities [~~Halls~~].

(a) An attendant must be on the labor hall premises as an agent for legal process for the temporary common worker employer at all times that common workers are on the premises during normal business hours. [~~In addition to service on the registered agent, any process involving a license holder shall be served, in person or by registered mail, on the license holder.~~]

(b) - (h) (No change.)

(i) A license holder shall comply with the provisions of all applicable federal, state, and local statutes, ordinances, regulations, or codes, including, but not limited to, State Department of Health Services food service sanitation regulations, [~~Texas Department of Health Rules on Food Service Sanitation;~~] mechanical, building, electrical, fire prevention, and life safety codes.

(j) A license holder that violates a prohibition, statute, ordinance, or code set forth above may have its license suspended [~~or~~] revoked, or the department may refuse to renew its license under Texas Occupations Code §51.353 [~~under §64.90 of this title (relating to Sanctions)~~].

§64.80. Fees.

(a) The non-refundable application fee for an [~~the~~] initial license is $550.

(b) The non-refundable application fee for a renewal license is $550.

[~~(c) These fees are not refundable.~~]

(c) [~~(d)~~] Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505687
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 463-6208

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16 TAC §64.60, §64.71

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of 16 Texas Administrative Code Chapter 64, §64.60 and §64.71, regarding the Temporary Common Worker Employers program.

The repeal of these sections is being proposed because they have been deleted either as unnecessary or as inconsistent with

statutory requirements, or combined with other sections for clarity.

The Department in a separate concurrent rulemaking action will propose amendments to 16 Texas Administrative Code Chapter 64 that will replace some of the rules affected by the repeal.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repeal is in effect, the public benefit will be less redundancy in that unnecessary rule language has been deleted.

There will be no effect on large, small, or micro-businesses as a result of the proposed repeal. There are no anticipated economic costs to persons who are required to comply with the rules as repealed.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Labor Code, Chapter 92 and 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.

The statutory provisions affected by the proposal are those set forth in Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§64.60. Powers and Duties of the Department and Executive Director.

§64.71. Other Duties of License Holder.

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

Filed with the Office of the Secretary of State on December 9, 2005.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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CHAPTER 82. BARBERS

16 TAC §§82.10, 82.20 - 82.23, 82.28, 82.29, 82.31, 82.32, 82.70 - 82.73, 82.75, 82.76, 82.80, 82.100 - 82.114, 82.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§82.10, 82.20 - 82.23, 82.28, 82.31, 82.32, 82.70 - 82.73, 82.75, 82.76, and 82.80, regarding the Barbers program. The Department also proposes new rules at 16 Texas Administrative Code, §§82.29, 82.100 - 82.114, and 82.120 regarding the Barbers program.

These proposed new and amended rules are necessary to implement provisions of Senate Bill 411, 79th Legislature, Regular Session. Senate Bill 411 abolished the Texas State Board of Barber Examiners and transferred the licensing and regulation of barbering to the Department. These proposed rules are part of a second phase of rulemaking to implement the transfer of the barber program to the Department. The first phase of Department rules concerning the barber program became effective on December 8, 2005. These proposed rules reorganize provisions for greater clarity and readability and update rule requirements, particularly health and safety requirements for barbers.

A definition of "barber establishment" is added to §82.10 because that term is used in proposed new rules concerning Department inspections. Those new inspection rules were filed with the Texas Register on December 5, 2005 and are scheduled to be published for public comment on December 16, 2005. Other proposed changes to §82.10 are the following: deleting language from the definition of "beard" as a result of a prior change to the cosmetology statute, Texas Occupations Code, Chapter 1602; adding definitions of "booth rental permit," "license by reciprocity," and "provisional license" to clarify the purpose of those license and permit types; and deleting the definition of "out of scope" because the substance of that definition now appears in new §82.112(a).

A provision is added to §82.20 specifying that a license application is valid for one year from the date of filing. The requirement in subsection (i) that a licensee notify the Department of a change of mailing address has been moved to §82.70.

In §82.21 provisions relating to examination procedure and eligibility to take an examination have been reorganized and updated. There will no longer be a separate examination application or examination fee that is paid to the Department. Rather, the examination will be part of the license application process after the filing of the license application, with the exception of persons who are eligible to take the written examination early. A provision is added that an examinee must pass the written examination before being eligible to take the practical examination. The minimum age of a model for the practical examination is lowered from 18 to 16 years. The requirements for an examinee's photo identification are amended to specify the type of identification that is acceptable. Finally, the clothing requirement for an examinee taking the practical examination has been changed to allow a smock or professional attire.

Section 82.22 is amended to incorporate eligibility requirements for a booth rental permit. In addition, a provision is added to require that a barbershop or manicurist specialty shop must be inspected and approved by the Department before operation of the shop. This provision tracks the requirement of Texas Occupations Code, §1603.103(a), added by Senate Bill 411.

In §82.23(a), a change is made to clarify that a school must be in compliance with all requirements of Chapter 82 to be eligible for a permit. Subsection (b) is added to require that an applicant for a barber school permit must provide a current financial statement prepared by a certified public accountant, and, if the financial statement is more than 180 days old, the applicant must also provide a supplemental financial statement. This provision implements the requirement of Texas Occupations Code, §1601.352 that a school be financially sound. Subsection (c)

requires that the school be inspected and approved by the Department prior to operation, consistent with Texas Occupations Code, §1603.103(a).

Amendments to §82.28 update and clarify the application process for a reciprocal license. In particular, the rule recognizes that the applicant will pay separate fees for license by reciprocity, the license application, and the law and rules book. The rule also establishes eligibility requirements for a provisional license that may be issued to an applicant for a license by reciprocity. These new eligibility requirements implement Texas Occupations Code, §1603.203, as added by Senate Bill 411, relating to provisional certificates or licenses.

New §82.29 requires that a barber establishment that relocates must apply for a new license and be inspected prior to operation. The rule also requires that if an establishment changes ownership the new owner must apply for a new license within 30 days after the change. A school must be inspected upon a change of ownership but may continue to operate prior to inspection. The rule defines the term "change of ownership," which includes the death or legal incompetency of the owner.

Section 82.31 is amended to change the term of a student permit from one year to two years.

Section 82.32 is amended to remove an unnecessary requirement that a student transferring hours from out of state submit two pictures of the student. A reference to the examination fee, which will no longer be required, is also removed.

In §82.70(c) is amended to refer to the new health and safety provisions. The rule specifies new requirements for licensee clothing while performing barbering services. The rule requires licensees to notify the Department of a name change or change of mailing address. The rule also includes the requirement that a barber or manicurist leasing space on the premises of a barbershop or manicurist specialty shop as an independent contractor obtain a booth rental permit.

In §82.71, amendments to subsection (c) remove specific height and location requirements of a barbershop's display of the word "barber" as unnecessary. A reference to sanitation requirements is updated. The rule specifies that alterations to a shop's floor plan must be in compliance with law and rule provisions. The rule clarifies that shops may establish rules of operation and conduct, including rules relating to clothing, that do not conflict with the Department's rules. Also included are requirements that the permit holder notify the Department of a change in the name of the shop or a change in mailing address.

In §82.72 unnecessary reporting requirements for schools are removed. References to application for enrollment are changed to "student permit" for consistency. The rule specifies that alterations to a school's floor plan must be in compliance with law and rule provisions. The rule clarifies that schools may establish rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with the Department's rules. In light of this, the provision specifying requirements for student clothing has been removed. A reference to sanitation requirements is updated. Also, requirements are added that the permit holder notify the Department of a change in the name of the shop or a change in mailing address.

In §82.73 unnecessary provisions concerning student permits are removed. A provision is added that students are responsible for compliance with the Department's health and safety requirements. The rule requires the student to notify the Department of a change in mailing address. Subsection (h), concerning display of a reenrolled or transferred student's permit, is deleted as unnecessary.

Section 82.75 is amended to add that a registered examination proctor must notify the Department of a name change or change in mailing address.

Section 82.76 is amended to add that barber technicians are responsible for compliance with the Department's health and safety standards. In addition, barber technicians must notify the Department of a name change or change in mailing address.

Technical changes are made to §82.80 to clarify that the application and renewal fees for Class A barber, barber technician, and manicurist include a $10 newsletter fee and that the application and renewal fees for a student permit include the $10 law and rules book fee. School fees are relocated to the appropriate subsection of the rule. The reciprocity fee is amended to make it a $100 fee that is in addition to the license application fee. To implement the proposed new inspection rules, a $35 fee is added for reinspection of a shop prior to operation, and a fee is added for each risk-based inspection of a school or shop.

New §82.120 is a renumbering of repealed §82.101. No other changes are made to that section.

New health and safety standard rules are added at §§82.100 to 82.114. These new rules update and supplement existing sanitation rules to accord with accepted industry standards. Section 82.100 contains definitions of key health and safety terms. Section 82.101 contains standards relating to Department-approved disinfectants. The rule describes the manner in which each type of disinfectant may be used. Section 82.102 contains general health and safety requirements, such as requiring a container of liquid disinfectant at each barber chair or station and the removal of hair cuttings as soon as practicable. Section 82.103 describes health and safety standards that apply specifically to hair cutting, styling, treatment, and shaving. Section 82.104 describes health and safety standards that apply specifically to facial services. Section 82.105 prescribes health and safety standards for waxing. Section 82.106 prescribes health and safety standards for manicure and pedicure services. In particular, the rule requires sterilization of tools by use of an autoclave, dry heat, or ultraviolet light. Section 82.107 contains requirements for the use of electric drill bits in manicuring and pedicuring. Section 82.108 contains requirements for footspas. Section 82.109 relates specifically to wig and hairpiece services. Section 82.110 relates specifically to hair weaving. Section 82.111 prescribes the standards for dealing with blood and body fluids. Section 82.112 prohibits certain products and practices, such as Methyl Methacrylate Liquid Monomers (MMA), which is an adhesive that is banned by the United States Food and Drug Administration (FDA) for use in nail services. The rule states that possession on licensed premises of any of the prohibited items is a violation of Department rules. Section 82.113 prohibits use, possession, or storage of products that are banned or deemed to be poisonous or unsafe by the FDA. Finally, §82.114 contains health and safety standards for barber establishments.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no significant cost to state government as a result of enforcing or administering the proposed rules. There will be some decrease in revenue from the elimination of separate fees for examinations. There will be an increase in revenue from the new $35 fee for a reinspection of a shop before

operation and from the new $150 fee for a risk-based inspection. The revenue from these fees should be sufficient to offset additional costs to the Department. These costs result from additional inspections that are required under inspection rules proposed in a separate rulemaking. There will be no cost to local government. The additional inspections and additional fees result from statutory changes in Senate Bill 411.

Mr. Kuntz also has determined that for each year of the first five-year period the amended and new rules are in effect, the public benefit will be increased health and safety by having clear and up-to-date standards for licensees. The public will also benefit from the elimination of some unnecessary regulatory requirements.

There will be some additional cost to persons who are required to comply with the rules, including small or micro-businesses. Barber licensees who perform manicure and pedicure services will be required to sterilize tools using an autoclave, dry heat, or ultraviolet light. There likely will be some cost to the licensee in acquiring an autoclave or other sterilizer. This sterilization requirement results from statutory changes made by the Texas Legislature. In addition, establishments that are subject to risk-based inspections will be required to pay the new $150 for each risk-based inspection. Shops that are not approved on initial inspection prior to operation will be required to pay the new $35 fee for a reinspection. There also will be some decreased costs of compliance as a result of the elimination of unnecessary regulatory requirements.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rules are proposed under Texas Occupations Code, Chapters 51, 1601 and 1603 which authorizes the Department to adopt rules as necessary to implement these chapters. In particular, the rules implement provisions of Senate Bill 411, 79th Legislature, Regular Session.

The statutory provisions affected by the proposal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the proposal.

§82.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapters 1601 and 1603.

(2) Barber Establishment--A barbershop, manicurist specialty shop, or school, licensed under the Act.

(3) [~~(2)~~] Barber Refresher Course--A department-approved course to renew or update the skills of a currently licensed barber, or a barber who has not practiced for a period of time, or to prepare a formerly licensed barber for the examination.

(4) [~~(3)~~] Barber School--When used in this chapter includes both barber schools and barber colleges.

(5) [~~(4)~~] Beard--The beard extends from below the line of demarcation and includes all facial hair regardless of texture and shall only be trimmed, shaped or cut by a licensed barber.

(6) [~~(5)~~] Board--The Advisory Board on Barbering.

(7) Booth Rental Permit--A permit that allows a barber or manicurist to lease space on the premises of a barbershop or manicurist specialty shop to engage in the practice of barbering as an independent contractor.

(8) [~~(6)~~] Commission--The Texas Commission of Licensing and Regulation.

(9) [~~(7)~~] Department--The Texas Department of Licensing and Regulation.

(10) [~~(8)~~] Hair Relating to Haircutting--The hair extending from the scalp of the head is recognized as the hair trimmed, shaped or cut in the process of hair cutting.

(11) [~~(9)~~] License--A license, permit, certificate, or registration issued under the authority of the Act.

(12) License by reciprocity--A process that permits a barber license holder from another jurisdiction or foreign country to obtain a Texas barber license without repeating barber education or examination license requirements.

(13) [~~(10)~~] Line of Demarcation between "the hair" and "the beard"--The demarcation boundary between scalp hair ("the hair") and facial hair ("the beard") is a line drawn from the bottom of the ear.

[~~(11) Out of Scope--~~]

[~~(A) The use of any blade or cutting tool for the purpose of removing any or all corns or calluses is considered a medical practice and is prohibited. The possession or storage of any blade or cutting tool for the purpose as contemplated by this rule is prima facie evidence of use.~~]

[~~(B) The use of any drill or similar tool designed for use by a manicurist or pedicurist is prohibited without proof of certification of training of that manicurist or pedicurist through a program approved by the department.~~]

[~~(C) Any chemical currently not approved for a particular use by the EPA, FDA, or any other governmental agency is prohibited.~~]

[~~(D) Or any other practice prohibited by the Act or these rules.~~]

(14) Provisional license--A license that allows a person to practice barbering in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(15) [~~(12)~~] Registered Examination Proctor--An individual authorized by the Department to evaluate or grade a practical examination for the department for a certificate or license issued under Texas Occupations Code, Chapter 1601.

(16) [~~(13)~~] Sideburn--A sideburn may be part of a hair cut or style that is a continuation of the natural scalp hair growth, and must not extend below the bottom of the ear lobe, and must not be connected to any other bearded area on the face. Only a licensed barber shall trim, shape or cut the sideburns with any type of razor.

§82.20. Licensing, Permitting and Certification Requirements--Individuals.

(a) To be eligible for a Class A Barber Certificate, a Teacher's Certificate, Barber Technician License, Manicurist License, or Student Permit, an applicant must:

(1) submit the application on a Department approved form;

(2) pass the applicable examination;

(3) pay the fee required under §82.80; and

(4) meet other applicable requirements of the Act and this section.

(b) Class A Barber Certificate--To be eligible for a Class A barber certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.253;

(c) Teacher's Certificate--To be eligible for a teacher's certificate, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.254;

(d) Barber Technician License--To be eligible for a Barber Technician License, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.256;

(e) Manicurist License--To be eligible for a Manicurist license, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.257;

(f) Student Permit--To be eligible for a Student permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.260;

(g) Registered Examination Proctor--To be eligible for an Examination Proctor registration, an applicant must:

(1) have held an active teacher's certificate for at least two of the five years preceding the application;

(2) hold an active teacher's certificate;

(3) obtain a certificate of completion from a department approved training course;

(4) submit a completed application for initial registration on a form approved by the department; and

(5) pay the applicable fee under §82.80.

(h) A license application is valid for one year from the date it is filed with the department. [~~Any person who holds a certificate of registration, permit, or license issued by the department shall notify the department in writing of any name change within thirty days and request a revised registration, permit or license.~~]

[~~(i) It is the responsibility of licensees to maintain a current mailing address on file with the department. All licensees must notify the department not later than 14 calendar days following any change of mailing address.~~]

§82.21. License Requirements--Examinations.

(a) To be eligible for a department examination, an applicant must:

(1) submit a completed license application on a department-approved form;

(2) pay the applicable license application fee under §82.80; and

(3) have completed the number of curriculum hours required by this chapter and the Act.

(b) [~~(a)~~] For a Class A barber or teacher certificate, a student is eligible to take the written examination when the department receives proof of completion of 1,000 curriculum hours, as specified by Texas Occupations Code, §1603.255, relating to early examination. [~~Upon completion of 1,500 hours in not less than nine months, a student may apply for examination for a Class A registered barber certificate. This application shall be on forms furnished by the department.~~]

(c) [~~(b)~~] Examinees must pass the written examination before being eligible to take the practical examination.[~~Each applicant shall submit to the department the following:~~]

[~~(1) the application for examination form;~~]

[~~(2) a statement from the manager or owner of the barber school, stating that the course is completed;~~]

[~~(3) the examination fee;~~]

[~~(4) the student certificate with photograph. Unless the student supplied a size two-inch by two-inch permanent-type photograph (no Polaroid photographs) upon application for enrollment, he or she shall submit a new photograph of this size and type.~~]

[~~(c) Each school will be furnished schedules of examination dates and locations. Students will not be individually notified. Each barber school is responsible for ensuring that applications for examinations are provided to the department no later than the 15th day of the month prior to the date on which the student is scheduled to take any examination, written or practical.~~]

(d) When appearing for an examination for a Class A barber certificate or a teacher's certificate, the examinee shall bring the instruments necessary to give a practical demonstration of barbering services.

(e) An examinee for a manicurist or barber technician license shall bring to the examination any instruments necessary for a practical demonstration of the services distinctive to his or her specialty.

(f) The examinee shall provide a model, of 16[~~18~~] years of age or older, on whom to demonstrate the practical work.

[~~(g) Each examinee is required to wear a clean and fastened barber smock, without any lettering or logos during both written and practical portions of the exams.~~]

(g) [~~(h)~~] To be admitted to an examination, the [~~The~~] examinee must present [~~shall provide~~] a current, valid government-issued photo identification, which includes the applicant's full name and date of birth.

(h) Examinees are required to wear a smock or professional attire for the practical examination.

[~~(i) The department will notify an examinee of the results of the examination by letter. The letter will be sent to the student in care of the barber school that he or she attended.~~]

(i) [~~(j)~~] The department will notify an examinee if the examinee fails either or both portions of the examination. If an examinee fails any part of the examination, he or she will be required to [~~complete a new exam application; submit a new examination fee; and~~] retake the entire failed portion, either written or practical, or both portions in the event the entire examination was failed.

(j) [~~(k)~~] Any student or [~~examination~~] applicant having had a name change during his or her enrollment at any department licensed barber school must notify the department in writing prior to the date on which the student or [~~examination~~] applicant is scheduled to take any examination, written or practical.

§82.22. Permit Requirements--Barbershops, [~~and~~] Manicurist Specialty Shops, and Booth Rental.

(a) To be eligible for a Barbershop or Manicurist Specialty Shop Permit, or a Booth Rental Permit, an applicant must:

(1) submit the application on a department approved form;

(2) pay the fee required under §82.80; and

(3) meet other applicable requirements of the Act and this chapter [~~section~~].

(b) Barbershop Permit--To be eligible for a barbershop permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.303.

(c) Manicurist Specialty Shop Permit--To be eligible for a Manicurist Specialty Shop Permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code §1601.305.

(d) Booth Rental Permit--To be eligible for a booth rental permit, an applicant must hold a valid Department-issued Class A barber certificate or manicurist license and meet the requirements of this section.

(e) A barbershop or manicurist specialty shop must be inspected and approved by the Department prior to the operation of the shop. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

§82.23. Permit Requirements--Barber Schools.

(a) To be eligible for a Barber School Permit, an applicant must:

(1) submit the application on a department approved form;

(2) pay the fee required under §82.80 and any required fee under §82.40; and

(3) meet other applicable requirements of the Act and this chapter [~~section~~].

(b) An applicant must provide a current financial statement prepared by a certified public accountant. If the financial statement is more than 180 days old, an applicant must also provide a supplemental financial statement dated to within 180 days of the application. [~~Barber School Permit--To be eligible for a barber school permit, an applicant must meet the eligibility requirements set forth in Texas Occupations Code Chapter 1601, Subchapter H.~~]

(c) A school must be inspected and approved by the Department prior to the operation of the school. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date. [~~The department shall inspect a proposed new barber school to determine that it fulfills all requirements of the department, applicable rules, and the Act. The required inspection (permit) fee or the re-inspection fee must be received by the department before the initial inspection or re-inspection will be scheduled.~~]

(d) An applicant must provide a current financial statement prepared by a certified public accountant. If the financial statements are more than 180 days old, an applicant must also provide a supplemental financial statement dated to within 180 days of the application.

§82.28. Reciprocity or Endorsement and Provisional Licensure.

(a) The examination requirement shall be waived for any person who completes the application for and payment of fees prescribed by the department for a certificate of registration, license, or permit and who submits satisfactory proof that he or she holds a current, valid certificate, license or permit from another state or country that has substantially equivalent licensing requirements to those of the State of Texas.

(b) Applicant must [~~provide~~]:

(1) submit a [~~The~~] completed application on a department-approved form;[~~, all required documents, and fees for a Class A registered barber certificate and the fee for the current law and rules book published by the department must be submitted to the department office in Austin.~~]

(2) pay the fee for license by reciprocity, the applicable license application fee, and the law and rules book fee, under §82.80; [~~Proof that the applicant is~~]

(3) be at least 16 years of age and have [~~has~~] at least a seventh grade education;[~~.~~]

(4) [~~(3)~~] hold a [~~A~~] current original barber license from the home licensing state or country; and[~~.~~]

[~~(4) A certified transcript of hours completed in an approved barber school and proof of graduation. If the applicant has an apprentice or assistant barber license, proof of 1,500 hours of barber school or working experience will be required from the licensing board or barber school.~~]

[~~(5) One current two-inch by two-inch process photograph (not Polaroid).~~]

(5) provide one of the following:

(A) [~~(6)~~] a [~~A~~] letter from the licensing board in the home state, bearing its official seal of office, stating that the applicant's license is current and in good standing; or [~~.~~]

(B) if the applicant is from a territory or foreign country, provide documents verified by a certified credentialing agency confirming that the licensure in the territory or foreign country was obtained by standards substantially equivalent to those of Texas.

(c) Texas requires 1,500 hours of training substantially equivalent to the Texas curriculum. If the applicant graduated in a state that required less than 1,500 hours, documented work experience may be substituted at the rate of 25 hours per month worked, up to a maximum of 500 hours, or the applicant must complete the balance of hours required in an approved Texas barber school.

(d) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas barber license by reciprocity.

(e) To be eligible for a provisional license, an applicant must:

(1) file a completed application for a Texas barber license by reciprocity;

(2) provide information sufficient for the department to verify the applicant's licensure in good standing, for at least two years immediately preceding the person's Texas application, in the same license type for which the person seeks the certificate or license; and

(3) have been licensed in a jurisdiction or foreign country in which the requirements for obtaining the same certificate or license are substantially equivalent to the requirements under the Act, including passage of a national examination or other examination recognized by the commission relating to the practice of the profession.

(f) Licensure in good standing means that a person must hold an active and valid license in another jurisdiction or foreign country.

(g) A person issued a provisional license may perform those acts of barbering authorized by the provisional certificate or license pending the department's approval or denial of an applicant's license by reciprocity.

(h) A provisional certificate or license is valid until the date the department approves or denies the application for licensure by reciprocity. The department must approve or deny a provisional certificate or license holder's application for a certificate or license by reciprocity not later than the 180th day after the date the provisional certificate or license is issued.

(i) The department shall issue a certificate or license by reciprocity to the provisional certificate or license holder if the person is eligible to hold a certificate or license under the Act.

(j) An applicant for licensure by reciprocity is eligible for a provisional certificate or license only once. A person who is denied licensure by reciprocity and subsequently reapplies for licensure by reciprocity is not eligible to obtain additional provisional certificates or licenses to practice barbering in Texas.

§82.29. Establishment Relocation, Change of Ownership, School Owner Death or Incompetency.

(a) Under the Act, a license is not transferable.

(b) If an establishment relocates, the licensee must apply for a new establishment license and the new establishment must be inspected prior to operation under the Act.

(c) If an establishment changes ownership, the new owner must apply for a license within 30 days after the change of ownership. Additionally, a school must be inspected but may continue to operate prior to inspection. A change of ownership is defined as:

(1) For a sole proprietorship, the licensee no longer owns and/or operates the establishment.

(2) For a partnership, the partnership is dissolved.

(3) For a corporation, the corporation is sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) The death or legal incompetency of the owner.

§82.31. Licenses--License Terms.

(a) The following licenses issued under this chapter shall have a term of two years from the date of issuance:

(1) Class A Barber Certificate;

(2) Teacher's Certificate;

(3) Barber Technician License;

(4) Manicurist License;

(5) Barbershop Permit;

(6) Manicurist Specialty Shop Permit; [~~and~~]

(7) Booth Rental Permit; and[~~.~~]

(8) Student Permit.

(b) The following licenses issued under this chapter shall have a term of one year from the date of issuance:

[~~(1) Student Permit;~~]

(1) [~~(2)~~] Barber School Permit; and

(2) [~~(3)~~] Examination Proctor Registration.

§82.32. Transfer of Student Hours from Out of State.

(a) A student barber may transfer hours of training as a barber from school of other states to Texas by providing to the department:

(1) an official transcript from the school attended, showing hours credited;

(2) a statement from the barber board of that state giving hours credited; and

(3) proof of at least a seventh grade education.[~~;~~]

[~~(4) two recent, identical pictures, size two inches by two inches; and~~]

[~~(5) payment of applicable examination fee.~~]

(b) If the student has not completed 1,500 hours in another state, credit for hours completed will be given when he or she is enrolled in a Texas barber school and when a student permit is issued.

§82.70. Responsibilities of Individual License Holders.

(a) Only a permitted barber school or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(b) A licensed barber who is enrolled in a barber refresher course cannot at the same time be employed or serve as a manager or instructor in the school.

(c) License holders, including Class A barbers, teachers, barber technicians and manicurists are responsible for compliance with the health and safety standards of this chapter [~~sanitation requirements of §82.100~~].

(d) Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see-through fabric.

(e) Licensees shall notify the department in writing of any name change within thirty days of the change.

(f) Licensees shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.71. Responsibilities of Shop Owner and/or Shop Manager.

(a) The owner of a barbershop or manicurist specialty shop and the shop manager in whose name the shop permit is jointly issued, if different from the owner, shall both be responsible individually and jointly for ensuring that all persons who work in a shop are properly licensed at all times. Individuals who do not hold a current license and/or permit required by the department shall not be allowed to engage in barbering. Shop owners and shop managers commit an offense in violation of department rules if an individual with an expired license or permit or no license or no permit engages in barbering in a shop.

(b) Shop owners and/or shop managers shall verify that all employees and independent contractors have current licenses and permits, as applicable.

(c) The shop owner and/or shop manager shall maintain a current list of all individuals who work in a shop at the time of inspection including employees and independent contractors who engage in barbering. The list is to be made available to department inspectors upon demand. The list shall contain at least the following information:

(1) name of each individual working in the shop;

(2) the file number (license number) for each individual;

(3) the booth rental permit number for each independent contractor (booth renter) whose booth rental permit was issued on or after September 1, 2004;

(4) whether the individual is an employee or an independent contractor who engages in barbering;

(5) the type of license or permit held by the individual (e.g., barber, manicurist);

(6) the expiration date of the individual's license and/or permit; and

(7) the expiration date of the independent contractor's booth rental permit.

(d) Each barbershop may display a barber pole. This pole shall be the traditional red, white with the optional blue.

(e) In addition, barbershops shall display on the exterior of the building or premises a sign containing the words "Barber Shop" or "Barber Salon" or any phrase containing the word "Barber" [~~on the entrance door or window of the shop in letters at least three inches high~~].

(f) A barbershop or specialty shop shall not prepare for sale or consumption food and drink except by vending machine, any food or drink must be disposed of in a closed container and the shop shall be separated by a solid wall and have a separate entrance if located in the same building with a restaurant or food preparation area. This rule will not apply to a licensed barbershop or specialty shop in a department store when the sale of food and drink is not immediately adjacent to the shop.

(g) No products may be sold in a barbershop or specialty shop other than products related to the practicing of barbering, including, but not limited to shampoos and treatment products, hair dyes, bleaches, wigs, toupees and hairpieces, cosmetic preparations and skin treatments, manicuring preparations, and implements, appliances, or ornaments used on the hair, skin, or nails.

(h) Permit holders are responsible for compliance with the health and safety standards of this chapter [~~sanitation requirements of §82.100~~].

(i) Alterations to the shop's floor plan must be in compliance with the requirements of the Act and this chapter.

(j) Shops may establish rules of operation and conduct, which may include rules relating to clothing, that do not conflict with this chapter.

(k) Permit holders shall notify the department in writing of any name change of the shop within thirty days of the change.

(l) Permit holders shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.72. Responsibilities of Barber Schools.

(a) If a barber school changes ownership, the new owner shall notify the department of the change and apply for a new permit from the department within thirty days of the change of ownership.

(b) The department shall inspect a barber school that has changed ownership to determine that it fulfills all requirements of the department and of the Act.

(c) A new permit fee shall be required from a barber school that has changed ownership.

~~[(d) Each barber school must inform the department in writing which hours and days the school is open and closed.]~~

(d) [~~(e)~~] A barber school must have one barber chair available for each student in attendance on the practical floor. Additional students in attendance must be assigned to the beginner's department or theory classroom.

(e) [~~(f)~~] A barber school shall furnish each student within seven days of the student's enrollment his or her own copy of the law and rules book published by the department. Each student shall retain permanent ownership of the books so that he or she will have ready access to and be knowledgeable of the laws and rules that regulate barbering.

(f) [~~(g)~~] The barber school must issue within seven days of enrollment each student his or her own textbook or books which shall contain all subjects referred to in Texas Occupations Code §1601.558. The department must approve each textbook or books before it may be used in the barber school curriculum.

(g) [~~(h)~~] Within 30 days of enrollment, a barber school shall furnish to or ensure that each student is equipped with his or her own personal tools which must include the following:

(1) one professional electric clipper of modern design;

(2) one neck duster;

(3) one barber shears;

(4) one thinning shears;

(5) one razor equipped with disposable blades;

(6) three barber combs;

(7) one styptic powder or liquid styptic;

(8) one tool kit (carrying kit);

(9) one hair styling brush;

(10) one neck clip;

(11) one can clipper oil;

(12) two washable uniforms;

(13) one hand held hair dryer; and

(14) one T-edger or outliner.

(h) [~~(i)~~] Optional equipment for the kit will be as follows:

(1) one razor strop;

(2) one razor hone; and

(3) one straight razor.

(i) [~~(j)~~] No student may take instruction or accrue hours for practical work unless he or she is equipped with the tools required above.

(j) [~~(k)~~] Each barber school shall have:

(1) for each student in attendance on the practical floor, enrolled in a manicurist course outlined in §82.120 [~~82.101~~], one complete manicure table, one complete set of manicuring implements for plain and sculptured nails, and one textbook with complete instructions;

(2) an adequate supply of permanent wave rods;

(3) a minimum of two canvas-type wig blocks;

(4) two mannequins, one long-haired and one short-haired;

(5) a minimum of one wig, one hairpiece, and one hairwoven piece;

(6) clock;

(7) bulletin board;

(8) fire extinguisher with current inspection report; and

(9) teacher's desk in classroom.

(k) [~~(l)~~] Each classroom consultant to theory instruction in a barber school shall have a valid Texas barber teacher's certificate, an academic degree or specialized training or expertise in the subject being taught if the subject pertains to material relating to barbering.

(l) [~~(m)~~] A student teacher may instruct theory only if assisted by a person holding a teaching certificate.

(m) [~~(n)~~] Whenever an approved barber school is without the services of at least one teacher who has a valid Texas barber teacher's certificate for all or any portion of three consecutive business days, no[~~the owner, manager, or authorized agent of the school must notify the department in writing. This notification must be on or before the seventh calendar day following the first day of the absence, and must explain the absence and its duration or expected duration. No~~] instruction may be provided, and no student shall accrue hours for either practical work or theory for the duration of such absence.

(n) [~~(o)~~] A barber school shall submit each application for student permit [~~enrollment~~] which shall include the following items;

(1) The original of the application for student permit [~~enrollment~~] form.

(2) Proof of a seventh-grade education or its equivalency. This shall be in the form of a transcript or photostatic copy of the diploma, equivalency certificate, or record.

(3) Two recent, identical, permanent-type photographs, size two-inch by two-inch, with applicant's signature on front. No Polaroid photographs will be accepted.

(o) [~~(p)~~] Application for a student permit [~~enrollment in a barber school~~] must be sent to the department in complete form within ten days of actual date of enrollment.

(p) [~~(q)~~] Each barber school approved by the department shall include in its instruction the curriculum approved by the department.

[~~(r) All hours earned by a student in a barber refresher course must be reported to the department on the school's monthly progress report, and the student permit must be returned by the school owner or manager within 7 days to the department when the student has completed 300 hours.~~]

(q) [~~(s)~~] No business other than the teaching and practicing of barbering can be operated on the premises of a barber school, with the exception of vending machines or retail products directly relating to hair care.

(r) [~~(t)~~] Only a permitted barber school or a licensed barber may advertise in the yellow pages of the telephone directory under "Barber."

(s) Schools may establish rules of operation and conduct, which may include rules relating to student clothing, that do not conflict with this chapter.

[~~(u) A student enrolled in a barber school must wear a clean uniform or smock during school hours.~~]

(t) [~~(v)~~] Barber schools are responsible for compliance with the health and safety standards of this chapter [~~sanitation requirements of §82.100~~].

[~~(w) Barber schools are responsible for compliance with the reporting requirements of §82.102~~].

(u) Alterations to the school's floor plan must be in compliance with the requirements of the Act and this chapter.

(v) Permit holders shall notify the department in writing of any name change of the school within thirty days of the change.

(w) Permit holders shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.73. Responsibilities of Students.

[~~(a) Each person enrolling in an approved barber school in Texas must apply on forms approved by the department.~~]

(a) [~~(b)~~] After the department receives the completed student permit application [~~for enrollment~~] the department will issue a student permit which gives the student the right to do barber service only in the school. Affixed to the student permit will be a current photograph furnished by the student to the school in accordance with §82.72. No student permit is valid unless this photograph is attached thereto.

[~~(c) A student permit expires 12 months after the date of enrollment. If a student has not completed the 1,500 hours required by §82.101 within 12 months from the date of enrollment, upon request by the school the department will reissue the student permit for an additional 12 month period.~~]

(b) [~~(d)~~] The student is responsible for ensuring that a student permit is on display at all times during the student's enrollment at or near the student's[~~students~~] work station. No student may accrue hours for practical work or theory unless the permit is displayed in accordance with this subsection.

(c) [~~(e)~~] When a student withdraws or otherwise interrupts his or her training in a barber school, for more than 60 days, after last date of attendance, the school shall send the student permit to the department within seven days after such withdraw, or interruption. The manager or owner of the barber school shall write on the permit the last day of the student's attendance and the number of credit hours accrued by the student and shall sign the student permit.

(d) [~~(f)~~] If a student returns to the same barber school after interruption the school shall notify the department in writing and a student permit shall be reissued.

(e) [~~(g)~~] When a barber school accepts a transfer of a student from another school the accepting school, shall on behalf of the student, submit to the department in writing the student's enrollment application and a request that the department issue a new student permit for the transferring student.

(1) Upon receipt of the accepting schools notification of transfer the department shall notify the school at which the student was formerly enrolled of such transfer.

(2) Upon receipt of the department's transfer notification the manager or owner of the barber school shall, within seven days of receipt of the department's transfer notification, send to the department the student permit with the following information written on the permit:

(A) the last day of the student's attendance;

(B) the number of credit hours accrued by the student; and

(C) the manager's or owner's signature.

(f) Students are responsible for compliance with the health and safety standards of this chapter.

(g) Students shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

[~~(h) No reenrolled or transferred students may take instruction or accrue hours for practical work or theory unless the new student permit issued by the department is on display at or near the student's work station.~~]

§82.75. Responsibilities of Registered Examination Proctor.

(a) Responsibilities of Registrant

(1) A registrant shall be knowledgeable of and comply with all standards, specifications, and procedures established by the commission or department relating to the evaluation or grading of practical examinations.

(2) A registrant shall be knowledgeable of and have expertise in the subject matter(s) of the practical examination. It is the obligation of the registered examination proctor to exercise reasonable judgment and skill in the evaluation or grading of practical examinations conducted under Texas Occupations Code, Chapter 1601.

(3) A registrant shall be professional, honest and trustworthy in the evaluation or grading of practical examinations and any activities related to evaluating or grading practical examinations.

(4) A registrant must hold a current and active teacher certification throughout the entire period of the registration.

(5) A registrant shall notify the department in writing of any name change within thirty days of the change.

(6) A registrant shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

(b) Responsibilities of Registrant--Prohibited Acts

(1) A registrant shall not perform as an examination proctor without a current and active examination proctor registration.

(2) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current student.

(3) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current employee, employer or co-worker.

(4) A registrant shall not evaluate or grade a practical examination of an applicant who is related to the registrant by family or by other personal or financial interest or relationship.

(5) A registrant shall not knowingly furnish false, misleading, inaccurate, or deceitful information about an applicant or an applicant's performance on a practical examination.

(6) A registrant shall not engage in any act or practice that constitutes a threat, coercion or extortion of an applicant.

(7) A registrant shall not ask for or receive directly from an applicant anything in connection to a registrant's evaluation or grading of an applicant.

(8) A registrant shall not state or imply that the department will grant or approve an applicant's certificate or license, or that the applicant will pass the examination.

(9) A registrant shall not engage in any activity that constitutes dishonesty or misrepresentation of or relating to the registrant's responsibilities.

§82.76. Responsibilities of Barber Technician.

(a) A barber technician may:

(1) assist the barber in shampooing and sterilizing in a barbershop and shall work under the direction of a registered Class A barber; and

(2) give massages, administer facial treatments, and apply makeup.

(b) A barber technician may not cut hair.

(c) Barber technicians are responsible for compliance with the health and safety standards of this chapter.

(d) Barber technicians shall notify the department in writing of any name change within thirty days of the change.

(e) Barber technicians shall maintain a current mailing address on file with the department and must notify the department not later than thirty days following any change of mailing address.

§82.80. Fees.

(a) Application Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$90 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--$35 (includes $10 law and rules book fee)

[~~(6) Barber by Endorsement or Reciprocity from Other States--$180 (includes law and rules book)~~]

(6) [~~(7)~~] Registered Examination Proctor--$25

(7) [~~(8)~~] Barbershop Permit--$60

(8) [~~(9)~~] Manicurist Specialty Shop Permit--$50

(9) [~~(10)~~] Booth Rental Permit--$50

(10) School Original Inspection (Permit)--$1,000

(b) Renewal Fees:

(1) Class A Registered Barber License--$90 (includes $10 newsletter fee)

(2) Barber Teacher Certificate--$70

(3) Barber Technician License--$90 (includes $10 newsletter fee)

(4) Manicurist License--$40 (includes $10 newsletter fee)

(5) Student Permit--$35 (includes $10 law and rules book fee)

[~~(6) Barber by Endorsement or Reciprocity from Other States--$180 (includes law and rules book)~~]

(6) [~~(7)~~] Registered Examination Proctor--$25

(7) [~~(8)~~] Barbershop Permit--$60

(8) [~~(9)~~] Manicurist Specialty Shop Permit--$50

(9) [~~(10)~~] Booth Rental Permit--$50

(10) School Permit--$300

(c) License by Reciprocity or Endorsement--$100 [~~Barber School Fees:~~]

[~~(1) Original Inspection (Permit)--$1,000~~]

[~~(2) Re-inspection--$500~~]

[~~(3) School (Renewal) Permit--$300~~]

[~~(d) Examination Fees:~~]

[~~(1) Student Barber--$40~~]

[~~(2) Student Manicurist--$40~~]

[~~(3) Student Teacher--$70~~]

[~~(4) Five-year Barber Teacher--$70~~]

[~~(5) Expired License Barber (Old Texan)--$75~~]

(d) [~~(e)~~] Issuance of a revised or duplicate license, certificate or permit--$25

(e) [~~(f)~~] Verification of license, permit or certificate to other states--$25

(f) [~~(g)~~] Law and Rules Book Fee--$10

(g) [~~(h)~~] Registered Examination Proctor Department Training Course--$50

(h) [~~(i)~~] Late renewals fees for licenses, certificates and permits issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

(i) Inspection Fees (for each occurrence):

(1) Reinspection of shop prior to operation--$35

(2) Reinspection of school prior to operation--$500

(3) Risk-based Inspection Fees for schools and shops--$150

§82.100. Health and Safety Definitions.

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

(1) Chlorine bleach solutions--A chemical used to destroy bacteria and to disinfect implements and hard, non-porous surfaces; solution should be mixed fresh at least once per day. As used in this chapter, chlorine bleach solutions fall into two categories based on concentration and exposure time:

(A) Low level disinfection (100 - 200 ppm)--Add one teaspoon (5ml) household (5.25%) bleach to one liter water. Soak 10 minutes minimum.

(B) High level disinfection (1,000 ppm)--Add five teaspoons (25ml) household (5.25%) bleach to one liter water. Soak 20 minutes minimum.

(2) Clean or cleansing--Washing with liquid soap and water, detergent, antiseptics, or other adequate methods. Cleansing is not disinfection.

(3) Disinfect or disinfection--The use of chemicals to destroy pathogens on implements and other hard, nonporous surfaces to render an item safe for handling, use, and disposal.

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) an EPA-registered bactericidal, fungicidal, or virucidal disinfectant used in accordance with the manufacturer's instructions;

(B) a chlorine bleach solution consisting of 3/4 cup of 5.25% per gallon of water; or

(C) an Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90%.

(5) EPA-registered bactericidal, fungicidal, or virucidal disinfectant--When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and hard, non-porous surfaces.

(6) Isopropyl or Ethyl alcohol--Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90% are chemicals that are a low-level disinfectant used to destroy bacteria and to disinfect implements.

(7) Multi-use items--Items constructed of hard materials with smooth surfaces such as metal, glass, or plastic typically for use on more than one client. The term includes but is not limited to such items as clippers, scissors, combs, nippers, and some nails files.

(8) Single-use items--Porous items made or constructed of cloth, wood, or other absorbent materials having rough surfaces usually intended for single use including but not limited to such items as tissues, orangewood sticks, cotton balls, some buffer blocks, and gauze.

(9) Sterilize or sterilization--To make free from live bacteria or other microorganisms by use of an autoclave, dry heat or ultraviolet light.

§82.101. Health and Safety Standards--Department-Approved Disinfectants.

(a) EPA-registered bactericidal, fungicidal, or virucidal disinfectants shall be used as follows:

(1) Implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection.

(2) Some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected. EPA-registered bactericidal, fungicidal, or virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates.

(3) Disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled.

(4) In all cases the disinfectant shall be used in accordance with the manufacturers' recommendation or other guidance in this rule.

(5) These chemicals are harsh and may affect the long term use of scissors and other sharp objects. Therefore, the Department recommends leaving items in solution in accordance with the manufacturers' recommendation for effective disinfection.

(b) Chlorine bleach solutions shall be used as follows:

(1) Chlorine bleach at the appropriate concentration is an effective disinfectant for all purposes in a salon.

(2) Chlorine bleach solutions shall be mixed daily at the following minimum standard: 3/4 cup of 5.25% bleach per gallon of water.

(3) Chlorine bleach shall be kept in a closed covered container and not exposed to sunlight.

(4) Chlorine bleach may affect the long-term use of scissors and other sharp objects so the Department does not recommend leaving items in bleach solution beyond 2 minutes for effective disinfection (5 minutes if disinfecting for blood contamination).

(5) Chlorine bleach vapors might react with vapors from other chemicals. Therefore chlorine bleach shall not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, or other disinfecting products) or near flame.

(6) Used or soiled chlorine bleach solution shall be properly disposed of each day.

(c) Isopropyl or Ethyl alcohols shall be used as follows:

(1) Isopropyl alcohol at a concentration of at least 70% and ethyl alcohol at a concentration of at least 90% are low-level disinfectants.

(2) Alcohol shall not be used for blood spills.

(3) All alcohol shall be kept in a covered container. Alcohol deteriorates in some plastics, metals and rubber items.

(4) Alcohol may affect the long-term use of scissors and other sharp objects.

(5) The Department recommends leaving items in alcohol in accordance with the manufacturer's recommendation for effective disinfection. When using alcohol on surfaces other than non-porous materials, the time of contact shall be between 1 to 3 minutes after proper cleaning that removed all visible debris.

(6) Alcohol may be sprayed onto porous or absorbent surfaces after cleaning, with contact time on the surface of the item for at least 1 minute, provided the porous items have not contacted broken or unhealthy skin or nails.

§82.102. Health and Safety Standards--General Requirements.

(a) All barber establishments and licensees shall utilize clean and disinfected equipment, tools, implements, and supplies in accordance with this Chapter, and shall employ good hygiene habits while providing barbering services.

(b) A licensee may not perform services on a client if the licensee has reason to believe the client has a contagious condition such as head lice, nits, ringworm; or inflamed, infected, broken, raised or swollen skin or nail tissue; or an open wound or sore in the area to be serviced.

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter shall be cleaned and disinfected before use on each client.

(d) Single-use equipment, implements, tools or porous items not addressed in this rule shall be discarded after use on a single client.

(e) Electrical equipment that cannot be immersed in liquid shall be wiped clean and disinfected prior to each use on a client.

(f) All clean and disinfected implements and materials when not in use shall be stored in a clean, dry, debris-free environment including but not limited to drawers, cases, tool belts, rolling trays, or hung from hooks. They must be stored separate from soiled implements and materials. Ultraviolet electrical sanitizers are permissible for use as a dry storage container. Non-barber related supplies must be stored in separate drawers or locations.

(g) A container of liquid disinfectant shall be located at each barber chair or station in a barber establishment to be used to disinfect combs, brushes, scissors or other equipment which may be safely immersed in a liquid disinfectant.

(h) Shampoo bowls and manicure tables shall be disinfected prior to use for each client.

(i) Floors in barber establishments shall be thoroughly cleaned each day. All hair cuttings shall be removed as soon as practicable.

(j) All trash containers must be emptied daily and kept clean by washing or using plastic liners.

(k) Hand washing facilities, including hot and cold running water must be provided for employees.

(l) Clean towels shall be used on each client.

(m) Soiled towels shall be removed after use on each client and deposited in a suitable receptacle.

(n) Each barber establishment shall keep all products used in the conduct of their business properly labeled in compliance with OSHA requirements.

§82.103. Health and Safety Standards--Hair Cutting, Styling, Treatment and Shaving Services.

(a) Barbers shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, or virucidal disinfectant, or isopropyl alcohol, ethyl alcohol, or bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, razors, edgers, guards and perm rods.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, comb and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, or virucidal disinfectant in accordance with manufacturer's instructions.

(2) Complete immersion in isopropyl alcohol or ethyl alcohol;

(3) Complete immersion in chlorine bleach solution.

§82.104. Health and Safety Standards--Facial Services.

(a) Barbers and barber technicians shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client. Gloves shall be worn during any type of extraction.

(b) Equipment, implements, tools and materials shall be properly cleaned and disinfected prior to servicing each client in accordance to this rule.

(c) Facial chairs and beds, including headrest for each, shall be cleaned prior to providing service to each client.

(d) After each client, the following implements shall be cleaned and disinfected: tweezers and comedone extractors.

(e) The following implements are single-use items and shall be discarded in a trash receptacle after use: cotton pads, cotton balls, gauze, wooden applicators, disposable gloves, tissues, disposable wipes, lancets, fabric strips and other items used for a similar purpose as one or more of the items listed above.

(f) The following items that are used during services shall be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas that contact skin or products from multi-use containers, sponges and other items used for a similar purpose as any one of the items listed above.

(g) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks and oils shall be used in a manner so as not to contaminate the remaining product. Applicators shall not be re-dipped in product. Permitted procedures to avoid cross contamination are:

(1) Disposing of the remaining product before beginning services on each client; or

(2) Using a single-use disposable implement to apply product and disposing of such implement after use; or

(3) Using an applicator bottle to apply the product.

§82.105. Health and Safety Standards--Waxing Services.

(a) Barbers and barber technicians shall clean the areas of the client's body on which the service is to be administered. Barbers and barber technicians may perform waxing services only on the face and/or neck of a client.

(b) Barbers and barber technicians shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(c) Barbers and barber technicians performing waxing services shall dispose of after each use all wax that has been in contact with a client's skin. Wax may not be reused under any circumstances.

(d) All wax pots shall be cleaned and disinfected in accordance with manufacturer's recommendations. No applicators shall be left standing in the wax at any time.

§82.106. Health and Safety Standards--Manicure and Pedicure Services.

(a) Barbers and barber manicurists shall clean their hands with soap and water or a hand sanitizer prior to performing any services.

(b) Barbers and barber manicurists shall clean the areas of the client's body on which the service is to be administered.

(c) All non-porous manicure and pedicure tools shall be properly cleaned, disinfected and sterilized prior to servicing each client in accordance with this rule.

(d) After each client, the following implements shall be cleaned and disinfected in accordance with the rule: metal pusher and files, cuticle nipper and scissors, tweezers, nail brushes, finger and toe nail clippers and electric file bits.

(e) The following implements are single-use items and shall be discarded after use: orangewood sticks, cotton balls, nail wipes and disposable towels.

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (rough surfaced or absorbent materials) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with Isopropyl or ethyl alcohol. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) The following materials that are used during a manicure and pedicure shall be replaced with new or clean articles for each client: terry cloth towels, finger bowls and spatulas that contact skin or skin products from multi-use containers.

§82.107. Health and Safety Standards--Electric Drill Bits.

(a) Only electric files, drills, or machines specifically designed and manufactured for use in the professional nail industry may be used in any barber establishment for performing manicure or pedicure services. Craft, hardware, and hobby tools cannot be used under any circumstances.

(b) After each use, diamond, carbide, natural and metal bits shall be cleaned by either

(1) using a brush; or

(2) using an ultrasonic cleaner; or

(3) immersing the bit in acetone for 5 to 10 minutes

(c) Immediately after cleaning all visible debris, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant between clients.

(d) Buffing bits and chamois shall be cleaned with soap and water at the end of every day of use in addition to being cleaned or replaced between clients.

§82.108. Health and Safety Standards--Footspas.

(a) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the establishment.

(b) Before use upon each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner.

(1) All water shall be drained and all debris shall be removed from the spa basin.

(2) The spa basin must be cleaned with soap or detergent and water.

(3) The spa basin must be disinfected with an EPA registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The spa basin must be wiped dry with a clean towel.

(c) At the end of each day, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

(1) The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap and water or detergent and water.

(2) Before replacing the screen, one of the following procedures shall be performed:

(A) The screen shall be washed with a chlorine bleach solution of one teaspoon of 5% chlorine bleach to one (1) gallon of water; or

(B) The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(3) The spa system shall be flushed with soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(d) Every other week (bi-weekly), after cleaning and disinfecting as provided in this subsection, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

(1) The spa basin shall be filled completely with water and one (1) teaspoon of 5% bleach for each one (1) gallon of water.

(2) The spa system shall be flushed with the chlorine bleach and water solution of 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(3) The spa system shall be drained and flushed with water before use upon a patron.

(e) A record shall be made on a form prescribe by the Department of the date and time of each cleaning and disinfecting indicating whether the cleaning was a daily or bi-weekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. The record shall indicate if a spa was not used at all during any individual work day. Cleaning and disinfecting records shall be made available upon request by either a patron or a Department representative.

(f) A footspa for which documentation is not maintained in accordance with this rule must be removed from service and not used

again until it has be cleaned and disinfected in accordance with the requirements of this rule and the records have been properly updated.

§82.109. Health and Safety Standards--Wig and Hairpiece Services.

(a) Barbers shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, or virucidal disinfectant, or isopropyl alcohol, ethyl alcohol, or bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, razors, edgers, guards, perm rods and bowls or containers used to clean or color wigs or hairpieces.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, comb and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, or virucidal disinfectant in accordance with manufacturer's instructions.

(2) Complete immersion in isopropyl alcohol or ethyl alcohol;

(3) Complete immersion in chlorine bleach solution.

(e) After the initial sale of a hairpiece, and prior to that hairpiece being resold, it must be properly disinfected.

(f) Used wigs and hairpieces shall be kept in a close bag or container until ready to be cleaned.

(g) Any wig block used to service a hairpiece should be covered with a plastic bag and kept in a sanitized condition after each use. Any wig block used to service hairpieces shall be sprayed with an EPA registered disinfectant solution after each use and kept in a sanitary condition.

(h) Finished wigs and hairpieces shall be placed away from soiled wigs and hairpieces until ready to be returned to the client.

§82.110. Health and Safety Standards--Hair Weaving Services.

(a) Barbers shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) Hair extensions, tracks, needles, and thread shall be stored in a bag or covered container until ready to use. No unrelated items shall be stored in the same bag or container.

(d) Needles shall be sprayed with a disinfectant before use.

§82.111. Health and Safety Standards--Blood and Body Fluids.

(a) Blood can carry many pathogens. For this reason licensees should never touch a client's open sore or wound. Powdered alum, styptic powder, or a cyanoacrylate (e.g. liquid-type bandage) may be used to contract the skin to stop minor bleeding, and should be applied to the open area with a disposable cotton-tipped instrument that is immediately discarded after application.

(b) In the case of blood or body fluid contact on any surface area such as a table, chair, or the floor, an EPA-registered hospital grade disinfectant, a tuberculocidal disinfectant, or a 10% bleach solution shall be used per manufacturer's instructions immediately to clean up all visible blood or body fluids.

(c) If any non-porous instrument is contacted with blood or body fluid, it shall be immediately cleaned and disinfected using an EPA-registered hospital grade disinfectant or a tuberculocidal disinfectant in accordance with the manufacturer's instructions, or totally immersed in a 10% bleach solution for 5 minutes.

(d) If any porous instrument contacts blood or body fluid, it shall be immediately double-bagged and discarded in a closed trash container or biohazard box.

§82.112. Health and Safety Standards--Prohibited Products or Practices.

(a) Licensees may not use any of the following substances or products in performing barbering services:

(1) Methyl Methacrylate Liquid Monomers, a.k.a., MMA

(2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses, e.g., credo blades.

(3) Alum or other astringents in stick or lump form. (Alum or other astringents in powder or liquid form are acceptable.)

(4) Fumigants such as formalin (formaldehyde) tablets or liquids.

(5) A drill or similar tool designed for use by a manicurist or pedicurist, without proof of certification of training of that manicurist or pedicurist through a program approved by the department.

(b) Possession on licensed premises of any item listed in this section is a violation under this chapter.

§82.113. Health and Safety Standards--FDA.

(a) Licensees shall not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States Food and Drug Administration (FDA) or other local, state, or federal governmental agencies responsible for making such determinations.

(b) Possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or other governmental agency shall be considered prima facie evidence of its use.

(c) For the purpose of performing services authorized under the Act, no licensee shall buy, sell, use, or apply to any person monomeric methyl methacrylate (MMA), an adhesive banned for use in nail services by the FDA.

§82.114. Health and Safety Standards--Establishments.

(a) Establishments shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(b) All floors in areas where services under the Act are performed, including restrooms and areas where chemicals are mixed or where water may splash, must be of a material which is not porous or absorbent and is easily washable, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in the reception area.

(c) Plumbing fixtures, including toilets and wash basins, shall be kept clean. They must be free from cracks and similar disrepair that cannot be readily accessible for cleaning.

(d) Each establishment must have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and potable water within the areas where work is performed and supplies dispensed.

(e) Every establishment shall provide at least one restroom located on or near the premises of the establishment. For public safety, supplies shall not be stored in the restroom.

(f) Food shall not be prepared on licensed premises. Pre-packaged food may be sold.

(g) For public health and safety, licensed premises shall eliminate any strong odors through adequate ventilation, including but not limited to, exhaust fans and air filtration to exhaust chemicals and fumes away from the public area and to provide for the input of fresh air.

(h) Licensed premises shall not be utilized for living or sleeping purposes, or any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public. An establishment that is attached to a residence must have an entrance that is separate and distinct from the residential entrance. Any door between a residence and a licensed facility must be closed during business hours.

(i) No animals with the exception of those providing assistance to individuals are allowed in establishments. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§82.120. Technical Requirements--Curricula.

(a) Full-time student teacher. A person enrolled in the six-month postgraduate course as a student teacher in an approved barber school shall complete a total of 26 consecutive weeks of training in such barber school. The full-time course shall consist of not less than:

(1) seven hours, 45 minutes per day for a five-day week; or

(2) six hours, 30 minutes per day for a six-day week.

(b) Part-time student teacher. A part-time student teacher at three-fourths time shall be required to attend school either:

(1) six hours per day for a five-day week for 33 weeks, plus an additional two days; or

(2) five hours per day for a six-day week for 33 weeks, plus an additional two days.

(c) Part-time student teacher requirements. On a part-time basis, a student teacher shall complete the course of 1,000 hours in not more than 18 months or shall surrender the student certificate, unless the student produces sufficient evidence of cause to the department in the form of an affidavit.

(d) Requirement for enrollment. No person may enroll in a teacher's course in an approved barber school before receiving a certificate of registration as a Class A barber.

(e) The curriculum to prepare a student for the examination for the teacher's certificate will consist of 1,000 hours, to include:
Figure: 16 TAC §82.120(e)

(f) The curriculum to prepare a student for the examination for the class A barber certificate will consist of 1,500 hours to include the following:
Figure: 16 TAC §82.120(f)

(g) The curriculum to prepare a student for the examination for the manicurist license will consist of 600 hours, to be completed in a course of not less than 16 weeks, to include:
Figure: 16 TAC §82.120(g)

(h) The curriculum to prepare a student for the examination for the barber technician license will consists of 300 hours, to include:
Figure: 16 TAC §82.120(h)

(i) The curriculum for a barber refresher course will consist of 300 hours to include:
Figure: 16 TAC §82.120(i)

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505781
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 463-6208

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16 TAC §§82.27, 82.100 - 82.102

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 16 Texas Administrative Code, §82.27 and §§82.100 - 82.102, regarding the Barbers program.

This proposed repeal is in conjunction with new and amended rules that are proposed in a separate, concurrent rulemaking. The repeal of these rules is necessary to update and reorganize rules in the barber program. Section 82.27 is repealed because necessary provisions concerning booth rental permits are relocated to other rule sections. Other provisions are deleted as unnecessary. Section 82.100 is repealed because this section is being replaced by new rules at §§82.100 - 82.114 relating to health and safety standards for barbers. Section 82.101 is repealed so that it may be renumbered as §82.120. Section 82.102 is repealed because the monthly reporting requirement for barber schools is no longer prescribed by statute, and the rule is no longer necessary.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repealed rules are in effect, the public benefit will be better organization for rules in the barbering program and the elimination of unnecessary regulatory requirements.

Mr. Kuntz has determined that there may be some decreased cost of compliance to barber schools, including small or micro-businesses, as a result of the proposed repeal of reporting requirements. There are no anticipated economic costs to persons who are required to comply with the rules as repealed.

Comments on the proposal may be submitted to Tamala Fletcher, Legal Assistant, Texas Department of Licensing

and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, Chapters 51, 1601 and 1603 which authorizes the Department to adopt rules as necessary to implement these chapters.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1601 and 1603. No other statutes, articles, or codes are affected by the repeal.

§82.27. Booth Rental Permit.

§82.100. Technical Requirements--Sanitation.

§82.101. Technical Requirements--Curricula.

§82.102. Technical Requirements--Reporting.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505780

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Earliest possible date of adoption: January 22, 2006

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

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CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20 - 83.26, 83.28, 83.29, 83.31, 83.40, 83.65, 83.70 - 83.73, 83.75, 83.80, 83.90, 83.100 - 83.114, 83.120

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, Chapter 83, §§83.10, 83.20 - 83.26, 83.28, 83.31, 83.40, 83.65, 83.70 - 83.73, 83.75, 83.80, and 83.90 and proposes new rules at §§83.29, 83.100 - 83.114, and 83.120, regarding the licensing and regulation of cosmetology. A proposed repeal of 16 Texas Administrative Code, Chapter 83, §§83.100 - 83.103 is simultaneously filed.

These proposed new and amended rules are necessary to implement provisions of Senate Bill 411, 79th Legislature, Regular Session, 2005, relating to provisional licensing and to the sterilization of non-disposable instruments used in manicure and pedicure nail services. Additionally, the proposed new and amended rules reorganize and clarify existing rules, especially relating to health and safety.

The amendment to existing §83.10 adds definitions for a booth rental license, license by reciprocity, and provisional license. Additionally, for clerical purposes, an amendment is proposed to change the word Department to department throughout the section.

The amendment to existing §83.20, relating to licensing requirements, clarifies subsection (b) to state that an applicant must pass a written, practical and oral examination to obtain an instructor license. Additionally, subsection (e) is amended to delete the reference to a student-instructor registration, as students of any type will hold a student permit. A new subsection (g) is proposed to state that a license application is valid for one year from the date it is filed with the department. For clerical purposes, an amendment is proposed to change the word Department to department throughout the section. Similarly, an amendment is proposed to spell hair weaving as two words instead of one throughout the section.

The amendment to existing §83.21, relating to examination requirements, proposes an amendment to subsection (a) to clarify that eligibility for examination requires a license application, license fee, and the completion of the required curriculum hours. This proposed amendment streamlines an applicant's licensure, as an examination is a license requirement. Also, this proposed amendment deletes a requirement that an applicant submit a photograph. The proposed amendment to subsection (b) states that a student is eligible to take an early written examination in accordance with Texas Occupations Code §1603.255. The proposed amendment to subsection (c) states that an applicant must pass the written examination before being eligible to take the practical examination. Additional proposed amendments clarify that an examinee must bring to a practical examination instruments required to demonstrate cosmetology services, that an examinee must present a government-issued, photo identification with an examinee's full name and date of birth to be admitted to an examination, and that an examinee must be dressed in a smock or be professionally dressed for the practical examination.

The proposed amendment to existing §83.22 clarifies salon and booth rental licensee obligations to comply with Texas Occupations Code, Chapters 1602 and 1603, and department rules and to have a copy of the current law and rules book. Change of ownership, including death or incompetency of a salon owner are proposed be deleted from this section and proposed in new rule §83.29. For clerical purposes, an amendment is proposed to change the word Department to department throughout the section.

The proposed amendment to existing §83.23, relating to school licensure, provides a re-organization to bring existing requirements to the same rule section, such as floor plan requirements for licensure. Change of ownership, including death or incompetency of a school owner are proposed to be deleted from this section and proposed in new rule §83.29. A proposed amendment states that school applicants must show financial soundness through financial statements prepared by a certified public accountant. For clerical purposes, an amendment is proposed to change the word Department to department throughout the section.

The proposed amendment to existing §83.24 clarifies the rule for inactive license status and clarifies that renewal of a license on inactive status. For clerical purposes, an amendment is proposed to change the word Department to department throughout the section.

The proposed amendment to existing §83.25 is to provide a change in citation to the curriculum to proposed new §83.120. Also, for clerical purposes, an amendment is proposed to change the word Department to department throughout the section. Similarly, an amendment is proposed to spell hair weaving as two words instead of one throughout the section.

The proposed amendment to existing §83.26 is to provide a clerical correction to change the word Department to department throughout the section.

The proposed amendment to existing §83.28 is to provide rules relating to provisional licensure in accordance with Texas Occupations Code §1603.203. A proposed amendment to subsection (a) clarifies that an applicant for licensure by reciprocity must pay the reciprocity fee, the license application fee, and the law and rules book fee. Further amendments are for clerical purposes in changing the word Department to department and in changing the word nation to country.

The proposed new rule at §83.29 is a re-organization of rules relating to change of ownership or relocation of a cosmetology establishment. The proposed rule also clarifies the definition for change of ownership.

The proposed amendment to existing §83.31 is to state that a student permit is valid for two years. For clerical purposes, hair weaving is proposed as two words instead of one.

The proposed amendment to existing §83.40 and §83.65 are to change the word Department to department for clerical purposes.

The proposed amendment to existing §83.70 clarifies that licensees are responsible for health and safety standards under the rules, that an independent contractor must obtain a booth rental license, and that licensees shall notify the department of a name change. A proposed amendment also requires licensees to wear outer garments, not to include lingerie or see-through fabric. A clerical change is proposed to change the word Department to department.

The proposed amendment to existing §83.71, relating to salon responsibilities, re-organizes existing requirements for salons and booth rental licensees (independent contractors) and adds them to this section. A proposed amendment is made to salon and booth rental licensee equipment to have a clean, dry, debris-free storage area and a suitable receptacle for used towels and linens. The requirement that no animal other than fish kept in an aquarium be permitted in a salon except as those animals providing assistance to individuals is moved to proposed new §83.114, health and safety standards for establishments. The rule clarifies that establishments are responsible for health and safety standards under the rules, that alterations to a floor plan must be done in accordance with the rules and Texas Occupations Code, Chapters 1602 and 1603, and that salons and booth rental licensees are required to have a copy of the current law and rules book.

The proposed amendment to existing §83.72, relating to school responsibilities, clarifies that establishments are responsible for health and safety standards under the rules, that alterations to a floor plan must be done in accordance with the rules and Texas Occupations Code, Chapters 1602 and 1603, and that salons and booth rental licensees are required to have a copy of the current law and rules book. The proposed rule also re-organizes existing facility and equipment requirements for schools and adds them to this section. Also, a proposed amendment allows schools to establish school rules of operation and conduct, including rules relating to absences and student clothing. Further, a proposed amendment clarifies the applicability of Texas Occupations Code §1602.456 by deleting the more narrowly written rule relating to the completion of 150 hours of training to be completed before a private school student may work on a client. Under §1602.456, depending on the course length, the completion of 10% of coursework will yield a different number of hours that either a public or private student is required to complete before the student may work on a client. Finally, for clerical purposes, the word Department is changed to the word department.

The proposed amendment to existing §83.73, relating to student responsibilities, deletes the rule relating to student clothing; a proposed amendment to §83.72 is simultaneously filed to allow schools to establish rules of operation and conduct, including rules relating to student clothing. The proposed rule also clarifies that students are responsible for compliance with health and safety standards under the rules. Finally, for clerical purposes, the word Department is changed to the word department.

The proposed amendment to existing §83.75 changes the word Department to department for clerical purposes.

The proposed amendment to existing §83.80, relating to fees, re-organizes the fees into application fees and renewal fees. A student-instructor registration fee is deleted; a student permit will be utilized for all students. The fee for retaking an examination is deleted and the provisional license fee is deleted. A $150 fee for risk-based inspections is added for salons, public schools and private schools subject to risk-based inspection. The phrase "licensee transcript" is re-stated as "Verification of license, permit or certificate to other states" with no fee change.

The proposed amendment to existing §83.90, relating to administrative sanctions and penalties, deletes subsection (b) for consistent language throughout the Department's programs. Consumer complaints will continue to be accepted through the Department's website, mail, or fax transmission.

Proposed new §§83.100-83.114, relating to health and safety standards, re-organizes existing sanitation rules and adds new rules to clarify and explain health and safety standards in accordance with current industry standards. Proposed new §83.100 provides health and safety definitions; §83.101 states department-approved disinfectants, §83.102 states general requirements; §83.103 states health and safety standards for hair cutting, styling and treatment services; §83.104 states health and safety standards for facial services; §83.105 states health and safety standards for waxing services; §83.106 states health and safety standards for manicure and pedicure services, including the requirement that non-porous instruments used in manicure and pedicure services are sterilized; §83.107 states health and safety standards for electric drill bits; §83.108 states health and safety standards for footspas; §83.109 states health and safety standards for wig and hairpiece services; §83.110 states health and safety standards for hair weaving and hair braiding services; §83.111 states health and safety standards relating to blood and body fluids; §83.112 states prohibited products or practices; §83.113 states FDA-related health and safety standards for cosmetology services, including a prohibition on the use of monomeric methyl methacrylate (MMA); and §83.114 states health and safety standards relating to cosmetology establishments generally.

Proposed new §83.120, relating to curriculum, re-organizes existing curriculum rules and creates a new section relating to curriculum with no substantive change. For clerical purposes, an amendment is proposed to spell hair weaving as two words instead of one throughout the section.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no significant cost to state government and no cost to local government as a result of enforcing or administering the amendments. The Department anticipates no significant effect on state revenues and no effect on local government revenues.

The increased fee for risk-based inspections will be off-set by the Department's operations in enforcing risk-based inspections pursuant to SB 411, 79th Legislature, Regular Session, 2005.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments are in effect, the public benefit will be updated health and safety standards that are more clearly written to enable increased compliance, and more efficient Department operations relating to license examinations.

Mr. Kuntz has determined that there will be an economic cost to individual licensees and/or small or micro-business licensees required to comply with updated sterilization practices of non-disposable manicure and pedicure nail instruments in accordance with SB 411 and HB 3149, 79th Legislature, Regular Session, 2005. Additionally, a $150 fee for risk-based inspections is added for public schools and private schools. Depending on criteria set forth in proposed 16 Texas Administrative Code §§83.50 -83.54, salons may or may not be subject to risk-based inspection.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, 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 proposal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.10. Definitions.

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

(1) Act--Texas Occupations Code, Chapters 1602 and 1603.

(2) Beauty Culture School--A cosmetology school licensed under the Act, public or private.

(3) Board--The Advisory Board on Cosmetology.

(4) Booth rental license--A license that allows an operator, manicurist, facialist, hair weaver or braider, wig specialist, or instructor to lease space on the premises of a beauty shop to engage in the practice of cosmetology as an independent contractor.

(5) [~~(4)~~] Department--The Texas Department of Licensing and Regulation.

(6) [~~(5)~~] Commission--The Texas Commission of Licensing and Regulation.

(7) [~~(6)~~] Cosmetology establishment--A beauty salon, specialty salon or school, public or private, licensed under the Act.

(8) [~~(7)~~] Facialist--A person who holds a specialty license and who is authorized to practice the application of facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of hair by the use of depilatory, mechanical tweezers, or wax.

(9) [~~(8)~~] Instructor--An individual authorized by the department [~~Department~~] to offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(10) [~~(9)~~] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(11) [~~(10)~~] License--A department [~~Department~~] issued permit, certificate, approval, registration, or other similar permission required by law.

(12) License by reciprocity--A process that permits a cosmetology license holder from another jurisdiction or foreign country to obtain a Texas cosmetology license without repeating cosmetology education or examination license requirements.

(13) [~~(11)~~] Manicurist--A manicurist may perform only those services defined in Occupations Code §1602.002(10) and (11).

(14) [~~(12)~~] Operator--An individual authorized by the department [~~Department~~] to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(15) Provisional license--A license that allows a person to practice cosmetology in Texas pending the department's approval or denial of that person's application for licensure by reciprocity.

(16) [~~(13)~~] Registered Examination Proctor--An individual authorized by the department [~~Department~~] to evaluate or grade a practical examination for the department [~~Department~~] for a license issued under Texas Occupations Code, Chapter 1602.

(17) [~~(14)~~] Shampoo Apprentice--A person authorized to perform the practice of cosmetology as defined in §1602.002(3), relating to shampooing and conditioning a person's hair.

(18) [~~(15)~~] Specialty Instructor--An individual authorized by the department [~~Department~~] to offer instruction in an act or practice of cosmetology limited to Texas Occupations Code, §1602.002(7), (9), and/or (10). Specialty instructors may only teach the subject matter in which they are licensed.

(19) [~~(16)~~] Specialty Salon--A cosmetology establishment in which only the practice of cosmetology as defined in Texas Occupations Code, §1602.002(2), (4), (7), (9), or (10) is performed. Specialty salons may only perform the act or practice of cosmetology in which the salon is licensed.

(20) [~~(17)~~] Wet disinfectant soaking container--A container with a cover to prevent contamination of the disinfectant solution and of a sufficient size such that the objects to be disinfected may be completely immersed in the disinfectant solution.

§83.20. License Requirements--Individuals.

(a) To be eligible for an operator license, facialist specialty license, manicurist specialty license, hair weaving [~~hairweaving~~]/braiding specialty certificate, wig specialty certificate, or shampoo/conditioning specialty certificate, an applicant must:

(1) pass a written and practical examination required under §83.21;

(2) submit a completed application on a department-approved [~~Department approved~~] form;

(3) pay the fee required under §83.80;

(4) be at least 17 years of age;

(5) have obtained a high school diploma, or the equivalent of a high school diploma, or have passed a valid examination administered by a certified testing agency that measures the persons ability to benefit from training; and

(6) have completed the following hours of cosmetology curriculum in a beauty culture school:

(A) for an operator license, one of the following:

(i) 1500 hours of instruction in a beauty culture school; or

(ii) 1000 hours of instruction in beauty culture courses and 500 hours of related high school courses prescribed by the department [~~Department~~] in a vocational cosmetology program in a public school.

(B) for a facialist specialty license, 750 hours of instruction.

(C) for a manicurist specialty license, 600 hours of instruction.

(D) for a hair weaving [~~hairweaving~~]/braiding specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.

(E) for a wig specialty certificate, 300 hours of instruction completed in not less than eight weeks from date of enrollment.

(F) for a shampoo/conditioning specialty certificate, 150 hours of instruction completed in not less than four weeks from date of enrollment.

(b) To be eligible for an instructor license, facial instructor specialty license or manicure instructor specialty license, an applicant must:

(1) pass a written, practical, and oral examination required under §83.21;

(2) [~~(1)~~] be at least 18 years of age;

(3) [~~(2)~~]have completed the 12th grade or its equivalent;

(4) [~~(3)~~] pay the fee required under §83.80; and

(5) [~~(4)~~] meet the following requirements:

(A) for an instructor license, hold an active operator license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student [~~of student-instructor training~~], if the applicant [~~student-instructor~~] can verify two years of working experience in a licensed beauty salon.

(B) for a facial instructor specialty license, hold an active operator or facialist specialty license and have completed one of the following:

(i) 750 hours in methods of teaching the student; or

(ii) 250 hours in methods of teaching the student [~~of student-instructor training~~], if the applicant [~~student-instructor~~] can verify two years of facial experience in a licensed beauty salon or facial specialty salon.

(C) for a manicure instructor specialty license, hold an active operator or manicurist specialty license and have completed one of the following:

(i) 750 hours of instruction in cosmetology courses and methods of teaching in a department-approved [~~Department approved~~] school or program, or

(ii) 250 hours in methods of teaching the student [~~of student-instructor training~~], if the applicant [~~student-instructor~~] can verify two years of manicure experience in a licensed beauty salon or manicure specialty salon.

(c) To be eligible for a shampoo apprentice permit, an applicant must:

(1) be at least 16 years of age; and

(2) submit a completed application on a department-approved [~~Department approved~~] form.

(3) An applicant is not required to pay a fee for a shampoo apprentice permit.

(4) An applicant is not required to complete instruction at a cosmetology school as a prerequisite for the issuance of a shampoo apprentice permit.

(5) An applicant may not earn credit hours at a beauty culture school as a result of time spent while holding a shampoo apprentice permit.

(d) To be eligible for a student permit, an applicant must:

(1) obtain the current law and rules book;

(2) submit a completed application on a department-approved [~~Department approved~~] form; and

(3) pay the fee required under §83.80.

(e) In addition to the requirements of subsection (d), to [~~To~~] be eligible to be [~~for~~] a student-instructor [~~registration~~], an applicant must:

(1) have completed the 12th grade or its equivalent; and

[~~(2) submit a completed application on a Department approved form;~~]

[~~(3) pay the fee required under §83.80; and~~]

(2) [~~(4)~~] have one of the following:

(A) for an instructor license, an active operator license;

(B) for an manicure instructor specialty license, an active operator or manicure specialty license; or

(C) for a facial instructor specialty license, an active operator or facialist specialty license.

(f) To eligible for a registered examination proctor registration, an applicant must:

(1) have held an active instructor license for at least two of the five years preceding the application;

(2) hold an active instructor license;

(3) obtain a certificate of completion from a department-approved [~~Department approved~~] training course;

(4) submit a completed application on a department-approved [~~Department approved~~] form; and

(5) pay the applicable fee under §83.80.

(g) A license application is valid for one year from the date it is filed with the department.

§83.21. License Requirements--Examinations.

(a) To be eligible for a department [~~Department~~] examination, an examinee [~~applicant~~] must [~~submit~~]:

(1) submit a completed license application on a department-approved [~~Department approved~~] form; [~~and~~]

(2) pay the applicable license fee under §83.80; and [~~a current photograph.~~]

(3) have completed the number of curriculum hours required under this chapter and the Act.

(b) For an operator license, a student is eligible to take the written examination when the department receives proof of the student's completion of 1,000 operator curriculum hours as specified by Texas Occupations Code, §1603.255, relating to early examination.

(c) Applicants must pass the written examination before being eligible to take the practical or oral examination.

(d) When appearing for an examination, the examinee shall bring the instruments necessary to give a practical demonstration of cosmetology services or a practical demonstration of the services distinctive to his or her specialty.

[(b) The passing grade for a Department written, practical and oral examination is 70.]

(e) [(c)] All department [Department] examinations consist of a written and practical part. Instructor examinations have an additional oral part. A passing grade of 70 on each part is needed to satisfy the examination requirement.

[(d) An examination application is valid for one year from the date it is filed with the Department.]

(f) [(e)] To be admitted to an examination, the examinee must present a current, valid, government-issued photo identification, which [a Department examination, applicants must present an identification card that] includes the applicant's full name, [a photograph] and date of birth. [The following forms of identification are acceptable if they contain the required information:]

[(1) valid driver's license;]

[(2) Texas Department of Public Safety identification card;]

[(3) military or other government identification card;]

[(4) current high school identification card; or]

[(5) resident alien card.]

[(f) Applicants who fail to appear for their scheduled examination will forfeit their examination fee and be required to submit another examination application and fee.]

(g) Examinees are required to wear a smock or professional attire for the practical examination. [Applicants are required to dress in a professional manner for an examination. The following dress code is required to be admitted to a practical examination:]

[(1) plain and clean non-knit clothing;]

[(2) dress slacks or dress skirt: black or white;]

[(3) dress blouse or shirt: white only;]

[(4) a three-quarter length laboratory coat: white only; or]

[(5) instead of (2), (3) and (4); an all-white professional type uniform of washable material with the armpits covered may be worn.]

[(6) Shoes must be clean and plain, black or white (no combination) and no heels over one-inch tall. No sandals, open-heeled, open-toed, open side or high-topped tennis shoes. Any shoe which has loops or holes for laces must be laced. Slip-on style shoes are acceptable.]

(h) Models used in an examination are required to [wear appropriate street clothes and] be at least 16 years of age.

[(i) A copy of the student permit and photograph must be posted at the school if a student continues to accrue hours between the time an examination application is filed and the date scheduled for an examination.]

§83.22. License Requirements--Beauty Salons and Booth Rentals (Independent Contractors).

(a) To be eligible for a beauty salon license, an applicant must:

(1) obtain the current law and rules book;

(2) [(1)] comply with the [facility and equipment] requirements of the Act and this Chapter [for a beauty salon under §83.102];

(3) [(2)] submit a completed application on a department-approved [Department approved] form; and

(4) [(3)] pay the fee required under §83.80.

(b) A beauty salon must be inspected and approved by the department [Department] prior to the operation of the beauty salon. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

[(c) When a beauty salon changes ownership, the salon shall be officially closed under the former owner. The new owner must apply for an original beauty salon license within 30 days after the change of ownership and meet the requirements of subsections (a) and (b) of this section.]

[(d) When a beauty salon moves to a new location, the owner must apply and be inspected for continued operation under subsections (a) and (b) of this section.]

[(e) When an beauty salon owner dies or becomes incompetent, the remaining owners (if jointly owned) or the heirs, devises, executors, administrators, or guardians (if a sole proprietorship), or any combination of the foregoing, may operate the salon for the duration of the owner's license. Within 30 days of a change of ownership under this subsection, the remaining owners or new owners must notify the Department. The remaining owners or new owners under this subsection must comply with the applicable law and rules.]

(c) [(f)] To be eligible for a booth rental (independent contractor) license, an applicant must:

(1) hold an active department-issued [Department issued] cosmetology license;

(2) obtain the current law and rules book;

(3) comply with the [facility and equipment] requirements of the Act or this Chapter [under §83.103];

(4) submit a completed application on a department-approved [Department approved] form; and

(5) pay the fee required under §83.80.

§83.23. License Requirements--Beauty Culture Schools.

(a) To be eligible for a beauty culture school license, an applicant must:

(1) obtain the current law and rules book;

(2) [(1)] comply with the [facility and equipment] requirements of the Act and this Chapter [for a beauty culture school under §83.102];

(3) [(2)] submit a completed application on a department-approved [Department approved] form; and

(4) [(3)] one of the following:

(A) for a private beauty culture school, pay the applicable license and inspection fees required under §83.80 and any required fee under §83.40; or

(B) for a public beauty culture school, pay the applicable inspection fee required under §83.80.

(b) An applicant must provide a current financial statement prepared by a certified public accountant. If the financial statement is more than 180 days old, an applicant must also provide a supplemental financial statement dated to within 180 days of the application.

(c) [~~(b)~~] A beauty culture school must be inspected and approved by the department [~~Department~~] prior to the operation of the school. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

(d) Private beauty culture schools must have and maintain the following:

(1) a floor plan of not less than 3,500 square feet that includes two separate areas, one area for instruction in theory and one area for clinic work, and separate restrooms for male and female;

(2) equipment established by the Department sufficient to instruct a minimum of 50 students;

(3) proof of ownership of building or proof of a lease for the first 12 months of operation;

(4) current inspection report(s) of the fire marshal and electrical inspector approving or confirming compliance with applicable laws and ordinances; and

(5) a copy of the curriculum for each course offered.

(e) Public beauty culture schools must have and maintain the following:

(1) a detailed floor plan showing not less than 2,200 square feet that includes office, dispensary, locker room, classroom space, and at least 1,200 square feet of laboratory space;

(2) equipment required by the department;

(3) if off-campus facilities are utilized, proof of a lease for the first 12 months of operation;

(4) current inspection report(s) of the fire marshal and electrical inspector approving or confirming compliance with applicable laws and ordinances; and

(5) a copy of the curriculum approved by the department for each course offered.

~~[(c) When a beauty culture school changes ownership, the school shall be officially closed under the former owner. The new owner must apply for an original beauty culture school license within 30 days after the change of ownership and meet the requirements of subsections (a) and (b) of this section.]~~

~~[(d) When a school moves to a new location or alters the school's floor plan, the owner must apply and be inspected for continued operation under subsections (a) and (b) of this section.]~~

~~[(e) When a school owner dies or becomes incompetent, the remaining owners (if jointly owned) or the heirs, devises, executors, administrators, or guardians (if a sole proprietorship), or any combination of the foregoing, may operate the school for the duration of the owner's license. Within 30 days of a change of ownership under this subsection, the remaining owners or new owners must notify the Department. The remaining owners or new owners under this subsection must comply with the applicable law and rules.]~~

§83.24. Inactive Status ~~[License]~~.

(a) To change a license to [~~be eligible for an~~] inactive status [~~license~~], an applicant must:

(1) submit a completed application on a department-approved [~~Department approved~~] form; and

(2) pay the fee required under §83.80.

(b) A person whose license is on inactive status may not practice cosmetology authorized by that license [~~and is not required to complete continuing education required under §83.25~~].

(c) A license on inactive status must be renewed in accordance with §83.26; however, continuing education is not required for renewal of a license on inactive status.

(d) [~~(c)~~] To change from an inactive license to an active license, an applicant must:

(1) submit a completed application on a department-approved [~~Department approved~~] form;

(2) pay the fee required under §83.80; and

(3) complete the continuing education that is required for the renewal of an active license during the preceding license period. Continuing education hours used to satisfy the requirement for changing from an inactive license status to an active license status may not also be utilized for a future renewal of an active license.

§83.25. License Requirements--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 an operator or instructor license on or after September 1, 2006, a licensee must complete a total of 12 hours of continuing education through department-approved [~~Department approved~~] courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.

(c) To renew a manicure instructor specialty license, manicurist specialty license, facial instructor specialty license, facialist specialty license, hair weaving [~~hairweaving~~]/braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate on or after September 1, 2006, a licensee must complete a total of 8 hours of continuing education through department-approved [~~Department approved~~] courses, of which 4 hours must be in Sanitation required under the Act and 16 Texas Administrative Code, Chapter 83.

(d) If a licensee holds an instructor license, facial instructor specialty license, or manicure instructor specialty license, then, of the total hours required under subsections (b) or (c), the licensee must complete 2 hours in Methods of Teaching in accordance with §83.120 [~~§83.101~~].

(e) For a timely or a late renewal, a licensee must complete the required continuing education hours within the two year period immediately preceding the renewal date.

(f) A licensee may receive continuing education hours in accordance with the following:

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

(2) A licensee may receive continuing education hours for a course if the course provider was approved by the former Texas Cosmetology Commission and the licensee completed the course on or after September 1, 2004 and on or before October 15, 2005.

(3) Except as provided within this subsection, a licensee will receive continuing education hours for only those courses that are registered with the department [~~Department~~], under procedures prescribed by the department [~~Department~~].

(g) A licensee shall retain a copy of the certificate of completion for a course for two years after the date of completion. In conducting any inspection or investigation of the licensee, the department [~~Department~~] may examine the licensee's records to determine compliance with this subsection.

(h) 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) Texas Occupations Code, Chapters 1602 and 1603;

(2) 16 Texas Administrative Code, Chapter 83; and/or

(3) the curriculum subjects listed in 16 Texas Administrative Code, §83.120 [~~§83.101~~].

(i) A registered course may be offered until the expiration of the course registration or until the provider ceases to hold an active provider registration, whichever occurs first.

(j) A provider shall pay to the department [~~Department~~] a continuing education record fee of $5 for each licensee who completes a course for continuing education credit. A provider's failure to pay the record fee for course completions submitted to the department [~~Department~~] on or after February 1, 2006 may result in disciplinary action against the provider, up to and including revocation of the provider's registration under Chapter 59 of this title.

§83.26. Licensing Requirements--Renewals.

(a) To renew an instructor license, manicure instructor specialty license, facial instructor specialty license, operator license, manicurist specialty license, facialist specialty license, hair weaving [~~hair-weaving~~]/braiding specialty certificate, wig specialty certificate, and shampoo/conditioning specialty certificate, an applicant must:

(1) complete the continuing education requirements under §83.25;

(2) submit a completed application on a department-approved [~~Department approved~~] form; and

(3) pay the applicable fee required under §83.80.

(b) In addition to the requirements of subsection (a), to renew an examination proctor registration, a registrant must hold an active instructor license.

(c) To renew and maintain continuous licensure, the renewal requirements under this section must be completed prior to the expiration of the license. A late renewal means the licensee will have an unlicensed period from the expiration date of the expired license to the issuance date of the renewed license. During the unlicensed period, a person may not perform any act of cosmetology that requires a license under this chapter.

(d) Non-receipt of a license renewal notice from the department [~~Department~~] does not exempt a person from any requirements of this chapter.

§83.28. Reciprocity or Endorsement and Provisional Licensure.

(a) To be granted a license through reciprocity or endorsement, an [~~and~~] applicant must:

(1) submit a completed application on a department-approved [~~Department approved~~] form;

(2) furnish a certified transcript of hours from the state board, territory, or foreign country [~~nation~~] from which the applicant is applying;

(3) provide one of the following:

(A) if an applicant is from another state of the United States, provide documentation that licensure in another state was obtained by standards substantially equivalent to those of Texas; or

(B) if an applicant is from a territory or foreign country [~~nation~~], provide documents verified by the department [~~Department~~] or a certified credentialing agency confirming that licensure in the territory or foreign country [~~nation~~] was obtained by standards substantially equivalent to those of Texas.

(4) obtain the current law and rules book;

(5) furnish a valid license or certificate; and

(6) pay the reciprocity fee, applicable license application fee, and law and rules book fee required under §83.80.

(b) A person who cannot provide documentation of standards equivalent to those in Texas must pass the applicable written and practical examination for the license.

(c) A person issued a license through reciprocity or endorsement may perform those acts of cosmetology authorized by the license.

(d) The department may issue a provisional license to applicants currently licensed in another jurisdiction who file an application for a Texas cosmetology license by reciprocity.

(e) To be eligible for a provisional license, an applicant must:

(1) file a completed application for a Texas cosmetology license by reciprocity;

(2) provide information sufficient for the department to verify the applicant's licensure in good standing for at least two years in the license type for which the person seeks the certificate or license; and

(3) have been licensed in a jurisdiction or foreign country in which the requirements for obtaining the same certificate or license are substantially equivalent to the requirements under the Act, including passage of a national examination or other examination recognized by the commission relating to the practice of the profession.

(f) Licensure in good standing means that a person must hold an active and valid license in another jurisdiction or foreign country.

(g) A person issued a provisional license may perform those acts of cosmetology authorized by the provisional certificate or license pending the department's approval or denial of an applicant's license by reciprocity.

(h) A provisional certificate or license is valid until the date the department approves or denies the application for licensure by reciprocity. The department must approve or deny a provisional certificate or license holder's application for a certificate or license by reciprocity not later than the 180th day after the date the provisional certificate or license is issued.

(i) The department shall issue a certificate or license by reciprocity to the provisional certificate or license holder if the person is eligible to hold a certificate or license under the Act.

(j) An applicant for licensure by reciprocity is eligible for a provisional certificate or license only once. A person who is denied licensure by reciprocity and subsequently reapplies for licensure by

reciprocity is not eligible to obtain additional provisional certificates or licenses to practice cosmetology in Texas.

§83.29. Establishment Relocation, Change of Ownership, School Owner Death or Incompetency.

(a) Under the Act, a license is not transferable.

(b) If an establishment relocates, the licensee must apply for a new establishment license and the new establishment must be inspected prior to operation under the Act.

(c) If an establishment changes ownership, the new owner must apply for a new establishment license within 30 days after the change of ownership and be inspected; however, an establishment may continue to operate pending the department's inspection. A change of ownership is defined as:

(1) For a sole proprietorship, the licensee no longer owns and/or operates the establishment.

(2) For a partnership, the partnership is dissolved.

(3) For a corporation, the corporation is sold to another person or entity. A change of ownership does not include corporate officer or stockholder restructuring.

(4) Legal incompetence or death.

§83.31. Licenses--License Terms.

(a) The following licenses have a term of two (2) years:

(1) operator license;

(2) manicurist specialty license;

(3) facialist specialty license;

(4) hair weaving [~~hairweaving~~]/braiding specialty certificate;

(5) wig specialty certificate;

(6) shampoo/conditioning specialty certificate;

(7) instructor license;

(8) facial instructor specialty license;

(9) manicure instructor specialty license;

(10) booth rental (independent contractor) license;

(11) beauty and specialty salon license ; and

(12) student permit.

(b) The following licenses have a term of one (1) year:

(1) private beauty culture school license;

(2) public secondary or postsecondary beauty culture school certificate; and

(3) examination proctor registration.

(c) A shampoo apprentice permit expires one (1) year from the date of issuance and is not renewable.

[~~(d) A student permit and student-instructor registration are valid for the student's duration in school until the student withdraws from school or takes an examination for licensure.~~]

§83.40. Private Beauty Culture School Tuition Protection Account.

(a) Pursuant to §1602.463 of the Act, in the event that a student from a closed school is placed in another beauty culture school, the Private Beauty Culture School Tuition Protection Account is created to pay the tuition costs and expenses incurred by a school in providing training directly related to educating the student from the closed school.

(b) In each year in which the balance of the Private Beauty Culture School Tuition Protection Account is less than $200,000 the department [~~Department~~] will determine a fee that shall be paid by all private beauty culture schools to the account.

(c) The necessity for assessing the fee will be determined by the department [~~Department~~] when it conducts it's annual account balance review prior to December 31st. The fee that is assessed by the department [~~Department~~] shall be in effect for a period of 12 months.

(d) The fee shall be paid by each private beauty culture school, upon annual renewal of the license during the 12-month period and shall be paid in addition to the renewal fee. The renewal notice sent by the department [~~Department~~] will reflect the fee due to the account.

(e) In addition to any other fees, all new schools applying for a private beauty culture school license shall pay the prescribed fee to the account before a license will be issued.

(f) In the event a student from a closed school cannot be placed or does not accept a place in another school, a refund, calculated under the closed school's refund policy, will be paid from the Private Beauty Culture School Tuition Protection Account and the total payment of a claim may not exceed $35,000.

§83.65. Advisory Board on Cosmetology.

(a) The purpose of the Advisory Board on Cosmetology is to advise the Commission and department [~~Department~~] on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

(b) The board is composed of five licensees and persons specified in the Act. Board members will serve staggered six-year terms.

(c) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose, and only to the extent of the appropriation.

(d) Expense reimbursements to board members are limited to authorized expenses incurred while traveling to and from board meetings and shall be limited to those allowed by the State of Texas Travel Allowance Guide, the Texas Department of Licensing and Regulation policies governing employee travel allowances, and the General Appropriations Act.

§83.70. Responsibilities of Individuals.

(a) Licensees are responsible for compliance with the health and safety standards of this this chapter [~~License holders are responsible for compliance with the sanitation requirements under §83.100.~~]

[~~(b) Booth rental (independent contractor) licensees are responsible for compliance with the requirements under §83.103.~~]

(b) [~~(c)~~] A licensee shall be restricted to working in a cosmetology establishment licensed under this chapter.

(c) A licensee who leases space as an independent contractor on the premises of a cosmetology establishment to engage in any practice of cosmetology authorized under the Act must obtain a booth rental permit.

(d) Specialty certificate holders may only perform the practice authorized by the specialty certificate.

(e) Individual licenses, booth rental (independent contractor) licenses, and the last inspection report must be posted at the licensee's work station in the public view.

(f) A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license, certificate or permit.

(g) Licensees shall notify the department in writing of any name change within 30 days of the change.

(h) [~~(g)~~] Licensees [~~Individuals licensed under §83.20~~] must notify the department [~~Department~~] not later than thirty (30) days following any change of address. The department [~~Department~~] may send all notices on other information required by applicable laws and rules to any licensee's last known mailing address on file with the department [~~Department~~].

(i) [~~(h)~~] Cosmetology services may be performed on incapacitated or deceased persons provided that the appointment is made through the salon. Licensees must have their license in their possession while performing the service.

(j) Licensees shall wear clean top and bottom outer garments and footwear while performing services authorized under the Act. Outer garments include tee shirts, blouses, sweaters, dresses, smocks, pants, jeans, shorts, and other similar clothing and does not include lingerie or see through fabric.

§83.71. Responsibilities of Beauty Salons.

(a) Each establishment must have a copy of the current law and rules book [~~Beauty and specialty salons are responsible for compliance with the sanitation requirements under §83.100~~].

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter [~~Beauty and specialty salons are responsible for compliance with the facility and equipment requirements under §83.102~~].

(c) Any alterations of a cosmetology establishment's floor plan must be done in accordance with this chapter and the Act.

(d) [~~(c)~~] Salons may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the department [~~Department~~] inspector with a list of renters upon request.

~~[(d) With the exception of a dog for sightless or hearing impaired persons, a security dog during closed hours, and aquariums containing fish, no animal, fowl, reptile, insect, etc. may be present at a beauty salon.]~~

(e) Each salon shall comply with the following requirements:

(1) a minimum of 150 square feet for the first licensee and not less than 30 square feet for each additional licensee. Dispensary, reception areas, restrooms, utility, heating and/or cooling facilities and retail floor space are not included as working floor space;

(2) a sink with hot and cold running water;

(3) an identifiable sign with the salon's name;

(4) a suitable receptacle for used towels/linen;

(5) one wet disinfectant soaking container;

(6) a clean, dry, debris-free storage area;

(7) a minimum of one covered trash container; and

(f) In addition to the requirements of subsection (e):

(1) beauty salons shall provide the following equipment:

(A) one working station for each operator;

(B) one styling chair for each operator;

(C) an adequate or sufficient amount of shampoo bowls; and

(D) one dryer for each operator.

(2) manicure salons shall provide the following equipment:

(A) one manicure table with light for each manicurist;

(B) one manicure stool for each manicurist; and

(C) one professional client chair for each manicure station.

(3) facial salons shall provide the following equipment:

(A) one facial couch/chair for each facialist; and

(B) one mirror for each facialist.

(4) combination manicure/facial salons shall provide the following equipment:

(A) the requirements for manicure salon; and

(B) the requirements for facial salon.

(5) wig salons shall provide the following equipment:

(A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;

(B) one wig dryer; and

(C) two canvas wig blocks.

(6) hair weaving/braiding salons shall provide the following equipment:

(A) one work station for each hair weaver/braider;

(B) one styling chair for each hair weaver/braider;

(C) a sufficient amount of shampoo bowls; and

(D) one chair dryer/handheld dryer for each three hair weaver/braiders.

(g) All booth rental (independent contractor) licensees must have the following items:

(1) one wet disinfectant soaking container;

(2) a clean, dry, debris-free storage area;

(3) a suitable receptacle for used towels/linen; and

(4) a current law and rules book.

(h) In addition to the requirements in subsection (g), booth rental (independent contractor) licensees must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in a facial salon, one facial couch or facial chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(i) Booth rental (independent contractor) licensees must post the original or a duplicate booth rental license issued by the department at each practice location.

(j) Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

(k) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.

§83.72. Responsibilities of Beauty Culture Schools.

(a) Each establishment must have a copy of the current law and rules book.[In addition to the requirements of Texas Occupations Code, Chapter 1602, beauty culture schools and programs are responsible for compliance with the following:]

[(1) sanitation requirements under §§83.100;]

[(2) curriculum requirements under §83.101; and]

[(3) facility and equipment requirements under §83.102.]

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Any alterations of a cosmetology establishment's floor plan must be done in accordance with this chapter and the Act.

(d) [(b)] The curriculum shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection. [; and]

(e) [(c)] Schools must have not less than one full-time licensed instructor on staff and on duty during business hours for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school on a full-time basis. The student-instructor shall at all times work under the direct supervision of the full-time licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum activities. No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(f) [(d)] Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits should be in alphabetical order.

(g) [(e)] Schools must use a time clock to track student hours and maintain a daily record of attendance with each student personally punching the time clock in accordance with the following:

(1) Attendance records will be maintained in the school and available to the department [Department] for a period of 48 months after the student completes or terminates attendance.

(2) Within five days of a time clock failure, written documentation must be submitted to the department [Department] on a department-approved [Department approved] form stating the time clock failure. If a technician is required to repair the clock, a copy of the work order indicating date(s) of repair must be submitted as part of the written documentation.

(3) Not later than the 10th day of each month, a school must display on a department-approved [Department approved] form the monthly hour report showing the hours acquired by each student during the preceding month in an album or binder.

(4) Each student must be given the opportunity to review, under supervision, his or her hours, and to sign or initial the report. The report shall be complete, accurate, and kept available for inspection by the student or a department [Department] representative. One copy of the monthly hour report, signed by a school official, must be given to the department [Department] inspector at each inspection visit.

(5) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hours reports.

(6) A school must properly account for the hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student hours that are not accrued in accordance with this chapter.

[(f) With the exception of a dog for sightless or hearing impaired persons, a security dog during closed hours, and aquariums containing fish, no animal, fowl, reptile, insect, etc. may be present at a beauty school.]

(h) [(g)] Private schools can utilize locations away from the building for instruction in the approved cosmetology school curriculum. The instruction at these locations must be identified as a field trip.

(i) [(h)] All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curriculum required under §83.120 [§83.101].

(j) [(i)] A private cosmetology school may provide cosmetology instruction to public high school students by contracting with the Texas Education Agency and complying with Texas Education Agency law and rules. A public high school student receiving instruction at a private cosmetology school in accordance with a contract between the private cosmetology school and the Texas Education Agency is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department [Department] rules.

[(j) Public school students must complete 150 hours of cosmetology training prior to working on clients. No school may offer compensation to any student in any form for cosmetology services performed.]

(k) Schools may enroll applicants for a refresher course. A person who holds a valid Texas license may service clients in the school. The school may receive compensation for services performed by a student holding a valid Texas license; however, the student may not receive compensation.

(l) The school principal or program administrator must certify that each public high school student has successfully completed 1,000 clocked cosmetology hours before 500 academic hours can be granted by the department [Department] for successfully passing academically approved courses to include math, lab science and English.

(m) When a student graduates, the school must certify that the student has completed the required curriculum and that all practical applications have been completed.

(n) Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this Chapter.

(o) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following:

(1) desks and chairs or table space for a minimum of 10 students (plus one desk or chair or table space for additional students enrolled an in attendance per theory class);

(2) charts covering, bones, muscles, nerves, skin, and nails;

(3) medical dictionary;

(4) minimum visual aid requirements: television and VCR or DVD; and

(5) a dispensary of not less than 50 contiguous square feet with a double sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) six shampoo bowls and six shampoo chairs;

(7) eight hair dryers with chairs;

(8) one heat cap or therapeutic light;

(9) eight dozen cold wave rods;

(10) three electric irons, or marcel stoves and irons;

(11) sixteen styling stations covered with Formica or similar material, with mirror, and 16 styling chairs (swivel or hydraulic);

(12) twelve mannequins with sufficient hair with table or attached to styling stations;

(13) one day/date formatted computer time clock;

(14) one pair of professional hand clippers;

(15) three professional hand held dryers;

(16) four manicure tables and four stools;

(17) a suitable receptacle for used towels/linen;

(18) four covered trash cans in lab area;

(19) one large wet disinfectant soaking container;

(20) a clean, dry, debris-free storage area;

(21) if teaching facial courses:

(A) facial chair;

(B) magnifying lamp;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer;

(F) brush machine for cleaning;

(G) vacuum machine that includes spray device;

(H) high frequency for disinfection, product penetration, stimulation;

(I) galvanic for eliminating encrustations, product penetration; and

(J) paraffin bath and paraffin wax.

(p) In addition to the posting requirements of this subsection, beauty culture schools shall post a sign at the time clock which states:

(1) Each student must clock in/out for himself/herself. No student may allow another person to clock in or out on behalf of that student.

(2) No credit shall be given for any times written in, except in a documented case of time clock failure.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoke breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

§83.73. Responsibilities of Students.

(a) Students are responsible for compliance with the health and safety standards of this chapter [~~Students are responsible for compliance with the sanitation requirements under §83.100~~].

~~[(b) Students shall wear a uniform of washable material with armpits and chest covered as prescribed by the school. Tank tops, lingerie, see-through fabric, topless or bottomless uniforms, and bare feet are not allowed. Students must wear closed toe and heel shoes.]~~

(b) [~~(c)~~] Students shall not engage in any act that constitutes dishonesty or misrepresentation of or relating to a student's hours accrued under this chapter.

(c) [~~(d)~~] Transfer students.

(1) A student desiring to transfer from one school to another must withdraw from the first school prior to the transfer. Enrollment in two or more schools of cosmetology at the same time is prohibited.

(2) A student transferring to a school who desires to claim hours and practical applications earned must inform the school transferred to prior to enrollment of his/her prior attendance and must furnish to that school and the department [~~Department~~] a record of hours claimed and practical applications completed. This record may be in the form of a transcript from the prior school or an extract from records of the department [~~Department~~].

(3) A student may not graduate until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported on any monthly hour report, but in any event, no later than the month prior to graduation.

(d) [~~(e)~~] Withdrawal from school.

(1) A student may withdraw from school at any time by notifying the school in writing.

(2) Upon withdrawal, and provided that the agreed tuition and fees have been tendered, a student is entitled to an official transcript of hours taken and practical application performed at the school withdrawn from. The transcript and practical applications must be ready for pickup or, if mailed, postmarked within ten calendar days of the school's receipt of notice of withdrawal. A copy of the transcript and practical applications must be kept in the student's file for 48 months and the copy must be made available at the request of the department [~~Department~~].

(3) A student who withdraws from a cosmetology school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1602.

(4) Withdrawal or termination during the first week shall be defined by scheduled clock hours. If scheduled clock hours are 40 hours per week, then the week is defined to be 40 clock hours; for part time students, the amount of scheduled clock hours per week defines the week.

(5) Enrollment is defined as the time elapsed between the actual starting date and the date of the student's last day of attendance.

(6) If a school closes or ceases operation before the class hours are completed, the student is entitled to a tuition refund in accordance with Texas Occupations Code, Chapter 1602.

(A) Any student of an out-of-state private licensed cosmetology school may submit a request to the department [~~Department~~] to transfer the completed hours of instruction to a Texas school. A transcript must be submitted on the prescribed form and certified by the school in which the instruction was given. Portions of the curriculum of the department [~~Department~~] not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.

(B) A student enrolled for a specialty course may withdraw and transfer hours acquired to the operator course not to exceed the amount of hours of that subject in the operator curriculum. Students enrolled in the operator course may withdraw and transfer up to the maximum specialty hours within the operator curriculum for that

course. Once a license is obtained, hours may not be transferred to another course.

§83.75. Responsibilities of Registered Examination Proctors.

(a) Responsibilities of Registrant.

(1) A registrant shall be knowledgeable of and comply with all standards, specifications, and procedures established by the Commission or department [~~Department~~] relating to the evaluation or grading of practical examinations.

(2) A registrant shall be knowledgeable of and have expertise in the subject matter(s) of the practical examination. It is the obligation of the registered examination proctor to exercise reasonable judgment and skill in the evaluation or grading of practical examinations conducted under Texas Occupations Code, Chapter 1602.

(3) A registrant shall be professional, honest and trustworthy in the evaluation or grading of practical examinations and any activities related to evaluating or grading practical examinations.

(4) A registrant must hold an active instructor license throughout the entire period of the registration.

(b) Responsibilities of Registrant--Prohibited Acts.

(1) A registrant shall not perform as an examination proctor without an active examination proctor registration.

(2) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current student.

(3) A registrant shall not evaluate or grade a practical examination of an applicant who is the registrant's current employee, employer or co-worker.

(4) A registrant shall not evaluate or grade a practical examination of an applicant who is related to the registrant by family or by other personal or financial interest or relationship.

(5) A registrant shall not knowingly furnish false, misleading, inaccurate, or deceitful information about an applicant or an applicant's performance on a practical examination.

(6) A registrant shall not engage in any act or practice that constitutes a threat, coercion or extortion of an applicant.

(7) A registrant shall not ask for or receive directly from an applicant anything in connection to a registrant's evaluation or grading of an applicant.

(8) A registrant shall not state or imply that the department [~~Department~~] will grant or approve an applicant's license or that the applicant will pass the examination.

(9) A registrant shall not engage in any activity that constitutes dishonesty or misrepresentation of or relating to the registrant's responsibilities.

§83.80. Fees.

(a) Application [~~and renewal~~] fees.

(1) Operator License--$53

(2) Facialist Specialty License--$53

(3) Manicurist Specialty License--$53

(4) Hair weaving [~~hairweaving~~]/braiding Specialty Certificate--$53

(5) Wig Specialty Certificate--$53

(6) Shampoo-Conditioning Specialty Certificate--$53

(7) Student Permit--$25 (includes law and rules book fee)

(8) Instructor License--$70

(9) Facial Instructor Specialty License--$70

(10) Manicure Instructor Specialty License--$70

[~~(11) Student-Instructor Registration--$70~~]

(11) [~~(12)~~] Examination Proctor Registration--$25

(12) Beauty salons--$106

(13) Booth Rental (Independent Contractor) License--$67

(14) Private Beauty Culture School--$500

(b) Renewal fees.

(1) Operator License--$53

(2) Facialist Specialty License--$53

(3) Manicurist Specialty License--$53

(4) Hair weaving/braiding Specialty Certificate--$53

(5) Wig Specialty Certificate--$53

(6) Shampoo-Conditioning Specialty Certificate--$53

(7) Student Permit--$25 (includes law and rules book fee)

(8) Instructor License--$70

(9) Facial Instructor Specialty License--$70

(10) Manicure Instructor Specialty License--$70

(11) Examination Proctor Registration--$25

(12) Beauty salons--$69

(13) Booth Rental (Independent Contractor) License--$67

(14) Private Beauty Culture School--$200

[~~(b) Beauty Salons and Booth Rental (Independent Contractor) application and renewal fees.~~]

[~~(1) Original application--$106~~]

[~~(2) Renewal application--$69~~]

[~~(3) Booth Rental (Independent Contractor) License--$67~~]

[~~(c) Private Beauty Culture School License application and renewal fees.~~]

[~~(1) Original application--$500~~]

[~~(2) Renewal application--$200~~]

[~~(d) Examination fee for retake--$25~~]

(c) [~~(e)~~] License by Reciprocity or Endorsement--$100

(d) [~~(f)~~] Inactive License--No charge. Activate License--$25

[~~(g) Provisional License --$45~~]

(e) [~~(h)~~]Revised/Duplicate License/Certificate/Permit/Registration--$53

(f) [~~(i)~~] Law and Rules book--$14

(g) [~~(j)~~] Inspection Fees (for each occurrence).

(1) Salon--$35

(2) School (public and private)--$200

(3) Risk-based Inspection (salons, public schools, private schools)--$150

(h) Verification of license, permit, or certificate to other states--$15.

[~~(k) Transcript fee.~~]

[~~(1) Licensee transcript--$15~~]

(i) [~~(2)~~] Student transcript fee--$5

(j) [~~(l)~~] Registered Examination Proctor Department training course--$50

(k) [~~(m)~~] Late renewals fees for licenses under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§83.90. Administrative Sanctions and Penalties.

[~~(a)~~] A person that violates Texas Occupations Code, Chapters 1602 or 1603, a rule, or an order of the Executive Director or Commission relating to Chapters 1602 or 1603, shall be subject to the imposition of administrative sanctions and/or administrative penalties in accordance with Texas Occupations Code, Chapters 51, 1602, or 1603, and 16 Texas Administrative Code, Chapter 60 of this title (relating to the Texas Department of Licensing and Regulation).

[~~(b) Consumer complaints alleging a violation of applicable law or rules shall be submitted through the Department's website or by writing through mail or fax transmission.~~]

§83.100. Health and Safety Definitions.

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

(1) Chlorine bleach solutions--A chemical used to destroy bacteria and to disinfect implements and hard, non-porous surfaces; solution should be mixed fresh at least once per day. As used in this chapter, chlorine bleach solutions fall into two categories based on concentration and exposure time:

(A) Low level disinfection (100 - 200 ppm) - Add one teaspoon (5ml) household (5.25%) bleach to one liter water. Soak 10 minutes minimum.

(B) High level disinfection (1,000 ppm) - Add five teaspoons (25ml) household (5.25%) bleach to one liter water. Soak 20 minutes minimum.

(2) Clean or cleansing--Washing with liquid soap and water, detergent, antiseptics, or other adequate methods. Cleansing is not disinfection.

(3) Disinfect or disinfection--The use of chemicals to destroy pathogens on implements and other hard, nonporous surfaces to render an item safe for handling, use, and disposal.

(4) Disinfectant--In this chapter, one of the following department-approved chemicals:

(A) an EPA-registered bactericidal, fungicidal, or virucidal disinfectant used in accordance with the manufacturer's instructions;

(B) a chlorine bleach solution consisting of 3/4 cup of 5.25% per gallon of water; or

(C) an Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90%.

(5) EPA-registered bactericidal, fungicidal, or virucidal disinfectant--When used according to manufacturer's instructions, a chemical that is a low-level disinfectant used to destroy bacteria and to disinfect implements and hard, non-porous surfaces.

(6) Isopropyl or Ethyl alcohol--Isopropyl alcohol used at a concentration of at least 70% and ethyl alcohol used at a concentration of at least 90% are chemicals that are a low-level disinfectant used to destroy bacteria and to disinfect implements.

(7) Multi-use items--Items constructed of hard materials with smooth surfaces such as metal, glass, or plastic typically for use on more than one client. The term includes but is not limited to such items as clippers, scissors, combs, nippers, and some nails files.

(8) Single-use items--Porous items made or constructed of cloth, wood, or other absorbent materials having rough surfaces usually intended for single use including but not limited to such items as tissues, orangewood sticks, cotton balls, some buffer blocks, and gauze.

(9) Sterilize or sterilization--To make free from live bacteria or other microorganisms by use of an autoclave, dry heat or ultraviolet light.

§83.101. Health and Safety Standards--Department-Approved Disinfectants.

(a) EPA-registered bactericidal, fungicidal, or virucidal disinfectants shall be used as follows:

(1) Implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection.

(2) Some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected. EPA-registered bactericidal, fungicidal, or virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates.

(3) Disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled.

(4) In all cases the disinfectant shall be used in accordance with the manufacturers' recommendation or other guidance in this rule.

(5) These chemicals are harsh and may affect the long term use of scissors and other sharp objects. Therefore, the Department recommends leaving items in solution in accordance with the manufacturers' recommendation for effective disinfection.

(b) Chlorine bleach solutions shall be used as follows:

(1) Chlorine bleach at the appropriate concentration is an effective disinfectant for all purposes in a salon.

(2) Chlorine bleach solutions shall be mixed daily at the following minimum standard: 3/4 cup of 5.25% bleach per gallon of water.

(3) Chlorine bleach shall be kept in a closed covered container and not exposed to sunlight.

(4) Chlorine bleach may affect the long-term use of scissors and other sharp objects so the Department does not recommend leaving items in bleach solution beyond 2 minutes for effective disinfection (5 minutes if disinfecting for blood contamination).

(5) Chlorine bleach vapors might react with vapors from other chemicals. Therefore chlorine bleach shall not be placed or stored near other chemicals used in salons (i.e. acrylic monomers, alcohol, or other disinfecting products) or near flame.

(6) Used or soiled chlorine bleach solution shall be properly disposed of each day.

(c) Isopropyl or Ethyl alcohols shall be used as follows:

(1) Isopropyl alcohol at a concentration of at least 70% and ethyl alcohol at a concentration of at least 90% are low-level disinfectants.

(2) Alcohol shall not be used for blood spills.

(3) All alcohol shall be kept in a covered container. Alcohol deteriorates in some plastics, metals and rubber items.

(4) Alcohol may affect the long-term use of scissors and other sharp objects.

(5) The Department recommends leaving items in alcohol in accordance with the manufacturer's recommendation for effective disinfection. When using alcohol on surfaces other than non-porous materials, the time of contact shall be between 1 to 3 minutes after proper cleaning that removed all visible debris.

(6) Alcohol may be sprayed onto porous or absorbent surfaces after cleaning, with contact time on the surface of the item for at least 1 minute, provided the porous items have not contacted broken or unhealthy skin or nails.

§83.102. Health and Safety Standards--General Requirements.

(a) All cosmetology establishments and licensees shall utilize clean and disinfected equipment, tools, implements, and supplies in accordance with this Chapter, and shall employ good hygiene habits while providing cosmetology services.

(b) A licensee may not perform services on a client if the licensee has reason to believe the client has a contagious condition such as head lice, nits, ringworm; or inflamed, infected, broken, raised or swollen skin or nail tissue; or an open wound or sore in the area to be serviced.

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter shall be cleaned and disinfected before use on each client.

(d) Single-use equipment, implements, tools or porous items not addressed in this rule shall be discarded after use on a single client.

(e) Electrical equipment that cannot be immersed in liquid shall be wiped clean and disinfected prior to each use on a client.

(f) All clean and disinfected implements and materials when not in use shall be stored in a clean, dry, debris-free environment including but not limited to drawers, cases, tool belts, rolling trays, or hung from hooks. They must be stored separate from soiled implements and materials. Ultraviolet electrical sanitizers are permissible for use as a dry storage container. Non-cosmetology related supplies must be stored in separate drawers or locations.

(g) Shampoo bowls and manicure tables shall be disinfected prior to use for each client.

(h) Floors in cosmetology establishments shall be thoroughly cleaned each day. Hair cuttings must be swept up and deposited in a closed receptacle after each hair cut.

(i) All trash containers must be emptied daily and kept clean by washing or using plastic liners.

(j) Hand washing facilities, including hot and cold running water must be provided for employees.

(k) Clean towels shall be used on each client.

(l) Soiled towels shall be removed after use on each client and deposited in a suitable receptacle.

(m) Each cosmetology establishment shall keep all products used in the conduct of their business properly labeled in compliance with OSHA requirements.

§83.103. Health and Safety Standards--Hair Cutting, Styling, and Treatment Services.

(a) Cosmetologists shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, or virucidal disinfectant, or isopropyl alcohol, ethyl alcohol, or bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, edgers, guards and perm rods.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, combs and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, or virucidal disinfectant in accordance with manufacturer's instructions.

(2) Complete immersion in isopropyl alcohol or ethyl alcohol;

(3) Complete immersion in chlorine bleach solution.

§83.104. Health and Safety Standards--Facial Services.

(a) Cosmetologists and facialists shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client. Gloves shall be worn during any type of extraction.

(b) Equipment, implements, tools and materials shall be properly cleaned and disinfected prior to servicing each client in accordance to this rule.

(c) Facial chairs and beds, including headrest for each, shall be cleaned prior to providing service to each client.

(d) After each client, the following implements shall be cleaned and disinfected: tweezers and comedone extractors.

(e) The following implements are single-use items and shall be discarded in a trash receptacle after use: cotton pads, cotton balls, gauze, wooden applicators, disposable gloves, tissues, disposable wipes, lancets, fabric strips and other items used for a similar purpose as one or more of the items listed above.

(f) The following items that are used during services shall be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas that contact skin or products from multi-use containers, sponges and other items used for a similar purpose as one or more of the items listed above.

(g) Items subject to possible cross contamination such as creams, cosmetics, astringents, lotions, removers, waxes, moisturizers, masks and oils shall be used in a manner so as not to contaminate the remaining product. Applicators shall not be re-dipped in product. Permitted procedures to avoid cross contamination are:

(1) Disposing of the remaining product before beginning services on each client; or

(2) Using a single-use disposable implement to apply product and disposing of such implement after use; or

(3) Using an applicator bottle to apply the product.

§83.105. Health and Safety Standards--Waxing Services.

(a) Cosmetologists and facialists shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) Cosmetologists and facialists shall clean the areas of the client's body on which the service is to be administered.

(c) Cosmetologists and facialists performing waxing services shall dispose of after each use all wax that has been in contact with a client's skin. Wax may not be reused under any circumstances.

(d) All wax pots shall be cleaned and disinfected in accordance with manufacturer's recommendations. No applicators shall be left standing in the wax at any time.

§83.106. Health and Safety Standards -Manicure and Pedicure Services.

(a) Cosmetologists and manicurists shall clean their hands with soap and water or a hand sanitizer prior to performing any services.

(b) Cosmetologists and manicurists shall clean the areas of the client's body on which the service is to be administered.

(c) All non-porous manicure and pedicure tools shall be properly cleaned, disinfected and sterilized prior to servicing each client in accordance with this rule.

(d) After each client, the following implements shall be cleaned and disinfected in accordance with the rule: metal pusher and files, cuticle nipper and scissors, tweezers, nail brushes, finger and toe nail clippers and electric file bits.

(e) The following implements are single-use items and shall be discarded after use: orangewood sticks, cotton balls, nail wipes and disposable towels.

(f) Buffer blocks, porous nail files, pedicure files, callus rasps, natural pumice and foot brush, arbor, sanding bands, sleeves, heel and toe pumice, exfoliating block (rough surfaced or absorbent materials) shall be cleaned by manually brushing or other adequate methods to remove all visible debris after each use, and then sprayed with Isopropyl or ethyl alcohol. If a buffer block or porous nail file is exposed to broken skin (skin that is not intact) or unhealthy skin or nails, it must be discarded immediately after use in a trash receptacle.

(g) The following materials that are used during a manicure and pedicure shall be replaced with new or clean articles for each client: terry cloth towels, finger bowls and spatulas that contact skin or skin products from multi-use containers.

§83.107. Health and Safety Standards--Electric Drill Bits.

(a) Only electric files, drills, or machines specifically designed and manufactured for use in the professional nail industry may be used in any cosmetology establishment for performing manicure or pedicure services. Craft, hardware, and hobby tools cannot be used under any circumstances.

(b) After each use, diamond, carbide, natural and metal bits shall be cleaned by either:

(1) using a brush;

(2) using an ultrasonic cleaner; or

(3) immersing the bit in acetone for 5 to 10 minutes.

(c) Immediately after cleaning all visible debris, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant between clients.

(d) Buffing bits and chamois shall be cleaned with soap and water at the end of every day of use in addition to being cleaned or replaced between clients.

§83.108. Health and Safety Standards--Footspas.

(a) As used in this section, "whirlpool footspa" or "spa" is defined as any basin using circulating water, either in a self-contained unit or in a unit that is connected to other plumbing in the establishment.

(b) Before use upon each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner.

(1) All water shall be drained and all debris shall be removed from the spa basin.

(2) The spa basin must be cleaned with soap or detergent and water.

(3) The spa basin must be disinfected with an EPA registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer's instructions.

(4) The spa basin must be wiped dry with a clean towel.

(c) At the end of each day, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

(1) The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap and water or detergent and water.

(2) Before replacing the screen, one of the following procedures shall be performed:

(A) The screen shall be washed with a chlorine bleach solution of one teaspoon of 5% chlorine bleach to one (1) gallon of water; or

(B) The screen shall be totally immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to manufacturer's instructions.

(3) The spa system shall be flushed with soap and warm water for at least ten (10) minutes, after which the spa shall be rinsed and drained.

(d) Every other week (bi-weekly), after cleaning and disinfecting as provided in this subsection, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

(1) The spa basin shall be filled completely with water and one (1) teaspoon of 5% bleach for each one (1) gallon of water.

(2) The spa system shall be flushed with the chlorine bleach and water solution of 5 to 10 minutes and allowed to sit for 6 to 10 hours.

(3) The spa system shall be drained and flushed with water before use upon a patron.

(e) A record shall be made on a form prescribe by the Department of the date and time of each cleaning and disinfecting indicating whether the cleaning was a daily or bi-weekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. The record shall indicate if a spa was not used at all during any individual work day. Cleaning and disinfecting records shall be made available upon request by either a patron or a Department representative.

(f) A footspa for which documentation is not maintained in accordance with this rule must be removed from service and not used

again until it has be cleaned and disinfected in accordance with the requirements of this rule and the records have been properly updated.

§83.109. Health and Safety Standards--Wig and Hairpiece Services.

(a) Cosmetologists and wig specialists shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) After each client, the following implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal, or virucidal disinfectant, or isopropyl alcohol, ethyl alcohol, or bleach solution. Equipment, implements, tools and materials to be cleaned and disinfected include but are not limited to combs and picks, haircutting shears, thinning shears/texturizers, razors, edgers, guards, perm rods and bowls or containers used to clean or color wigs or hairpieces.

(d) At the end of each day of use, the above items, along with any other tools, such as sectioning clips, brushes, combs and picks shall be cleaned by manually scrubbing with soap and water or adequate methods, and then disinfected by one of the following methods:

(1) Complete immersion in an EPA-registered bactericidal, fungicidal, or virucidal disinfectant in accordance with manufacturer's instructions.

(2) Complete immersion in isopropyl alcohol or ethyl alcohol.

(3) Complete immersion in chlorine bleach solution.

(e) After the initial sale of a hairpiece, and prior to that hairpiece being resold, it must be properly disinfected.

(f) Used wigs and hairpieces shall be kept in a close bag or container until ready to be cleaned.

(g) Any wig block used to service a hairpiece should be covered with a plastic bag and kept in a sanitized condition after each use. Any wig block used to service hairpieces shall be sprayed with an EPA registered disinfectant solution after each use and kept in a sanitary condition.

(h) Finished wigs and hairpieces shall be placed away from soiled wigs and hairpieces until ready to be returned to the client.

§83.110. Health and Safety Standards--Hair Weaving and Hair Braiding Services.

(a) Cosmetologists, wig specialists and hair weavers shall wash their hands with soap and water, or use a liquid hand sanitizer, prior to performing any services on a client.

(b) All equipment, implements, tools and materials shall be properly cleaned and disinfected in accordance with this rule prior to servicing each client.

(c) Hair extensions, tracks, needles, and thread shall be stored in a bag or covered container until ready to use. No unrelated items shall be stored in the same bag or container.

(d) Needles shall be sprayed with a disinfectant before use.

§83.111. Health and Safety Standards--Blood and Body Fluids.

(a) Blood can carry many pathogens. For this reason licensees should never touch a client's open sore or wound. Powdered alum, styptic powder, or a cyanoacrylate (e.g. liquid-type bandage) may be used to contract the skin to stop minor bleeding, and should be applied to the open area with a disposable cotton-tipped instrument that is immediately discarded after application.

(b) In the case of blood or body fluid contact on any surface area such as a table, chair, or the floor, an EPA-registered hospital grade disinfectant, a tuberculocidal disinfectant, or a 10% bleach solution shall be used per manufacturer's instructions immediately to clean up all visible blood or body fluids.

(c) If any non-porous instrument is contacted with blood or body fluid, it shall be immediately cleaned and disinfected using an EPA-registered hospital grade disinfectant, a tuberculocidal disinfectant in accordance with the manufacturer's instructions, or totally immersed in a 10% bleach solution for 5 minutes.

(d) If any porous instrument contacts blood or body fluid, it shall be immediately double-bagged and discarded in a closed trash container or biohazard box.

§83.112. Health and Safety Standards--Prohibited Products or Practices.

(a) Licensees may not use any of the following substances or products in performing cosmetology services:

(1) Methyl Methacrylate Liquid Monomers, a.k.a., MMA.

(2) Razor-type callus shavers designed and intended to cut growths of skin such as corns and calluses, e.g., credo blades.

(3) Alum or other astringents in stick or lump form. (Alum or other astringents in powder or liquid form are acceptable.)

(4) Fumigants such as formalin (formaldehyde) tablets or liquids.

(b) Possession on licensed premises of any item listed in this section is a violation under this chapter.

§83.113. Health and Safety Standards--FDA.

(a) Licensees shall not use any product in providing a service authorized under the Act that is banned or deemed to be poisonous or unsafe by the United States Food and Drug Administration (FDA) or other local, state, or federal governmental agencies responsible for making such determinations.

(b) Possession or storage on licensed premises of any item banned or deemed to be poisonous or unsafe by the FDA or other governmental agency shall be considered *prima facie* evidence of its use.

(c) For the purpose of performing services authorized under the Act, no licensee shall buy, sell, use, or apply to any person monomeric methyl methacrylate (MMA), an adhesive banned for use in nail services by the FDA.

§83.114. Health and Safety Standards--Establishments.

(a) Establishments shall keep the floors, walls, ceilings, shelves, furniture, furnishings, and fixtures clean and in good repair. Any cracks, holes, or other similar disrepair not readily accessible for cleaning shall be repaired or filled in to create a smooth, washable surface.

(b) All floors in areas where services under the Act are performed, including restrooms and areas where chemicals are mixed or where water may splash, must be of a material which is not porous or absorbent and is easily washable, except that anti-slip applications or plastic floor coverings may be used for safety reasons. Carpet is permitted in the reception area.

(c) Plumbing fixtures, including toilets and wash basins, shall be kept clean. They must be free from cracks and similar disrepair that cannot be readily accessible for cleaning.

(d) Each establishment must have suitable plumbing that provides an adequate and readily available supply of hot and cold running water at all times and that is connected for drainage of sewage and potable water within the areas where work is performed and supplies dispensed.

(e) Every establishment shall provide at least one restroom located on or near the premises of the establishment. For public safety, supplies shall not be stored in the restroom.

(f) Food shall not be prepared on licensed premises. Pre-packaged food may be sold.

(g) For public health and safety, licensed premises shall eliminate any strong odors through adequate ventilation, including but not limited to, exhaust fans and air filtration to exhaust chemicals and fumes away from the public area and to provide for the input of fresh air.

(h) Licensed premises shall not be utilized for living or sleeping purposes, or any other purpose that would tend to make the premises unsanitary, unsafe, or endanger the health and safety of the public. An establishment that is attached to a residence must have an entrance that is separate and distinct from the residential entrance. Any door between a residence and a licensed facility must be closed during business hours.

(i) No animals with the exception of those providing assistance to individuals are allowed in establishments. Covered aquariums are allowed provided that they are maintained in a sanitary condition.

§83.120. Technical Requirements--Curriculum.

(a) Operator Curriculum
Figure: 16 TAC §83.120(a)

(b) Specialist Curriculum
Figure: 16 TAC §83.120(b)

(c) Student-Instructor Curriculum
Figure: 16 TAC §83.120(c)

(d) Practical Applications of the Curriculum
Figure: 16 TAC §83.120(d)

(e) Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course;

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the facial course; and

(E) a maximum of 30 hours for students taking the 750 hour student-instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required. The report of hours earned and the documentation will be attached to the monthly hour report for the inspector to audit.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505783
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 463-7348

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16 TAC §§83.100 - 83.103

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

The Texas Department of Licensing and Regulation ("Department") proposes the repeal of existing rules at 16 Texas Administrative Code, §§83.100-83.103 regarding cosmetology.

This proposed repeal is in conjunction with new and amended rules that are proposed in a separate, but concurrent rulemaking. The repeal of these rules is necessary to update and reorganize the cosmetology rules.

Section 83.100 is repealed because sanitation requirements are more specifically stated for each type of cosmetology service in proposed new §§83.100-83.114, filed concurrently with this repeal. Sanitation, disinfection, and sterilization procedures are also updated in accordance with SB 411 and HB 3149, 79th Legislature, 2005, and industry standards.

Section 83.101 is repealed because this section is replaced by proposed new health and safety standards. The rules from 83.101, relating to curriculum are relocated to proposed new section 83.120 without substantive change.

Sections 83.102-83.103 are repealed because these section are replaced by proposed new health and safety standards. The rules within these sections are relocated and proposed as amendments to existing rules and new rules in a separate but concurrent rulemaking.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed repeal is in effect there will be no cost to state or local government as a result of enforcing or administering the repeal.

Mr. Kuntz also has determined that for each year of the first five-year period the repealed rules are in effect, the public benefit will be better organization for rules in the cosmetology program,

the updating of health and safety standards, and the elimination of unnecessary regulatory requirements.

Mr. Kuntz has determined that there is no cost to small or micro-businesses, as a result of the proposed repeal of reporting requirements. There are no anticipated economic costs to persons who are required to comply with the rules as repealed.

Comments on the proposal may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: caroline.jackson@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The repeal is proposed under Texas Occupations Code, Chapters 51, 1602, and 1603, 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 proposed repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, and 1603. No other statutes, articles, or codes are affected by the proposal.

§83.100. Technical Requirements--Sanitation.

§83.101. Technical Requirements--Curriculum.

§83.102. Technical Requirements--Facility and Equipment.

§83.103. Technical Requirements--Booth Rental (Independent Contractor) Licensees.

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

Filed with the Office of the Secretary of State on December 12, 2005.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §1.5

The Texas Board of Architectural Examiners proposes an amendment to §1.5 of Chapter 1, Subchapter A, pertaining to defined terms. The amendment revises the definition of the term "practice of architecture" to incorporate changes made to the statutory definition of the term by the 79th Legislature. The amendment also defines the term "regulatory approval" for purposes of the rules and deletes the definition of the term "architect of record" to conform the rule to revisions the board proposes to the only rule that includes the term. The amendment corrects statutory cross-references and revises the defined terms "chairman" and "vice-chairman" to "chair" and "vice-chair." The amendment generally updates the rule to reflect statutory changes and changes to other rules.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the amended section.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: the revised definition of "practice of architecture" will reflect the definition of the term as adopted by the 79th Legislature. It will also specify which of the listed activities may be performed by one who is not an architect which also reflects a legislative change. By defining the term "regulatory approval" the amended rule will provide greater direction regarding the use of the architectural seal to architects and governmental entities that review and approve architectural plans. Architects must affix a seal to plans that are issued for regulatory approval in addition to other purposes. In the past, the board received notice from registrants who indicated that it was unclear whether plans were subject to regulatory approval under certain circumstances. Repealing the definition for "architect of record" would eliminate confusion. The term is defined only as used in the rules. Pursuant to another proposed rule change, the term will no longer appear in the rules. Thus, the definition would be superfluous. The revisions of the terms "chairman" and "vice-chairman" reflect a trend toward using titles that do not imply gender. The public would benefit by correcting the statutory cross-references to reflect changes made in the codification process. Without these changes, the public may be confused or misinformed by referring to obsolete statutes. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of architecture and the administration of Subtitle B of Title 6 of the Texas Occupations Code. The proposed amendment, in part, implements §1051.001(7), Texas Occupations Code.

The proposed amendment, in part, implements §1051.001(7), Texas Occupations Code.

§1.5. Terms Defined Herein.

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

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

~~[(7) Architect of Record--An Architect who has submitted an affidavit confirming that the Architect is employed on a full-time basis by or, pursuant to §1.122, associated with a business entity that offers or provides architectural services in Texas. The Architect of Record for a business entity shall be responsible for answering or designating another individual to answer inquiries of the Board concerning matters under the jurisdiction of the Board which are related to the business entity's Practice of Architecture.]~~

(7) [~~(8)~~] Architect Registration Examination (ARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas architectural registration certificate.

(8) [~~(9)~~] Architect Registration Examination Financial Assistance Fund (AREFAF)--A program administered by the Board which provides monetary awards to Candidates and newly registered Architects who meet the program's criteria.

(9) [~~(10)~~] Architects' Registration Law--Article 249a, Vernon's Texas Civil Statutes, and Chapter 1051, Texas Occupations Code.

(10) [~~(11)~~] Architectural Barriers Act--Article 9102, Vernon's Texas Civil Statutes and Texas Government Code, Chapter 469.

(11) [~~(12)~~] Architectural Intern--An individual enrolled in the Intern Development Program (IDP).

(12) [~~(13)~~] ARE--Architect Registration Examination.

(13) [~~(14)~~] AREFAF--Architect Registration Examination Financial Assistance Fund.

(14) [~~(15)~~] Authorship--The state of having personally created something.

(15) [~~(16)~~] Barrier-Free Design--The design of a building or a facility or the design of an alteration of a building or a facility which complies with the Texas Accessibility Standards, the Americans with Disabilities Act, the Fair Housing Accessibility Guidelines, or similarly accepted standards for accessible design.

(16) [~~(17)~~] Board--Texas Board of Architectural Examiners.

(17) [~~(18)~~] Candidate--An Applicant approved by the Board to take the ARE

(18) [~~(19)~~] CEPH--Continuing Education Program Hour(s).

(19) [~~(20)~~] Chair [~~Chairman~~]--The member of the Board who serves as the Board's presiding officer.

(20) [~~(21)~~] Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents issued by an Architect for the purpose(s) of Regulatory Approval [~~regulatory approval~~], permitting, or [~~and/or~~] construction.

(21) [~~(22)~~] Consultant--An individual retained by an Architect who prepares or assists in the preparation of technical design documents issued by the Architect for use in connection with the Architect's Construction Documents.

(22) [~~(23)~~] Contested Case--A proceeding, including a licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

(23) [~~(24)~~] Continuing Education Program Hour (CEPH)--At least fifty (50) minutes of time spent in an activity meeting the Board's continuing education requirements.

(24) [~~(25)~~] Council Certification--Certification granted by NCARB to architects who have satisfied certain standards related to architectural education, training, and examination.

(25) [~~(26)~~] Delinquent--A registration status signifying that an Architect

(A) has failed to remit the applicable renewal fee to the Board and

(B) is no longer authorized to Practice Architecture in Texas or use any of the terms restricted by the Architects' Registration Law.

(26) [~~(27)~~] Direct Supervision--The amount of oversight by an individual overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

(27) [~~(28)~~] E-mail Directory--A listing of e-mail addresses

(A) used to advertise architectural services and

(B) posted on the Internet under circumstances where the Architects included in the list have control over the information included in the list.

(28) [~~(29)~~] Emeritus Architect (or Architect Emeritus)--An honorary title that may be used by an [~~Inactive~~] Architect who has retired from the Practice of Architecture in Texas pursuant to Texas Occupations Code, §1051.357.

(29) [~~(30)~~] Feasibility Study--A report of a detailed investigation and analysis conducted to determine the advisability of a proposed architectural project from a technical architectural standpoint.

(30) [~~(31)~~] Good Standing--

(A) a registration status signifying that an Architect is not delinquent in the payment of any fees owed to the Board or

(B) an application status signifying that an Applicant or Candidate is not delinquent in the payment of any fees owed to the Board, is not the subject of a pending TBAE enforcement proceeding, and has not been the subject of formal disciplinary action by an architectural registration board that would provide a ground for the denial of the application for architectural registration in Texas.

(31) [~~(32)~~] Governmental Entity--A Texas state agency or department; a district, authority, county, municipality, or other political subdivision of Texas; or a publicly owned Texas utility.

(32) [~~(33)~~] Governmental Jurisdiction--A governmental authority such as a state, territory, or country beyond the boundaries of Texas.

(33) [~~(34)~~] IDP--The Intern Development Program as administered by NCARB.

(34) [~~(35)~~] Inactive--A registration status signifying that an Architect may not Practice Architecture in the State of Texas.

(35) [~~(36)~~] Intern Development Program (IDP)--A comprehensive internship program established, interpreted, and enforced by NCARB.

(36) [~~(37)~~] Intern Development Training Requirement--Architectural experience necessary for an Applicant to obtain architectural registration by examination in Texas.

(37) [~~(38)~~] Institutional Residential Facility--A building intended for occupancy on a 24-hour basis by persons who are receiving custodial care from the proprietors or operators of the building. Hospitals, dormitories, nursing homes and other assisted living facilities, and correctional facilities are examples of buildings that may be Institutional Residential Facilities.

(38) [~~(39)~~] Licensed--Registered.

(39) [~~(40)~~] Member Board--An architectural registration board that is part of the nonprofit federation of architectural registration boards known as NCARB.

(40) [~~(41)~~] NAAB--National Architectural Accrediting Board.

(41) [~~(42)~~] National Architectural Accrediting Board (NAAB)--An agency that accredits architectural degree programs in the United States.

(42) [~~(43)~~] National Council of Architectural Registration Boards (NCARB)--A nonprofit federation of architectural registration boards from fifty-five (55) states and territories of the United States.

(43) [~~(44)~~] NCARB--National Council of Architectural Registration Boards.

(44) [~~(45)~~] Nonregistrant--An individual who is not an Architect.

(45) [~~(46)~~] Practice Architecture--Perform or do or offer or attempt to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(46) [~~(47)~~] Practicing Architecture--Performing or doing or offering or attempting to do or perform any service, work, act, or thing within the scope of the Practice of Architecture.

(47) [~~(48)~~] Practice of Architecture--A service or creative work applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details for the construction, enlargement, or alteration of a building or environs intended for human use or occupancy, the proper application of which requires education, training, and experience in those matters. [~~Any service or creative work, either public or private, applying the art and science of developing design concepts, planning for functional relationships and intended uses, and establishing the form, appearance, aesthetics, and construction details, for any building or buildings, or environs, to be constructed, enlarged or altered, the proper application of which requires architectural education, training, and experience.~~]

(A) The term includes:

(i) establishing and documenting the form, aesthetics, materials, and construction technology for a building, group of buildings, or environs intended to be constructed or altered;

(ii) preparing or supervising and controlling the preparation of the architectural plans and specifications that include all integrated building systems and construction details, unless otherwise permitted under Texas Occupations Code, §1051.606(a)(4); and

(iii) observing the construction, modification, or alteration of work to evaluate conformance with architectural plans and specifications described in clause (ii) of this subparagraph for any building, group of buildings, or environs requiring an architect.

(B) The term "practice of architecture" also includes the following activities which, pursuant to Texas Occupations Code §1051.701(a), may be performed by a person who is not registered as an Architect:

(i) programming for construction projects, including identification of economic, legal, and natural constraints and determination of the scope and spatial relationship of functional elements;

(ii) recommending and overseeing appropriate construction project delivery systems;

(iii) consulting, investigating, and analyzing the design, form, aesthetics, materials, and construction technology used for the construction, enlargement, or alteration of a building or environs and providing expert opinion and testimony as necessary;

(iv) research to expand the knowledge base of the profession of architecture, including publishing or presenting findings in professional forums; and

(v) teaching, administering, and developing pedagogical theory in academic settings offering architectural education.

(48) [~~(49)~~] Principal--An architect who is responsible, either alone or with other architects, for an organization's Practice of Architecture.

(49) [~~(50)~~] Prototypical--From or of an architectural design intentionally created not only to establish the architectural parameters of a building or facility to be constructed but also to serve as a functional model on which future variations of the basic architectural design would be based for use in additional locations.

(50) [~~(51)~~] Public Entity--A state, a city, a county, a city and county, a district, a department or agency of state or local government which has official or quasi-official status, an agency established by state or local government though not a department thereof but subject to some governmental control, or any other political subdivision or public corporation.

(51) [~~(52)~~] Registered--Licensed.

(52) [~~(53)~~] Registrant--Architect.

(53) Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the architectural content of the Construction Documents as a prerequisite to construction or occupation of a building or a facility.

(54) - (69) (No change.)

(70) Vice-Chair [~~Vice-Chairman~~]--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair [~~Chairman~~], serves as the Board's presiding officer. If necessary, the Vice-Chair [~~Vice-Chairman~~] succeeds the Chair [~~Chairman~~] until a new Chair [~~Chairman~~] is appointed.

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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Cathy L. Hendricks, ASID/IIDA
Executive Director
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For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.21

The Texas Board of Architectural Examiners proposes an amendment to §1.21 of Chapter 1, Subchapter B, pertaining to registration by examination. The amendment allows for the architectural registration of graduates from an architectural program that becomes accredited within two years after they graduate. The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation

for accreditation and subsequently was found to be worthy of accreditation.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will likely be no fiscal impact on state and local government. If there is any impact, it is likely to be positive because the amendment would expand the class of people who may become registered as architects. It is impossible to specify a dollar amount because it is not possible to determine how many programs may become accredited during the next five years and the number of candidates who would qualify for registration as architects as a result of the amendment.

Ms. Hendricks has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: those who receive an architectural education from a program that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration. The amendment would make the rule more equitable in that students who are enrolled in a program while it is under review would receive the benefit of accreditation based upon that review. Under the current rule, only subsequent students would receive the benefit of accreditation, notwithstanding the fact that the program would mostly be no better than it was when it was under review for accreditation. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.705, Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to approve the colleges or universities of architecture that provide acceptable education for registration as an architect.

The proposed amendment does not affect any other statutes.

§1.21. Registration by Examination.

(a) In order to obtain architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from an architectural education program accredited by the National Architectural Accreditation Board (NAAB), or from an architectural education program that became accredited by NAAB not later than two years after graduation, or from an architectural education program outside the United States where an evaluation by NAAB or another organization acceptable to the Board has concluded that the program is substantially equivalent to an NAAB accredited professional program;

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

(b) - (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.

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §§1.121 - 1.124

The Texas Board of Architectural Examiners proposes amendments to §§1.121 - 1.124 of Chapter 1, Subchapter G, pertaining to compliance and enforcement. The reason for the amendment to §1.121 is to restate the term "practice of architecture" as used in the section in upper case and thereby designate it as a term defined by rule. Section 1.122 is amended to make technical revisions, list criteria for creation of a business association as separate, specified items, and to correct obsolete statutory cross-references. The amendment to §1.123 prohibits any person who is not 1) registered as an architect and licensed as a professional engineer, or 2) a licensed professional engineer who holds a degree in architectural engineering from using the title "architectural engineer" or any form of the term "architectural engineering." The amendment more specifically states the Board's current enforcement authority regarding restrictions on the use of a title of business or profession including any form of the word "architect." The amendment to §1.124 revises the business registration process. As amended, each architect, upon registration and annual renewal of registration, is to file contact information regarding each business entity and business association on behalf of which the architect rendered architectural services. The amendment deletes the requirement that each architectural firm or architectural business entity file a sworn affidavit of an architect to render services on behalf of the firm or business entity. The purpose of the amendment is to secure current, regularly updated information on file with the board regarding businesses that may lawfully offer or render architectural services. Under the current rule, information is not consistently filed and that which is filed is not kept current through annual registration renewal. As amended, the registration requirement is shifted to the board's registrants who are more likely to adhere to the board's rules. As amended the rule also requires at least annual updates of the information registered regarding registrants' firms.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendments are in effect, there is not anticipated to be a significant fiscal impact as a result of the amendments. The revisions to §1.124 will provide more data regarding the identities of architectural firms and business entities practicing in the state. That information is currently filed with the Board by businesses, not architects, and not on an annual basis. The agency estimates a one-time fiscal impact of $20,000 in upgrading the agency's database to collect the information. Restrictions on the use of the title "architectural engineer" and the term "architectural engineering" more specifically and explicitly state the position currently held by the Board. Therefore, the amendment to §1.123 would not have a fiscal impact on state government. There are no fiscal implications for local government arising from the amendments to §§1.121 - 1.124.

Ms. Hendricks has also determined that for the first five-year period the amended sections are in effect the public benefits ex-

pected as a result of the amendments are as follows: the agency will have more comprehensive and up-to-date information on firms and business entities that may lawfully offer or render architectural services. Conversely, the agency will more easily identify those firms and business that may not lawfully offer or render architectural services. The amendments will add the amount of information architects must provide upon renewing registration. However, architects would no longer be required to complete, and business would not be required to file, architect of record affidavits as is required under current §1.124. The amendment to §1.123 will benefit the public by providing specific notice of the qualifications one must hold in order to represent oneself by title or terminology as an "architectural engineer." The amendment explicitly states pre-existing statutory authority enforced by the Board regarding usage of the title "architectural engineer." The amendments will have no impact on small business. The business registration requirements shift the responsibility to file information with the agency from businesses to registrants.

There will be no change in the cost to persons required to comply with the amended sections.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed pursuant to §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Architects' Registration Law; §1051.208, Texas Occupations Code Annotated, which requires the Board to establish by rule standards of conduct for its registrants; §1051.306, Texas Occupations Code Annotated, which allows the Board to adopt rules requiring business entities that engage in the practice of architecture to register with the Board; §1051.601(c), Texas Occupations Code Annotated, which allows an engineer who has an architectural engineering degree to use the title "architectural engineer;" §1051.701, Texas Occupations Code Annotated, which prohibits a person who is not registered as an architect from engaging in the practice of architecture or offering or attempting to engage in the practice of architecture; §1051.703, Texas Occupations Code Annotated, which allows a firm, partnership, corporation, or association to offer or engage in the practice of architecture or use the word "architect" or "architecture" in its name only if all architecture rendered on behalf of the firm is rendered by an architect; and §1051.801(a), Texas Occupations Code, which prohibits one who is not registered as an architect from engaging in, or offering or attempting to engage in, the practice of architecture and from using any form of business or professional title that uses a form of the word "architect."

The proposed amendments do not affect any other statutes.

§1.121. General.

In carrying out its responsibility to insure strict enforcement of the Architects' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the Practice of Architecture [~~practice of architecture~~] and the use of the title "architect." The Board also may investigate representations which imply that a person or a business entity is legally authorized to offer or provide architectural services to the public. Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

§1.122. Association.

(a) An Architect who forms a business association [~~association, either formally or informally,~~] to jointly offer architectural services with:

(1) any individual who is not a [~~duly registered~~] Texas Architect or bona fide employee working in the same firm where the Architect is employed or [~~with~~]

(2) any group of individuals who are not [~~duly registered~~] Texas Architects shall, prior to offering architectural services on behalf of the business association, enter into a written agreement of association with the nonregistrant(s) whereby the Architect agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association.

(b) All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Architect or under the Architect's Supervision and Control unless the Construction Documents are prepared and issued as described in subsection (f) [~~(e)~~] of this section.

(c) [~~(b)~~] The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Architect who has agreed to associate with the nonregistrant(s).

(3) The name, address, telephone number, and signature of each nonregistrant with whom the Architect has agreed to associate.

(d) [~~(c)~~] All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(e) [~~(d)~~] Copies [~~Paper or microform copies~~] of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Architect who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

(f) [~~(e)~~] If, pursuant to §1051.606(b) of the Texas Occupations Code [~~Section 14.2 of the Act~~], a Texas Architect associates with a person who is not a Texas Architect but is duly registered as an architect in another jurisdiction and does not maintain or open an office in Texas, The Texas Architect shall, at a minimum, exercise Responsible Charge over the preparation of all Construction Documents issued for use in Texas as a result of the association. The Texas Architect shall seal, sign, and date all Construction Documents issued for use in Texas as a result of the association in the same manner as if the Architect had prepared the Construction Documents or they had been prepared under the Architect's Supervision and Control. The requirements of subsections (a), (c), and (e) [~~(a), (b), and (d)~~] of this section also must be satisfied. For purposes of subsections (a) and (c) of this section [~~(a) and (b)~~], the term "nonregistrant" shall include the non-Texas architect. The requirements of this subsection must be satisfied regardless of whether the Texas Architect or the non-Texas architect acts as the "consultant" as that term is used in §1051.606(b) of the Texas Occupations Code [~~Section 14.2 of the Act~~].

§1.123. Titles.

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

(c) A person may not use the title "architectural engineer" or use any form of the term "architectural engineering" to refer to services the person offers or renders, unless the person is:

(1) An Architect who is a licensed professional engineer; or

(2) A licensed professional engineer who holds a degree in architectural engineering.

(d) [~~(c)~~] No entity other than those qualified in subsections (a) and (b) of this section may use any form of the word "architect" or "architecture" in its name or to describe services it offers or performs in Texas.

(e) [~~(d)~~] A person enrolled in the Intern Development Program (IDP) may use the title "architectural intern."

§1.124. Business Registration.

(a) Upon initially registering as an Architect and upon renewing architectural registration, each Architect shall identify [~~Unless excepted from the Act in accordance with Section 10 or Section 14 of the Act,~~] each business entity or association on behalf of which the Architect [~~that~~] offers or provides architectural services in Texas [~~must register with the Board by submitting a completed business registration form accompanied by at least one duly executed Architect of Record affidavit. Blank business registration forms and Architect of Record affidavit forms may be requested by contacting the Board's office~~]. The Architect shall list the name, address, and contact information regarding each business entity and association as specified on the renewal application form provided by the Board. If a business association does not have a name, the Architect shall list the name(s), address(es) and any other contact information of the person(s) with whom the association was formed as specified on the renewal application form.

[~~(b) Once the Board has received a completed business registration form and a duly executed Architect of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to offer and provide architectural services in Texas.~~]

(b) [~~(c)~~] If an Architect [~~who has signed an Architect of Record affidavit~~] ceases to provide architectural services on behalf of a [~~the~~] business entity or association [~~for which the Architect signed the affidavit~~], the Architect must so notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Architect ceases to provide architectural services on behalf of the business entity or association.

[~~(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.~~]

[~~(e) An Architect who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) 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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Cathy L. Hendricks, ASID/IIDA
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SUBCHAPTER L. HEARINGS--CONTESTED CASES

22 TAC §1.232

The Texas Board of Architectural Examiners proposes an amendment to §1.232 of Chapter 1, Subchapter L, pertaining to hearings and contested cases. The amendment corrects cross-references to subsections of §1.122 and §1.124 to reflect proposed amendments to those rules. The amendment specifies a penalty of reprimand or administrative penalty for an architect's failure to list, upon registration or renewal of registration, a business entity or association on behalf of which the architect renders architectural services as required by a proposed amendment to §1.124(a). The amendment also corrects a pre-existing incorrect cross-reference to §1.104(e) which was listed as "Rule 1.103(e)" relating to the removal of an architectural seal from an issued document.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there is no anticipated fiscal impact resulting from the amendment. The amendment changes the number designations within the agency's penalty matrix and the wording of certain pre-existing offenses listed within the penalty matrix to reflect proposed changes to those rules. The amendment neither increases nor decreases agency workload. There are no fiscal implications for local government resulting from the amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: the amended section will provide notice of the nature of the penalty that may be imposed for failing to comply with the business association and registration requirements. If the section is not amended and the proposed amendments to §1.122 and §1.124 are adopted, the penalty matrix will be inaccurate. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.452(c), Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules and which requires the Board to adopt an administrative penalty schedule for violations of the laws enforced by the Board, respectively.

The proposed amendment does not affect any other statutes.

§1.232. Board Responsibilities.

(a) - (i) (No change.)

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following

guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §1.232(j)

(k) - (m) (No change.)

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

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §3.5

The Texas Board of Architectural Examiners proposes an amendment to §3.5 of Chapter 3, Subchapter A, Title 22, pertaining to defined terms. The amendment would delete the definition of the term "landscape architect of record." Because that term would no longer appear in the rules if another proposed rule change is adopted. Because the term would no longer be used, it will be unnecessary for the rules to include a definition of it. The proposed amendment would also define the term "regulatory approval" for purposes of the rules. As defined, "regulatory approval" would mean the approval by a governmental entity of landscape architectural plans and specification for construction or occupancy. The sealing rules and other requirements are triggered by the issuance of plans and specifications for permit, regulatory approval, or construction. The purpose of the definition is to clarify the circumstances that constitute regulatory approval for purposes of those requirements. Also the rule amendment would change the defined terms "chairman" and "vice-chairman" to "chair" and "vice-chair" in order to make the title for those offices gender neutral.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will be no fiscal impact on state or local government.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: registrants and the public will have more specific direction on the circumstances under which landscape architectural seals must be applied to plans and specifications and under which other requirements apply. By eliminating a definition for an unused term, the rules will be less confusing. Changing the presiding officers' titles to chair and vice-chair would acknowledge that either gender may serve as these officers. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of the Texas Occupations Code Annotated, which provide the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of landscape architecture.

The proposed amendment does not affect any other statutes.

§3.5. Terms Defined Herein.

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

(1) - (5) (No change.)

(6) Architectural Barriers Act--Article 9102, Vernon's Texas Civil Statutes and Texas Government Code, Chapter 469.

(7) - (11) (No change.)

(12) Chair [~~Chairman~~]--The member of the Board who serves as the Board's presiding officer.

(13) (No change.)

(14) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents issued by a Landscape Architect for the purpose(s) of Regulatory Approval [~~regulatory approval~~], permitting, or [~~and/or~~] construction.

(15) - (29) (No change.)

[~~(30) Landscape Architect of Record--A Landscape Architect who has submitted an affidavit confirming that the Landscape Architect is employed on a full-time basis by or, pursuant to Section 3.122, associated with a business entity that offers or provides landscape architectural services in Texas. The Landscape Architect of Record for a business entity shall be responsible for answering or designating another individual to answer inquiries of the Board concerning matters under the jurisdiction of the Board which are related to the business entity's practice of Landscape Architecture.~~]

(30) [~~(31)~~] Landscape Architect Registration Examination (LARE)--The standardized test that a Candidate must pass in order to obtain a valid Texas landscape architectural registration certificate.

(31) [~~(32)~~] Landscape Architects' Registration Law--Article 249c, Vernon's Texas Civil Statutes, and Chapter 1052, Texas Occupations Code.

(32) [~~(33)~~] Landscape Architectural Accreditation Board (LAAB)--An agency that accredits landscape architectural degree programs in the United States.

(33) [~~(34)~~] Landscape Architectural Intern--An individual participating in an internship to complete the experiential requirements for landscape architectural registration in Texas.

(34) [~~(35)~~] Landscape Architecture--The art and science of landscape analysis, landscape planning, and landscape design, including the performance of professional services such as consultation, investigation, research, the preparation of general development and detailed site design plans, the preparation of studies, the preparation of specifications, and responsible supervision related to the development of landscape areas for:

(A) the planning, preservation, enhancement, and arrangement of land forms, natural systems, features, and plantings, including ground and water forms;

(B) the planning and design of vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements;

(C) the formulation of graphic and written criteria to govern the planning and design of landscape construction development programs, including:

(i) the preparation, review, and analysis of master and site plans for landscape use and development;

(ii) the analysis of environmental, physical, and social considerations related to land use;

(iii) the preparation of drawings, construction documents, and specifications; and

(iv) construction observation;

(D) design coordination and review of technical submissions, plans, and construction documents prepared by individuals working under the direction of the Landscape Architect;

(E) the preparation of feasibility studies, statements of probable construction costs, and reports and site selection for landscape development and preservation;

(F) the integration, site analysis, and determination of the location of buildings, structures, and circulation and environmental systems;

(G) the analysis and design of:

(i) site landscape grading and drainage;

(ii) systems for landscape erosion and sediment control; and

(iii) pedestrian walkway systems;

(H) the planning and placement of uninhabitable landscape structures, plants, landscape lighting, and hard surface areas;

(I) the collaboration of Landscape Architects with other professionals in the design of roads, bridges, and structures regarding the functional, environmental, and aesthetic requirements of the areas in which they are to be placed; and

(J) field observation of landscape site construction, revegetation, and maintenance.

(35) [~~(36)~~] LARE--Landscape Architect Registration Examination.

(36) [~~(37)~~] Licensed--Registered.

(37) [~~(38)~~] Member Board--A landscape architectural registration board that is part of CLARB.

(38) [~~(39)~~] Nonregistrant--An individual who is not a Landscape Architect.

(39) [~~(40)~~] Prototypical--From or of a landscape architectural design intentionally created not only to establish the landscape architectural parameters of a project but also to serve as a functional model on which future variations of the basic landscape architectural design would be based for use in additional locations.

(40) [~~(41)~~] Registrant--Landscape Architect.

(41) Regulatory Approval--The approval of Construction Documents by the applicable Governmental Entity after a review of the landscape architectural content of the Construction Documents as a prerequisite to construction of a project.

(42) - (58) (No change.)

(59) Vice-Chair [~~Vice-Chairman~~]--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair [~~Chairman~~], serves as the Board's presiding officer. If necessary, the Vice-Chair [~~Vice-Chairman~~] succeeds the Chair [~~Chairman~~] until a new Chair [~~Chairman~~] is appointed.

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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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §3.21

The Texas Board of Architectural Examiners proposes an amendment to §3.21 of Chapter 3, Subchapter B, Title 22, pertaining to registration by examination. The amendment allows for the registration of graduates from a landscape architecture program that becomes accredited within two years after they graduate. The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation for accreditation and subsequently was found to be worthy of accreditation.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will likely be no fiscal impact on state and local government. If there is any impact, it is likely to be positive because the amendment would expand the class of people who may become registered as landscape architects. It is impossible to specify a dollar amount because it is two speculative to determine how many programs may become accredited during the next five years and the number of candidates who would qualify for registration as landscape architects as a result of the amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: Those who receive a landscape architectural education that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration. The amendment would make the rule more equitable. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1052.154(a)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with gen-

eral authority to promulgate rules and authority to recognize and approve landscape architectural programs which render education acceptable for registration as a landscape architect.

The proposed amendment does not affect any other statutes.

§3.21. Registration by Examination.

(a) In order to obtain landscape architectural registration by examination in Texas, an Applicant:

(1) shall have a professional degree from a landscape architectural education program accredited by the Landscape Architectural Accreditation Board (LAAB), or from a landscape architectural education program that became accredited by LAAB not later than two years after graduation, or from a landscape architectural education program outside the United States where an evaluation by Education Credential Evaluators or another organization acceptable to the Board has concluded that the program is substantially equivalent to an LAAB accredited professional program;

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

(b) - (d) (No change.)

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

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §3.121, §3.122

The Texas Board of Architectural Examiners proposes amendments to §3.121 and §3.122 of Chapter 3, Subchapter G, Title 22, pertaining to compliance and enforcement. The amendment to §3.121 replaces the term "landscape architecture" with the term "Landscape Architecture" to create a cross-reference to the definition of the term for purposes of Chapter 3. The amendment to §3.122 makes minor revisions to clarify the rule and implements §1052.005(b), Texas Occupations Code, which allows landscape architects to consult with landscape architects from other jurisdictions to render services in Texas. The amendment requires a Texas landscape architect who associates with an out-of-state landscape architect to exercise responsible charge over the preparation of construction documents created in consultation with an out-of-state landscape architect.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications to state or local government.

Ms. Hendricks has also determined that for the first five-year period the amended rules are in effect the public benefits expected as a result of the amendments are as follows: the changes to §3.121 will more clearly reference the board's definition of the term "landscape architecture" which will help specify the intent of the rule. The amendments to §3.122 also clarify the rule and specify the standard of care for a landscape architect who associates with a landscape architect from another jurisdiction to act as a consultant with the out-of-state landscape architect or to retain the out-of-state landscape architect to serve as the consultant to the Texas landscape architect. The public will benefit from the implementation of the statute and a clear statement of the role to be played by Texas landscape architect in consultation with out-of-state landscape architects. The amendments will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended sections.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed pursuant to §1051.202 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The rule is also proposed to implement §1052.005(b) of Texas Occupations Code Annotated which allows a person who is licensed or registered outside of Texas and who does not open or maintain a business in Texas to engage in the practice of landscape architecture in consultation with a Texas landscape architect.

The proposed amendments do not affect any other statutes.

§3.121. General.

In carrying out its responsibility to insure strict enforcement of the Landscape Architects' Registration Law (the Act), the Board may investigate circumstances which appear to violate or abridge the requirements of the Act or the rules dealing with the practice of Landscape Architecture [~~landscape architecture~~] and the use of the term "landscape architect," the term "landscape architectural," the term "landscape architecture," or any similar term. The Board may also investigate representations which imply that a person or a business entity is legally authorized to offer or provide landscape architectural services to the public. Violations of the Act or the rules which cannot be readily resolved through settlement shall be disposed of by administrative, civil, or criminal proceedings as authorized by law.

§3.122. Association.

(a) A Landscape Architect who forms a business association[~~, either formally or informally,~~] to jointly offer landscape architectural services with:

(1) any individual who is not a [~~duly registered~~] Texas Landscape Architect or a bona fide employee working in the same firm where the Landscape Architect is employed or

(2) [~~with~~] any group of individuals who are not [~~duly registered~~] Texas Landscape Architects shall, prior to offering such services on behalf of the business association, enter into a written agreement of association with the Nonregistrant(s) whereby the Landscape Architect agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association.

(b) All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Landscape Architect or under the Landscape Architect's Supervision and Control unless the Construction Documents are prepared and issued as described in subsection (f) of this section.

(c) [~~(b)~~] The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Landscape Architect who has agreed to associate with the Nonregistrant(s).

(3) The name, address, telephone number, and signature of each Nonregistrant with whom the Landscape Architect has agreed to associate.

(d) [~~(c)~~] All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(e) [~~(d)~~] Copies [~~Paper or microform copies~~] of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Landscape Architect who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

(f) If, pursuant to §1052.005(b) of the Texas Occupations Code, a Texas Landscape Architect associates with a person who is not a Texas Landscape Architect but is registered as a landscape architect in another jurisdiction and does not maintain or open an office in Texas, the Texas Landscape Architect shall, at a minimum, exercise Responsible Charge over the preparation of all Construction Documents issued for use in Texas as a result of the association. The Texas Landscape Architect shall seal, sign, and date all Construction Documents issued for use in Texas as a result of the association in the same manner as if the Landscape Architect had prepared the Construction Documents or they had been prepared under the Landscape Architect's Supervision and Control. The requirements of subsections (a), (c), and (e) of this section also must be satisfied. For purposes of subsections (a) and (c), the term "nonregistrant" shall include the non-Texas landscape architect. The requirements of this subsection must be satisfied regardless of whether the Texas Landscape Architect of the non-Texas landscape architect acts as the "consultant" as that term is used in §1052.005(b) of the 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.

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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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22 TAC §3.124

The Texas Board of Architectural Examiners proposes an amendment to §3.124 of Chapter 3, Subchapter G, Title 22, pertaining to business registration. The purpose for the amendment to §3.124 is to update the business registration rule. As amended, each landscape architect, not the business entities and associations, must file information with the board regarding the businesses on behalf of which the landscape architect renders landscape architectural services. The information is to be filed upon registration and annually upon renewal of registration. Landscape architects who cease to render services on behalf of a business entity or association must notify the board of that fact. The amendment repeals the requirement that a landscape architect complete an affidavit swearing to act as landscape architect of record at a business entity or association. The purpose of the amendment is to secure current, regularly updated information on file with the board regarding businesses that may lawfully offer or render landscape architectural services. Under the current rule, information is not consistently filed and that which is filed is not kept current through annual registration renewal. As amended, the registration requirement is shifted to the board's registrants who are more likely to adhere to the board's rules. As amended the rule also requires at least annual updates of the information registered regarding registrants' firms.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there is not anticipated to be a significant fiscal impact as a result of the amendments. The revisions to §3.124 will provide more data regarding the identities of architectural firms and business entities practicing in the state. That information is currently filed with the Board by businesses, not landscape architects, and not on an annual basis. The agency estimates a one-time fiscal impact of $20,000 in upgrading the agency's database to collect the information. There are no fiscal implications to local government arising from the amendments.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: The agency will have more comprehensive and up-to-date information on firms and business entities that may lawfully offer or render landscape architectural services. Conversely, the agency will more easily identify those firms and business that may not lawfully offer or render landscape architecture. The amendment will add the amount of information landscape architects must provide upon renewing registration. However, landscape architects would no longer be required to file landscape architect of record affidavits as is required under current §1.124. The amendment will have no fiscal impact on small business. The business registration requirements shift the responsibility to file information with the agency from businesses to registrants.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Landscape Architects' Registration Law; §1051.208, Texas Occupations Code Annotated, which requires the Board to establish by rule standards of conduct for its registrants; §1051.306, Texas Occupations Code Annotated, which allows the Board to adopt

rules requiring business entities that engage in the practice of landscape architecture to register with the Board.

The proposed amendment does not affect any other statutes.

§3.124. Business Registration.

(a) Upon initially registering as a Landscape Architect and upon renewing landscape architectural registration, each Landscape Architect shall identify [~~Unless excepted from the Act in accordance with the specific exemptions described in the Act,~~] each business entity or association on behalf of which the Landscape Architect [~~that~~] offers or provides landscape architectural services in Texas. The Landscape Architect shall list the name, address, and contact information regarding each business entity and association as specified on the renewal application form provided by the Board. If a business association does not have a name, the Landscape Architect shall list the name(s), address(es), and any other contact information of the person(s) with whom the association was formed as specified on the renewal application form. [~~must register with the Board by submitting a completed business registration form accompanied by at least one duly executed Landscape Architect of Record affidavit. Blank business registration forms and Landscape Architect of Record affidavit forms may be requested by contacting the Board's office.~~]

[~~(b) Once the Board has received a completed business registration form and a duly executed Landscape Architect of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to offer and provide landscape architectural services in Texas.~~]

(b) [~~(c)~~] If a Landscape Architect [~~who has signed a Landscape Architect of Record affidavit~~] ceases to provide landscape architectural services on behalf of a [~~the~~] business entity or association [~~for which the Landscape Architect signed the affidavit~~], the Landscape Architect must so notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Landscape Architect ceases to provide landscape architectural services on behalf of the business entity or association.

[~~(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.~~]

[~~(e) A Landscape Architect who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) 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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Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
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For further information, please call: (512) 305-8535

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

The Texas Board of Architectural Examiners proposes an amendment to §3.232 of Chapter 3, Subchapter K, Title 22, pertaining to hearings and contested cases. The amendment corrects cross-references to subsections of Rules 3.122 and 3.124 to reflect proposed amendments to those rules. The amendment specifies a penalty of reprimand or administrative penalty for a landscape architect's failure to list, upon registration or renewal of registration, a business entity or association on behalf of which the landscape architect renders landscape architectural services as required by a proposed amendment to §3.124(a). The amendment also corrects a pre-existing incorrect cross-reference to Rule 3.104(e) which was listed as "Rule 3.103(e)" relating to the removal of a landscape architectural seal from an issued document.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there is no anticipated fiscal impact resulting from the amendments. The amendments change the number designations within the agency's penalty matrix and the wording of certain pre-existing offenses listed within the penalty matrix to reflect proposed changes to those rules. The amendments neither increase nor decrease agency workload. There are no fiscal implications for local government resulting from the amendments.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: The amended section will provide notice of the nature of the penalty that may be imposed for failing to comply with the business association and registration requirements. If the section is not amended and the proposed amendments to §3.122 and §3.124 are adopted, the penalty matrix will be inaccurate. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.452(c), Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules and which requires the Board to adopt an administrative penalty schedule for violations of the laws enforced by the Board, respectively.

The proposed amendment does not affect any other statutes.

§3.232. Board Responsibilities.

(a) - (i) (No change.)

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §3.232(j)

(k) - (m) (No change.)

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

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Cathy L. Hendricks, ASID/IIDA
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For further information, please call: (512) 305-8535

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CHAPTER 5. INTERIOR DESIGNERS
SUBCHAPTER A. SCOPE; DEFINITIONS

22 TAC §5.5

The Texas Board of Architectural Examiners proposes an amendment to §5.5 of Chapter 5, Subchapter A, Title 22, pertaining to defined terms. The amendment deletes the definition for the term "interior designer of record." Pursuant to the proposed amendment of another rule, the term "interior designer of record" would no longer appear in the rules. The amendment defines the term "regulatory approval" as that term is used in the rules. The amendment also changes the defined terms "chairman" and vice-chairman" to "chair" and "vice-chair," respectively, in order to make the two terms gender-neutral.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will be no fiscal impact on state or local government arising from the amendment to the definition.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: defining the term "regulatory approval" will clarify the board's intent in rules which specify sealing as a prerequisite to issuing plans for regulatory approval. In the past, the board received notice from registrants who indicated that it was unclear whether plans were subject to regulatory approval under certain circumstances. By defining the term "regulatory approval" the board explicitly states that the term refers to approval for construction or occupancy of a project. By repealing the definition for the term "interior designer of record", the public benefit will be to eliminate superfluous provisions in the board's rules. Revising the terms "chairman" and "vice-chairman" to "chair" and "vice-chair" makes those terms gender neutral. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules, including rules related to the practice of interior design and the administration of subtitle B of title 6 of the Texas Occupations Code.

The proposed amendment does not affect any other statutes.

§5.5. Terms Defined Herein.

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

(1) - (11) (No change.)

(12) Chair [~~Chairman~~]--The member of the Board who serves as the Board's presiding officer.

(13) Construction Documents--Drawings; specifications; and addenda, change orders, construction change directives, and other Supplemental Documents issued by an Interior Designer for the purpose(s) of Regulatory Approval [~~regulatory approval~~], permitting, or [~~and/or~~] construction.

(14) - (28) (No change.)

[~~(29) Interior Designer of Record--An Interior Designer who has submitted an affidavit confirming that the Interior Designer is employed on a full-time basis by or, pursuant to Section 5.132, associated with a business entity that uses the title "interior designer" or the term "interior design" to describe itself or a service it offers or performs in Texas. The Interior Designer of Record for a business entity shall be responsible for answering or designating another individual to answer inquiries of the Board concerning matters under the jurisdiction of the Board which are related to the business entity's use of the title "interior designer" or the term "interior design."~~]

(29) [~~(30)~~] Interior Designers' Registration Law--Article 249e, Vernon's Texas Civil Statutes, and Chapter 1053, Texas Occupations Code.

(30) [~~(31)~~] Interior Design Intern--An individual participating in an internship to complete the experiential requirements for interior design registration by examination in Texas.

(31) [~~(32)~~] Licensed--Registered.

(32) [~~(33)~~] Member Board--An interior design registration board that is part of NCIDQ.

(33) [~~(34)~~] National Council for Interior Design Qualification (NCIDQ)--A nonprofit organization of state and provincial interior design regulatory agencies and national organizations whose membership is made up in total or in part of interior designers.

(34) [~~(35)~~] NCIDQ--National Council for Interior Design Qualification

(35) [~~(36)~~] Nonregistrant--An individual who is not an Interior Designer.

(36) [~~(37)~~] Registrant--Interior Designer.

(37) Regulatory Approval--The approval of Construction Documents by a Governmental Entity after a review of the Interior Design content of the Construction Documents as a prerequisite to construction or occupation of a building or facility.

(38) - (54) (No change.)

(55) Vice-Chair [~~Vice-Chairman~~]--The member of the Board who serves as the assistant presiding officer and, in the absence of the Chair [~~Chairman~~], serves as the Board's presiding officer. If necessary, the Vice-Chair [~~Vice-Chairman~~] succeeds the Chair [~~Chairman~~] until a new Chair [~~Chairman~~] is appointed.

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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Cathy L. Hendricks, ASID/IIDA
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SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5.31 of Chapter 5, Subchapter B, Title 22, pertaining to interior design registration by examination. The amendment allows for the registration of graduates from an interior design program that becomes accredited within two years after they graduate. The amendment allows for registration of candidates who were enrolled in a program while it was under evaluation for accreditation and subsequently was found to be worthy of accreditation.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will likely be no fiscal impact on state and local government. If there is any impact, it is likely to be positive because the amendment would expand the class of people who may become registered as interior designers. It is impossible to specify a dollar amount because it is not possible to determine how many programs may become accredited during the next five years and the number of candidates who would qualify for registration as interior designers as a result of the amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: Those who receive an education from an interior design program that is ultimately determined to be worthy of accreditation would receive the benefit of that accreditation in seeking registration. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1053.155(c)(1), Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with general authority to promulgate rules and discretion to recognize and approve interior design educational programs acceptable to gain admission to take the registration examination.

The proposed amendment does not affect any other statutes.

§5.31. Registration by Examination.

(a) In order to obtain interior design registration by examination in Texas, an Applicant shall demonstrate that the Applicant has a combined total of at least six years of approved interior design education and experience and shall successfully complete the interior design registration examination as more fully described in Subchapter C. For purposes of this section, an Applicant has "approved interior design education" if:

(1) The Applicant graduated from a program that has been granted professional status by the Foundation for Interior Design Education Research (FIDER) or the National Architectural Accreditation Board (NAAB), or from a program that was granted professional status by FIDER or NAAB not later than two years after graduation, or from an interior design education program outside the United States where an evaluation by World Education Services or another organization acceptable to the Board has concluded that the program is substantially equivalent to a FIDER or NAAB accredited professional program;

(2) - (6) (No change.)

(b) - (h) (No change.)

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

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SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

22 TAC §5.132

The Texas Board of Architectural Examiners proposes amendments to §5.132 of Chapter 5, Subchapter G, Title 22, pertaining to business associations. The amendment makes minor revisions to clarify the requirements for an interior designer to enter into an association to offer or render interior design services with one or more persons who are not interior designers. The amendment also implements §1053.002(b), Texas Occupations Code, which allows interior designers to consult with interior designers from other jurisdictions to render services in Texas. The amendment requires a Texas interior designer who associates with an out-of-state interior designer to exercise responsible charge over the preparation of construction documents created in consultation with an out-of-state interior designer.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications to state or local government.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: The amendments will clarify the rule and specify the standard of care for an interior designer who associates with an interior designer from another jurisdiction to act as a consultant to the out-of-state interior designer or to retain the out-of-state interior designer to serve as the consultant to the Texas interior designer. The public will benefit from the implementation of the statute and a clear statement of the role to be played by Texas interior designer when services

are rendered in Texas by an out-of-state interior designer. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 of Texas Occupations Code Annotated which provide the Texas Board of Architectural Examiners with authority to promulgate rules. The rule is also proposed to implement §1053.002(b) of Texas Occupations Code Annotated which allows a person who is licensed or registered outside of Texas and who does not open or maintain a business in Texas to engage in the practice of interior design in consultation with a Texas interior designer.

The proposed amendment does not affect any other statutes.

§5.132. Association.

(a) An Interior Designer who forms a business association[~~, either formally or informally,~~] to jointly offer services designated as "interior design" with:

(1) any person who is not a [~~duly registered~~] Texas Interior Designer or a bona fide employee working in the same firm where the Interior Designer is employed or

(2) [~~with~~] any group of individuals who are not [~~duly registered~~] Texas Interior Designers shall, prior to offering such services on behalf of the business association, enter into a written agreement of association with the nonregistrant whereby the Interior Designer agrees to be responsible for the preparation of all Construction Documents prepared and issued for use in Texas pursuant to the agreement of association.

(b) All Construction Documents prepared and issued for use in Texas pursuant to the agreement of association shall be prepared by the Interior Designer or under the Interior Designer's Supervision and Control unless the Construction Documents are prepared and issued as described in subsection (f) of this section [~~supervision and control~~].

(c) [~~(b)~~] The written agreement of association shall be signed by all parties to the agreement. In addition to the provisions of subsection (a) of this section, the written agreement of association shall contain the following:

(1) The date when the agreement to associate is effective and the approximate date when the association will be dissolved if such association is not to be a continuing relationship. If the association is to be a continuing relationship, that fact shall be so noted in the agreement. If the association is only for one project, the project shall be identified in the agreement of association by listing both the client's and the project's names and addresses.

(2) The name, address, telephone number, registration number, and signature of each Interior Designer who has agreed to associate with the nonregistrant(s).

(3) The name, address, telephone number, and signature of each nonregistrant with whom the Interior Designer has agreed to associate.

(d) [~~(c)~~] All Construction Documents prepared pursuant to the association described in this section shall be sealed, signed, and dated in accordance with the provisions of Subchapter F.

(e) [~~(d)~~] Copies [~~Paper or microform copies~~] of all Construction Documents resulting from the association, together with the written agreement of association, shall be retained by the Interior Designer who sealed them and made available for review by the Board for ten (10) years from the date of substantial completion of each project.

(f) If, pursuant to §1053.002(b) of the Texas Occupations Code, a Texas Interior Designer associates with a person who is not a Texas Interior Designer but is registered as an interior designer in another jurisdiction and does not maintain or open an office in Texas, the Texas Interior Designer shall, at a minimum, exercise Responsible Charge over the preparation of all Construction Documents issued for use in Texas as a result of the association. The Texas Interior Designer shall seal, sign, and date all Construction Documents issued for use in Texas as a result of the association in the same manner as if the Interior Designer had prepared the Construction Documents or they had been prepared under the Interior Designer's Supervision and Control. The requirements of subsections (a), (c), and (e) of this section also must be satisfied. For purposes of subsections (a) and (c), the term "nonregistrant" shall include the non-Texas interior designer. The requirements of this subsection must be satisfied regardless of whether the Texas Interior Designer or the non-Texas interior designer acts as the "consultant" as that term is used in §1053.002(b) of the 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 December 12, 2005.

TRD-200505756
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8535

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22 TAC §5.134

The Texas Board of Architectural Examiners proposes an amendment to §5.134 of Chapter 5, Subchapter G, Title 22, pertaining to business registration. The purpose for the amendment to §5.134 is to update the business registration rule. As amended, each interior designer must file information with the board regarding the businesses on behalf of which the interior designer renders interior design services. The current version of the rule requires business entities and associations to register with the board. As amended, the rule would require interior designers to file the information upon registration and annually upon renewal of registration. Interior designers who cease to render services on behalf of a business entity or association would be required to notify the board of that fact. The amendment repeals a requirement that an interior designer complete an affidavit swearing to act as interior designer of record at a business entity or association. The rule's purpose is to secure current, regularly updated information on file with the board regarding businesses that may lawfully offer or render interior design services. Under the current rule, information is not consistently filed and that which is filed is not kept current through annual registration renewal. As amended, the registration requirement is shifted to the board's registrants who are more likely to adhere to the board's rules.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there is not anticipated to be a significant fiscal impact as a result of the amendments. The revisions to §5.134 will provide more data regarding the identities of interior design firms and business entities practicing in the state. That information is currently filed with the Board by businesses, not interior designers, and is not filed on an annual basis. The agency estimates a one-time fiscal impact of $20,000 in upgrading the agency's database to collect the information. There are no fiscal implications to local government arising from the amendment.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: The agency will have comprehensive and up-to-date information on firms and business entities that may lawfully offer or render interior design services. Conversely, the agency will more easily identify those firms and business that may not lawfully offer or render interior design services. The amendment will add the amount of information interior designers must provide upon renewing registration. However, interior designers would no longer be required to complete affidavits which businesses must file with the board under current §1.124. The amendment will have no fiscal impact on small business. The business registration requirements shift the responsibility to file information with the agency from businesses to registrants.

There will be no change in the cost to persons required to comply with the amended section.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202, Texas Occupations Code Annotated, which grants authority to the Board to adopt rules necessary to administer or enforce the Interior Designers' Registration Law; §1051.208, Texas Occupations Code Annotated, which requires the Board to establish by rule standards of conduct for its registrants; §1051.306, Texas Occupations Code Annotated, which allows the Board to adopt rules requiring business entities that engage in the practice of interior design to register with the Board.

The proposed amendment does not affect any other statutes.

§5.134. Business Registration.

(a) Upon initially registering as an Interior Designer and upon renewing Interior Design registration, each Interior Designer shall identify each [~~Each~~] business entity or association on behalf of which the Interior Designer offers or provides Interior Design Services in Texas. The Interior Designer shall list the name, address, and contact information regarding each business entity and association as specified on the renewal application form provided by the Board. If a business association does not have a name, the Interior Designer shall list the name(s), address(es), and any other contact information of the person(s) with whom the association was formed as specified on the renewal form. [~~that uses the title "interior designer" or the term "interior design" to describe itself or a service it offers or performs in Texas must register with the Board by submitting a completed business registration form accompanied by at least one duly executed Interior Designer of Record affidavit. Blank business registration forms and Interior Designer of Record affidavit forms may be requested by contacting the Board's office.~~]

[~~(b) Once the Board has received a completed business registration form and a duly executed Interior Designer of Record affidavit from a business entity or association, the Board shall enter the entity's or association's name into its registry of business entities and associations that are authorized to use the title "interior designer" and the term "interior design" to describe themselves and services they offer and perform in Texas.~~]

(b) [~~(c)~~] If an Interior Designer [~~who has signed an Interior Designer of Record affidavit~~] ceases to provide interior design services on behalf of a [~~the~~] business entity or association [~~for which the Interior Designer signed the affidavit~~], the Interior Designer must so notify the Board in writing. Such notification must be postmarked within thirty (30) days of the date the Interior Designer ceases to provide interior design services on behalf of the business entity or association.

[~~(d) Effective September 1, 2001, the Board may establish a business registration fee. All business entities required to register with the Board pursuant to the provisions of this section shall pay the business registration fee as prescribed by the Board.~~]

[~~(e) An Interior Designer who is a sole proprietor doing business under his/her own name shall be exempt from the requirements of subsections (a) - (d) 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 December 12, 2005.

TRD-200505757
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8535

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

The Texas Board of Architectural Examiners proposes an amendment to §5.242 of Chapter 5, Subchapter K, Title 22, pertaining to hearings and contested cases. The amendment corrects cross-references to subsections of Rules 5.132 and 5.134 to reflect proposed amendments to those rules. The amendment specifies a penalty of reprimand or administrative penalty for an interior designer's failure to list, upon registration or renewal of registration, a business entity or association on behalf of which the interior designer renders interior design services as required by a proposed amendment to §5.134(a). The amendment also corrects a pre-existing incorrect cross-reference to Rule 5.114(e) which was listed as "Rule 5.113(e)" relating to the removal of an interior designer's seal from an issued document.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amendment is in effect, there is no anticipated fiscal impact resulting from the amendments. The amendments change the number designations within the agency's penalty matrix and the wording of certain pre-existing offenses listed within the penalty

matrix to reflect proposed changes to those rules. The amendments neither increase nor decrease agency workload. There are no fiscal implications for local government resulting from the amendments.

Ms. Hendricks has also determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amendment are as follows: The amended section will provide notice of the nature of the penalty that may be imposed for failing to comply with the business association and registration requirements. If the section is not amended and the proposed amendments to §5.132 and §5.134 are adopted, the penalty matrix will be inaccurate. The amendment will have no impact on small business.

There will be no change in the cost to persons required to comply with the amended section

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §1051.202 and §1051.452(c), Texas Occupations Code Annotated, which provides the Texas Board of Architectural Examiners with authority to promulgate rules and which requires the Board to adopt an administrative penalty schedule for violations of the laws enforced by the Board, respectively.

The proposed amendment does not affect any other statutes.

§5.242. Board Responsibilities.

(a) - (i) (No change.)

(j) The Board and the administrative law judge who presides over the formal hearing in a Contested Case shall refer to the following guidelines to determine the appropriate penalty for a violation of any of the statutory provisions or rules enforced by the Board:
Figure: 22 TAC §5.242(j)

(k) - (m) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505758
Cathy L. Hendricks, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8535

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PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.29

The Texas Funeral Service Commission (Commission) proposes an amendment to §203.29, concerning Funeral Establishment Names.

The amendment is proposed because the existing subsection (e) conflicts with §651.153(b) of the Commission's enabling legislation which prohibits a rule that restricts the person's advertisement under a trade name.

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

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

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

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

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

§203.29. Funeral Establishment Names.

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

(e) No funeral establishment may advertise under an assumed name, unless the entity has filed an assumed name certificate with the appropriate county clerk or the secretary of state, as required by the Texas Assumed Business or Professional Name Act [~~or provide funeral services under a name other than the name on the establishment 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.

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505679
O.C. Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 936-2466

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.11, 537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.44, 537.46, 537.47

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §§537.11, 537.20, 537.28, 537.30 - 537.32, 537.37, 537.43, 537.44, 537.46, and 537.47, concerning professional agreements and standard contracts. These amendments would adopt by reference ten revised contract forms to be used by Texas real estate licensees.

Texas real estate licensees are generally required to use forms promulgated by TREC when negotiating contracts for the sale of real property. These forms are drafted by the Texas Real Estate Broker-Lawyer Committee, an advisory body consisting of six attorneys appointed by the President of the State Bar of Texas, six brokers appointed by TREC, and a public member appointed by the governor.

The amendment to §537.11 would renumber the revised forms promulgated by TREC.

The amendment to §537.20 would adopt by reference Standard Contract Form TREC No. 9-6, Unimproved Contract Form. Paragraph 4A would be reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender's approving the buyer's financial condition pursuant to the Third Party Financing Conditions Addendum. Paragraph 6C would be reformatted by moving the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6D would be revised to clarify the provisions regarding buyer's right to object to any portion of the property lying in a special flood hazard area (Zone V or A) to parallel language in Federal Emergency Management Agency maps; and to provide that if Paragraph 6C(2) applies, the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. Paragraph 6E would be revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A would be reformatted to be consistent with other TREC contract forms. Paragraph 7E. would be revised regarding seller's disclosures about flooding of the property and environmental hazards or conditions. Paragraph 12 would be revised to be consistent with other TREC contract forms. Paragraph 18 would be reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C would provide that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D would be added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses would be added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 would be modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option would be in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box would be placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials would be deleted from the signature page. The seller's receipt of the option fee on the last page would be clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.28 would adopt by reference Standard Contract Form TREC No. 20-7, One to Four Family Residential Contract (Resale). The form would be revised to bold the phrase in Paragraph 2B to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A would be reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender's approving the buyer's financial condition pursuant to the Third Party Financing Conditions Addendum. Paragraph 6C would be reformatted by moving the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6D would be revised to provide that if Paragraph 6C(2) applies, the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. Paragraph 6E would be revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A would be reformatted to be consistent with other TREC contract forms. Paragraph 12 would be revised to be consistent with other TREC contract forms. Paragraph 18 would be reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C would provide that upon termination of the contract, either party

may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D would be added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses would be added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 would be modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option would be in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box would be placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials would be deleted from the signature page. The seller's receipt of the option fee on the last page would be clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendments to §537.30 would adopt by reference Standard Contract Form TREC No. 23-6, New Home Contract (Incomplete Construction). The amendment to §537.31 would adopt by reference Standard Contract Form TREC No. 24-6, New Home Contract (Complete Construction). Paragraph 4A of both forms would be reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender's approving the buyer's financial condition pursuant to the Third Party Financing Conditions Addendum. Paragraph 6C of Form No. 24-6 would be reformatted by moving the provision related to the existing survey to Paragraph 6C(1) and by adding a sentence in Paragraph 6C(1) that clarifies that if the seller fails to deliver the existing survey or an acceptable affidavit to the buyer and title company within the time required, the buyer may obtain a new survey no later than three days before the closing date at the seller's expense. If the seller delivers the existing survey and affidavit within the time required, but it is not acceptable to the title company or lender, the parties negotiate (by checking the appropriate box for which party pays for a new, acceptable survey). Paragraph 6D would be revised to provide that if Paragraph 6C(2) applies, the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. Paragraph 6E would be revised to add two notices. The notice under Paragraph 6E(6) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6E(7) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A would be reformatted to be consistent with other TREC contract forms. Paragraph 12 would be revised to be consistent with other TREC contract forms. Paragraph 18 would be reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C would provide that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D would be added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses would be added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 would be modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option would be in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box would be placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The notice required by Chapter 27 of the Texas Property Code adjacent to the signature lines would be revised to reflect the current statutory language. The blanks for the parties' initials would be deleted from the signature page. The seller's receipt of the option fee on the last page would be clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendments to §537.32 would adopt by reference Standard Contract Form TREC No. 25-5 Farm and Ranch Contract. The form would be revised to bold the phrases in Paragraph 2B(1) and (2) to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A would be reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender's approving the buyer's financial condition pursuant to the Third Party Financing Conditions Addendum. Paragraph 6C would be revised to rearrange the check boxes for consistency with other TREC contract forms. Paragraph 6D would be revised to clarify the provisions regarding buyer's right to object to any portion of the property lying in a special flood hazard area (Zone V or A) to parallel language in Federal Emergency Management Agency maps; and to provide that if Paragraph 6C(2) applies, the buyer is deemed to have received the survey on the date specified in Paragraph 6C(2) or the actual day he or she receives it, whichever date is earlier. Paragraph 6G would be revised to add two notices. The notice under Paragraph 6G(5) is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. The notice under Paragraph 6G(6) is a statutorily required notice that a seller of property in a public improvement district (PID) must provide to a buyer. The notice cautions the buyer that a PID may make special assessments against property in the PID. Paragraph 7A would be reformatted to be consistent with other TREC contract forms. Paragraph 12 would be revised to be consistent with other TREC contract forms. Paragraph 18 would be reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C would provide that upon ter-

mination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D would be added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses would be added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 would be modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option would be in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box would be placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials would be deleted from the signature page. The seller's receipt of the option fee on the last page would be clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.37 would adopt by reference Standard Contract Form TREC No. 30-5, Residential Condominium Contract (Resale). The form would be revised to bold the phrase in Paragraph 2B to further emphasize that the list of items in Paragraph 2B are those items that are permanently installed or built in. Paragraph 4A would be reformatted to clarify that the contract is made subject to the approval of the property and if Paragraph 4A(2)(a) applies, the contract is also subject to the lender's approving the buyer's financial condition pursuant to the Third Party Financing Conditions Addendum. Paragraph 6E would be revised to add a notice as 6E(5) which is a statutorily required notice that a seller of property located in a certificated service area of a utility service provider must give to a buyer. The notice cautions the buyer that the property may be located in such a district and that special costs to obtain service may apply. Paragraph 7A would be reformatted to be consistent with other TREC contract forms. Paragraph 12 would be revised to be consistent with other TREC contract forms. Paragraph 18 would be reformatted to clarify obligations of the parties related to the earnest money and to provide for additional incentives for prompt release of the earnest money. Paragraph 18C would provide that upon termination of the contract, either party may send a release to the other party and the escrow agent and the parties will execute the appropriate documents and return them to the escrow agent. If one party makes demand on the escrow agent for the return of the earnest money, the escrow agent should send the demand to the other party. If the other party does not object within 15 days (shortened from 30 days), the escrow agent may disburse the earnest money to the demanding party. Paragraph 18D would be added to provide that if a party wrongfully refuses or wrongfully fails to sign a release, the party entitled to the earnest money is entitled to liquidated damages of three times the amount of the earnest money. A line for e-mail addresses would be added under Paragraphs 21 and 24, and to the Broker Information and Ratification of Fee Box on the last page. Paragraph 23 would be modified to provide that the option fee may be paid within two days after the effective date of the contract. If the buyer fails to timely pay the option fee, the buyer will not have an option under the contract. Consideration supporting the option would be in two parts: the option fee and nominal consideration, receipt of which is acknowledged. A box would be placed around the effective date to call more attention to the brokers to complete the effective date upon final acceptance of the contract. The blanks for the parties' initials would be deleted from the signature page. The seller's receipt of the option fee on the last page would be clarified so that the listing broker may acknowledge receipt of the option fee for a proper tendering of the fee.

The amendment to §537.43 would adopt by reference Standard Contract Form TREC No. 36-4, Addendum for Property Subject to Mandatory Membership in an Owners' Association. The form would be revised to delete the requirement in Paragraph A that the Subdivision Information not be more than three months as such is not required by the statute. Old Paragraph A(3), which previously provided that the buyer does not require delivery of the Subdivision Information would be deleted. Paragraph B would be modified to change the title to "Fees" rather than "Transfer Fees" and to provide that the buyer will pay a certain amount of any fees resulting from the transfer and the seller will pay the remainder. The revisions will clarify that the fees at issue in the paragraph include any Owners' Association fees resulting from the transfer, which may also include initiation or other fees.

The amendment to §537.44 would adopt by reference Standard Contract Form TREC No. 37-2, Subdivision Information, Including Resale Certificate for Property Subject to Mandatory Membership in an Owners' Association. The proposed change would add a line for an e-mail address for the managing agent of the subdivision.

The amendment to §537.46 would adopt by reference Standard Contract Form TREC No. 39-6, Amendment. In Paragraph 6, the proposed revision would strike the word 'nonrefundable' before the word 'Option.' A bold box would be added around the execution date of the amendment to call the licensee's attention to the need to complete the date.

The amendment to §537.47 would adopt by reference Standard Contract Form TREC No. 40-2, Third Party Financing Condition Addendum. The form would be revised to include a provision concerning availability of the described loan terms to the definition of financing approval. Specifically, financing approval is obtained when the terms of the described loan are available; and the lender determines that the buyer has met the lender's financial requirements (creditworthiness, assets and income). This clarifies that the buyer may terminate the contract under the addendum, within the time specified in the addendum, if the described loan terms are not available (for example, interest rate increase over the stated amount). A note was added to the first paragraph to clarify that financing approval under the addendum does not include approval of the property.

Loretta R. DeHay, General Counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the amended sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the amended sections.

Ms. DeHay also has determined that for each year of the first five years the amendments as proposed are in effect the public benefit anticipated as a result of enforcing the amended sections will be the availability of current standard contract forms. There will be no effect on small businesses. There is no anticipated

economic cost to persons who are required to comply with the proposed amendments, other than the costs of obtaining copies of the forms, which would be available at no charge through the TREC web site, and available from private printers at an estimated cost of $7.50 per set of 50 copies.

Comments on the proposal may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapter 1101 and Chapter 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapter 1101 and Chapter 1102 and ensure compliance with Chapter 1101 and Chapter 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC No. 9-6[~~5~~] is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-4 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-5 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 15-3 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-3 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-7[~~6~~] is promulgated for use in the resale of residential real estate. Standard Contract Form TREC No. 23-6[~~5~~] is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-6[~~5~~] is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-5[~~4~~] is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-4 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 30-5[~~4~~] is promulgated for use in the resale of a residential condominium unit Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-1 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form TREC Form No. 36-4[~~3~~] is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-2[~~1~~] is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 38-1 is promulgated for use as a notice of termination of contract. Standard Contract Form TREC Form No. 39-6[~~5~~] is promulgated for use as an amendment to promulgated forms of contracts. TREC Form No. 40-2[~~1~~] is promulgated for use as an addendum to be added to promulgated forms of contracts when there is a condition for third party financing. TREC Form No. 41-0 is promulgated for use as an addendum to be added to promulgated forms of contracts when there is an assumption of a loan. TREC Form No. 42-0 is promulgated for use as a notice that buyer cannot obtain financing pursuant to the Third Party Financing Condition Addendum.

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

§537.20. Standard Contract Form TREC No. 9-6[~~5~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 9-6[~~5~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.28. Standard Contract Form TREC No. 20-7[~~6~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 20-7[~~6~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.30. Standard Contract Form TREC No. 23-6[~~5~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 23-6[~~5~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.31. Standard Contract Form TREC No. 24-6[~~5~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 24-6[~~5~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.32. Standard Contract Form TREC No. 25-5[~~4~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 25-5[~~4~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.37. Standard Contract Form TREC No. 30-5[~~4~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 30-5[~~4~~] approved by the Texas Real Estate Commission in 2005 [~~2003~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.43. Standard Contract Form TREC No. 36-4[~~3~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 36-4[~~3~~] approved by the Texas Real Estate Commission in 2005 [~~2004~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. Standard Contract Form TREC No. 37-2[~~1~~].
The Texas Real Estate Commission adopts by reference standard contract form TREC No. 37-2[~~1~~] approved by the Texas Real Estate Commission in 2005 [~~1999~~]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.46. Standard Contract Form TREC No. 39-6[5].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 39-6[5] approved by the Texas Real Estate Commission in 2005[2004]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.47. Standard Contract Form TREC No. 40-2[1].

The Texas Real Estate Commission adopts by reference standard contract form TREC No. 40-2[1] approved by the Texas Real Estate Commission in 2005 [2004]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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

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

TRD-200505619
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 465-3900

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PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 591. GENERAL PROVISIONS

22 TAC §591.21

The Texas Structural Pest Control Board proposes an amendment to §591.21 concerning Definitions of Terms. The proposal is based upon the Attorney General's Opinion No. GA-0346 ruling. Because the Attorney General has ruled that the Board may define "infestation", the Board is responding to that ruling and proposing this definition.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Murray Walton, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated is that "infestation" will be defined. This definition will help interested parties and licensees also know what matters fall into the Board's jurisdiction. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Texas Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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

§591.21. Definition of Terms.

In addition to the definitions set out in the Structural Pest Control Act the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Structural Pest Control Act, Occ. Code, Chpt. 1951, as amended.

(2) Apprentice--A sales or service employee who has been registered with the Structural Pest Control Board, but has not yet passed a technician examination. An apprentice card is valid for a maximum of twelve (12) months.

(3) Bait Process--The use of food or other requisite that may be treated with a pesticide and/or other mitigating agent that will adversely affect the pest.

(4) Barrier--For the purposes of a termite treatment, an area of soil or other material which has been treated with a termiticide.

(5) Board--The Structural Pest Control Board

(6) Category--The type of service or services a person or business entity is authorized to perform.

(7) Chairman--An individual appointed by the Governor, who presides at the Board meetings.

(8) Contract--A binding agreement between two or more persons or parties that spell out in writing, the terms and conditions or such agreement, and will include, but not limited to, warranties or guarantees for pest control work.

(9) Document--any original or official application for technician exam, application for technician license, application for exam and certified applicator license, contract, electronic forms, drawing, guarantee, invoice, map, notice of pre-construction treatment, report, service agreement, termination notice, termite pre-treatment disclosure document, training records, Wood Destroying Insect report, warranty or other paperwork required by the Board. Relevant sections of the document must be filled out in its entirety when provided or presented by a licensee to either the customer or the Board. Documents required to be maintained by a licensee must be made available to the Board upon request.

(10) Executive Director--The person employed by the Board who administers the provisions of this of this Act and the rules and regulations promulgated by the Board.

(11) Inactive license--license that reflects certification, but which prohibits the technician or certified applicator from doing any pest control services for compensation.

[(11) Investigator--A structural pest control investigator employed by the Board.]

(12) Infest--the presence of one or more obnoxious or unwanted animal(s) or plant(s) in, on or around a structure, trees, shrubs, or other plantings adjacent to or in a residence, business establishment, industrial plant, institutional building, or street.

[(12) Inactive license--license that reflects certification, but which prohibits the technician or certified applicator from doing any pest control services for compensation.]

(13) Investigator--A structural pest control investigator employed by the Board.

[(13) License--A document issued by the Board to a person authorizing the practicing and/or supervising of the professional service or services indicated thereon.]

(14) License--A document issued by the Board to a person authorizing the practicing and/or supervising of the professional service or services indicated thereon.

[(14) Licensee--The holder of a valid license.]

(15) Licensee--The holder of a valid license.

[(15) Personal Contact--Physical presence at a work location.]

(16) Obnoxious and unwanted animals or plants--animals or plants that limit the use or enjoyment or cause harm or damage of any type to people, pets, structures, landscapes, or the environment. Animals excluded from this definition are members of the Order Primates, hoofed mammals, members of the Family Ursidea, members of the Genus Felis, members of the Genus Canis, domestic livestock, ratites, gallinaceous birds, and alligators.

[(16) Revoke--To cancel a license issued under authority of the Structural Pest Control Act. When a business license is revoked, the holder of said license must acquire a new license by completing a new application, and paying the required fee. In the case of the certified applicator, the holder of such certified applicator's license must acquire a new license by completing a new application, paying a required fee, and being re-examined in each category desired by said person.]

(17) Personal Contact--Physical presence at a work location.

[(17) Suspend--To cease operations for a period of time as specified by the Board.]

(18) Revoke--To cancel a license issued under authority of the Structural Pest Control Act. When a business license is revoked, the holder of said license must acquire a new license by completing a new application, and paying the required fee. In the case of the certified applicator, the holder of such certified applicator's license must acquire a new license by completing a new application, paying a required fee, and being re-examined in each category desired by said person.

[(18) Unit--One hour of time.]

(19) Suspend--To cease operations for a period of time as specified by the Board.

[(19) Vice-Chairman--An individual appointed Board member elected by the Board who presides at the Board meeting in the absence of the Chairman.]

(20) Unit--One hour of time.

(21) Vice-Chairman--An individual appointed Board member elected by the Board who presides at the Board meeting in the absence of the Chairman.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505690
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8270

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CHAPTER 593. LICENSES

22 TAC §593.7

The Texas Structural Pest Control Board proposes an amendment to §593.7 Fees. The proposal will correct typographical errors.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Murray Walton, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that licensees will know exactly the length of time of their license. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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

§593.7. Fees.

(a) Applicants, licensees and continuing education providers will be charged the following fees:

(1) $180 for an original business license;

(2) $180 for renewal of a business license;

(3) $85 for an original certified applicators license;

(4) $80 for renewal of a certified applicators license;

(5) $65 for an original technician license;

(6) $60 for an renewal of a technician license;

(7) $30 for duplicate business license, certified applicator license or technician license when the original has been lost or destroyed;

(8) $30 for reissuing a business license, certified applicators license or technician license due to a name change in the license;

(9) $50 for administering exams in each category;

(10) $37.50 for late renewal fee for applications received 1 day to 30 days after expiration date;

(11) $75 for late renewal fee for applications received 31 to 60 days after expiration date; and

(12) $40 for continuing education course.

(b) The following fees are based on increments of six (6) months.

(1) Business License Fees

(A) Issued for 1 day-6 months $92.50

(B) Renewed for 1 day-6 months $90.00

(C) Issued for 7-12 months $180.00

(D) Renewal for 7-12 months $180.00

(E) Issued for 13-18 months $267.50 [~~$262.50~~]

(F) Renewal for 13-18 months $270.00

(2) Certified Applicator License Fees

(A) Issued for 1 day-6 months $45.00

(B) Renewed for 1 day-6 months $40.00

(C) Issued for 7-12 months $85.00

(D) Renewal for 7-12 months $80.00

(E) Issued for 13-18 months $125.00 [~~$120.00~~]

(F) Renewal for 13-18 months $120.00 [~~$125.00~~]

(3) Technician License Fees

(A) Issued for 1 day-6 months $35.00

(B) Renewed for 1 day-6 months $30.00

(C) Issued for 7-12 months $65.00

(D) Renewal for 7-12 months $60.00

(E) Issued for 13-18 months $95.00

(F) Renewal for 13-18 months $90.00

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505691
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8270

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22 TAC §593.25

The Texas Structural Pest Control Board proposes new rule, §593.25. The proposal will be of the emergency rule enacted by the Board on September 15, 2005.

Murray Walton, Executive Director, has determined that there will be no fiscal implications as result of enforcing or administering the rule. There is no estimated additional cost or estimated reduction in cost for state government. There will be no estimated increase in revenue to state government for the first five-year period the rule will be in effect. There will be no estimated additional cost, estimated reduction in cost or estimated increase in revenue on local government for the first five-year period the rule will be in effect. There will be no cost of compliance for small businesses since the rule proposal does not affect them. There is no cost comparison for small or large businesses since they will not be affected by the rule proposal.

Murray Walton, Executive Director, has determined that for each of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be that licensees will know exactly the length of time of their license. There are no economic costs to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Frank M. Crull, General Counsel, Structural Pest Control Board, P.O. Box 1927, Austin, TX 78767.

The amendment is proposed under the Texas Occupations Code, Chapter 1951, which provides the Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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

§593.25. Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina.

(a) This rule is adopted pursuant to the Hurricane Katrina disaster proclamation of September 1, 2005, by Governor Rick Perry declaring an emergency disaster and emergency condition for the State of Texas and invoking Gov't Code 418.014 to suspend laws, rules and regulations that may inhibit or prevent prompt response for the duration of the event.

(b) An individual who is currently licensed in Louisiana or Mississippi may be issued a provisional license for comparable categories of certification within thirty (30) days of September 16, 2005 under the following circumstances:

(1) The applicant furnishes a verification of state license from each state where licensed or other information sufficient for the Board to verify with the appropriate state that the person is currently licensed. Facsimile or mail verification directly by the appropriate Louisiana or Mississippi state agency is acceptable. Any applicants whose certification was denied, revoked, suspended, annulled, or probated by the appropriate Louisiana or Mississippi state agency is not eligible to license.

(2) The applicant provides all information requested by the Board on the application for provisional license.

(3) The applicant on the provisional license application indicates that:

(A) the applicant has been displaced by Hurricane Katrina and is no longer able to practice structural pest control in Louisiana or Mississippi;

(B) the applicant has read the Texas Structural Pest Control Act and the Board Rules; and

(C) the applicant will abide by the Texas Structural Pest Control Act and the Board Rules.

(c) The applicant will not begin work in Texas:

(1) prior to beginning employment with a licensed structural pest control business or after obtaining a structural pest control business license by making a provisional license application, paying the required fee, and providing proof of insurance;

(2) the applicant will inform the Board of the business location within ten (10) days of beginning work from that location; and

(3) the applicant will inform the Board of any change in the applicant's residence address within ten (10) days of the change.

(d) The Board may deny application for a provisional license for failure to submit a complete application, misrepresentation on any information that must be provided on the provisional license application, or a possessing a criminal background as provided in section 593.9 of the Board Rules.

(e) An applicant granted a provisional license under this section must abide by the Texas Structural Pest Control Act and the Board Rules. The granting of a provisional license under this section constitutes limited authority to perform structural pest control in Texas. Violations of the Texas Structural Pest Control Act, Board Rules, or the provisional license will subject the licensee to disciplinary action by the Board.

(f) A provisional license issued under this section expires ninety (90) days from the date of issuance. Engaging in the business of structural pest control after the provisional license expires without obtaining a license through the normal application and examination process by the Board constitutes working without a license. The provisional license expires upon issuance of a full license or if the provisional licensee applies for full licensure and is informed by the Board of failing to pass both the General Standards category and at least one category examination.

(g) A provisional license issued under this section may not be renewed. Applicants may apply for a full license during the time period that a provisional license is held.

(h) A provisional license issued prior to October 16, 2005 will remain in effect until the provisional license expires.

(i) The issuance of a provisional license does not restrict the Board regarding the issuance of or refusal to issue a full license on application of the provisional licensee.

(j) This rule expires on January 16, 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 December 9, 2005.

TRD-200505692
Murray Walton
Executive Director
Texas Structural Pest Control Board
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 305-8270

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PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

The Texas State Board of Examiners of Professional Counselors (board) proposes amendments to §§681.9, 681.91, 681.112, 681.162, and 681.166, concerning the licensing and regulation of professional counselors. Specifically, the amendments cover committees, temporary licenses, provisional licensing, and complaint processes.

The amendments are required by statutory changes to the Texas Occupations Code, Chapter 503, by House Bill 1283, passed during the 79th Legislature, Regular Session, 2005. The proposed amendments ensure that the rules reflect current and accurate legal, policy, and operational considerations; improve draftsmanship; and make the rules more accessible, understandable, and usable, to the extent possible.

SECTION-BY-SECTION SUMMARY

The amendment to §681.9 documents who may serve on a board committee.

New §681.91(i) is added to clarify that an intern may not provide counseling services unless under supervision.

The amendment to §681.112 clarifies examination requirements for license by reciprocity.

New §681.162(e) is added to allow the board to issue a cease and desist order for persons violating the Act. A violation of an order constitutes grounds for the imposition of an administrative penalty by the board.

The amendment to §681.166 allows the board to order a license holder to issue a refund to a consumer resulting from an informal conference instead of, or in addition to, an administrative penalty.

FISCAL NOTE

Bobbe Alexander, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

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

PUBLIC BENEFIT

Ms. Alexander has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of counseling in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

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

public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Bobbe Alexander, Executive Director, State Board of Examiners of Professional Counselors, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by e-mail to lpc@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. THE BOARD

22 TAC §681.9

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendment affects Occupations Code, Chapter 503.

§681.9. Committees.

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

(c) Only members of the board may be appointed to a board committee. [~~The chairperson may appoint non-board members to serve as committee members on a consultant or voluntary basis subject to board approval.~~]

(d) - (g) (No change.)

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505716
Judy Powell
Chairperson
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER F. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §681.91

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendment affects Occupations Code, Chapter 503.

§681.91. Temporary License.

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

(i) A person holding a temporary license will provide no direct counseling services unless acting under a supervisor agreement as stated in §681.93 of this title (relating to Supervisor Requirements).

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505717
Judy Powell
Chairperson
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER H. LICENSING

22 TAC §681.112

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §503.203, which authorizes the board to adopt rules necessary for the performance of the board's duties.

The proposed amendment affects Occupations Code, Chapter 503.

§681.112. Provisional Licensing.

(a) The board may grant a provisional license to a person who holds, at the time of application, a license as a counselor or art therapist issued by another state, territory, or jurisdiction that is acceptable to the board. An applicant for a provisional license must:

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

(3) have passed the required examinations [~~a national examination recognized by the board, relating to counseling or art therapy or an exam offered by another state, territory, or jurisdiction for licensure as a professional counselor or art therapist and submit documentation of passing such examination~~]; and

(4) (No change.)

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505718
Judy Powell
Chairperson
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER K. COMPLAINTS AND VIOLATIONS

22 TAC §681.162, §681.166

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §503.203, which authorize the board to adopt rules necessary for the performance of the board's duties.

The proposed amendments affect Occupations Code, Chapter 503.

§681.162. Disciplinary Action; Notices.

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

(e) Cease and Desist Order. If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of counseling, the board, after notice and an opportunity for a hearing may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of an order under this subsection constitutes grounds for the imposition of an administrative penalty by the board.

§681.166. Informal Disposition.

(a) - (v) (No change.)

(w) Refund Order.

(1) The board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal settlement conference instead of, or in addition, to imposing an administrative penalty under this chapter.

(2) The amount of a refund ordered as provided in an agreement resulting from an informal settlement conference may not exceed the amount the consumer paid to the license holder for a service regulated by this chapter. The board may not require payment of other damages or estimate harm in a refund order.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505719
Judy Powell
Chairperson
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

The Texas State Board of Examiners of Marriage and Family Therapists (board) proposes the repeal of §§801.18, 801.19, 801.144, 801.201, 801.202, 801.204, 801.361 - 801.369; new §§801.18, 801.201, 801.202, 801.361 - 801.364; and amendments to §§801.1, 801.2, 801.11 - 801.17, 801.41 - 801.54, 801.71 - 801.73, 801.91 - 801.93, 801.111 - 801.114, 801.141 - 801.143, 801.171 - 801.174, 801.203, 801.231 - 801.237, 801.261 - 801.268, 801.291 - 801.302, 801.331 - 801.332, and 801.351, concerning the licensure and regulation of marriage and family therapists.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). 22 Texas Administrative Code, Chapter 801 has been reviewed in its entirety and the board has determined that the reasons for adopting the sections continue to exist because rules relating to the licensure and regulation of marriage and family therapists are needed in order to protect and promote public health, safety, and welfare. The rule review revealed that the sections require modification, as described below, to update and clarify the rules.

In general, each section was reviewed and proposed for repeal, new, or amendment in order to ensure clarity; to ensure that the rules reflect current legal, policy, and operational considerations; to ensure accuracy; to improve draftsmanship; and to make the rules more accessible, understandable, and usable, to the extent possible.

Additionally, the 79th Texas Legislature, 2005, enacted House Bill 1413, which became effective September 1, 2005. The legislation was the result of the review of the board and the board's enabling statute by the Sunset Advisory Commission. The Commission recommended, and the Legislature enacted, amendments to the enabling statute (Occupations Code, Chapter 502) that are intended to strengthen the regulation of marriage and family therapists and apply Sunset across-the-board recommendations for licensing programs. This rule proposal addresses those statutory amendments.

The repeals, new sections, and amendments are the result of the comprehensive rule review undertaken by the board and the board's staff, as well as the need to implement and incorporate recent legislation.

SECTION BY SECTION SUMMARY

Regarding Subchapter A, amendments to §801.1 are proposed to improve draftsmanship. Amendments to §801.2 are proposed to add a new definition of "client", to improve accuracy and clarity, and to delete unnecessary language.

Regarding Subchapter B, amendments to §801.11 are proposed to ensure that at least one public member shall be appointed to the Ethics Committee, to ensure that the board member training program shall meet the requirements of the enabling statute, and to clarify that board members are entitled to reimbursement of travel expenses.

Amendments to §801.12 are proposed to improve draftsmanship. Amendments to §801.13 are proposed to reflect current policy and operational considerations. Amendments to §801.14 and §801.15 are proposed to improve accuracy, and revise references to the Act and department. Amendments to §801.16 are proposed to improve and clarify the board's policy regarding dis-

ability accommodations. Amendments to §801.17 are proposed to include a "renewal card".

The repeal of §801.18 is proposed as not reflecting current operational procedures. The roster of marriage and family therapists is available on demand through the board's website and the production of a directory is no longer necessary.

The repeal of existing §801.19 and new §801.19 are proposed to reflect the doubling of licensing fees necessitated by the move to two-year license terms. Notwithstanding other law, two-year license terms were mandated by House Bill 2292, 78th Legislature, Regular Session. Fees for a two-year license are two times the amount of the fee for a one-year license. The section is also proposed to reflect the board's authority to collect fees required to fund the Office of Patient Protection and the processing costs of transactions conducted through Texas Online.

Regarding Subchapter C, amendments to §801.41 and §801.42 are proposed to improve and clarify the sections, and to delete the word "rendering" and the subject concerning "scope". Amendments to §801.43 are proposed to improve draftsmanship. Amendments to §801.44 are proposed to clarify board expectations regarding information to be provided to prospective clients.

Amendments to §801.45 are proposed to improve draftsmanship and to eliminate the prohibition against a licensee engaging in sexual contact with a supervisor. The prohibition serves no purpose relating to client or public protection.

Amendments to §801.46 and §801.47 are proposed to improve draftsmanship. Amendments to §801.48 are proposed to clarify the section and incorporate the topic of the release of mental health records. Amendments to §801.49 are proposed to eliminate the unnecessary prohibition that applicants may not use board members as references. Amendments to §§801.50 - 801.54 are proposed to improve accuracy and draftsmanship and to clarify the sections.

Regarding Subchapter D, amendments to §801.71 and §801.72 are proposed to improve draftsmanship and clarify that an application must be complete within one year of the original date of filing or the application may be voided.

Amendments to §801.73 are proposed to reflect current operating procedure, to eliminate the requirement relating to an applicant's references, and to require applicants to submit proof of completion of the jurisprudence examination, which is required by recent Sunset legislation.

Regarding Subchapter E, amendments to §§801.91 - 801.93 are proposed to improve draftsmanship and accuracy of the sections.

Regarding Subchapter F, amendments to §801.111 are proposed to improve draftsmanship. Amendments to §801.112 are proposed to clarify that it is the responsibility of the applicant to have foreign coursework and degrees evaluated by a professional transcript evaluation service approved by the board. Amendments to §801.113 and §801.114 are proposed to improve draftsmanship.

Regarding Subchapter G, amendments to §801.141 are proposed to improve draftsmanship. Amendments to §801.142 are proposed to clarify that the section relates only to experience requirements for licensure and to move existing language from §801.144 into the section. Amendments to §801.143 are proposed to improve accuracy and draftsmanship and clarify the section's intent. The section is also amended to clarify that an approved supervisor must have either completed a graduate level course in supervision or be approved by the American Association of Marriage and Family Therapy to supervise interns. Existing language from §801.144 is also being incorporated into the section. The repeal of §801.144 is proposed, as the language of the section is more appropriately placed into §801.142 and §801.143.

Regarding Subchapter H, amendments to §801.171 and §801.172 are proposed to improve draftsmanship. Amendments to §801.173 are proposed to clarify that the section relates to the licensure examination and to delete obsolete language. Amendments to §801.174 are proposed to clarify and establish procedures for the licensure and jurisprudence examinations.

Regarding Subchapter I, the repeal of §§801.201, 801.202 and 801.204 and new §801.201 and §801.202 are proposed in order to reorganize, rewrite, and improve the subchapter. Amendments to §801.203 are proposed to correct references.

Regarding Subchapter J, amendments to §801.231 are proposed to include late renewal and surrender of license. Amendments to §801.232 are proposed to reflect the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003. Amendments are also proposed to update language relating to failure to pay student loans and to incorporate language relating to failure to pay an administrative penalty, as established by recent Sunset legislation. Amendments to §801.233 are proposed to eliminate language relating to fee proration as not reflecting current operating procedure. Amendments to §801.234 are proposed to reflect current operating procedure, to improve section intent, and to eliminate unnecessary language relating to license renewal when a contested case is pending. The Administrative Procedure Act governs license renewal when a contested case is pending.

Amendments to §801.235 are proposed to clarify and update the section. Amendments to §801.236 are proposed to clarify and update the section; to require that inactive status periods are two-year periods and are renewable biennially, to eliminate fee proration upon return to active status, and to eliminate unnecessary language. Amendments to §801.237 are proposed to clarify procedures relating to license surrender when a complaint is not pending and when a complaint is pending.

Regarding Subchapter K, amendments to §§801.261 - 801.264 are proposed to improve draftsmanship; to incorporate references and procedures relating to the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003; and to provide for the acceptance of one hour of ethics continuing education for completing the jurisprudence examination. Amendments to §801.265 are proposed to establish that the board may evaluate continuing education sponsors, remove sponsor approval for non-compliance, and disallow continuing education hours gained from unapproved sponsors.

Amendments to §801.266 are proposed to reference the two-year term of license requirement established by House Bill 2292, 78th Regular Session, 2003 and to clarify the use of clinical supervision as continuing education hours. Amendments to §801.267 are proposed to improve accuracy concerning clock hour credits. Amendments to §801.268 are proposed to improve draftsmanship and update the section concerning continuing education.

Regarding Subchapter L, amendments to §§801.291 - 801.293 are proposed to improve draftsmanship and update the sections. Amendments to §801.294 are proposed to incorporate the board's new authority to issue a cease and desist order to an unlicensed person who is in violation of the Act or rules, and to impose an administrative penalty upon that person for violation of an order. Amendments to §§801.295 - 801.298 are proposed to improve draftsmanship; to clarify, update, and improve the sections; to update obsolete language relating to cease and desist orders; and to clarify monitoring requirements. Amendments to §801.299 are proposed to update the board's administrative penalty schedule to reflect recent Sunset legislation and to eliminate obsolete language. Amendments to §801.300 - 801.302 are proposed to improve draftsmanship and clarify that administrative penalties may be assessed in combination with or in lieu of other disciplinary action.

Regarding Subchapter M, amendments to §801.331 and §801.332 are proposed to revise and add references concerning licensing of persons with criminal backgrounds.

Regarding Subchapter N, amendments to §801.351 are proposed to change the term "settlement conference" to "informal conference"; to update the section to reflect current operating procedure; to improve accuracy; to incorporate language relating to the board's new authority to order consumer refunds as part of an informal conference agreement; and to establish new language relating to the failure to appear at an informal conference.

Regarding Subchapter O, the repeal of §§801.361 - 801.369 are proposed to reorganize and improve the subchapter and to eliminate obsolete and unnecessary provisions. New §§801.361 - 801.364 are proposed to establish updated provisions relating to formal hearings that reflect current operating procedures.

FISCAL NOTE

Charles Horton, Executive Director, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to the state as a result of enforcing or administering the sections as proposed. The amendments to licensing fees reflect the move to two-year license terms as required by House Bill 2292, 78th Legislature, Regular Session. As a result, licensing fees are doubled for a two-year license term. This is the same cost to those who are required to comply with the sections as was previously incurred with a one-year license term. The licensing fee is now due biennially, instead of annually. Implementation of the proposed sections will not result in fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Horton has also determined that there will be no economic costs to small businesses or micro-businesses. This was determined by the interpretation of the rules that these entities will not be required to alter their business practices to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to effectively regulate the practice of marriage and family therapy in Texas, which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Charles Horton, Executive Director, Texas State Board of Examiners of Marriage and Family Therapists, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by email to mft@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. INTRODUCTION

22 TAC §801.1, §801.2

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; by Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.1. Purpose.

The purpose of this chapter is to implement the [~~provisions in the~~] Licensed Marriage and Family Therapist Act, Occupations Code, Chapter 502, concerning the licensure and regulation of marriage and family therapists.

§801.2. Definitions.

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

(1) - (5) (No change.)

(6) Client--An individual, family, couple, group, or organization that seeks or receives services from a person identified as a marriage and family therapist who is either licensed or unlicensed by the board.

(7) [~~(6)~~] Completed application--The official marriage and family therapy application form, fees and all supporting documentation which meets the criteria set out in §801.73 of this title (relating to Required Application Materials).

(8) [~~(7)~~] Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

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

(10) [~~(9)~~] Family systems--An open, ongoing, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(11) [~~(10)~~] Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(12) [~~(11)~~] Group supervision--Supervision that involves a minimum of three and no more than six marriage and family supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(13) [~~(12)~~] Individual supervision--Supervision of no more than two marriage and family therapy supervisees or associates in a clinical setting during the supervision hour. A supervision hour is forty-five minutes.

(14) [~~(13)~~] Investigator--A professional complaint investigator employed by the Texas Department of State Health Services.

(15) [~~(14)~~] License--A marriage and family therapist license, a marriage and family therapist associate license, or a provisional marriage and family therapist license.

(16) [~~(15)~~] Licensed marriage and family therapist--An individual who offers to provide marriage and family therapy for compensation.

(17) [~~(16)~~] Licensee--Any person licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(18) [~~(17)~~] Licensed marriage and family therapist associate--An individual who offers to provide marriage and family therapy for compensation under the supervision of a board-approved supervisor.

(19) [~~(18)~~] Marriage and family therapy--The rendering of professional therapeutic services to clients, [~~individuals, families, or married couples,~~] singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes [~~within the context of therapy~~].

(20) [~~(19)~~] Month--A calendar month.

(21) [~~(20)~~] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the Administrative Law Judge (ALJ) as having a justifiable [~~justiciable~~] interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(22) [~~(21)~~] Person--An individual, corporation, partnership, or other legal entity.

(23) [~~(22)~~] Pleading--Any written allegation filed by a party concerning its claim or position.

(24) [~~(23)~~] Regionally accredited institutions--An institution accredited by one of the following accreditation associations will be accepted for licensing purposes: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

(25) [~~(24)~~] Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of their regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally cognizable church, denomination or sect, or an integrated auxiliary of a church as defined in Federal Tax Regulations, 26, Code of Federal Regulation 1.6033-2,(g)(5)(i), (1982);

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

[~~(25) Rules--The rules in this chapter are covering the designated policies and procedures of operation for the board and for individuals affected by the Act.~~]

(26) - (28) (No change.)

(29) Texas Public Information [~~Open Records~~] Act--Government Code, Chapter 552.

(30) - (31) (No change.)

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505694
Wayne Hinson, Ph.D
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

SUBCHAPTER B. THE BOARD

22 TAC §§801.11 - 801.18

STATUTORY AUTHORITY

The proposed amendments and new rule are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153,

which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments and new rule affect Occupations Code, Chapter 502.

§801.11. The Board.

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

(f) Committees. The chair may appoint board members to committees to assist the board in its work. All committees appointed by the chair shall consist of no more than four members and shall make reports to the board at regular meetings. The board shall direct all such reports to the executive director for distribution. The board shall appoint at least one public member to any board committee established to review a complaint filed with the board or review an enforcement action against a license holder related to a complaint filed with the board.

(g) Compensation. No member of the board may receive compensation for serving on the board. Each member is entitled to reimbursement of travel expenses [~~the per diem set by legislature~~] for each day that the member performs functions as a member of the board.

(h) - (i) (No change.)

(j) Training. A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that meets the requirements established in the Act. [~~A training program shall be available for the members of the board. At least one training course of this program must be completed before a member of the board may assume duties on the board. The board shall use the training program of the Health Professions Council.~~]

§801.12. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to establish [~~delineate the board~~] procedures for the submission, consideration, and disposition of a petition [~~to the board~~] to adopt a rule.

(b) - (d) (No change.)

§801.13. Executive Director and the Department.

(a) The department [~~commissioner of health~~] shall designate a department employee [~~appoint an employee of the Texas Department of Health~~] as executive director for the board after consultation with the board members.

(b) (No change.)

(c) The department [~~executive director~~] shall exercise general supervision over individuals employed in the administration of the Act [~~, at the direction of the board or the commissioner of health~~].

(d) The executive director shall be responsible for the preliminary information regarding complaints and for the presentation of the formal complaints to the board. [~~A committee may be appointed for extensive investigation.~~]

(e) - (f) (No change.)

[~~(g) The executive director or the executive director's designee may serve as the administrator of licensure examinations, as directed by the board or the commissioner of health.~~]

(g) [~~(h)~~] The executive director shall sign the approved minutes of each meeting.

§801.14. Official Records.

(a) All official records of the board, except files containing information considered confidential under the provisions of the Texas Public Information [~~Open Records~~] Act, shall be open for public inspection during regular office hours.

[~~(b) A person desiring to examine official records shall be required to identify himself or herself and sign statements listing the records requested and examined.~~]

(b) [~~(c)~~] Official records shall not be taken from board offices; however, persons may obtain copies of files upon written request and by paying the cost per page set by the General Services Commission and the department [~~Texas Department of Health~~].

§801.15. Impartiality and Nondiscrimination.

(a) (No change.)

(b) A [~~Any~~] board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or specialty or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§801.16. Policy on Disability Accommodations [~~Disabled Applicants~~].

The board complies with the Americans with Disabilities Act in the delivery of its services to applicants and licensees. A person who needs reasonable accommodations in order to access board services shall request accommodations in writing and may be required to provide verification of the person's disability and recommendations for appropriate accommodations from a medical, mental health, rehabilitation, or educational professional or specialist qualified to make such recommendations.

[~~(a) The board recognizes that disabled applicants may encounter unusual problems in applying for licensure or taking the examination and will make an effort to accommodate these applicants.~~]

[~~(b) The board, on an individual basis, may consider requests for special arrangements for disabled applicants including assistance in taking the examination provided that such requests are reasonable and do not violate this Act or this chapter.~~]

§801.17. License Certificate.

(a) The board shall prepare and provide to each therapist a license certificate and a renewal card which contains the licensee's name and license number.

(b) Any license certificate or renewal card issued by the board remains the property of the board and must be surrendered to the board upon demand.

§801.18. Fees.

(a) The board has established the following fees for licenses, license renewals, examinations, and all other administrative expenses under the Licensed Marriage and Family Therapists Act (Act).

(b) The schedule of fees shall be as follows:

(1) application fee--$40;

(2) licensure examination fee--shall be in accordance with the current contracted examination fee;

(3) initial licensure fee issued for a two-year term--$90;

(4) biennial renewal fee--$130;

(5) late renewal fee--late renewal fees shall be set as follows:

(A) on or before 90 days--biennial renewal fee plus one-half of the current contracted examination fee; and

(B) longer than 90 days but less than one year--biennial renewal fee plus fee equal to the current contracted examination fee;

(6) inactive status (administrative) fee--$75;

(7) duplicate license fee--$10;

(8) initial associate licensure fee--$80;

(9) provisional licensure fee--$40;

(10) continuing education sponsor fee--$50 annually;

(11) child support reinstatement fee--$40;

(12) verification fee--$10; and

(13) student loan default reinstatement fee--$40.

(c) All fees are nonrefundable.

(d) For all applications and renewal applications, the board is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online. For all applications and renewal applications, the board is authorized to collect fees to fund the Office of Patient Protection in accordance with Occupations Code, Chapter 101 (relating to Health Professions Council.)

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. All fee changes shall be made through rulemaking procedures.

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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Wayne Hinson, Ph.D
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22 TAC §801.18, §801.19

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed repeals affect Occupations Code, Chapter 502.

§801.18. Directory.

§801.19. Fees.

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

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SUBCHAPTER C. GUIDELINES FOR PROFESSIONAL THERAPEUTIC SERVICES AND CODE OF ETHICS

22 TAC §§801.41 - 801.54

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.41. Purpose [~~and Scope~~].

[~~(a)~~] The purpose of this subchapter is to provide guidelines regarding the provision [~~rendering~~] of professional therapeutic services and to [~~implement the provisions of the Act, concerning a code of ethics.~~]

[~~(b) The scope of this subchapter establishes~~] establish standards of professional and ethical conduct required of a therapist.

§801.42. [~~Rendering~~] Professional Therapeutic Services.

The following are professional therapeutic services which are part of marriage and family therapy when the services involve the professional application of family systems theories and techniques in the delivery of the services:

(1) - (18) (No change.)

§801.43. Professional Representation.

(a) (No change.)

(b) A therapist shall not misrepresent any agency or organization by presenting it as having attributes that [~~which~~] it does not possess.

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

§801.44. Relationships with Clients.

(a) A therapist shall make known to a prospective client the important aspects of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, fees, and arrangements for payment [~~including fees and arrangements for payment~~] which might affect the client's decision to enter into the relationship.

(b) - (l) (No change.)

§801.45. Sexual Misconduct.

(a) (No change.)

(b) A licensee shall not engage in sexual contact with a person who is:

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

(3) an associate or an intern for whom the licensee has administrative or clinical responsibility; or

(4) an intern in a marriage and family therapy graduate program in which the licensee offers professional or educational services[~~; or~~]

[~~(5) a supervisor of the licensee].~~

(c) - (i) (No change.)

§801.46. Testing.

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

(c) A therapist shall not administer any test without the appropriate training and experience [~~to administer and interpret the test~~].

(d) (No change.)

§801.47. Drug and Alcohol Use.

A therapist shall not abuse [~~the use of~~] alcohol or drugs, use illegal drugs of any kind, or promote[~~,~~] or encourage the illegal use or possession of alcohol or drugs.

§801.48. Confidentiality and Release of Records.

(a) A therapist shall follow the rules of confidentiality and the provisions regarding the release of mental health records set forth in the Health and Safety Code, Chapter 611, and other applicable laws related to mental health records.

(b) (No change.)

§801.49. Therapists and the Board.

(a) - (f) (No change.)

[~~(g) Applicants for licensure shall not use current members of the board as references.~~]

§801.50. Assumed Names.

(a) An individual practice by a therapist may be incorporated in accordance with Texas Business Organizations Code, Chapter 301 (relating to Provisions Relating to Professional Entities) [~~the Professional Corporation Act~~] or other applicable law.

(b) (No change.)

§801.51. Consumer Information.

(a) (No change.)

(b) The board shall prepare information of consumer interest that [~~which~~] describes the regulatory functions of the board and board procedures for handling and resolving complaints.

(c) (No change.)

§801.52. Display of License Certificate.

(a) A therapist shall display the license certificate and annual renewal card[~~, issued by the board,~~] in a prominent place in the primary location of practice.

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

(d) A therapist shall not display a license certificate or renewal card issued by the board that [~~which~~] has been reproduced or is expired, suspended, or revoked.

§801.53. Advertising and Announcements.

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

(c) All advertisements or announcements of therapeutic services including telephone directory listings by a person licensed by the board [~~Board~~] shall clearly state the therapist's licensure status by the use of a title such as "Licensed Therapist", or "Licensed Marriage and Family Therapist", or "L.M.F.T.", "Licensed Marriage and Family Therapist Associate" or "LMFT-A", or a statement such as "licensed by the Texas State Board of Examiners of Marriage and Family Therapists".

(d) A therapist shall not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that [~~which~~] may be confusing or misleading to the public as to the services or legal recognition of the therapist.

§801.54. Research and Publications.

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

(c) When conducting and reporting research, a therapist must give recognition to previous work on the topic as well as observe all the copyright laws.

(d) (No change.)

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

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♦ ♦ ♦

SUBCHAPTER D. APPLICATION PROCEDURES

22 TAC §§801.71 - 801.73

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.71. Purpose.

The purpose of this subchapter is to set out the application procedures for examination and licensure as a marriage and family therapist.

§801.72. General.

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

(c) Applications must be complete within one year of the original date of filing or the application may be voided. [~~The board will send one notice determined by the anniversary date of the filing of an application to an applicant who does not complete an application in a timely manner. An application not completed within 30 days after the date of the board's notice may be voided; however, by written request to the board, an applicant may request that his or her application be kept active for an additional year.~~]

§801.73. Required Application Materials.

(a) Application form. The application form shall contain:

(1) - (5) (No change.)

(6) the applicant's [~~dated and notarized~~] signature and date of signature; and

(7) (No change.)

(b) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and is valid only when it bears the supervisor's signature. [~~and contain:~~]

[~~(1) the name of the applicant;~~]

[~~(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;~~]

[~~(3) the name and address of the agency or organization where the experience was gained;~~]

[~~(4) the inclusive dates of supervision provided to the applicant; the total hours of individual supervision; and the types of supervision used;~~]

[~~(5) the applicant's employment status during supervised experience;~~]

[~~(6) the types and total hours of direct, face-to-face clinical services provided to individuals, families, or couples;~~]

[~~(7) the supervisor's evaluation of the applicant's therapeutic skills and competence for independent or private practice; and~~]

[~~(8) the supervisor's notarized signature.~~]

(c) (No change.)

[~~(d) References. An applicant must have references submitted by three persons who can attest to the applicant's therapy skills and professional standards of practice.~~]

[~~(1) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.~~]

[~~(2) References must include:~~]

[~~(A) one graduate instructor in a university, college, or post-degree training setting;~~]

[~~(B) one licensed marriage and family therapist; and~~]

[~~(C) one licensed or certified professional in a related mental health field which may include an additional licensed marriage and family therapist.~~]

(d) [~~(e)~~] Other documents. Vita, resume, and/or other documentation of the applicant's credentials may be submitted.

(e) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application. The jurisprudence examination must be completed no more than six months prior to the date of licensure application.

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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Wayne Hinson, Ph.D
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SUBCHAPTER E. CRITERIA FOR DETERMINING FITNESS OF APPLICANTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.91 - 801.93

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.91. Purpose.

The purpose of this subchapter is to establish [~~set forth~~] the criteria by which the board will determine the qualifications required of applicants for approval for examination and licensure.

§801.92. Finding of Non-Fitness for Licensure.

The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of an associate license or a regular license of the applicant:

(1) lack of the necessary skills and abilities to provide adequate marriage and family therapy [~~counseling~~] services in independent practice;

(2) any misrepresentation in the application or other materials submitted to the board [~~Board~~];

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

§801.93. Finding of Non-Fitness for Licensure Subsequent to Issuance of License [~~Licensure~~].

The board may take disciplinary action based upon information received after issuance of a license, if such information [~~had been received prior to issuance of license and~~] would have been the basis for denial if it had been received prior to issuance of the 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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SUBCHAPTER F. ACADEMIC REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §§801.111 - 801.114

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.111. Purpose.

This subchapter establishes [~~The purpose of this subchapter is to set out~~] the academic requirements for examination and licensure as a marriage and family therapist.

§801.112. General.

(a) (No change.)

(b) Degrees and coursework received at foreign universities shall be acceptable only if such coursework may be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. It is the applicant's responsibility to have degrees and coursework evaluated by a professional transcript evaluation service approved by the board. [~~If degrees or coursework cannot be documented because the foreign university refuses to issue a transcript or other evidence of the degrees or coursework, the board may consider accepting, on an individual basis, degrees or coursework based on other evidence presented by the foreign graduate applicant.~~]

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

§801.113. Academic Requirements.

(a) Persons applying for the examination must have completed or be enrolled in a marriage and family therapy graduate internship program, or its equivalent, approved by the board [~~Board~~].

(b) - (d) (No change.)

§801.114. Academic Course Content.

An applicant who holds [~~having~~] a graduate degree in a mental health related field must have course work in each of the following areas (one course equals three semester hours):

(1) - (7) (No change.)

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

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR LICENSURE

22 TAC §§801.141 - 801.143

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.141. Purpose.

The purpose of this subchapter is to set out the experience requirements for [~~examination and~~] licensure as a marriage and family therapist.

§801.142. Experience [~~Licensure~~] Requirements and Conditions.

(a) The [~~After receiving a passing grade on the licensure examination, receipt of a degree and course work under Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure), the~~] applicant must have completed a minimum of two years of work experience in marriage and family therapy services that:

(1) include at least 3,000 hours of clinical services to individuals, couples or families, of which at least 1,500 hours must be direct clinical services, 750 hours to couples or families, and the remaining 1,500 hours may come from related experiences that may include but not be limited to workshops, public relations, writing case notes, consulting with referral sources, etc;

(2) must be supervised in a manner acceptable to the board, including at least 200 hours of supervision of which at least 100 hours must be individual supervision. Up to 100 of the 200 hours of supervision may be earned during the graduate program. One-half of the supervised hours after graduation must be individual supervision.

(b) An associate may practice marriage and family therapy in any established setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(c) During the period of supervised experience, an associate may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(d) During the post graduate supervision, both the supervisor and the associate may have disciplinary actions taken against their licenses for violations of the Act or rules.

(e) Supervision must be conducted under a supervision contract, which must be submitted to the board on the official form within 60 days of the initiation of supervision.

(f) Group supervised experience of an associate may count toward an associate's supervision requirement only if the supervision group consisted of a minimum of three and no more than six associates during the supervision hour.

(g) Individual supervised experience of an associate may count toward the associate's supervision requirement only if the supervision consisted of no more than two associates.

(h) The 200 hours of supervision must be face-to-face. The associate must receive a minimum of one hour of supervision every two weeks. A supervision hour is 45 minutes.

(i) An associate may have no more than two board-approved supervisors at a time, unless given prior approval by the board or its designee.

(j) If an associate's primary clinical employer has a contract to provide mental health services via telephonic or other electronic media, the associate may receive credit for up to 300 clock-hours toward the required 3,000 hours of clinical services, as approved by the supervisor.

§801.143. Supervisor Requirements.

(a) Supervisors are recognized by the board when subsection (a) or (b) of this section is met by submitting [~~submiting~~] an application which includes documentation and verification of the following [~~four documents~~]:

(1) a license (which is not a provisional or an associate license) issued by the board[~~,~~] or a license as a marriage and family therapist in another state or territory [~~, or submit documents to support eligibility for licensure by the board~~];

(2) (No change.)

(3) [~~one of the following:~~]

[~~(A)~~] successful completion of a one-semester graduate course in marriage and family therapy supervision from a regionally accredited institution [~~; or~~]

[~~(B) an equivalent course of study consisting of a 30-hour didactic component and a 15-hour interactive component in the study of marriage and family therapy supervision approved by the Board. The interactive component must include a minimum of four persons~~]; and

(4) at least 3,000 hours of direct client contact in the practice of marriage and family therapy over a minimum of three years as a licensed marriage and family therapist.

(b) (No change.)

(c) A supervisor may not be employed by the person whom he or she is supervising.

(d) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

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

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SUBCHAPTER G. EXPERIENCE REQUIREMENTS FOR EXAMINATION AND LICENSURE

22 TAC §801.144

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

STATUTORY AUTHORITY

The proposed repeal is authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed repeal affects Occupations Code, Chapter 502.

§801.144. Other Conditions for Supervised Experience.

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

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SUBCHAPTER H. EXAMINATIONS

22 TAC §§801.171 - 801.174

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.171. Purpose.

The purpose of [~~for~~] this subchapter is to establish the rules governing the [~~administration, and other procedures for~~] examinations for licensure.

§801.172. Frequency.

The board, or its designee, shall administer licensure examinations at least semi-annually [~~or as often as deemed necessary~~].

§801.173. Applying for Licensure Examination.

A person must apply for the licensure examination in accordance with Subchapter F of this chapter (relating to Academic Requirements for Examination and Licensure) and §801.73 of this title (relating to Required Application Materials). The board shall notify an applicant of application approval or disapproval, and if disapproved, state the reason.

(1) A [~~a~~] person may apply to take the licensure examination after the person [~~he/she~~] has [~~:~~]

[~~(A)~~] submitted the necessary forms, fee and application in accordance with §801.73 of this title. [~~; and~~]

[~~(B) enrolled in or completed on or after September 1, 1999 a graduate internship in marriage and family therapy or an equivalent internship as approved by the board except that a person, who prior to September 1, 1999 enrolled in a graduate internship that has not been completed, has the option of taking the examination as described above in this section or may take the examination after submitting the notarized statement(s) from their supervisor(s) documenting the completion of 1,000 hours of direct clinical contact and the 200 hours of approved supervision.~~]

(2) At least 60 days prior to the licensure examination, the executive director or the executive director's designee shall notify an applicant in writing that an application has been approved.

(3) An [~~an~~] applicant who wishes to take a scheduled licensure examination must complete an examination registration form and return it to the board.

§801.174. Licensure and Jurisprudence Examinations [~~Examination~~].

(a) The licensure examination shall be a written examination prescribed by the board which has been validated by an independent testing professional.

(b) An applicant shall apply to take the licensure examination on a form prescribed by the board. The applicant will pay the examination fee at the examination site.

(c) (No change.)

(d) The board, or its designee, shall notify the examinee of the results of the licensure examination in accordance with the current examination contract or agreement. If the board is notified of a potential delay of notification of exam results, the board shall notify the examinee as soon as possible regarding the delay. [~~Examination results shall be reported as follows:~~]

[~~(1) The examinee shall be notified of the results of the examination within 45 days of the examination date.~~]

[~~(2) If the examination results will be delayed more than 60 days after the examination date, the board shall notify each examinee of the reason for the delay within 60 days of the examination date.~~]

(e) Procedures for failure of an applicant to pass a [~~an~~] licensure examination are as follows:

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

(3) The applicant must reschedule the examination and resubmit the examination fee [~~resubmit an application~~].

(4) (No change.)

(f) If an applicant fails the licensure examination two or more times, the board may require the applicant to complete additional courses of study designated or recommended by the board; and present satisfactory evidence of completion of the required courses.

(g) Effective September 1, 2006, all applicants for licensure must submit proof of successful completion of the jurisprudence examination at the time of application.

(h) The jurisprudence examination must have been completed no more than six months prior to the licensure application date.

(i) The jurisprudence examination is available as an online learning experience and applicable fees are payable directly to the approved vendor.

(j) The jurisprudence examination content is based on the Act, the rules of the board, and other state laws and rules that relate to the practice of marriage and family therapy.

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 I. ISSUANCE OF LICENSE

22 TAC §§801.201, 801.202, 801.204

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed repeals affect Occupations Code, Chapter 502.

§801.201. Purpose.

§801.202. License Issuance.

§801.204. Associate 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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For further information, please call: (512) 458-7236

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SUBCHAPTER I. LICENSING

22 TAC §§801.201 - 801.203

STATUTORY AUTHORITY

The proposed new rules and amendment are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed new rules and amendment affect Occupations Code, Chapter 502.

§801.201. General Licensing.

(a) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license containing a license number within 30 days.

(b) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the therapist and payment of the duplicate license fee. Requests must include a statement detailing the loss or destruction of the therapist's original license or be accompanied by the damaged certificate.

(c) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate license within 30 days for a second place of practice which is designated in a licensee's file.

§801.202. Associate License.

(a) A temporary license shall be issued to an applicant who has:

(1) obtained a master's or doctorate degree in marriage and family therapy or a related mental health field with course work and training equivalent to a graduate degree in marriage and family therapy as set out in §801.114 of this title (relating to Academic Course Content);

(2) submitted an official graduate transcript from a regionally accredited institution of higher education or an institution of higher education approved by the board;

(3) submitted a complete application and all applicable fees to the board;

(4) submitted a supervisory contract to the board which specifies all contractual agreements with said supervisor and that the supervisor has met the requirements of §801.143 of this title (relating to Supervisor Requirements); and

(5) submitted proof of successful completion of the required licensure examinations.

(b) The initial associate license will be issued for a period of 24 months and may be renewed biennially for a period not to exceed a total of 72 months. The appropriate board committee may consider exceptions to the 72-month time limit.

§801.203. Provisional License.

(a) A provisional license may be granted to a person who:

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

(5) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter (relating to Experience Requirements [~~for Examination and~~] Licensure); and

(6) the provisional license holder meets any other requirements set forth under the Act [~~Licensed Marriage and Family Therapist Act (Act)~~].

(b) (No change.)

(c) The board shall issue a license to a holder of a provisional license if:

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

(3) the provisional license holder provides documentation, on board prescribed forms, of the experience requirements set out in Subchapter G of this chapter [~~(relating to Experience Requirements for Examination and Licensure)~~]; and

(4) (No change.)

(d) (No change.)

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

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SUBCHAPTER J. LICENSURE RENEWAL AND INACTIVE STATUS

22 TAC §§801.231 - 801.237

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.231. Purpose.

The purpose of this subchapter is to set out the rules governing licensure renewal, late renewal, surrender of license, and inactive status.

§801.232. General.

(a) A therapist must renew licensure biennially [~~annually~~].

(b) - (d) (No change.)

(e) The board shall deny renewal if required by the Texas Education Code, §57.491, relating to defaults on guaranteed student loans. [~~A therapist who has been notified of a student loan default shall surrender their license until the loan payment has been resolved to the satisfaction of the National Student Loan Center.~~]

(f) The board may refuse to renew the license of a person who fails to pay an administrative penalty imposed in accordance with the Act unless the enforcement of the penalty is stayed or a court has ordered that the administrative penalty is not owed. [~~A therapist shall pay a reinstatement fee set out in §801.19 of this title (relating to fees) prior to issuance of the license under this subsection.~~]

§801.233. Staggered Renewals.

The board shall use a staggered system for licensure renewals.

[~~(1)~~] The renewal date of a license shall be the last day of the licensee's birth month.

[~~(2) Licensure fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.~~]

[~~(3) Prorated fees shall be rounded off to the nearest dollar.~~]

§801.234. License Renewal.

(a) At least 60 days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee. The licensure renewal form may be completed electronically.

(b) The licensure renewal form shall require the licensee to provide current addresses, telephone numbers, and [~~other~~] information regarding completion of [~~such as~~] continuing education requirements [~~completed and type of practice~~].

(c) A [~~The board, or its designee, shall not consider a~~] license is not [~~to be~~] renewed until the board [~~it~~] receives the completed licensure renewal form and the renewal fee, and the licensee has complied with the continuing education requirements. [~~No renewal fee shall be processed by the board until the licensee has met the applicable continuing education requirements.~~] The board or its designee may grant the licensee additional time to complete continuing education requirements based on extraordinary circumstances, such as medical complications.

(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal [~~before license expiration~~].

[~~(e) The license of a person who made a timely request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.~~]

[~~(f) The board will not process the licensure renewal of a licensee who is a party to formal license revocation or suspension proceedings. A formal proceeding commences when the notice described in Subchapter L of this chapter (relating to Complaints and Violations) is mailed by the board.~~]

[~~(1) a licensee whose license is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.~~]

[~~(2) in the case of delay in the licensure renewal process because of formal licensure suspension or revocation proceeding, late renewal penalty fees shall not apply.~~]

§801.235. Late Renewal.

(a) A person who renews a license after the expiration date but on or within 90 days after the expiration date shall pay the renewal fee plus one-half the examination fee. If a person's license has been expired for 90 days but less than one year the person may renew the license by paying to the board the renewal fee and a fee that is equal to the examination fee for licensure. [~~A final notice will be sent 30 days after the expiration date.~~]

(b) A person whose license was not renewed within one year of the expiration date may obtain a new license by reapplying for licensure, submitting to examination, and complying with current [~~the original~~] requirements and procedures for obtaining an original license.

(c) (No change.)

§801.236. Inactive Status.

(a) A licensee may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive status periods shall not exceed 24 months and may be renewed biennially [~~three years; however, consecutive inactive status periods may be approved by the board~~]. An inactive status fee is required biennially [~~for each three-year period of inactive status~~].

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

(g) A therapist may return to active status by written request to, and approval by, the board. Active status shall begin the first day of the month following board approval and payment of a license fee. [~~The~~

license fee shall be prorated to the next renewal date in accordance with §801.233 of this title (relating to Staggered Renewals).]

(h) Upon return to active status, the therapist must begin accruing continuing education hours in order to fulfill the continuing education requirements prior to the next licensure renewal. [If continuing education requirements have not been met prior to the time that a therapist goes on inactive status, upon return to active status the hours that were remaining to complete the continuing education requirement described in §801.262 of this title (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the therapist's cycle at the time that the therapist went into inactive status.]

[(i) Upon return to active status, the therapist's next continuing education cycle will begin on the first day of the month following the licensee's birth month; however, the start date for the next cycle will begin following the additional time period described in subsection (h) of this section.]

§801.237. Surrender of License.

(a) [Surrender by licensee.] A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion. If there is no complaint pending, board staff shall accept the surrender and void the license.

[(b) Acceptance by the board.]

[(1) The board shall decide whether to formally accept the voluntary surrender of a license.]

[(2) Surrender of a license without the acceptance of the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Licensed Marriage and Family Therapist Act (Act) or any other statute.]

(b) [(c)] [Formal disciplinary action.] When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter, the board shall consider whether to accept the license surrender. If the board accepts [and the board has accepted] such a surrender, that surrender is deemed to be the result of a formal disciplinary action and shall be reported as formal disciplinary action. Surrender of a license without acceptance by the board shall not deprive the board of jurisdiction over the licensee in accordance with the Act or other law.

(c) [(d)] Reinstatement. A license which has been surrendered and accepted may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

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 K. CONTINUING EDUCATION REQUIREMENTS

22 TAC §§801.261 - 801.268

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.261. Purpose.

The purpose of this subchapter is to establish the continuing education requirements for the renewal of licensure which a therapist must complete annually. These requirements are intended to maintain and improve the quality of professional services in marriage and family therapy provided to the public; maintain and improve [and keep] the therapist's knowledge [therapist knowledgeable] of current research, techniques, and practice; and provide other resources which will improve skill and competence in marriage and family therapy. Continuing education hours must be relevant to the practice of marriage and family therapy.

§801.262. Deadlines.

Continuing education requirements for renewal shall be fulfilled during two-year [one-year] periods beginning on the first day of a therapist's renewal period [year] and ending on the last day of the therapist's renewal period [year].

§801.263. [Clock-Hour] Requirements for Continuing Education.

A licensee must complete 30 [15] clock hours of continuing education acceptable to the board each renewal period [year] as described in §801.262[(b)] of this title (relating to Deadlines). Six hours of ethics are required each renewal period. A board-approved supervisor must complete at least three hours of clinical supervision education each renewal period. [A three-hour ethics course will be required each year.]

§801.264. Types of Acceptable Continuing Education.

Continuing education undertaken by a therapist shall be acceptable to the board as credit hours if it is offered by an approved sponsor(s) in the following categories:

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

(4) presenting workshops, seminars, or lectures relevant to marriage and family therapy (the same seminar may not be used more than once biennially [annually]); [and]

(5) [by] completing correspondence courses, satellite or distance learning courses, and/or audio-video courses relative to marriage and family therapy (no more than 6 hours per year); and[.]

(6) completing the jurisprudence examination may count for one hour of the ethics requirement described in §801.263 of this title (relating to Requirements for Continuing Education).

§801.265. Continuing Education Sponsor.

The board is not responsible for approving individual continuing education programs. The board will approve an institute, agency, organization, association, or individual as a continuing education sponsor of continuing education units. The board will grant approval to organizations that [who] pay the continuing education sponsor fee, which shall permit the organizations to approve continuing education units for

their marriage and family therapy courses, seminars, and conferences. These organizations do not need prior permission from the board but must submit an annual list of their seminars, workshops, and courses with the presenter's name to the board. Any university, professional organization, or individual who meets the required criteria may advertise as approved sponsors of continuing education for licensed marriage and family therapists.

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

(4) Sponsors shall pay a continuing education sponsor fee which will be effective for one year from the last day of the approval issue month [~~date of receipt~~].

(5) The board may evaluate approved sponsors or applicants on a regular or random basis to ensure compliance with the requirements of this subchapter.

(6) Complaints regarding continuing education programs offerings may be submitted in writing to the executive director.

(7) The board may rescind the approval status of a continuing education sponsor at any time for failure to comply with this subchapter.

(8) The board may randomly audit continuing education providers for compliance with this subchapter.

(9) A sponsor whose approval is rescinded by the board may reapply for approval the 91st day following the board action. The sponsor shall be required to submit a plan of correction regarding the non-compliance that was previously identified. The sponsor's application shall be reviewed by the Complaints Committee.

(10) Continuing education hours received from a sponsor not approved by the board or whose approval has been rescinded shall not be acceptable to fulfill the continuing education requirements of this subchapter, even if the sponsor is approved by another licensing or approval entity.

(11) Continuing education hours received from a sponsor who failed to renew the sponsor's approval status rescinded shall not be acceptable to fulfill the continuing education requirements of this subchapter, even if the sponsor is approved by another licensing or approval entity.

(12) Fees paid by a sponsor who has been denied or whose approval has been rescinded are not refundable.

§801.266. Criteria for Approval of Continuing Education Activities.

Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria.

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

(3) Credit may be earned for clinical supervision of marriage and family therapy interns and associates. Supervision may count for no more than one-half of the biennial continuing education requirement [~~annual continuing education~~].

(4) Credit may be earned for participation in clinical supervision as a marriage and family therapy associate not to exceed one-half of the biennial requirement. [~~A presenter of a continuing education activity or an author of a published work which enhances a marriage and family therapist's knowledge or skill may be granted five credit hours for each presentation or publication not to exceed one-half of the annual continuing education required.~~]

(5) A presenter of a continuing education activity may earn 1.5 hours for each approved hour of continuing education presented, not to exceed one-half of the biennial continuing education requirement.

(6) An author of a book or peer reviewed article which enhances a marriage and family therapist's knowledge or skill may be granted continuing education credit not to exceed one-half of the biennial continuing education requirement.

§801.267. Determination of Clock Hour Credits.

The board shall credit continuing education as follows.

[~~(1)~~] Parts of programs which meet the criteria in §801.264 of this title (relating to Types of Continuing Education) shall be credited on a one-for-one basis with one clock-hour credit for each clock-hour spent in the continuing education activity, unless otherwise designated in §801.266 of this title (relating to Criteria for Approval of Continuing Education Activities).

[~~(2) A graduate course of three credit hours or an institute's course of at least 30 clock hours or other intensive training approved by the board will be accepted as two years of continuing education.~~]

§801.268. Reporting and Auditing [~~Submission~~] of Continuing Education.

(a) Completion of approved continuing [~~Continuing~~] education [~~units~~] of no less than 30 [~~15~~] hours must be reported [~~annually~~] by the licensee at the time of renewal. [~~These hours will be reported on the form provided by the board.~~]

(b) The board shall conduct [~~an annual~~] random audits of compliance with the [~~audit requesting documentation of~~] continuing education requirements by licensees. A licensee selected for audit shall submit continuing education documentation upon request. Individual continuing education certificates of attendance shall not be submitted unless the licensee is requested to do so by the board.

(c) Continuing education [~~credits~~] from organizations which are not approved sponsors may be accepted if relevance to marriage and family therapy can be documented.

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 L. COMPLAINTS AND VIOLATIONS

22 TAC §§801.291 - 801.302

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering

the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.291. General.

The purpose of this subchapter is to establish procedures [~~inform licensees of the valid reasons~~] for the denial, revocation, probation, or suspension of a license, reprimand of a licensee, or imposition of an administrative penalty, and the procedures for filing complaints and allegations of statutory or rule violations.

(1) The following shall be grounds for revocation, probation or suspension of a license, imposition of an administrative penalty, refusal to renew a license, or reprimand of a licensee if a licensee has:

(A) - (J) (No change.)

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

§801.292. Criteria for Denial of a License.

The substantiation of any of the following [~~items~~] related to an applicant may be, as the board determines, the basis for the denial of licensure of the applicant:

(1) - (11) (No change.)

§801.293. Procedures for Revoking, Suspending, Probating or Denying a License, or Reprimanding a Licensee.

(a) The board's executive director [~~or executive director's designee~~] will give written notice to the person that the board proposes [~~intends~~] to deny, suspend, probate, or revoke the license, impose an administrative penalty, or reprimand the licensee, after a hearing in accordance with the provisions of the Administrative Procedure Act (APA), and the board's hearing procedures in Subchapter O of this chapter (relating to Formal Hearings).

(b) Prior to denying, revoking, probating or suspending a license; imposing an administrative penalty; or reprimanding a licensee, the ethics committee shall give the applicant or licensee the opportunity for an informal [~~settlement~~] conference or a formal hearing or both [~~settlement conferences~~] in accordance with the provisions of this subchapter, Subchapter N of this chapter (relating to Informal [~~Settlement~~] Conferences), and Subchapter O of this chapter (relating to Formal Hearings).

§801.294. Violations by an Unlicensed Person.

(a) A person commits an offense if the person [~~he or she~~] knowingly or intentionally acts as a therapist without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) (No change.)

(c) If it appears to the board that a person who is not licensed under the Act is violating the Act, a rule adopted under the Act, or another state statute or rule relating to the practice of marriage and family therapy, the board after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity. A violation of a cease and desist order constitutes grounds for the imposition of an administrative penalty by the board.

§801.295. Power to Sue.

The board may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin a [~~the~~] violation of the Act.

§801.296. Complaint Procedures.

(a) A person wishing to report a complaint or allege a violation of the Act or this chapter by a licensee or other person shall notify the executive director[~~, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas 78756-3183, or by calling 1-800-942-5540 (for complaints only)~~]. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the board office.

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

(d) The executive director or executive director's designee shall collect all information related to the complaint. The chair shall appoint an ethics committee, which shall include at least one public board member, to review the complaint and the supporting documentation.

(e) (No change.)

(f) The executive director or executive director's designee shall periodically notify the parties to the complaint of the status of the complaint [~~, on a quarterly basis,~~] until the complaint is resolved.

(g) - (i) (No change.)

(j) If the committee determines that a violation exists and that the violation is not a serious complaint affecting the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as an advisory notice or warning letter [~~a cease and desist order or an informal agreement with the violator to correct the violation. The informal agreement is subject to approval by the board~~].

§801.297. Monitoring of Licensees.

(a) The department [~~executive director or executive director's designee~~] shall maintain a complaint tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license shall be required to submit regularly scheduled reports, if ordered by the board. The report shall be scheduled at intervals appropriate to each individual situation.

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

§801.298. Default Orders.

(a) If a right to a hearing is waived, the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

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

§801.299. Administrative Penalties.

(a) The assessment of an administrative penalty is governed by the Act [~~, §502.401~~].

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

(d) A hearing to assess administrative penalties shall be governed by Subchapter O of this chapter (relating to Formal Hearings) except where the subchapter is in conflict with the Act. [~~, §25A.~~]

(e) The amount of an administrative penalty shall be based on the following criteria.

(1) (No change.)

(2) The range of administrative penalties by severity levels are as follows:

(A) Level I--$500 - $5,000 [~~$1,000 to $500~~];

(B) Level II--$250 - $2,500 [~~$500 to $250~~]; or

(C) (No change.)

(3) (No change.)

[~~(4) Adjustments to the range of an administrative penalty may be made for:~~]

[(A) prompt reporting;]

[(B) corrective action;]

[(C) compliance history; or]

[(D) multiple violations.]

§801.300. Suspension of License for Failure to Pay Child Support or Non-Compliance with Child Custody Order.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, or failure to be in compliance with a court order relating to child custody, the executive director shall immediately determine if the board has issued a license to the obligator named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

[(4) have to pay and be in accordance with child custody.]

(b) - (h) (No change.)

§801.301. Relevant Factors.

When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction [which includes]: the culpability of the licensee; the harm caused or posed; and the requisite deterrence. It is the responsibility of the licensee to bring exonerating factors to the attention of the ethics committee [complaint subcommittee] or administrative law judge. Specific factors are to be considered as set forth herein.

(1) - (5) (No change.)

§801.302. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §801.301 of this title (relating to Relevant Factors).

(1) - (5) (No change.)

(6) An administrative penalty may be assessed for any violation, as determined by the ethics committee. An administrative penalty may be assessed in lieu of, or in addition to, other disciplinary actions.

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 M. LICENSING OF PERSONS WITH CRIMINAL BACKGROUNDS

22 TAC §801.331, §801.332

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed amendments affect Occupations Code, Chapter 502.

§801.331. Purpose.

The purpose of this subchapter is to comply with Occupations Code, Chapter 53 (relating to Consequences of Criminal Conviction) by establishing [establish] guidelines and criteria regarding [on] the eligibility of persons with criminal backgrounds to obtain licenses as a marriage and family therapist.

§801.332. Criminal Conviction.

(a) (No change.)

(b) In considering whether a criminal conviction directly relates to the occupation of a therapist, the board shall consider:

(1) (No change.)

(2) the relationship of the crime to the purposes for requiring a license [licensee] to be a therapist. The following felonies and misdemeanors relate to the license of a therapist because these criminal offenses indicate an inability to perform as a therapist or a tendency to be unable to perform as a therapist:

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

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

(5) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a therapist. In making this determination, the board will apply the criteria outlined in Occupations Code, Chapter 53 [Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7)].

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 N. INFORMAL CONFERENCES

22 TAC §801.351

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of pro-

fessional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints.

The proposed amendment affects Occupations Code, Chapter 502.

§801.351. Informal [~~Settlement~~] Conference.

(a) Informal disposition of any complaint or contested case involving a licensee or an applicant for licensure may be made through an informal [~~settlement~~] conference held to determine whether an agreed order may be approved.

(b) If the executive director or the ethics committee of the board determines that the public interest may be served by attempting to resolve a complaint or contested case with an agreed order in lieu of a formal hearing, the provisions of this subchapter shall apply. A licensee or applicant may request an informal [~~settlement~~] conference; however, the decision to hold a conference shall be made by the executive director or the ethics committee.

(c) (No change.)

(d) The executive director shall decide upon the time, date and place of the informal [~~settlement~~] conference, and provide written notice to the licensee or applicant. Notice shall be provided no less than ten days prior to the date of the conference [~~by certified mail, return receipt requested,~~] to the last known address of the licensee or applicant or by personal delivery. The ten days shall begin on the date of mailing or delivery. The licensee or applicant may waive the ten-day notice requirement.

(e) A copy of the board's rules concerning informal [~~settlement~~] conference may [~~shall~~] be enclosed with the notice of the informal [~~settlement~~] conference. The notice shall inform the licensee or applicant of the following:

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

(f) The notice of the informal [~~settlement~~] conference may [~~shall~~] be sent [~~by certified mail, return receipt requested,~~] to the complainant at his or her last known address or personally delivered to the complainant. The complainant may [~~shall~~] be informed that he or she may appear and testify or may submit a written statement for consideration at the informal [~~settlement~~] conference. [~~The complainant shall be notified if the conference is cancelled.~~]

(g) At least one member of the ethics committee shall be present at an informal [~~a settlement~~] conference.

(h) The [~~settlement~~] conference shall be informal and shall not follow the procedures established in this chapter for contested cases and formal hearings.

(i) (No change.)

(j) The board's legal counsel or an attorney from the Office of the Attorney General shall attend each informal [~~settlement~~] conference. The ethics committee members or executive director may call upon the attorney at any time for assistance in the informal [~~settlement~~] conference.

(k) Access to the board's investigative file may be prohibited or limited in accordance with the Public Information [~~Open Records~~] Act, the Administrative Procedure Act (APA), and other applicable law.

(l) At the discretion of the executive director or the ethics committee members, a tape recording may be made of some or all of the informal [~~settlement~~] conference.

(m) The ethics committee members or the executive director shall exclude from the informal [~~settlement~~] conference all persons except witnesses during their testimony. The licensee or applicant, the licensee's or applicant's attorney, and board staff may remain for all portions of the informal [~~settlement~~] conference, except consultation between the ethics committee members, staff, and the board's legal counsel.

(n) The complainant shall not be considered a party in the informal [~~settlement~~] conference but shall be given the opportunity to be heard if the complainant attends. Any written statement submitted by the complainant shall be reviewed at the conference.

(o) At the conclusion of the informal [~~settlement~~] conference, the ethics committee member(s) or executive director may make a proposal for an informal settlement of the complaint or contested case. The proposed settlement may include administrative penalties or any disciplinary action authorized by the Act. The ethics committee member(s) or executive director may also [~~propose to~~] recommend that the board lacks jurisdiction, that a violation of the Act or this chapter has not been established, or that the investigation be closed [~~for some other reason~~].

(p) The licensee or applicant may either accept or reject the settlement recommendations at the conference. If the recommendations are accepted, an agreed [~~settlement~~] order shall be prepared by the executive director, executive director's designee or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within ten days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(q) - (s) (No change.)

(t) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order and may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(u) - (v) (No change.)

(w) A licensee's opportunity for an informal conference under this subchapter shall satisfy the requirement of the APA, §2001.054(c).

[~~(1) If the executive director or ethics committee determines that an informal conference shall not be held, the executive director or executive director's designee shall give written notice to the licensee or applicant if it has not been previously provided. The notice will indicate facts or conduct alleged to warrant the intended disciplinary action and the licensee or applicant shall be given the opportunity to show, in writing and as described in the notice, compliance with all requirements of the Act and this chapter.~~]

[~~(2) The complainant shall be sent a copy of the written notice. The complainant shall be informed that he or she may also submit a written statement to the board office.~~]

(x) The board may order a license holder to pay a refund to a consumer as provided in an agreement resulting from an informal conference instead of or in addition to imposing an administrative penalty. The amount of a refund ordered as provided in an agreement resulting

from an informal conference may not exceed the amount the consumer paid to the license holder for a service regulated by the Act and this title. The board may not require payment of other damages or estimate harm in a refund order.

(y) The following statement shall be included in to the notice of informal conference, in bold letters of at least 10 point type:
Figure: 22 TAC §801.351(y)

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505710
Wayne Hinson, Ph.D
Chair
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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SUBCHAPTER O. FORMAL HEARINGS

22 TAC §§801.361 - 801.369

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

STATUTORY AUTHORITY

The proposed repeals are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed repeals affect Occupations Code, Chapter 502.

§801.361. Purpose.

§801.362. General.

§801.363. Notice.

§801.364. Parties to the Hearing.

§801.365. Subpoenas.

§801.366. Depositions.

§801.367. Prehearing Conferences.

§801.368. Hearing Procedures.

§801.369. Action after the Hearing.

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

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

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22 TAC §§801.361 - 801.364

STATUTORY AUTHORITY

The proposed new rules are authorized by Occupations Code, §502.151, which authorizes the board to adopt a code of professional ethics for license holders and to determine the qualifications and fitness of a license applicant; Occupations Code, §502.152, which authorizes the board to adopt rules establishing the board's procedures; Occupations Code, §502.153, which authorizes the board to set fees in amounts reasonable and necessary to cover the costs of administering the licensing program; and Occupations Code, §502.158, which authorizes the board to adopt rules regarding complaints

The proposed new rules affect Occupations Code, Chapter 502.

§801.361. Purpose.

These rules cover the hearing procedures and practices that are available to persons or parties who request formal hearings from the board. The intended effect of these rules is to supplement the contested case provisions of the Texas Government Code, Chapter 2001, Administrative Procedure Act (APA), the hearing procedures of the State Office of Administrative Hearings (Texas Government Code, Chapter 2003 and Rules of Procedure, 1 Texas Administrative Code, Chapter 155), and to make the public aware of these procedures and practices.

§801.362. Notice.

(a) For purposes of contested case proceedings before the State Office of Administrative Hearings, proper notice means notice sufficient to meet the provisions of the Texas Government Code, Chapter 2001 and the State Office of Administrative Hearings Rules of Procedure, 1 Texas Administrative Code, Chapter 155.

(b) For purposes of informal conferences, proper notice shall include the name and style of the case, the date, time, and place of the informal conference, and a short statement of the purpose of the conference.

(c) The following statement shall be attached to the notice of hearing or notice of informal conference, in bold letters of at least 10 point type:
Figure: 22 TAC §801.362(c)

§801.363. Default.

(a) For purposes of this section, default means the failure of the respondent to appear in person or by legal representative on the day and at the time set for hearing in a contested case or informal conference, or the failure to appear by telephone, in accordance with the notice of hearing or notice of informal conference.

(b) Remedies available upon default in a contested case before the State Office of Administrative Hearings (SOAH). The Administrative Law Judge (ALJ) shall proceed in the party's absence and such failure to appear shall entitle the department to seek informal disposition as provided by the Texas Government Code, Chapter 2001. The ALJ shall grant any motion by the department to remove the case from the contested hearing docket and allow for informal disposition by the board.

(c) Remedies available upon default in an informal conference. The board may proceed to make such informal disposition of the case as it deems proper, as if no request for hearing had been received.

(d) The board may enter a default judgment by issuing an order against the defaulting party in which the factual allegations in the notice of violation or notice of hearing are deemed admitted as true without the requirement of submitting additional proof, upon the offer of proof that proper notice was provided to the defaulting party.

(e) Motion to set aside and reopen. A timely motion by the respondent to set aside the default order and reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that such failure was due to mistake, accident, or circumstances beyond the respondent's control.

(1) A motion to set aside the default order and reopen the record shall be filed with the board prior to the time that the order of the board becomes final pursuant to the provisions of the Texas Government Code.

(2) A motion to set aside the default order and reopen the record is not a motion for rehearing and is not to be considered a substitute for a motion for rehearing. The filing of a motion to set aside the default order and reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing, as provided in the Texas Government Code.

(f) This subsection also applies to cases where service of the notice of hearing on a defaulting party is shown only by proof that the notice was sent to the party's last known address as shown on the department's records, with no showing of actual receipt by the defaulting party or the defaulting party's agent. In that situation, the default procedures described in subsection (c) of this section may be used if there is credible evidence that the notice of hearing was sent by certified or registered mail, return receipt requested, to the defaulting party's last known address.

§801.364. Action after Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The department shall reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice of any reopened hearing shall be provided to all previously designated parties, by certified mail, return receipt requested.

(b) Final orders or decisions.

(1) The final order or decision of the department will be rendered by the board or its designee.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order, by attachment, or by reference to an ALJ's proposal for decision.

(3) Unless otherwise permitted by statute or by these sections, all final orders shall be signed by the board chair, or designee.

(c) Motion for rehearing. A motion for rehearing shall be governed by the APA or other pertinent statute and shall be filed with the board.

(d) Appeals. All appeals from final department orders or decisions shall be governed by the APA or other pertinent statute and shall be addressed to the board.

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

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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

The Texas Board of Orthotics and Prosthetics (board) proposes amendments to §§821.1, 821.2, 821.5 - 821.7, 821.9, 821.15, 821.17, 821.23, 821.27 - 821.29, 821.33, and 821.35 and the repeal of §821.25, concerning the licensure and regulation of orthotists, prosthetists, assistants, technicians, students, and orthotic and prosthetic facilities.

Specifically, the amendments delete all references to provisional licensing; change "comprehensive orthotic care" to "extensive orthotic practice;" change "comprehensive prosthetic care" to "extensive prosthetic practice; correctly identify the name change of the "Texas Department of Health" to the "Department of State Health Services" to which the board is administratively attached; correct citations; allow applicants to submit professional references from practitioners who are licensed or certified by another state or national organization; do not allow for renewal of a temporary license if the licensee has failed an examination administered by the board; require applicants to receive prior approval from the executive director before completing the required 80-hour planned, structured, and personalized tutorial after failing the examination three times; require applicants to wait a period of three years before reapplying for licensure and examination if they fail the examination six times; remove the language that allows applicants to qualify for licensure and examination as an orthotist and prosthetist with an associate's degree; require a bachelor's degree for student registration renewal; and require accredited facilities to attach mirrors to the wall or be on a free standing base and have appropriate equipment for patient ambulation trials. The repeal deletes the section pertaining to provisional licensing.

Heather Muehr, Executive Director of the board, has determined that for each year of the first five-year period the amendments and repeal are in effect, there will be no fiscal impact to state or local governments as a result of enforcing and administering the amended or repeal sections as proposed.

Ms. Muehr has also determined that for each year of the first five years the amendments and repeal are in effect, the public benefit as a result of enforcing or administering the amended or repeal sections will be to insure the appropriate regulation of orthotists, prosthetists, and accredited facilities. There is no anticipated cost to small businesses or micro-businesses in that these entities will not be required to alter their business practices to comply with the amendments or repeal as proposed. There is no anticipated economic cost to persons who are required to comply with the amendments or repeal as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Heather Muehr, Executive Director, Texas Board of Orthotics and Prosthetics, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6768. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

22 TAC §§821.1, 821.2, 821.5 - 821.7, 821.9, 821.15, 821.17, 821.23, 821.27 - 821.29, 821.33, 821.35

The amendments are proposed under Texas Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

The amendments affect the Texas Occupations Code, Chapter 605.

§821.1. Introduction.

(a) (No change.)

(b) Content. These sections cover definitions; powers and duties of the board; organization of the board; fees; application requirements and procedures for licensing prosthetists and orthotists; [~~application requirements for provisionally licensing prosthetists and orthotists;~~] application requirements for temporary licensing prosthetists and orthotists; application requirements for licensing orthotist and prosthetist assistants; application requirements for registering orthotist and prosthetist technicians; application requirements for registering orthotist and prosthetist students; upgrading a student registration or[~~,~~] temporary license [~~or provisional license~~]; application requirements for accreditation of prosthetic and orthotic facilities; issuance of licenses, temporary licenses, registrations, and accreditations, exemptions to licensure, registration and accreditation; continuing education for license renewal; display of license; registration or accreditation; renewal of license, registration or accreditation; changes in name or address; professional and ethical standards; violations, complaints and disciplinary actions; licensing or registration of persons with criminal backgrounds; and petition for rule making.

§821.2. Definitions.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly suggests otherwise. Words and terms defined in the Orthotics and Prosthetics Act shall have the same meaning in these rules:

(1) - (7) (No change.)

[~~(8) Comprehensive orthotic care--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthoses including plastic forming, metal contouring, cosmetic covering, upholstering and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthoses; the maintaining of current encounter notes and patient records. The practitioner with comprehensive orthotic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.~~]

[~~(9) Comprehensive prosthetic care--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, upholstering, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with comprehensive prosthetic care experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.~~]

(8) [~~(10)~~] Critical care events--Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function of the prosthesis or orthosis.

(9) [~~(11)~~] Custom-fabricated--A prosthesis or orthosis has been designed, prescribed, fabricated, fitted, and aligned specifically for an individual in accordance with sound biomechanical principles.

(10) [~~(12)~~] Custom-fitted--A prosthesis or orthosis prescribed, adjusted, fitted, and aligned for a specific individual according to sound biomechanical principles.

(11) [~~(13)~~] Department--Department of State Health Services [~~Texas Department of Health~~].

(12) [~~(14)~~] Direct supervision--Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervisor must review, and sign-off on patient care notes made by the clinical resident.

(13) Extensive orthotic practice--Includes: the evaluation of patients with a wide range of lower limb, upper limb and spinal pathomechanical conditions, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements into a custom orthotic design; the selection of materials and components; the fabrication of therapeutic or functional orthoses including plastic forming, metal contouring, cosmetic covering, upholstering and assembling; the fitting and critique of the orthosis; the appropriate follow-up, adjustments, modifications and revisions in an orthotic facility; the instructing of patients in the use and care of the orthoses; the maintaining of current encounter notes and patient records. The practitioner with extensive orthotic practice experience must, within the limits set by the Texas Board of Orthotics and

Prosthetics, apply all of the aforementioned experiential elements to the orthoses listed below. At least two-thirds of the orthoses must be included: foot orthosis; ankle-foot orthosis; knee-ankle-foot orthosis; hip-knee-ankle-foot orthosis; hip orthosis; knee orthosis; cervical orthosis; cervical-thoracic orthosis; thoracic-lumbar-sacral orthosis; lumbar-sacral orthosis; cervical-thoracic-lumbar-sacral orthosis; hand orthosis; wrist-hand orthosis; shoulder-elbow orthosis; shoulder-elbow-wrist-hand orthosis.

(14) Extensive prosthetic practice--Includes: the evaluation of patients with a wide range of upper and lower limb deficiencies, respectively; the taking of measurements and impressions of the involved body segments; the synthesis of observations and measurements onto a custom prosthetic design; the selection of materials and components; the fabrication of functional prostheses including plastic forming, metal contouring, cosmetic covering, upholstering, assembly, and aligning; the fitting and critique of the prosthesis; the appropriate follow-up, adjustments, modifications and revisions in a prosthetic facility; the instructing of patients in the use and care of the prosthesis; and the maintaining of current encounter notes and patient records. The practitioner with extensive prosthetic practice experience must, within the limits set by the Texas Board of Orthotics and Prosthetics, apply all of the aforementioned experiential elements to the prostheses listed below. At least two-thirds of the prostheses must be included: wrist disarticulation prosthesis; below elbow prosthesis; above elbow prosthesis; shoulder disarticulation prosthesis; partial foot prosthesis; symes prosthesis; below knee prosthesis; above knee prosthesis; hip disarticulation prosthesis.

(15) - (42) (No change.)

§821.5. Fees.

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

(d) Schedule of fees. The board has established the schedule of fees as follows:

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

[~~(11) prosthetist or orthotist provisional license or provisional license renewal--$300;~~]

[~~(12) prosthetist/orthotist provisional license or provisional license renewal--$400;~~]

(11) [~~(13)~~] prosthetic or orthotic facility accreditation or accreditation renewal--$400;

(12) [~~(14)~~] prosthetic/orthotic facility accreditation or accreditation renewal--$500;

(13) [~~(15)~~] license, registration, or accreditation duplicate or replacement--$25;

(14) [~~(16)~~] orthotic or prosthetic examination--shall be determined by the department [~~Texas Department of Health (department)~~] and shall consist of the examination fee in accordance with the current examination contract plus an administrative fee;

(15) [~~(17)~~] upgrade for student registrant[~~, provisional licensees~~] and temporary licensees after passing the examination:

(A) one category--$200;

(B) two categories--$300;

(16) [~~(18)~~] license reinstatement following suspension of a license under the Family Code--the renewal fee for the license or registration and an additional $100;

(17) [~~(19)~~] returned check--$25;

(18) [~~(20)~~] written license/certification verification--$25 each;

(19) [~~(21)~~] adding orthotics or prosthetics to a facility accreditation issued in one category, including the designation of a practitioner in charge for the new category--$400;

(20) [~~(22)~~] changing the location or name of an accredited facility--$400;

(21) [~~(23)~~] changing the ownership of an accredited facility--$400;

(22) [~~(24)~~] changing the name of the on-site practitioner in charge of an accredited facility--$100; and

(23) [~~(25)~~] changing the name of the safety manager of an accredited facility--$100.

(e) - (f) (No change.)

§821.6. General Application Procedures.

(a) (No change.)

(b) General.

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

(5) Family Code §231.302 [~~§231.02~~] requires the disclosure of the applicant's social security number. Social security numbers are used for identification purposes and are confidential except to the child support enforcement division of the Office of the Attorney General.

(c) Required application materials.

(1) The application form shall contain:

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

(C) specific and complete information regarding prosthetic and/or orthotic work experience to include:

(i) verifiable information regarding length of time the applicant has been engaged in extensive [~~provided comprehensive~~] prosthetic or orthotic practice [~~care~~] as defined in §821.2 of this title (relating to Definitions) in the State of Texas and outside the State of Texas;

(ii) (No change.)

(iii) names and addresses of two persons who are not relatives and who are either a licensed physician familiar with prostheses and/or orthoses, [~~or~~] a practitioner, as set out in §821.2 of this title, or a person licensed or certified by another state or national organization in orthotics and prosthetics who will attest to the applicant's extensive [~~experience providing comprehensive~~] prosthetic and/or orthotic practice [~~care~~].

(D) - (H) (No change.)

(I) a statement that the applicant understands that fees submitted in the licensure process are not refundable, unless the processing time is exceeded without good cause as set out in subsection (j)(2)(A) - (B) [~~(i)(2)(A) - (B)~~] of this section;

(J) - (K) (No change.)

(2) (No change.)

(3) Applicants shall be responsible for submitting board reference forms from a total of two licensed physicians, [~~or~~] practitioners, or persons licensed or certified by another state or national organization in orthotics and/or prosthetics who can attest to the applicant's

skills and professional standards of extensive [~~comprehensive~~] prosthetic and/or orthotic practice.

(4) - (8) (No change.)

(d) - (f) (No change.)

(g) Applications proposed for disapproval. If the board determines that the application should not be approved, the executive director shall give the applicant written notice of the reason for the proposed disapproval and of the opportunity for a formal hearing as set out in §821.39(g) [~~§821.39(h)~~] of this title. Within 14 days after receipt of the written notice, the applicant shall give written notice to the executive director to waive or request a hearing. If the applicant fails to respond within 14 days after receipt of the notice of opportunity or if the applicant notifies the executive director that the hearing be waived, the board shall finally deny the application.

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

§821.7. General Licensing Procedures.

(a) (No change.)

(b) Issuance of licenses.

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

[~~(3) A provisional license shall be issued for a two-year period and may be renewed. The board shall not issue or renew a provisional license on or after January 1, 2005.~~]

(3) [~~(4)~~] A temporary license shall be issued for a one-year period, and may be renewed for not more than one year.

(4) [~~(5)~~] A student registration shall be issued or renewed for a two-year period, unless issued or renewed under §821.27(e) or (f) of this title (relating to Student Registration).

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

§821.9. Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist.

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

(d) Applications for examination.

(1) The board shall notify an applicant whose license application has been approved for the examination. Approval to take the examination shall be limited to the three-year period after the date of the board's notification to the applicant, unless specifically extended by action of the board. [~~An applicant who was approved for the examination under §821.25 of this title (relating to Provisional License) may not take the examination after January 1, 2005.~~]

(2) (No change.)

(e) - (h) (No change.)

(i) Failures.

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

(3) An applicant who fails the examination three times shall have his application denied unless the applicant:

(A) (No change.)

(B) submits proof that they have completed an 80-hour planned, structured, and personalized tutorial that was pre-approved by the executive director of the board. [~~furnished the board with evidence that the applicant completed an 80-hour planned, structured and personalized tutorial in each area of weakness directed and supervised by a licensed prosthetist(s), orthotist(s), or prosthetist/orthotist(s). The area of licensure for the supervisor(s) shall match the type of examination taken by the applicant.~~] The tutorial may include classroom instruction, reading, research, continuing education activities, and test material review. [~~The tutorial may include the clinical application and patient care if the applicant holds a current student registration, or if the applicant undertakes the tutorial outside the state of Texas. Acceptable evidence shall include a letter from the tutor describing the tutorial completed by the student, including details such as the number of hours completed, the dates attended, subject matter covered, and the type of tutorials employed.~~]

(4) (No change.)

(5) An applicant who fails the examination six times must wait for a period of three years before they may file a new application for examination. The three-year period begins when the applicant is notified of the sixth failure.

(j) (No change.)

§821.15. Acquiring Licensure as a Uniquely Qualified Person.

(a) (No change.)

(b) Unique qualifications. A uniquely qualified person means a resident of the State of Texas who, through education, training and experience, is as qualified to perform prosthetic and/or orthotic care as those persons who obtain licensure pursuant to the Act, §605.252.

(1) (No change.)

(2) The board presumes [~~will not approve~~] a person [~~as~~] possessing unique qualifications will have engaged in extensive [~~who has not provided comprehensive~~] orthotic and/or prosthetic practice [~~care and/or comprehensive prosthetics care to the extent required by the Act, §605.254(a)~~].

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

§821.17. Licensing by Examination.

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

(c) Academic requirements for an orthotist license. The applicant must hold a bachelor's degree in:

[~~(1) a bachelor's degree in:~~]

(1) [~~(A)~~] prosthetics and orthotics from a college or university educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(2) [~~(B)~~] any subject and an orthotic certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards.[~~;~~]

[~~(2) until January 1, 2005, an associates degree in prosthetics and/or orthotics or an associates degree in any subject and a minimum:~~]

[~~(A) six semester hours of anatomy and physiology;~~]

[~~(B) six semester hours of physics or chemistry; and~~]

[~~(C) three semester hours of trigonometry or higher mathematics.~~]

(d) Academic requirements for a prosthetist license. The applicant must hold a bachelor's degree in:

[~~(1) a bachelor's degree in:~~]

(1) [~~(A)~~] prosthetics and orthotics from a college or university educational program accredited by CAAHEP while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(2) [~~(B)~~] any subject and a prosthetic [~~prosthetics~~] certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards. [~~; or~~]

[~~(2) until January 1, 2005, an associates degree in prosthetics and/or orthotics or an associates degree in any subject and a minimum:~~]

[~~(A) six semester hours of anatomy and physiology;~~]

[~~(B) six semester hours of physics or chemistry; and~~]

[~~(C) three semester hours of trigonometry or higher mathematics.~~]

(e) Academic requirements for a prosthetist/orthotist license. The applicant must hold a bachelor's degree in:

[~~(1) a bachelor's degree in:~~]

(1) [~~(A)~~] prosthetics and orthotics from a college or university educational program accredited by the CAAHEP while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or

(2) [~~(B)~~] any subject and a prosthetic certificate and an orthotic certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards. [~~; or~~]

[~~(2) until January 1, 2005, an associates degree in prosthetics and orthotics or an associates degree in any subject and a minimum:~~]

[~~(A) six semester hours of anatomy and physiology;~~]

[~~(B) six semester hours of physics or chemistry; and~~]

[~~(C) three semester hours of trigonometry or higher mathematics.~~]

(f) Post-graduate requirements for the orthotist license.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency as described in §821.31 of this title (relating to Standards, Guidelines and Procedures for a Professional Clinical Residency)[~~, or 4,500 hours of post graduate clinical experience if applying under subsection (c)(2) of this section before January 1, 2005. The 4,500 hours of clinical experience must be completed by January 1, 2005~~].

(2) (No change.)

(g) Post-graduate requirements for the prosthetist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title[~~, or 4,500 hours of post graduate clinical experience if applying under subsection (d)(2) of this section. The 4,500 hours of clinical experience must be completed by January 1, 2005~~].

(2) (No change.)

(h) Post-graduate requirements for the prosthetist/orthotist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency and not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title[~~, or 4,500 hours of post graduate clinical experience in each discipline if applying under subsection (e)(2) of this section. The 4,500 hours of clinical experience in each discipline must be completed by January 1, 2005~~].

(2) (No change.)

(i) Additional post-graduate requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical prosthetic residency as described in §821.31 of this title[~~, or 4,500 hours of post-graduate clinical experience if applying under subsection (d)(2) of this section. The 4,500 hours of clinical experience in prosthetics must be completed by January 1, 2005~~].

(2) (No change.)

(j) Additional post-graduate requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1,900 hours of clinical orthotic residency as described in §821.31 of this title[~~, or 4,500 hours of post graduate clinical experience if applying under subsection (c)(2) of this section. The 4,500 hours of experience in orthotics must be completed by January 1, 2005~~].

(2) (No change.)

§821.23. Temporary License.

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

(e) Renewal requirements. A temporary license may be renewed once for one additional one-year period if the applicant:

(1) has not failed an examination administered by the board; and

(2) [~~(1)~~] applies for renewal on or before the expiration date of the initial temporary license; and either

(3) [~~(2)~~] is registered to take the next scheduled examination [~~or has taken an examination under §821.9 of this title during the year immediately preceding the date of the application for temporary license renewal~~]; or

(4) [~~(3)~~] presents evidence, satisfactory to the executive director of good cause for renewal. The executive director may consult with a board member in order to determine if sufficient evidence has been presented.

(f) (No change.)

§821.27. Student Registration.

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

(e) Renewal. A student registration may be renewed once for an additional two years[~~, unless issued under subsection (f) of this sec-~~

~~tion~~]. A student registration may not be renewed more than once in each area: prosthetics, orthotics, or both. The continuing education requirements as set out in §821.35 of this title (relating to Continuing Education) do not apply to renewal of a student registration. A student registration shall not be renewed after December 31, 2004, if the person does not hold a bachelor's degree in prosthetics and/or orthotics or a bachelor's degree in any subject and a prosthetic or orthotic certificate.

~~[(f) Special provisions expiring January 1, 2005.]~~

~~[(1) A student registration issued to a person who holds an associate degree including course work in the anatomical, biological, and physical sciences, shall expire two years from the date issued or on January 1, 2005, whichever occurs first.]~~

~~[(2) A student registration shall not be issued or renewed after December 31, 2004, if the person does not hold a bachelor's degree in prosthetics and/or orthotics or a bachelor's degree and a prosthetic or orthotic certificate.]~~

(f) [~~(g)~~] Application before residency. The applicant shall apply for a student registration before beginning the clinical residency, but not more than 30 days before the beginning date of the clinical residency. An applicant who is actively engaged in completing a clinical residency that began before October 1, 1998, shall apply for a student registration within 30 days of the date the board adopts rules. A person who is actively engaged in a clinical residency who does not apply for a student registration may not receive credit for the hours completed before application toward qualifying for a license by examination. The applicant shall provide on the application form the:

(1) name and address of the facility(ies) where the applicant will accomplish the clinical residency;

(2) name(s) and license number(s) of the practitioner(s) who will provide direct and indirect supervision to the applicant; and

(3) beginning date and the anticipated ending date of the clinical residency.

(g) [~~(h)~~] Reporting of changes. The applicant shall inform the board within 30 days of changes in the information provided on the application form.

(h) [~~(i)~~] Compliance with board rules. The student registrant shall comply with the rules of the board, including §821.31 of this title.

§821.28. Upgrading a Student Registration or[,] Temporary License [~~or Provisional License~~].

(a) Application of section. Unless the content clearly indicates otherwise, the term licensee, when used in this section shall include a student registrant and[,] a temporary licensee [~~and a provisional licensee~~]. The term license shall include a student registration or[,] temporary license [~~or provisional license~~].

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

§821.29. Accreditation of Prosthetic and Orthotic Facilities.

(a) - (m) (No change.)

(n) Examination/treatment rooms.

(1) (No change.)

(2) At least one set of parallel bars and a mirror that is affixed to the wall or a mirror with a free standing base for patient ambulation trials must be provided in each facility.

(3) (No change.)

(o) - (p) (No change.)

(q) General.

(1) (No change.)

(2) Facility must have the equipment and capabilities to provide casting, measuring, fitting, repairs, and adjustments.

(r) (No change.)

§821.33. License Renewal.

(a) (No change.)

(b) General. Paragraph (1) of this subsection does not apply to renewal of a [~~provisional or~~] temporary license or a student registration.

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

(c) License renewal requirements.

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

(4) A licensee must comply with applicable continuing education requirements to renew a license including the audit process described in §821.35 of this title (relating to Continuing Education). Continuing education shall not be required if the applicant is renewing a temporary [~~or provisional~~] license or a student registration.

(5) (No change.)

(d) - (g) (No change.)

§821.35. Continuing Education.

(a) (No change.)

(b) Application. This section applies to licensees and registrants of the board. Unless the text clearly says otherwise, use of the term licensee shall include both licensees and registrants, and use of the term license shall include both licenses or registrations. This section does not apply to a [~~provisional or~~] temporary license[,] or a student registration.

(c) - (o) (No change.)

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

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

TRD-200505612
Wanda Furgason
Presiding Officer
Texas Board of Orthotics and Prosthetics
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

22 TAC §821.25

(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 Board of Orthotics and Prosthetics 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 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotists and prosthetists.

The repeal affects the Texas Occupations Code, Chapter 605.

§821.25. Provisional 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.

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

TRD-200505613
Wanda Furgason
Presiding Officer
Texas Board of Orthotics and Prosthetics
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 458-7236

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PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.28

The Texas Board of Professional Geoscientists (TBPG) proposes amendments to 22 Texas Administrative Code Chapter 851, §851.28, concerning license renewal. The proposed amendments outline renewal procedures for licenses that are allowed to expire for over 60 days. Our statute currently stipulates that a license that is not renewed within 60 days past its expiration date cannot be renewed, but does state that *the board by rule may establish conditions for the reissuance of a license that has lapsed, expired, or been suspended or revoked*. Thus, as per the proposed amendments, a license not renewed within 60 days past its expiration date will now be considered lapsed and can be renewed according to the conditions set forth in the proposed amended rule. In addition, a license that is allowed to lapse for over a year but less than three can also be renewed in accordance with the proposed amended rule. This would change current Board policy stating a license becomes permanently expired when not renewed within one year of its expiration date. The amended rule also stipulates that the Board may suspend or revoke a license as disciplinary action for violation of Board law or rules. The amended rule outlines how a revoked or suspended license can be re-instated.

Michael D. Hess, Executive Director of the TBPG, has determined that for the first five years that the amendments are in effect the proposed amendments will have no fiscal implications for state or local government as a result of enforcement and administration of the amended section.

Mr. Hess has also determined that for each year of the first five years that the amendments are in effect the public benefit from adoption of the amendments is that the amended rule may help in decreasing the number of licensees who permanently expire annually. There is a potential for increased cost to licensees if they allow their license to lapse for over a year due to payment of more than one late penalty fee. However, a licensee whose license does lapse for more than a year and less than three, but wishes to remain licensed, will not have to take an examination for licensure and will save the expense and time of having to do so. There will not be an effect on small or micro businesses.

Comments on the proposed amendments may be submitted in writing to Michael D. Hess, Executive Director, P.O. Box 13225, Austin, Texas 78701, (512) 936-4401. Comments may also be submitted electronically to *mhess@tbpg.state.tx.us* or faxed to (512) 936-4409. All comments must be received 30 days after publication of the proposed amendments in the *Texas Register*. All requests for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the Executive Director not more than 15 calendar days after notice of the proposed changes to the section has been published in the *Texas Register*.

The amendments are proposed under the Texas Occupations Code, Chapter 1002, which authorizes the Board to establish conditions and fees for the reissuance of a license that has lapsed, expired, or been suspended or revoked.

The proposed amendments implement the Texas Occupations Code, §1002.301.

§851.28. License Renewal and Reinstatement.

(a) The Board will mail a renewal notice to the last recorded address of each license holder, at least 30 days prior to the date the license is about to expire. Regardless of whether the renewal notice is received, it is the sole responsibility of the license holder to pay the required renewal fee together with any applicable penalty at the time of payment.

~~[(b) Commencing June 1, 2004, the Board adopts a renewal system that changes license renewal dates to the birth month of the licensee. Each licensee seeking renewal will be charged $12.50 per month times the number of months to the licensee's birth month; thereafter, each licensee seeking renewal will be charged $150 for each annual renewal.]~~

(b) ~~[(c)]~~ A late fee of $50 will be charged for each renewal application received not less than 60 days after the licensee's expiration date.

(c) The Board may refuse to renew a license if the license holder is the subject of a lawsuit regarding his/her practice of geoscience or is found censurable for a violation of Board laws or rules that would warrant such disciplinary action under §851.157 of this chapter.

(d) A license that has been expired for 60 days or less may be renewed by submitting a renewal application and fee to the Board, any increase in fees as required by §851.80 of this chapter, and the continuing education documentation as required in §851.32 of this chapter.

(e) A license that has been expired for more than 60 days and less than three years from the original expiration date is considered lapsed. A license that has lapsed for less than one year may be renewed by submitting to the Board a renewal application and fee, the late penalty fee, any increase in fees as required by §851.80 of this chapter, and the continuing education documentation as required in §851.32 of this chapter. The licensee must also submit a signed affirmation that they did not practice as a P.G. when their license was expired.

(f) A license that has lapsed for more than one year but less than three years after the original expiration date may be renewed by submitting to the Board an annual renewal application and fee, any applicable late penalty fees for every year the license has lapsed, any increase in fees as required by §851.80 of this chapter, and the continuing education requirements as required in §851.32 of this chapter for every year the license has lapsed. The licensee must also submit a

signed affirmation that they did not practice as a P.G. when their license was expired.

(g) A license that is allowed to lapse for a period of three years after the original expiration date may not be renewed. The former license holder may apply for a new license as provided by the Act and applicable Board rules and will have to meet all licensure requirements in said Act and Rules.

(h) As per §1002.403 of the Act, the Board may suspend or revoke a license as disciplinary action against a license holder who is found censurable for a violation of the Act or rules.

(1) A license that has been suspended can be reinstated by the board only if the suspended licensee complies with all conditions of the suspension, which may include payment of fines, continuing education requirements, participation in a peer review program or any other disciplinary action outlined in §1002.403 of the Act.

(2) A license that has been revoked can be re-instated only if by a majority vote the Board approves reinstatement given the applicant:

(A) re-applies and submits all required application materials and fees;

(B) successfully completes an examination in the required discipline of geoscience being sought for reinstatement if the applicant has not previously passed said examination; and

(C) provides evidence to demonstrate competency and that future non-compliance with the laws and rules of the Board will not occur.

(i) 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 a timely manner because the license holder was serving on active duty in the United States armed forces outside of 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.

Filed with the Office of the Secretary of State on December 7, 2005.

TRD-200505629
Frank Knapp
Assistant Attorney General
Texas Board of Professional Geoscientists
Proposed date of adoption: March 17, 2006
For further information, please call: (512) 936-4402

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 137. RETURN-TO-WORK

SUBCHAPTER E. RETURN-TO-WORK PILOT PROGRAM FOR SMALL EMPLOYERS: ACCOUNT

28 TAC §§137.41 - 137.48

The Texas Department of Insurance, Division of Workers' Compensation proposes new Subchapter E, §§137.41 - 137.48 concerning the return-to-work pilot program for small employers and the workers' compensation return-to-work account. The new sections are proposed to implement the Texas Labor Code §413.022, which requires the Commissioner of Workers' Compensation to establish by rule a return-to-work pilot program designed to promote the early and sustained return to work of an injured employee who has a compensable injury and to provide reimbursement from the return-to-work account to participating eligible employers for eligible expenses. The purpose of the return-to-work pilot program for small employers is to promote the early and sustained return to work of injured employees in modified or alternate duty job assignments through reimbursements to small employers for the costs of workplace modifications and other costs that were necessary to return injured employees back to work.

The return-to-work pilot program for small employers becomes effective January 1, 2006, at which time eligible small employers may submit an application for reimbursement for workplace modification expenditures, which were necessary to return an injured employee to work. An eligible employer must have made the expenditure prior to submitting the application for possible reimbursement for the workplace modifications. The Division will dispense funds from the account for approved reimbursements to eligible employers depending on the availability of funds in this account. The maximum reimbursement that a single eligible employer may receive is $2,500 annually for all workplace modifications.

Legislative appropriations that provide funding for the workers' compensation return-to-work account are made on a state fiscal year basis. The state's fiscal year begins September 1st and ends August 31st of the following year. Beginning January 1, 2006, the effective date of the program, approved reimbursements shall be processed for funding from the return-to-work account in the order that applications are received by the Texas Department of Insurance, Division of Workers' Compensation.

When all available funds in the return-to-work account are disbursed, reimbursements from the account will not be approved or authorized during the remainder of the current state appropriation year. Additional funding will not be available until the beginning of the next state fiscal year, dependent on appropriations authorized by the Legislature. Applications for reimbursement from the return-to-work account that are received after all available funds are disbursed during the current fiscal year will not carry forward to the next state appropriation year.

Proposed §137.42 provides definitions applicable to the program. Proposed §137.43 provides for the appointment of a return-to-work account administrator. The return-to-work account and criteria for reimbursements to eligible employers from the account are described in proposed §137.44. Eligibility requirements for small employers to participate in the pilot program are set forth in proposed §137.45. Instructions to participating small employers for submitting an application for reimbursement from the return-to-work account for workplace modifications are provided in proposed §137.46. Proposed §137.47 presents

criteria that the return-to-work account administrator shall use to evaluate applications from participating small employers and proposed §137.48 provides guidance to the return-to-work account administrator in making determinations regarding verification of employer eligibility, workplace modifications, related costs, on-site evaluations of workplace modifications, approval or denial of applications, and reimbursements from the account.

The return-to-work pilot program for small employers becomes effective on January 1, 2006 pursuant to the requirements of House Bill 7 (79th Legislature, Regular Session, 2005) enacted as the Texas Labor Code §412.022. The return-to-work pilot program for small employers and return-to-work account expire on September 1, 2009 pursuant to the Texas Labor Code §413.022(e) unless subsequently extended or reauthorized by the Legislature.

Virginia May, Director of Return-To-Work Services, has determined that for each year of the first five years the proposed sections will be in effect there will be minimal fiscal impact to state and local governments as a result of the enforcement or administration of the rules. The return-to-work account is established as a special account in the state's general revenue fund. Funding of the account shall not exceed $100,000 annually and is provided through administrative penalties received by the Texas Department of Insurance, Division of Workers' Compensation. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. May has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of the proposed sections will be improved return-to-work outcomes for employees and employers. Eligible small employers will have an incentive to provide workplace modifications in order to return injured employees back to work since an individual employer may be reimbursed by the program. Employees who sustain compensable injuries and are employed by qualified small employers may benefit from early return to work in a modified or alternate duty assignment as a result of workplace modifications made by their employers, particularly if they return to employment at wages commensurate with their pre-injury wages.

Small employers that employ at least two but no more than 50 employees and who otherwise qualify for participation in the program may benefit from this voluntary program through reimbursements from the return-to-work account for the costs of providing workplace modifications to return injured employees back to work in a modified or alternate duty capacity. Small employers will have an incentive to make workplace modifications to enable injured employees to return to work and be productive employees. The small employer may be reimbursed no more than $2,500 for all expenditures for workplace modifications during a state fiscal year. The employer may also benefit through insurance premium reductions for workers' compensation as a result of reduced indemnity benefits and possibly reduced medical benefits paid by the insurance carrier to injured employees. The early return to work of injured employees will reduce the employer's lost work time, which enables the employer to maintain an experienced workforce and improves productivity and services provided.

This is a voluntary program specifically designated for small employers that elect to participate. Eligible small employers will incur minimal costs of completing and submitting an application to the Division for reimbursement from the account. A small employer will also incur the cost of the workplace modification of which $2,500 may be reimbursed. The employer pays for any workplace modification costs in excess of that amount. There is no guarantee that if a modification has been made that the employer will receive reimbursement. Expenditure documentation will need to be provided to enable the Division to evaluate the employer's application and to verify the workplace modifications.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on January 23, 2006, to Norma Garcia, General Counsel, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Blvd., Suite 100, Mail Stop 4D, Austin, Texas 78744. A request for a public hearing should be submitted separately.

These sections are proposed under the Texas Labor Code, §§413.022, 402.00111, and 402.061. The Texas Labor Code §413.022 requires the Commissioner of Workers' Compensation to establish by rule a small employer return-to-work pilot program designed to promote the early and sustained return to work of an injured employee who sustains a compensable injury. Texas Labor Code §402.00111 grants the Commissioner of Workers' Compensation the authority to exercise all executive authority, including general rulemaking authority, and §402.061 provides the Commissioner with the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

The following statute is affected by this proposal: Texas Labor Code §413.022

§137.41. Purpose.

The purpose of this subchapter is to set forth the terms, conditions, and requirements for the return-to-work pilot program for small employers.

§137.42. Definitions.

The following words and terms shall have the following meanings only for the purposes of the return-to-work pilot program for small employers:

(1) Alternative duty--Job duties that are different from the injured employee's normal or regular pre-injury job duties and that are assigned specifically to facilitate the injured employee's doctor-identified work restrictions or limitations.

(2) Eligible employer--Any employer that:

(A) is not a state agency or political subdivision of the state;

(B) employs at least two but not more than 50 employees on each business day during the preceding calendar year; and

(C) has workers' compensation insurance coverage in Texas.

(3) Eligible expense--An expenditure of funds or costs incurred by an eligible employer on or after January 1, 2006 for a workplace modification or other costs that are necessary to reasonably facilitate an injured employee's doctor-identified restrictions intended to facilitate the early and sustained return to work of an employee who has a compensable injury. An indemnity benefit, medical benefit, or health care for which an insurance carrier is liable is not an eligible expense.

(4) Modified duty--The injured employee's normal or regular pre-injury job duties that are modified or changed to facilitate doctor-identified work restrictions or limitations.

(5) Return-to-work account (account)--The Texas Department of Insurance, Division of Workers' Compensation's return-to-work account for small employers.

(6) Return-to-work account administrator (administrator)--The administrator of the Texas Department of Insurance, Division of Workers' Compensation's return-to-work account and the return-to-work pilot program for small employers.

(7) Single employer--An employer operating one or more businesses under the same federal employer identification number. In the absence of a federal employer identification number, a single employer is established by the employer's social security number.

(8) State appropriation year--The state of Texas' fiscal accounting year that begins September 1st and ends August 31st of the following year.

(9) Workplace modification--Physical adjustments or adaptations to the worksite, or equipment, devices, furniture, or tools that are necessary to reasonably facilitate an injured employee's doctor-identified restrictions to return the employee to modified or alternate duty.

§137.43. Return-to-Work Account Administrator.

The Commissioner of Workers' Compensation shall appoint a qualified employee of the Texas Department of Insurance, Division of Workers' Compensation to serve as the return-to-work account administrator to implement the provisions of this subchapter.

§137.44. Return-to-Work Account for Small Employers.

(a) The workers' compensation return-to-work account is a special account in the general revenue fund. The Texas Department of Insurance, Division of Workers' Compensation (Division) shall deposit into the account an amount not to exceed $100,000 each state appropriation year from administrative penalties received by the Division. The maximum amount of total disbursements from the account may not exceed $100,000 each state appropriation year.

(b) Disbursements of funds from the account are dependent on the availability of funds in the account.

(c) The total reimbursement that any single employer may receive from the account is $2,500 for all workplace modification expenditures made during the state appropriation year for all injured employees.

(d) Disbursements from the account to approved eligible employers shall be made on a reimbursement basis subject to verification of employer eligibility, receipts and expenditures, workplace modifications, the employee's return to work, and approval of the employer's application.

(e) For purposes of making disbursements from the account, the date the employer's completed application for reimbursement from the return-to-work account is received by the Division shall be considered the official date of service.

(f) Reimbursements shall be processed in the order that applications are received by the Division.

(g) Reimbursements of approved applications shall be funded from the account in the state appropriation year in which the application is received.

(h) Approved reimbursements shall be immediately processed for funding subject to the availability of funds in the account. Applications may be denied in whole or in part due to the lack of available funds in the account.

§137.45. Employer Eligibility for Reimbursement from the Return-to-Work Account.

(a) In order to be eligible to receive reimbursement from the return-to-work account, an employer must:

(1) be an eligible employer that has incurred an eligible expense;

(2) have Texas workers' compensation insurance in effect on the date the employee is injured and be able to provide proof of coverage;

(3) submit an Application for Reimbursement from the Return-to-Work Account for Small Employers; and

(4) provide any additional or supplemental information to the return-to-work account administrator that may be deemed necessary by the Division.

(b) An employer that willfully applies for or receives reimbursement from the account knowing that the employer is not an eligible employer commits a violation.

§137.46. Application for Reimbursement from the Return-to-Work Account.

(a) An eligible employer seeking reimbursement from the return-to-work account shall submit to the Texas Department of Insurance, Division of Workers' Compensation (Division) an Application for Reimbursement from the Return-to-Work Account for Small Employers.

(b) Application forms shall be available on the Division's website (www.tdi.state.tx.us/wc) and at the Division's central office. Upon request, the Division shall provide an application form to an employer.

(c) Applications shall be submitted to the Division in the manner prescribed by the Division.

(d) The date the completed application is received by the Division shall be the official date for purposes of processing the application.

(e) An application that has information missing or that does not include itemized expenditures, receipts, or other documentation necessary to support the application and to justify the workplace modification may be returned to the employer for completion, documentation supplementation, or the application may be denied.

(f) Upon completion of the application evaluation, the return-to-work account administrator shall notify the employer in writing of the approval or denial of the application.

§137.47. Criteria for Evaluation of Applications.

An employer must provide the following information on the application to be considered for reimbursement from the account:

(1) The date the employee returned to work, and if available, the injured employee's Texas Department of Insurance, Division of Workers' Compensation (Division) claim number.

(2) A statement or certification that the injured employee returned to work in either a modified or alternative duty capacity.

(3) A statement or certification that the employer was able to sustain the employment of the injured employee as a result of the workplace modification.

(4) A copy of the Division's "Work Status Report" from the injured employee's examining doctor that specifies the injured employee's physical restrictions or limitations, which necessitated the provision of a workplace modification in order for the employee to return to work in a modified or alternative duty capacity.

(5) A detailed description of the workplace modification, including any supporting information such as receipts, photos or diagrams of the modification, and how the modification facilitates the doctor-identified physical restrictions or limitations.

(6) Documentation of the expenses that provided the workplace modification or other costs necessary to facilitate the injured employee's return to work.

§137.48. Return-to-Work Account Administrator Determinations.

(a) The administrator shall make determinations regarding the following:

(1) The employer's eligibility to participate in the program;

(2) The appropriateness of the workplace modification in facilitating the injured employee's return to work based on doctor-identified restrictions;

(3) The effectiveness of the workplace modification in facilitating the injured employee's early and sustained return to work;

(4) The cost of the workplace modification in relation to usual and customary costs of the same or similar modification; and

(5) The appropriateness of other costs incurred by the employer to return the injured employee to work in a modified or alternate duty capacity;

(b) The administrator or designee may make an on-site evaluation or request information from the employer or providers of a workplace modification in order to verify that:

(1) The workplace modification was provided;

(2) The workplace modification was a reasonable modification and expenditure; and

(3) The injured employee returned to work as a result of the workplace modification.

(c) The administrator shall utilize the National Institute of Health's "Searchable Online Accommodation Resource," U.S. Department of Labor resources, Texas Department of Assistive and Rehabilitative Services resources, or similar resources in evaluating and verifying workplace modifications and associated costs. The administrator may consult with a rehabilitation counselor or specialist when verifying the appropriateness of workplace modifications and costs.

(d) The administrator may approve or deny in whole or in part the employer's request for reimbursement from the account.

(e) Decisions regarding approval or denial of applications, the reason for approval or denial of an application, and the amount to be disbursed from the account may not be appealed and are the sole discretion of the return-to-work account administrator.

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-200505776
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 804-4288

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

SUBCHAPTER O. ADVISORY COMMITTEES

The Texas Parks and Wildlife Department (the department) proposes an amendment to §51.601, concerning General Provisions, and new §51.644, concerning the Big Bend Ranch State Park Task Force.

The amendment to §51.601 is necessary to allow department staff to informally consult with groups of experts and interested persons regarding contemplated rulemaking actions. The Administrative Procedure Act authorizes a state agency to "use an informal conference or consultation to obtain the opinions and advice of interested persons" and to "appoint committees of experts or interested persons or representatives of the public" in an effort to obtain advice about anticipated rulemaking. Tex. Gov't Code §2001.031. Periodically, rulemaking issues arise about which department staff would benefit from advice and opinions from interested and knowledgeable persons. Therefore, the department proposes adding subsection (m) to §51.601 to authorize the executive director of the department to appoint ad hoc advisory committees to advise department staff regarding rulemaking actions. Such committees would continue for no longer than one year, unless reappointed.

Proposed new §51.644 is necessary to implement the requirements of Government Code, Chapter 2110, and Parks and Wildlife Code, §11.0162. The Texas Parks and Wildlife Code authorizes the Chairman of the Texas Parks and Wildlife Commission (the commission) to appoint advisory committees and to "adopt rules that set the membership, terms of service, qualifications, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this section." Tex. Parks & Wild. Code §11.0162. An advisory committee is a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising a state agency in the executive branch of state government. Tex. Gov't Code §2110.001.

The Texas Government Code, Chapter 2110, requires that a state agency adopt rules regarding each agency advisory committee. Unless otherwise provided by specific statute, the rules must (1) state the purpose of the committee; (2) describe the manner in which the committee will report to the agency; and (3) establish the date on which the committee will automatically be abolished, unless the advisory committee has a specific duration established by statute. Tex. Gov't Code §§2110.005, 2110.008. Chapter 2110 also contains other requirements for advisory committees, such as annual evaluation, a limit of 24 members, balanced membership representation, selection of presiding officer by members, and four-year duration unless otherwise provided by rule. Tex. Gov't Code §§2110.002, 2110.003, 2110.006, 2110.008.

Proposed new §51.644 would establish the Big Bend Ranch State Park Task Force to advise the department on issues relevant to Big Bend Ranch State Park. Effective September 28, 2005, the commission adopted rules addressing department advisory committees, including §51.601, which addressed membership and the expiration date of advisory committees. The proposed new Big Bend Ranch State Park Task Force would be subject to §51.601. Therefore, the proposed Big Bend Ranch

State Park Task Force will have no more than 24 members and will expire on the fourth anniversary of its creation.

Ann Bright, General Counsel, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules, except for incidental administrative costs associated with scheduling and preparing for task force meetings.

Ms. Bright has also 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 to ensure proper management and effective use of department advisory committees; to ensure that department staff obtain knowledgeable and relevant input regarding contemplated rulemaking actions; and to ensure public participation in issues involving Big Bend Ranch State Park.

The proposed rules will result in no adverse economic effects to small or microbusinesses.

The department has not filed a local impact statement with the Texas Workforce Commission as required by 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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Ann Bright, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8558; or ann.bright@tpwd.state.tx.us.

DIVISION 1. GENERAL REQUIREMENTS

31 TAC §51.601

The amendment is proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005 and 2110.008.

The proposed amendment affects Parks and Wildlife Code, §11.0162.

§51.601. General Requirements.

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

(1) Advisory committee--a committee, council, commission, board, or task force or other entity with multiple members that has as its primary function advising the department.

(2) Chairman--the chairman of the Texas Parks and Wildlife Commission.

(3) Commission--the Texas Parks and Wildlife Commission.

(4) Department--the Texas Parks and Wildlife Department.

(5) Director--the Executive Director of the Texas Parks and Wildlife Department.

(b) Creation. The Chairman may appoint advisory committees to advise the commission on issues within the jurisdiction of the department or the commission.

(c) Function. Unless otherwise provided by law, an advisory committee will address only those matters about which advice is sought. An advisory committee will have no authority to establish agency policy.

(d) Expiration of advisory committee. Unless expressly provided in this subchapter or other law, each department advisory committee will expire on the fourth anniversary of the date of its creation. The date of creation shall be the date on which the rule establishing the advisory committee is effective.

(e) Membership. The chairman may, in his or her sole discretion, appoint individuals to serve on an advisory committee. Membership in an advisory committee will not exceed 24 (excluding ex officio members). Unless otherwise provided by specific statute, membership of each advisory committee shall be balanced to ensure representation of industries or occupations regulated or directly affected by the department and consumers of services provided by the department or by the industries or occupations regulated by the department to which the advisory committee relates. Each advisory committee shall include at least one department employee as an ex officio member. Members may be subject to removal and/or replacement at the discretion of the Chairman.

(f) Term of members. Unless expressly provided in this subchapter or other law, each member to an agency advisory committee will serve a term of four years. The terms may be staggered. Members' terms will expire at the end of four years or upon the termination of the advisory committee, whichever is earlier. Members may be reappointed. Members serve at the will of the chairman and may be removed at any time by the chairman. The terms of members appointed prior to September 1, 2005, expire on September 1, 2005.

(g) Presiding officer. The presiding officer of each advisory committee shall be selected by the members of the advisory committee from its membership. The chairman may make a recommendation to the advisory committee regarding the presiding officer.

(h) Subcommittees. The chairman may also appoint one or more subcommittees of an advisory committee, so long as the membership of the advisory committee, including any subcommittees does not exceed 24.

(i) Meetings. Each committee shall meet at least once a year, but may meet as often as necessary. The department ex officio member of each advisory committee shall work with the presiding officer to schedule advisory committee meetings and provide adequate notice to department staff and to other members.

(j) Reports. On or before October 1 of each year of its existence, each advisory committee shall submit a report to the department. Upon receipt of the report, the department shall evaluate the advisory committee's work, usefulness and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities. Each report shall included the following:

(1) a summary or minutes of meetings conducted during the previous fiscal year (September 1-August 30);

(2) a summary of recommendations from the advisory committee; and

(3) other information determined by the advisory committee or the chairman to be appropriate and useful.

(k) Expenses. Members of each advisory committee will serve without compensation or reimbursement for travel or other out-of-pocket expenses.

(l) Rules. For each advisory committee appointed, the commission shall adopt rules that address the purpose of the advisory committee and membership qualifications. Such rules may also address the terms of service, operating procedures, and other standards to ensure the effectiveness of an advisory committee appointed under this subchapter.

(m) Rulemaking Committees. Notwithstanding other provisions of this subchapter, as authorized by Government Code, §2001.031, (the Administrative Procedure Act), the Director may, from time to time, appoint ad hoc committees of experts or interested persons or representatives of the public to advise the Department about contemplated rulemaking. Members of such committees shall serve at the will of the Director and shall serve without compensation. Committees appointed under this subsection shall continue for no longer than one year, unless extended by the Director.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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DIVISION 5. STATE PARKS

31 TAC §51.644

The new rule is proposed under the authority of Parks and Wildlife Code, §11.0162 and Government Code, §§2110.005 and 2110.008.

The proposed new rule affects Parks and Wildlife Code, §11.0162.

§51.644. Big Bend Ranch State Park Task Force.

(a) The Big Bend Ranch State Park Task Force is created to advise the department regarding issues related to Big Bend Ranch State Park.

(b) The Big Bend Ranch State Park Task Force shall consist of members of the public, representatives of governmental bodies and representatives of non-governmental organizations that have an interest in issues affecting Big Bend Ranch State Park.

(c) The Big Bend Ranch State Park Task Force shall comply with the requirements of §51.601 of this title (relating to General Requirements).

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

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CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.14

The Texas Parks and Wildlife Department proposes an amendment to §53.14, concerning Deer Management and Removal Permits. The amendment would increase the fees for scientific breeder's permits and renewals of scientific breeder's permits. The current fee for a scientific breeder's permit is $180; the current fee for a renewal is also $180. The proposed amendment would increase the respective fees to $400. The proposed amendment also would eliminate the fees for purchase and transport permits.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits. By 2005, the numbers had mushroomed to 821 breeder permits. The growth of the program has introduced new levels of complexity and expense in administering the program, because keeping track of inventories, transactions, movements, and records is time-consuming and laborious. At the same time, the emergence of Chronic Wasting Disease (CWD) as a threat to native free-ranging deer populations has assumed national proportions. Within the next five years, the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids. Together, these developments point to the need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry.

In another rulemaking published elsewhere in this issue, the department proposes to implement disease monitoring protocols, not only in anticipation of federal requirements, but to ensure the viability of the deer-breeding industry in this state for the future. The proposed fee increases, along with the elimination of the fees for transport and purchase permits, are intended to increase efficiency, but are also necessary to shift the full cost of administering the program from the department to the regulated community. Since the inception of the scientific breeder program, the fees paid by permittees have not generated revenue sufficient to fund the administrative expenses of the program. Thus, the program has been subsidized by revenues obtained from sources other than program participants. Parks and Wildlife Code, §43.355(c), gives the Texas Parks and Wildlife Commission (Commission) discretion to set fees for scientific breeder permits. The Commission has directed that the scientific breeder program be administered by the department according to a 'user-benefit/user-pay' model. Therefore, the department has determined that the fee for a scientific breeder permit (or renewal) should be set at $400. This value was obtained by taking the estimated cost to the department of administering and en-

forcing the provisions of this subchapter and relevant provisions of the Parks and Wildlife Code ($297,000, including the development and implementation of the automated identification and tracking protocols discussed previously) and dividing that value by the number of scientific breeder permits issued in 2005 (821). The resultant figure ($361.75) was then adjusted upward to account for the annual revenue lost by the elimination of the transport and purchase permits ($64,800) and rounded to $400.

The expected results of the rulemaking are increased program efficiency, more efficient and less time-consuming customer service, increased opportunity for the use of automation in the scientific breeder program, and the creation of a mechanism to produce coherent data for a number of useful purposes, such as disease monitoring.

Robert Macdonald, regulations coordinator, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the rules. The increased revenue to the department as a result of the fee increase will offset the expense incurred by the department of administering the scientific breeder program, including the additional costs associated with designing and implementing an automated system to assist in program delivery and administration.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of the department to more accurately monitor the movement of deer in and out of scientific breeder facilities, which will assist the department in detecting abuses and protecting wild, native deer from communicable diseases.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rule as proposed will be the additional $220 for a scientific breeder's permit or permit renewal imposed by the fee increase (the fee for a scientific breeder's permit is currently $180). The preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses. The impact of the fee increase will be mitigated to some extent by the elimination of fees for transport and purchase permits, depending on the sales volume of each scientific breeder. Because the department cannot project in advance the number of deer that each scientific breeder will sell or purchase, the extent to which the elimination of the fees for transport and purchase permits will affect each breeder cannot be accurately quantified. The cost of compliance (i.e., the fee for a permit) is the same for the largest and smallest businesses affected by the proposed rule. The cost of compliance per employee will vary depending on the number of employees of the scientific breeder. For a very small scientific breeder operation with only two or three employees, the cost of compliance per employee could be as high as $110 per employee per year. On the other hand, if a scientific breeder has 100 employees, the cost of compliance would be only $2.20 per employee per year. Because the preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses, the impact will be similar for most scientific breeders. The department has also determined that there is no feasible way to reduce the effect of the proposed rule on small or micro-businesses, because, as noted earlier, the preponderance of businesses affected by the proposed rule are probably small or microbusiness as defined in Government Code, §2006.002. The only alternative to the fee increase is to maintain the present method of program delivery and administration, which is operating at maximum capacity and unable to accommodate further growth without diminishing customer service and program efficiency.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule 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.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendment is proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

The proposed amendment affects Parks and Wildlife Code, Chapter 43.

§53.14. Deer Management and Removal Permits.

(a) Deer breeding and related permits.

[~~(1)~~] Scientific [~~scientific~~] breeder's and scientific breeder's renewal--$400[~~$180~~];

[~~(2) deer purchase application--$30; and~~]

[~~(3) deer transport application--$30~~].

(b) Trap, transport and transplant permit application fees:

(1) nonrefundable application processing fee--$180; and

(2) nonrefundable application processing fee for amendment to existing permit--$30.

(c) Urban white-tailed deer removal permit:

(1) nonrefundable application processing fee--$180; and

(2) nonrefundable application processing fee for amendment to existing permit--$30.

(d) Deer management permit:

(1) deer management permit--$1,000; and

(2) renewal of deer management permit--$600.

(e) Antlerless and spike buck deer control permit application processing fee--$360

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-200505760

Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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31 TAC §53.17

The Texas Parks and Wildlife Department proposes new §53.17, concerning Miscellaneous Fees. The new section would establish the fee for an off-highway vehicle decal. The enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session) added Parks and Wildlife Code, Chapter 29, which created the Off-Highway Vehicle Trail and Recreational Area Program and added §11.046 and 11.046 regarding the Off Highway Vehicle Trails and Recreational Area Account. Under the provisions of S.B. 1311, a person may not operate an off-highway vehicle on a trail or in a recreational area established or maintained by the department under Chapter 29, or on land purchased or developed under a grant made under Chapter 29 or any other grant program operated or administered by the department without having obtained an off-highway vehicle decal. The fee for the off-highway vehicle decal is established by S.B. 1311 at $8. The rule is necessary to ensure that a record of all fees imposed or collected by the department is reflected in the Texas Administrative Code.

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 governments as a result of enforcing or administering the rule. The fee for an off-highway vehicle decal is established by statute and not by this rulemaking.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the ability of any person to access Title 31 of the Texas Administrative Code to find fees imposed or collected by the department.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rule as proposed will be the $8 fee for an off-highway vehicle decal; however, the fee for an off-highway vehicle decal is established by statute and not by this rulemaking

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, § 2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

(E) The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Andy Goldbloom, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 912-7128 (e-mail: andy.goldbloom@tpwd.state.tx.us).

The new rule is proposed under the authority of Parks and Wildlife Code, §29.003, which authorizes the commission to establish a fee for the off-highway vehicle decal.

The proposed new rule affects Parks and Wildlife Code, Chapter 29.

§53.17. Miscellaneous Fees.

Off-highway vehicle decal--$8.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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DIVISION 3. TRAINING AND CERTIFICATION FEES

31 TAC §53.50

The Texas Parks and Wildlife Department (TPWD) proposes an amendment to §53.50, concerning Training and Certification Fees. The amendment would increase the fee for attending a hunter education class from $10 to $15. The amendment is necessary to maximize instructor recruitment efforts by increasing the monetary incentive for persons to become hunter education instructors. Under Parks and Wildlife Code, §62.014, the commission by rule may establish a procedure to allow a volunteer hunter education instructor to retain an amount from the fees collected by the instructor to cover the instructor's actual and necessary out-of-pocket expenses. The current rule, which has been in effect since 1995, authorizes an instructor to retain $5. The department has determined that economic factors over the last 10 years have affected the out-of-pocket expenses incurred by volunteer instructors, and that it is appropriate to increase the amount retained by volunteer instructors to $10. Volunteer instructors are critical to the viability of the hunter education program. Last year, approximately 3,000 volunteers provided hunter education training to 33,000 persons in Texas.

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 governments as a result of enforcing or administering the rule, since the entirety of the additional revenue generated by the fee increase will be retained by private citizens who volunteer to be hunter education instructors.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the safety of the hunting and non-hunting public, via the recruitment of competent persons to instruct hunters in the safe handling and use of firearms, archery equipment, and crossbows.

There will be no adverse economic effect on small businesses or microbusinesses required to comply with the rule as proposed, as no small businesses or microbusinesses are affected by the rule. There will be an economic cost to persons required to comply with the rule as proposed, namely, the $15 fee for obtaining hunter education certification.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule 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 Steve Hall, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4568 (e-mail: steve.hall@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §62.014, which authorizes the commission to establish a fee not to exceed $15 to defray the costs of administering a hunter education program and to establish a procedure to allow a volunteer instructor to retain an amount from the fees collected by a volunteer hunter education to cover actual and necessary out-of-pocket expenses.

The proposed amendment affects Parks and Wildlife Code, Chapter 62.

§53.50. Training and Certification Fees.

(a) Marine safety enforcement training and certification fees.

(1) The fee for certification as a marine safety enforcement officer is $25.

(2) The fee for certification as a marine safety enforcement officer instructor is $25.

(b) Hunter education fees.

(1) The registration fee for a hunter education course is $15 [~~$10~~], of which $10 [~~$5~~] may be directly retained by a volunteer instructor.

(2) The fee for a deferred hunter education option is $10; however, at the time a person who has used a deferred hunter education option chooses to enroll in a hunter education course, that person shall pay a $5 registration fee to be directly retained by the volunteer instructor.

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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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 59. PARKS

SUBCHAPTER J. OFF-HIGHWAY VEHICLE TRAIL AND RECREATIONAL AREA PROGRAM

31 TAC §59.231

The Texas Parks and Wildlife Department proposes new §59.231, concerning the Off-Highway Vehicle Trail and Recreational Area Program. The proposed new section would provide for the definitions and general requirements necessary to administer the Off-Highway Vehicle Trail and Recreational Area Program (OHVTRAP) established by the enactment of Senate Bill 1311 (S.B. 1311) by the 79th Texas Legislature (Regular Session). S.B. 1311 added Chapter 29 and §§11.046 and 11.047 to the Texas Parks and Wildlife Code.

Under the provisions of S.B. 1311, the OHVTRAP was established to further the establishment of motor vehicle recreation sites, establish and maintain a public system of trails and other recreational areas for use by owners and riders of off-highway vehicles, improve existing trails and other recreational areas open to the public for use by owners and riders of off-highway vehicles, and to foster the responsible use of off-highway vehicles.

The proposed rule would provide definitions for 'off-highway motorcycle' and 'public land' and would specify that a valid off-highway vehicle decal be affixed to any off-highway vehicle operated in a recreational area established or maintained by the department under Parks and Wildlife Code, Chapter 29, on other public land, or on land purchased or developed under a grant made under Parks and Wildlife Code, §29.008 or any other grant program operated or administered by the department. The proposed new section also would clarify that possession of the off-highway vehicle decal does not authorize any person to enter public land or use an off-highway vehicle on public land if such entry or use is prohibited, and does not authorize any person to operate an off-highway vehicle on a public roadway.

The definition of 'off-highway motorcycle' is necessary because the term is created but not defined by statute and should be defined for enforcement purposes. S.B. 1311 defines an off-highway vehicle as an "all-terrain vehicle as defined by Transportation Code, §663.001; off-highway motorcycle; or any other four-wheel drive vehicle not registered to be driven on a highway." The definition in proposed §59.231(a) would establish an 'off-highway motorcycle' as any vehicle meeting the definition of a motorcycle under Transportation Code, §502.001(12) that is not registered for use on a public roadway. The definition is consistent with the statutory definition for 'other four-wheel drive vehicles,' in that the key distinction is registration for use on a public roadway. 'Public land' would be defined as 'any land on which an off-highway decal is required under Parks and Wildlife Code, §29.003. The amendment is necessary to provide clear meanings for the terminology used in the rule.

The requirement that an off-highway decal be affixed to all off-highway vehicles is necessary because although S.B. 1311 prohibits the operation of off-highway vehicles on public land unless an off-highway vehicle decal has been obtained, it does not create specific display or possession requirements. In order to verify compliance, the department would require a decal to be affixed to an off-highway vehicle at all times the off-highway vehicle is operated on public land, reasoning that this would be the easiest and least complicated method of proving compliance.

The clarification concerning the use of an off-highway decal is necessary to make clear that the decal is not a permit and does not make an off-highway vehicle lawful to operate on a public roadway.

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 governments as a result of enforcing or administering the rule.

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be rules that offer clarification and specificity in order to foster ease of compliance.

There will be no adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has determined that the rule will not affect local economies; accordingly, no local employment impact statement has been prepared.

The department has determined that Government Code, § 2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rule.

The department has determined that Government Code, Chapter 2007 (Governmental Action Affecting Private Property Rights), does not apply to the proposed rule.

Comments on the proposed rule may be submitted to Andy Goldbloom, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 912-7128 (e-mail: andy.goldbloom@tpwd.state.tx.us).

The new rule is proposed under the authority of Parks and Wildlife Code, §29.010, which authorizes the commission to adopt rules necessary to implement Parks and Wildlife Code, Chapter 29.

The proposed new rule affects Parks and Wildlife Code, Chapter 29.

§59.231. Off-Highway Vehicle Trail and Recreational Area Program.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Off-highway motorcycle--a vehicle meeting the definition in Transportation Code, §502.001(12), that is not registered for use on a public roadway.

(2) Public land--Any land on which an off-highway decal is required under Parks and Wildlife Code, §29.003.

(b) No person shall operate an off-highway vehicle on public land in this state unless an off-highway decal has been affixed to the off-highway vehicle.

(c) An off-highway vehicle decal does not authorize any person to:

(1) enter public land or operate an off-highway vehicle on public land if entry or use of an off-highway vehicle is otherwise prohibited; or

(2) operate an off-highway vehicle on a public roadway.

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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Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

CHAPTER 65. WILDLIFE
SUBCHAPTER C. PERMITS FOR TRAPPING, TRANSPORTING, AND TRANSPLANTING GAME ANIMALS AND GAME BIRDS

31 TAC §65.107, §65.109

The Texas Parks and Wildlife Department proposes amendments to §65.107 and §65.109, concerning Permits to Trap, Transport, and Transplant Game Animals and Game Birds.

The proposed amendment to §65.107, concerning Permit Applications and Processing, would widen the applicability of the current review process for permit denials to include decisions by the department not to process an application if the applicant is a defendant in a criminal prosecution for specified violations of the Parks and Wildlife Code or department regulations. The amendment is necessary because the proposed amendment to §65.109 would specify that the department may deny permit issuance on the basis of the applicant's history of convictions or violations of certain Parks and Wildlife Code provisions or department regulations.

The proposed amendment to §65.109, concerning Issuance of Permit, would modify the criteria used by the department to delay permit processing or issuance to persons on the basis of past convictions or violations of certain Parks and Wildlife Code provisions or department regulations. The proposed amendment would allow the department to refuse permit issuance to any person who applies for a permit to trap, transport, and transplant game animals and game birds ("Triple T" permit) within five years of being finally convicted of or receiving deferred adjudication for any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

Under current rules, the department does not issue Triple T permits to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions governing the use of Triple T permits. The proposed amendment would eliminate the current automatic prohibition and allow permits to be issued at the department's discretion; however, the current two-year period of applicability would be expanded to five years, the provisions of the subsection would also apply to deferred adjudication in addition to convictions, and the subsection would apply to a wider range of offenses, including offenses involving any permit authorizing the possession of live animals and serious offenses in-

volving violations of the Parks and Wildlife Code (i.e., offenses that are more serious than the common violations such as those involving bag limits, possession limits, etc).

The amendment also would allow the department to refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining certain types of permits have attempted to continue their activities by using proxies to obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

The proposed amendment would apply the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The amendment also would authorize the department to deny or delay the processing of a Triple T application if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

The amendment is part of an overall effort to create uniform criteria for the denial of special permits or permit processing to persons who have been proven to exhibit disregard for statutes and regulations governing the privilege of taking or possessing wildlife, particularly under department permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits).

However, the department does not intend for a prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a permit based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offence, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

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

Mr. Macdonald has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of live wildlife via the prevention of known abusers of wildlife permits from obtaining permits for the possession of live wildlife.

There will be no direct adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule 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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter E, which requires the commission shall adopt rules for the content of wildlife stocking plans, certification of wildlife trappers, and the trapping, transporting, and transplanting of game animals and game birds.

The proposed new rule and amendments affect Parks and Wildlife Code, Chapter 43.

§65.107. Permit Applications and Processing.

(a) Permit applications.

(1) Application for permits authorized under this subchapter shall be on a form prescribed by the department.

(2) A single application for a Trap, Transport, and Transplant Permit or an Urban White-tailed Removal Permit may specify multiple trap and/or release sites. A single application for a Trap, Transport, and Process Surplus White-tailed Deer Permit may specify multiple trap sites and/or processing facilities.

(3) A single application may not specify multiple species of game birds and/or game animals.

(4) The application must be signed by:

(A) the applicant;

(B) the landowner or agent of the trap site(s); and

(C) the landowner or agent of the release site(s) or the owner or agent of the processing facility or facilities.

(5) The applicant may designate certain persons and/or companies that will be involved in the permitted activities, including direct handling, transport and release of game animals or game birds. In the absence of the permittee, at least one of the named persons and/or companies shall be present during the permitted activities.

(b) Review. An applicant for a permit under this subchapter may request a review of a decision of the department to deny issuance or delay processing of a [~~the~~] permit.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director and District Leader with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer or Mule Deer program leader, as appropriate.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.109. Issuance of Permit.

(a) Permits authorized under this subchapter:

(1) will be issued, with the exception of permits to trap, transport, and process surplus white-tailed deer, only if the activities identified in the application are determined by the department to be in accordance with the department's stocking policy;

(2) will be issued only if the application and any associated materials are approved by a Wildlife Division technician or biologist assigned to write wildlife management plans;

[~~(3) shall not be issued to individuals who are not in compliance with the reporting requirements specified in §65.115 of this title (relating to Reports)~~];

[~~(4) shall not be issued to applicants who have been finally convicted, during the two-year period immediately preceding the date of application, of any violation of the provisions of this subchapter;~~] and

(3) [~~(5)~~] do not exempt an applicant from the requirements of §§55.142-55.152 of this title (relating to Aerial Management of Wildlife and Exotic Animals).

(b) The department may refuse permit issuance or renewal to any person who within five years of applying for a Triple T permit has been finally convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class A misdemeanor, a Class B misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

(c) The department may prohibit any person for a period of five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (b) of this section.

(d) The department may deny or delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution for an offense listed in subsection (b) of this section.

(e) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

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

Filed with the Office of the Secretary of State on December 12, 2005.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

SUBCHAPTER D. DEER MANAGEMENT PERMIT (DMP)

31 TAC §§65.131, 65.132, 65.138

The Texas Parks and Wildlife Department proposes amendments to §§65.131, 65.132, and 65.138, concerning Deer Management Permits (DMP). The proposed amendment to §65.131, concerning Deer Management Permit, would clarify that an approved deer management plan may be changed to comply with regulatory or statutory actions without being considered as a new application. Under current rule, any changes to a plan constitute a new plan and therefore the $1,000 fee for a new permit is applicable, rather than the renewal fee of $600. The amendment is necessary because the department wishes to make clear that changes necessitated by commission or legislative action do not constitute a new application.

The proposed amendment to §65.131(e) clarifies that the review process may be invoked to review a decision by the department to delay processing a permit or to deny a permit renewal, in addition to a decision to deny a new permit. This amendment is necessary to provide consistency with the amendments to §§65.132 and 65.138 which clarify the agency's authority to deny or delay issuing a permit or renewal. Although a review procedure is not required, the department wishes to avail itself of the opportunity to review and correct decisions that may have made in error. In addition, the department wishes to allow persons whose permit applications or renewals are denied or delayed the opportunity to discuss this matter with appropriate department personnel.

The proposed amendments to §65.132, concerning Permit Application, and §65.138, concerning Violations and Penalties, would clarify the criteria used by the department to deny permit issuance to or prohibit participation in permitted activities by persons on the basis of past convictions or pending prosecutions for certain types of violations of the Parks and Wildlife Code or department regulations. The Parks and Wildlife Code states that deer managed under a DMP "remain the property of the people of the state of Texas and the holder of the permit is considered to be managing the population on behalf of the state." Tex. Parks & Wild. §43.601. Permit activities are a privilege granted by the department under the assumption and expectation that the permittee will abide by permit provisions and applicable laws.

The proposed amendments would eliminate the current provisions regarding convictions and deferred adjudications in §65.138(b) and (c). Those provisions would be modified and moved to §65.132(c)-(e). Under current rules, the department may decline to issue a DMP to an applicant who has been finally convicted or has received deferred adjudication for any violation of the Parks and Wildlife Code within three years preceding the application for a DMP. The proposal would expand the current

three-year period of applicability to five years. Also, the types of offenses which could prevent a person from obtaining a DMP would be modified to refer to offenses involving a permit authorizing the possession of live animals and serious offenses involving violations of the Parks and Wildlife Code (i.e., offenses that are more serious than the more common violations such as bag limits, possession limits, etc).

Under the proposed amendment to §65.132, the department may refuse to issue a permit to any person who applies for a DMP within five years of being finally convicted of or receiving deferred adjudication for any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002.

The proposed amendment to §65.132 also clarifies that the department may deny or delay the processing of an application for a DMP if the applicant is a defendant in a prosecution for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, and R, any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony, or a violation of Parks and Wildlife Code, §63.002. When persons have been charged with a serious violation of certain provisions of the Parks and Wildlife Code or department regulations, it is reasonable for the department to reserve the right to deny or suspend the processing of a permit application because of the danger of further violations and the danger of harm to the resource.

The proposed amendment to §65.132 would provide that the department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities. In some cases, persons who have been prohibited from obtaining a permit have attempted to continue their activities by using proxies to obtain a permit. The department's intent is to ensure that persons the department intends to prevent from engaging in certain activities are in fact prevented from doing so.

Proposed subsection 65.132(e) applies the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

The department does not intend for a pending prosecution, conviction or deferred adjudication to be an automatic bar to obtaining a DMP. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to deny a DMP based on a conviction, deferred adjudication or pending charges would include, but are not limited to, the seriousness of the offense, the number of offenses, the existence or absence of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

The amendment also preserves, but moves from §65.138(c) to §65.132(d), the provision that completely bars a person from obtaining a DMP for three years after being convicted or receiving deferred adjudication for a violation of §65.136 of the department's regulations (relating to Release).

The proposed amendment to section §65.132 also would reword the final sentence of subsection (a) to clarify the department's interpretation of the provision. The current provision states that "A DMP will be issued following the approval of the applicant's deer management plan by a Wildlife Division technician or biologist assigned to write wildlife management plans." As reflected in the record of the original adoption of this section in August 2001, this provision was not intended to be a stand-alone criterion for permit issuance, but as an explanatory note to indicate that a deer management plan must be approved in order for a permit to be issued. Obviously, other provisions must be satisfied (payment of fees, completion of application materials, etc.) by an applicant before a permit is issued. The proposed amendment would state that a DMP will not be issued unless the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans. The amendment is necessary to avoid confusion about the intent of the provision.

The amendment to §65.138 would eliminate the provisions of subsections (b) and (c). Subsection (b) is no longer necessary, as it is being supplanted by proposed §65.132(c). Section 65.138(c) is being relocated without change to proposed §65.132(d)

The amendments are part of an overall effort to create uniform criteria for the denial of permits to persons who have been proven to exhibit disregard for statutes and regulations governing the privilege of taking or possessing wildlife, particularly under department permits for the possession of live wildlife issued pursuant to Parks and Wildlife Code, Chapter 43 (scientific, educational, and zoological permits, Triple T permits, scientific breeder's permits, and deer management permits).

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

Mr. Macdonald has also determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the protection of live wildlife via the prevention of known abusers of wildlife permits from obtaining permits for the possession of live wildlife.

There will be no direct adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by the Administrative Procedures Act, §2001.022, as the agency has determined that the rule 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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith

School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to issue a permit for the management of the wild white-tailed deer population on acreage enclosed by a fence capable of retaining white-tailed deer, subject to conditions established by the commission.

The proposed amendments affect Parks and Wildlife Code, Chapter 43.

§65.131. Deer Management Permit (DMP).

(a) The department may issue a Deer Management Permit to a person who has met the requirements of §65.132 of this title (relating to Permit Application [~~and Fees~~]).

(b) A person who possesses a valid Deer Management Permit may trap and detain wild deer according to the provisions of this subchapter and Parks and Wildlife Code, Chapter 43, Subchapter R. A permittee shall abide by the terms of an approved deer management plan.

(c) The provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, and L do not apply to deer lawfully being held in possession under authority of a valid DMP.

(d) Changes to an approved Deer Management Plan shall be considered as a new application, unless the changes are necessary to comply with regulatory or statutory requirements implemented after the deer management plan was approved.

(e) An applicant for a permit under this subchapter may request that a decision by the department to deny issuance or delay processing of a [~~the~~] permit or permit renewal be reviewed.

(1) An applicant seeking review of a decision of the department under this subsection shall contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for a review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Director of the Wildlife Division;

(B) the Regional Director with jurisdiction;

(C) the Big Game Program Director; and

(D) the White-tailed Deer Program Leader.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.132. Permit Application.

(a) Applicants for a DMP shall complete and submit an application on a form supplied by the department. Applications for a DMP shall be accompanied by a deer management plan containing the information stipulated by the application form and the nonrefundable fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees). Incomplete applications will be returned to the applicant and will not be processed until complete. A DMP will not be issued unless [~~following the approval of~~] the applicant's deer management plan has been approved by a Wildlife Division technician or biologist assigned to write wildlife management plans.

(b) A permit under this subchapter is valid from September 1 of one year through August 31 of the immediately following year.

(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for a period of three years from the date the conviction is obtained or deferred adjudication was received.

(d) The department may refuse to issue a permit or permit renewal to any person who within five years of applying for a permit has been convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony;

(3) a violation of Parks and Wildlife Code, §63.002.

(e) The department may prohibit a person from acting as an agent for any permittee if the person is a defendant in a prosecution for an offense listed in subsection (d) of this subsection.

(f) The department may deny or delay the processing of a permit or renewal application if the applicant is a defendant in a prosecution for an offense listed in subsection (d) of this subsection.

(g) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

§65.138. Violations and Penalties.

[~~(a)~~] A person who violates any provision of this subchapter commits an offense and is subject to the penalties prescribed by Parks and Wildlife Code, Chapter 43, Subchapter R.

[~~(b) The department reserves the right to refuse permit issuance to any person receiving deferred adjudication for or finally convicted of a violation of the Parks and Wildlife Code within the three years immediately preceding an application for a DMP.~~]

[~~(c) A person who receives deferred adjudication for or is finally convicted of a violation involving §65.136 of this title (relating to Release) is prohibited from obtaining a DMP for as period of three years from the date the conviction is obtained or the terms of the deferred adjudication have been satisfied.~~]

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505762
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 389-4775

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SUBCHAPTER T. SCIENTIFIC BREEDER'S PERMITS

The Texas Parks and Wildlife Department proposes the repeal of §65.609 and §65.610; amendments to §§65.601 - 65.603, 65.607, and 65.608; and new §65.604 and §65.610, concerning Scientific Breeder's Permits.

The proposed repeals, amendments, and new rules are a comprehensive revision of the department's rules governing the scientific breeder permit program. The intent of the rulemaking is to restructure the administrative process of the program to make it consistent with the anticipated federal requirements for cervid disease-monitoring and to improve program delivery and customer service.

The past five years have seen explosive growth in the number of scientific breeder permits issued by the department. In 2000, the department issued 385 scientific breeder permits and 947 purchase permits. By 2005, the numbers had mushroomed to 821 breeder permits and 2,084 purchase permits. At the same time, the emergence of Chronic Wasting Disease (CWD) as a potential threat to native free-ranging deer populations has assumed national proportions; the U.S. Department of Agriculture is expected to impose mandatory identification and tracking protocols for captive cervids within the next five to ten years to address issues related to numerous animal diseases. Together, these developments indicate a need for the department to develop and implement effective methods for quickly and efficiently gathering, collating, storing, and retrieving the large and growing amounts of data generated by the industry.

In a related proposed rulemaking published elsewhere in this issue, the department proposes to increase the fees for scientific breeder permits and renewals. These changes are intended to increase the efficiency in the administration and delivery of the scientific breeder program. The expected results are increased program efficiency; the provision of more efficient and less time-consuming customer service; and the generation of coherent data for a number of useful purposes, such as disease monitoring.

The proposed repeal of §65.609, concerning Purchase of Deer and Purchase Permit, is necessary because the department is eliminating the purchase permit and the transport permit and replacing them with a single permit called a transfer permit.

The proposed repeal of §65.610, concerning Transfer of Deer and Transfer Permit, is necessary because the department is eliminating the purchase permit and the transport permit and replacing them with a single permit called a transfer permit.

The amendment to §65.601, concerning Definitions, corrects a misspelling of the scientific name for mule deer, adds new definitions for the terms 'movement qualified,' 'release,' and 'transfer permit,' and alters definitions for the terms 'serial number' and 'unique number.' The definition of 'movement qualified' is necessary because proposed new §65.604, concerning Disease Monitoring, would condition the movement of scientific breeder deer on the maintenance and results of disease-testing protocols. The definition establishes the department's understanding of the meaning of the term, defining a status required for the introduction of deer to or removal of deer from a scientific breeder facility.

The proposed definition of 'release' would specify what the department considers to be the termination of possession of a scientific breeder deer. The definition is necessary to create an obvious point at which deer can no longer be considered in the possession of a scientific breeder.

The proposed amendment of 'serial number' clarifies that a serial number consists of the prefix "TX" followed by a four-digit number. The amendment is necessary to firmly establish what the department intends with respect to certain provisions involving serial numbers.

The definition of 'transfer permit' is necessary in order to establish that the transfer permit, although a multi-use permit, satisfies the requirements of Parks and Wildlife Code, §43.361 and §43.362, which require a person to possess a permit issued by the department to purchase, ship, or transport deer.

The proposed amendment of the definition of 'unique number' would eliminate the option for permittees to employ user-generated numbering conventions for deer held under a scientific breeder permit, thus having the effect of requiring all deer held under scientific breeder permits to be identified with a department-supplied unique number. The amendment is necessary because the current provision has resulted in confusing and/or misleading identification conventions that interfere with the department's attempts to maintain accurate records and inventories. The proposed amendment also restates the purpose of the unique number. The current definition states that the unique number is "used by the department to track ownership of a deer." The proposed amendment would state that the purpose of the unique number is to provide for the identification of specific deer held under a scientific breeder permit. The amendment is necessary to accurately reflect the actual function of the unique numbering system.

The amendment to §65.602, concerning Permit Requirement and Permit Privileges, adds a new subsection (b)(2) to state that a scientific breeder may purchase or accept deer from another scientific breeder. The provision is a nonsubstantive addition for purposes of clarification; under current rules, scientific breeders are allowed to obtain deer from other scientific breeders. The amendment also adds the term 'transfer' to the provisions of paragraph (3). Since other provisions of this rulemaking would replace the transport and purchase permits and replace them with the transfer permit; the proposed amendment is necessary to add the function of the transfer permit to the list of activities authorized by a permit.

The amendment to §65.602 also imposes an expiration date of March 31, 2007, for the provisions of subsection (c), regarding requirements for the release of deer into the wild from a scientific breeder facility. Under current rule, scientific breeder deer may not be released unless they originate from a herd enrolled in a valid herd health plan approved by the Texas Animal Health Commission (TAHC). The rule was originally promulgated as part of a joint effort between the department and TAHC to reduce the potential spread of Chronic Wasting Disease (CWD) from deer imported to scientific breeder facilities from outside the state. The department seeks to allow a reasonable amount of time for permittees to comply with the disease monitoring provisions of proposed new §65.604, concerning Disease Monitoring. The proposed effective date for compliance with the provisions of proposed new §65.604 is April 1, 2007; therefore, it is necessary to continue the effectiveness of current §65.602(c) until that time.

Proposed new §65.604 would establish new provisions governing the movement and release of scientific breeder deer. Those provisions would allow a scientific breeder to establish a status ('movement qualified'), over time, that qualifies the scientific breeder to accept deer into or move deer out of a facility for purposes of sale or release, provided the scientific breeder

continues to perform disease testing at a certain rate (provided there are no test results of 'detected'). In order to allow for a seamless transition, the department will delay the effectiveness of certain requirements within §65.604 for one permit-year (i.e., until March 31, 2007) in order to give scientific breeders the opportunity to attain movement qualified status. In the interim, the provisions of §65.602(c) will continue in effect. The amendment is necessary to implement a better and more effective protocol for preventing captive native cervids from becoming a disease vector. The proposed amendment also restructures paragraph (6) to reflect the addition of the transfer permit and the elimination of the purchase and transport permits.

The amendment to §65.603, concerning Application and Permit Issuance, would require an affirmation from a certified biologist that a prospective facility physically exists and contains no deer prior to the time of application; change the permit year to run from July 1 to June 30 instead of from April 1 to March 31, consolidate all provisions governing the effect of criminal prosecutions on permit issuance in one place, and provide for a review of department decisions to refuse issuance of permits or renewals.

The department has discovered that in some cases persons have acquired scientific breeder deer and placed them within a facility before applying for a scientific breeder permit, then added deer at later dates. Another practice noticed by the department was the certification of plans by a certifying biologist even though the facility had not been built yet. This has caused significant discrepancies and difficulties for the department in identifying, tracking, and inventorying deer and transactions among scientific breeders. As a result, the department feels it is necessary, as a part of the application process, to require the certifying biologist to affirm that the prospective facility physically exists and that no deer are being held in the facility. The amendment is necessary to ensure that the department is able to maintain an accurate record of the number of deer within scientific breeder facilities.

The current permit-year (April 1 - March 31) has proven to be problematic for both permittees and the department. Given the tremendous growth of the program, department staff has found it difficult to process the large number of renewal applications, causing inconvenient delays for permittees. The proposed amendment to §65.603(c) is necessary to provide additional buffer time between the end of the reporting period (March 31) and the beginning of the following permit year (July 1) to enable the department to issue permit renewals prior to the start of the permit year.

Under current rules, the department may, at its discretion, refuse to issue a scientific breeder's permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43. In reviewing similar provisions in other regulations governing the possession of live animals, the department has determined that a more uniform approach to situations involving the criminal history (with respect to the Parks and Wildlife Code) of permit applicants is appropriate. Therefore, the department elsewhere in this issue is also proposing changes to similar provisions affecting deer management permits and permits for the trapping, transporting, and transplanting game animals and game birds. The department intends to propose similar changes to the permits governing scientific, educational, zoological, and rehabilitation permits at a later date.

As a result of the review, the department determined that the decision to issue or renew a permit should take into account the applicant's history of violations involving the possession of live animals and major violations of the Parks and Wildlife Code (Class B misdemeanors, Class A misdemeanors, and felonies). The department reasons that it is appropriate to deny the privilege of possessing live animals to persons who exhibit a demonstrable disregard for the regulations governing the possession of live animals. Similarly, it is appropriate to deny the privilege of possessing live animals to a person who has exhibited demonstrable disregard for wildlife law in general by committing more egregious (Class B misdemeanors, Class A misdemeanors, and felonies) violations of wildlife law.

Therefore, proposed subsections 65.603(g)-(i) would specify that the department may refuse permit or renewal issuance to persons who have been finally convicted of or received deferred adjudication for a violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R (which govern specialized permits for the possession of live animals), violations of the Parks and Wildlife Code or rules of the commission that are Class B misdemeanors, Class A misdemeanors, or felonies, and violations of Parks and Wildlife Code, §63.002, which although a Class C misdemeanor, specifically addresses the unlawful possession of live game animals.

The department also notes that the current rule is open-ended; theoretically, persons can be prevented from ever obtaining a permit following a conviction. The department has determined that it is appropriate for the department to consider only those convictions or deferred adjudications that have occurred within five years prior to an application for a permit or renewal, reasoning that a potential five-year period of permit denial will act as a sufficient deterrent to intentional violations. The department also stresses that the intent of the proposed amendments is to give the department a credible response to persons with a history of blatant disregard for the rules.

However, the department does not intend for a conviction or deferred adjudication to be an automatic bar to obtaining a permit. The department intends to consider a number of factors and make such determinations on a case-by-case basis. The factors that may be considered by the department in determining whether to refuse to issue a permit or permit renewal based on a conviction or deferred adjudication would include, but not be limited to, the seriousness of the offense, the number of offenses, the existence or absences of a pattern of offenses, the length of time between the offense and the permit application, the applicant's efforts towards rehabilitation, and the accuracy of the information provided by the applicant regarding the applicant's prior permit history.

Proposed subsection 65.603(h) applies the same standards to agents. In many cases, permit activities are conducted by other persons in addition to the permittee. The department believes in addition to provisions affecting permittees, it is appropriate to prevent persons who have been convicted of or received deferred adjudication for an offense which could result in permit denial from assisting in activities involving live animals.

Proposed subsection 65.603(i) would allow the department to refuse permit issuance to persons who, in the judgment of the department, are acting as surrogates for persons who are prohibited from obtaining a permit. In light of the proposed five-year period of time during which the department could choose to refuse permit issuance to persons convicted of the offenses, it is reasonable to assume that persons might attempt to circumvent the intent of the department (that they not engage in the business of possessing, breeding and selling deer) by using another person to obtain a permit with the objective of continuing to do business

as usual in the name of the shadow permittee. It is therefore necessary to address the possibility.

Proposed subsection 65.603(j) would create a review process for department decisions concerning the issuance of permits and renewals. The proposed amendment is necessary to create a process to allow persons who have been denied issuance of permits or permit renewals to have the decision reviewed by a panel of senior department managers. The process as proposed would allow the department to reverse such decisions upon further review, and would require the department to report annually to the White-tailed Deer Advisory Committee on the number and disposition of reviews.

Proposed new §65.604, concerning Disease Monitoring, would establish new protocols for the testing of scientific breeder deer for chronic wasting disease (CWD). Current rules prohibit the release of deer from any facility that is not enrolled in a valid herd health plan for cervidae approved by the TAHC. The current rule was promulgated in 2003 in response to concerns about the emergence of CWD in both captive and free-ranging deer populations in other states, which represents a potential threat to wild deer populations in Texas.

The biological and epidemiological nature of CWD is not well understood and has not been extensively studied, but it is known to be communicable, incurable, and invariably fatal. The department has worked closely with the Texas Animal Health Commission to characterize the threat potential of CWD to native wildlife and livestock, and to determine the appropriate level of response. The department believes that vigilance and early detection are crucial to minimizing the severity of biological and economic impacts in the event that an outbreak occurs in Texas, and that the implementation of reasonable rules to detect the disease is necessary.

The proposed new §65.604 would allow a scientific breeder to release deer to the wild, provided the facility from which the deer are released is 'movement qualified.' Movement qualified status would be obtained by maintaining a herd-status level of at least "A" with the TAHC and testing eligible deer mortalities occurring within the facility such that test results of 'not detected' are returned on a minimum of 20% of all eligible mortalities and none are returned as 'detected' from the Texas Veterinary Medical Diagnostic Laboratories. Status would be maintained by continuing to test at the minimum level, but could be lost if deer from a facility that is not movement qualified are introduced. If status is lost as a result of the acceptance of deer from a facility that is not movement qualified, movement of deer from the facility would be prohibited for a minimum of one year and the facility would have to reestablish movement qualified status. The proposed new rule is necessary to provide an effective and scientifically valid mechanism for reasonably ensuring that deer held under a scientific breeder permit are free of communicable diseases.

The proposed amendment to §65.607, concerning Marking of Deer, would clarify that the unique number required to be tattooed in a deer's ear must be a unique number assigned to the scientific breeder who possessed the deer when the deer was born or who lawfully obtained the deer from an out-of-state source. By rule, a deer may not leave a facility unless it has been tattooed with a unique number. This means that when a deer leaves the facility in which it was born (or to which it was introduced, if it was lawfully obtained from an out-of-state source when such acquisition was lawful), the deer must be tattooed with a legible unique number identifying that facility. For purposes of clarification, the amendment would add language to make the requirements of the section unmistakable, and to stipulate that deer also may not be knowingly accepted into a scientific breeder facility unless the deer have been tattooed in accordance with the provisions of the subchapter.

The proposed amendment to §65.607 is necessary to ensure that the history of possession and movement of all deer held under scientific breeder permits is traceable for purposes of disease control and law enforcement. A tattoo can be an effective permanent marking if done correctly; however, poorly done tattoos can become illegible over time, which makes reliable identification problematic. To account for cases in which it is unpractical or impossible to identify deer by means of tattooing (e.g., there is no more room in the ear for an additional tattoo), the proposed amendment also would allow the department to prescribe alternative methods for permanent identification on a case-by-case basis.

The proposed amendment to §65.608, concerning Annual Reports and Records, would alter the reporting deadline for annual reports in order to comport the requirements of the section with changes that would alter the permit-year, discussed earlier in the proposed amendments to §65.603. The proposed amendment also would remove references to documentation such as purchase permits and invoices for temporary possession, which would no longer be necessary because they would be eliminated in favor of the transfer permit. The proposed amendment also requires that reports and records be maintained in a legible condition. The amendment is necessary to ensure that the department is able to accurately interpret information required to be kept by permittees. The proposed amendment also comports the section to reflect the creation of the transfer permit and the elimination of the purchase and transfer permits.

Proposed new §65.610, concerning Transfer Permit, would create a single permit for the movement of deer from a scientific facility to any other place for any other purpose. Under current rules deer may be moved under the scientific breeder's permit, a purchase permit, a transport permit, or a temporary invoice, each of which invoke different reporting and documentation standards, creating a problematic recordkeeping burden for the department and the regulated community. This system was workable when the number of scientific breeders and persons patronizing scientific breeders were few; however, given the growth of the industry, a new approach is necessary. In concert with other proposed provisions of this rulemaking, the proposed new rule would eliminate all permits other than the scientific breeders permit and replace them with a single permit that would be required in order to move deer to any destination for any purpose. In a proposed amendment to §53.14, published elsewhere in this issue, the department is addressing the elimination of the fees for the transport and purchase permits.

Proposed new §65.610(e) establishes the transfer permit, specifies the period of validity, sets forth the circumstances and manner in which it is required to be used, and prescribes the recordkeeping and reporting requirements incidental to permit use. Under current rules, a transfer or purchase permit costs $30 and is valid for 30 days from the time it is activated (i.e., when the user of the permit notifies the department of pending activities for which the permit would be required).

The proposed rule would eliminate the fee and impose a 48-hour period of validity. The 30-day period proved problematic for enforcement and recordkeeping purposes, since 30 days is simply too great a time span within which to monitor or verify permit activities, and recordkeeping and reporting errors tend to

be multiplied if permittees do not keep up with records in real time but instead wait until the end of the period of validity. The department believes that the proposed 48-hour period of validity, coupled with the 48-hour mandatory reporting window following the completion of each act of transfer, will improve program efficiency, facilitate compliance by the regulated community, and make enforcement less problematic. Additionally, the requirement to report all deer movements, temporary or otherwise, within 48 hours, would greatly enhance the department's ability to quickly track animals for the purpose of epidemiological investigation in the unfortunate event of certain disease detection.

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

Mr. Macdonald has also 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 protection of wild, native deer from communicable diseases, thus ensuring the public of continued enjoyment of the resource. Additionally, the protection of native deer herds will have the simultaneous collateral benefit of protecting captive herds, maintaining the economic viability of deer breeding operations.

The direct adverse economic effect on small businesses, microbusinesses, and persons required to comply with the rules as proposed is associated with the disease-testing requirements of proposed new §65.604, concerning Disease Monitoring. The estimated average cost of compliance is between $200 and $750 per year for each breeder who desires to maintain movement qualified status, depending on whether private veterinarians are employed to remove, fix, and send samples or scientific breeders perform those functions themselves. This value was obtained by estimating the average number of eligible mortalities that will occur in each facility per year (five, although the number in most cases will be between one and three) and multiplying that value by the cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by the scientific breeder ($40: $25 for a brainstem in formalin or complete head, plus a $15 disposal fee by the lab). If the sample is collected, fixed, and submitted by a private veterinarian, the department estimates the cost to be approximately $150 per deer, testing included. The cost of compliance (i.e., the fee for a test performed by TVMDL) is the same for the largest and smallest businesses affected by the proposed rule.

The cost of compliance per employee will vary depending on the number of employees of the scientific breeder. For a very small scientific breeder operation with only 2 or 3 employees, the cost of compliance per employee cold be as high as $100 to $375 per employee per year. On the other hand, if a scientific breeder has 100 employees, the cost of compliance would be only $2 to $7.50 per employee per year. Because the preponderance of deer breeding operations in the state qualify as small businesses or microbusinesses, the impact will be similar for most scientific breeders. The department has also determined that there is no feasible way to reduce the effect of the proposed rule on small or micro-businesses, because, as noted earlier, the preponderance of businesses affected by the proposed rule are probably small or micro-business as defined in Government Code, §2006.002.

The department considered absorbing the costs of disease-testing, but determined that to do so would be fiscally impossible without additional fee increases; therefore, the department has determined that there is no alternative to the disease-testing requirements imposed by the rules, since the only way to be reasonably confident that CWD is not present in any given captive herd is to test at a statistically significant rate. The department also considered that federal and state programs are being developed to assist the regulated community in defraying or eliminating out-of-pocket expenses for disease testing. The department also notes that many, if not most, breeders are currently performing CWD testing as part of a herd health certification plan administered by TAHC and for those breeders the proposed rules will not impose additional costs and could result in reduced costs for disease testing.

The department also considered that a scientific breeder who in is compliance with current rules requiring enrollment in a herd health certification plan in order to release deer might not choose to obtain movement qualified status and thus would be prohibited from releasing deer, which could result in lost revenue to the breeder. The department reasons, however, that potential purchasers of deer will be aware of the potential danger of CWD and will prefer to purchase deer from herds that have been certified. Therefore, the department believes that most if not all scientific breeders will undertake testing.

There also will be direct adverse economic costs to small businesses, microbusinesses, and persons required to comply with proposed fee increases for scientific breeder permits and renewals; however, those impacts are discussed in the proposed amendment to §53.14, which is published elsewhere in this issue.

The department has not filed a local impact statement with the Texas Workforce Commission as required by 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 rules.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules) does not apply to the proposed rules.

Comments on the proposed rule may be submitted to Robert Macdonald, Texas Parks and Wildlife Department 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 (e-mail: robert.macdonald@tpwd.state.tx.us).

31 TAC §§65.601 - 65.604, 65.607, 65.608, 65.610

The amendments and new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to promulgate regulations governing the possession of white-tailed deer and mule deer for scientific, management, and propagation purposes.

The proposed amendments and new rules affect Parks and Wildlife Code, Chapter 43.

§65.601. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. All other words and terms shall have the meanings assigned by Parks and Wildlife Code.

(1) Authorized agent--An individual designated by the permittee to conduct activities on behalf of the permittee. For the purposes

of this subchapter, the terms 'scientific breeder' and 'permittee' include authorized agents.

(2) Certified Wildlife Biologist--A person not employed by the department who has been certified as a wildlife biologist by The Wildlife Society, or who:

(A) has been awarded a bachelor's degree or higher in wildlife science, wildlife management, or a related educational field; and

(B) has not less than five years of post-graduate experience in research or wildlife management associated with white-tailed deer or mule deer within the past 10 years.

(3) Common Carrier--Any licensed firm, corporation or establishment which solicits and operates public freight or passenger transportation service or any vehicle employed in such transportation service.

(4) Deer--White-tailed deer of the species Odocoileus virginianus or mule deer of the species Odocoileus hemionus[~~hemonius~~].

(5) Facility--One or more enclosures, in the aggregate and including additions, that are the site of scientific breeding operations under a single scientific breeder's permit.

(6) Movement qualified--A status, determined by the department, under which the removal of deer from a facility is authorized.

(7) [~~(6)~~] Propagation--The holding of captive deer for reproductive purposes.

(8) Release--the intentional release of a live deer from a permitted facility, or from a vehicle or trailer at a location other than a facility.

(9) [~~(7)~~] Sale--The transfer of possession of deer for consideration and includes a barter and an even exchange.

(10) [~~(8)~~] Scientific--The accumulation of knowledge, by systematic methods, about the physiology, nutrition, genetics, reproduction, mortality and other biological factors affecting deer.

(11) [~~(9)~~] Serial Number--A permanent four-digit number assigned to the scientific breeder by the department. A serial number shall be preceded by the prefix "TX".

(12) Transfer permit--A permit authorizing the movement or shipping of deer as a result of purchase, sale, barter, exchange, or any other arrangement under which deer are physically removed from or accepted into a permitted facility.

(13) [~~(10)~~] Unique number--A four-digit alphanumeric identifier assigned to a permittee for the purposes of individually identifying the [~~used by the department to track the ownership of a~~] specific deer held by the permittee. [~~Unique numbers may be assigned by the department or by the permittee. If the permittee chooses to assign the unique numbers, each deer must be tattooed with the permittee's serial number in one ear and the unique number in the other ear. No two deer shall share a common unique number.~~]

§65.602. Permit Requirement and Permit Privileges.

(a) No person may possess a live deer in this state unless that person possesses a valid permit issued by the department under the provisions of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R.

(b) Except as otherwise provided by this subchapter, a [~~A~~] person who possesses a valid scientific breeder's permit may:

[~~(1) possess deer within the permitted facility for the purpose of propagation;~~]

(1) [~~(2)~~] engage in the business of breeding legally possessed deer within the facility for which the permit was issued;

(2) purchase or otherwise lawfully take possession of deer lawfully possessed by another scientific breeder;

(3) sell or transfer deer that are in the legal possession of the permittee;

(4) release deer from a permitted facility into the wild as provided in this subchapter;

(5) recapture lawfully possessed deer that have been marked in accordance §65.607 of this title (relating to Marking of Deer) that have escaped from a permitted facility;

(6) temporarily relocate and hold deer in accordance with the applicable provisions of §65.610[~~(a)(2) and (3)~~] of this title (relating to Transfer Permit [~~Transport of Deer and Transport Permit~~]) [~~for breeding or nursing purposes~~]; and

(7) temporarily relocate and recapture buck deer under the provisions of Subchapter D of this chapter (relating to Deer Management Permit).

(c) The provisions of this subsection are effective until March 31, 2007. No person may release a deer obtained or possessed under this subchapter to the wild unless the person can prove that the deer came directly from a facility enrolled in a current, valid herd health plan for cervidae approved by Texas Animal Health Commission.

§65.603. Application and Permit Issuance.

(a) An applicant for an initial scientific breeder's permit shall submit the following to the department:

(1) a completed notarized application on a form supplied by the department;

(2) a breeding plan which identifies:

(A) the activities proposed to be conducted; and

(B) the purpose(s) for proposed activities;

(3) a letter of endorsement by a certified wildlife biologist which states that:

(A) the certified wildlife biologist has reviewed the breeding plan;

(B) the activities identified in the breeding plan are adequate to accomplish the purposes for which the permit is sought; [~~and~~]

(C) the biologist has conducted an inspection of the facility identified in the application and affirms that:

(i) the facility identified in the application:

(I) physically exists; and

(II) is adequate to conduct the proposed activities; and

(ii) no deer are present within the facility;

(4) a diagram of the physical layout of the facility;

(5) the application processing fee specified in Chapter 53, Subchapter A, of this title (relating to Fees); and

(6) any additional information that the department determines is necessary to process the application.

(b) A scientific breeder's permit may be issued when:

(1) the application and associated materials have been approved by the department; and

(2) the department has received the fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(c) A scientific breeder's permit shall be valid from the date of issuance until the immediately following July 1 [~~March 31~~].

(d) Except as provided in subsection (g) of this section, a [~~A~~] scientific breeder's permit may be renewed annually, provided that the applicant:

(1) is in compliance with the provisions of this subchapter;

(2) has submitted a notarized application for renewal;

(3) has filed the annual report in a timely fashion, as required by §65.608 of this title (relating to Annual Reports and Records); and

(4) has paid the permit renewal fee as specified in Chapter 53, Subchapter A, of this title (relating to Fees).

(e) An authorized agent may be added to or deleted from a permit at any time by faxing or mailing an agent amendment form to the department. No person added to a permit under this subsection shall participate in any activity governed by a permit until the department has received the agent amendment form.

(f) If a scientific breeder facility is enlarged or added to, the permittee shall submit an accurate diagram of the facility, including the additions or enlargements, to the department. No person shall introduce or cause the introduction of deer to a pen that has been added or enlarged unless the diagram required by this subsection is on file at the department's Austin headquarters.

(g) The department may refuse permit issuance or renewal to any person who within five years of applying for a scientific breeder's permit has been finally convicted of or received deferred adjudication for:

(1) any violation of Parks and Wildlife Code, Chapter 43, Subchapters C, E, L, or R;

(2) any violation of Parks and Wildlife Code that is a Class B misdemeanor, a Class A misdemeanor, or felony; or

(3) a violation of Parks and Wildlife Code, §63.002.

[~~(g) The department may, at its discretion, refuse to issue a permit or permit renewal to any person finally convicted of any violation of Parks and Wildlife Code, Chapter 43.~~]

(h) The department may prohibit any person for a period of five years from acting as an agent of any permittee if the person has been convicted of or received deferred adjudication for an offense listed in subsection (g) of this section.

(i) The department may refuse to issue a permit to any person the department has reason to believe is acting on behalf of or as a surrogate for another person who is prohibited by the provisions of this subchapter from engaging in permitted activities.

(j) An applicant for a permit under this subchapter may request a review of a decision of the department to refuse issuance of a permit or permit renewal.

(1) An applicant seeking review of a decision of the department with respect to permit issuance under this subchapter shall first contact the department within 10 working days of being notified by the department of permit denial.

(2) The department shall conduct the review and notify the applicant of the results within 10 working days of receiving a request for review.

(3) The request for review shall be presented to a review panel. The review panel shall consist of the following:

(A) the Assistant Executive Director for Operations (or his or her designee);

(B) the Director of the Wildlife Division; and

(C) the Big Game Program Director.

(4) The decision of the review panel is final.

(5) The department shall report on an annual basis to the White-tailed Deer Advisory Committee the number and disposition of all reviews under this subsection.

§65.604. Disease Monitoring.

(a) The provisions of subsections (b)-(d) and (g) of this section take effect April 1, 2007.

(b) No person shall remove, or authorize or cause the removal of a live deer from a facility permitted under this subchapter unless:

(1) the facility is designated by the department as movement qualified; or

(2) the removal is specifically authorized by the department.

(c) No person shall knowingly or intentionally allow the introduction of a live deer from a facility that is not movement qualified into a facility permitted under this subchapter.

(d) The department may authorize the transfer of deer from a facility that is not movement qualified and for which there is no valid scientific breeder permit to a facility permitted under this subchapter; however, the receiving facility shall not allow any deer to be moved from the facility for a period of one year from the date the transfer occurs.

(e) A facility permitted under this subchapter is movement qualified if:

(1) it has been certified by the Texas Animal Health Commission (TAHC) as having a CWD Monitored Herd Status of Level A or higher; and/or

(2) less than five eligible deer mortalities have occurred within the facility as of April 1, 2006;

(3) no CWD test results of 'detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories for deer submitted from the facility; and

(4) CWD test results of 'not detected' have been returned from the Texas Veterinary Medical Diagnostic Laboratories on a minimum of 20% of all eligible deer mortalities occurring within the facility as of April 1, 2006.

(f) An eligible mortality is any lawfully possessed deer aged 16 months or older that has died within a facility after April 1, 2006.

(g) A facility is no longer movement qualified if it cannot meet the requirements of subsection (e) of this section as of March 31 of any year; however, a facility may reestablish movement qualified status at any time by meeting the requirements of subsection (e) of this section.

(h) If a person receives or accepts into a facility that is movement qualified a deer from a facility that is known by the person not to be a movement qualified facility, the receiving facility immediately and automatically loses movement qualified status for a period of one year from the date the transfer occurred, as determined by the department.

(i) Except as provided in this subsection, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a test result of 'detected' has been obtained by the Texas Veterinary Medical Diagnostic Laboratories. The provisions of this subsection take effect immediately upon the posting of notice by the department at the facility that a 'detected' result has been obtained and continue in effect until:

(1) the facility meets the requirements of subsection (e) of this section; and

(2) the department specifically authorizes the resumption of permitted activities at the facility.

§65.607. Marking of Deer.

(a) No two scientific breeder deer in this state may have the same unique number.

(b) [~~(a)~~] Each deer held in captivity by a permittee under this subchapter shall be permanently marked by an ear tag that shows the letters "TX" followed by the serial number assigned to the scientific breeder. All deer within a scientific breeder facility shall be ear-tagged by March 31 of the year immediately following their birth.

(c) [~~(b)~~] No person shall remove or knowingly allow the removal of a deer held in a facility by a permittee under this subchapter unless it has been permanently and legibly tattooed in one or both ears with the [~~a~~] unique number assigned to the scientific breeder in lawful possession of the deer when the deer was born or who lawfully obtained the deer from an out-of-state source.

(d) No person shall knowingly accept of knowingly allow the acceptance of a deer into a facility permitted under this subchapter unless it has been permanently and legibly tattooed in one or both ears with the unique number assigned to the scientific breeder in lawful possession of the deer when the deer was born or who lawfully obtained the deer from an out-of-state source.

(e) [~~(c)~~] No person shall introduce and no person shall accept a deer into a facility permitted under this subchapter if:

(1) an ear tag bearing the TX number of any scientific breeder other than the scientific breeder receiving the deer has not been removed; and

(2) the deer has not been affixed with an ear tag bearing the TX number of the scientific breeder receiving the deer [~~under the provisions of a purchase permit unless the ear tag identifying the seller has been removed from the deer and replaced with an ear tag bearing the TX number of the purchaser~~].

(f) In the event that a tattoo is illegible and additional tattoos are impossible, the department may prescribe alternative methods of uniquely identifying a deer held under the provisions of this subchapter.

§65.608. Annual Reports and Records.

(a) Each scientific breeder shall file a legible, completed annual report on a form supplied or approved by the department[~~, accompanied by photocopies of all invoices for the temporary relocation of deer and all purchase permits used by the permittee during the reporting period,~~] by not later than May 15 [~~April 16~~] of each year.

(b) The holder of a scientific breeder's permit shall maintain and, on request, provide to the department adequate documentation as to the source or origin of all deer held in captivity[~~, including all invoices for the temporary relocation of deer, and buyer's and seller's invoices, as applicable, of all purchase permits used by the permittee~~].

(c) A person other than a scientific breeder holding deer for nursing, breeding, or health care purposes shall maintain and, upon request, provide copies of transfer permits indicating [~~appropriate invoices attesting to~~] the source of all deer in the possession of that person.

§65.610. Transfer of Deer.

(a) General requirement. No person may remove deer from or accept deer into a permitted facility unless a valid transfer permit on a form provided by the department has been activated as provided in this section.

(b) Transfer by scientific breeder. The holder of a valid scientific breeder's permit may transfer legally possessed deer:

(1) to or from another scientific breeder as a result of sale, purchase or other arrangement;

(2) to or from another scientific breeder on a temporary basis for breeding or nursing purposes;

(3) to an individual who purchases or otherwise lawfully obtains the deer for purposes of release but does not possess a scientific breeder's permit;

(4) to an individual for the purpose of obtaining medical attention, provided the deer do not leave this state; and

(5) to a facility authorized under Subchapter D of this chapter (relating to Deer Management Permit) to receive buck deer on a temporary basis.

(c) Transfer by person other than scientific breeder. An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(d) Release.

(1) The department may authorize the release of deer for stocking purposes if the department determines that the release of deer will not detrimentally affect existing populations or systems.

(2) Deer lawfully purchased, possessed, or obtained for stocking purposes may be held in captivity for no more than 30 days:

(A) to acclimate the deer to habitat conditions at the release site;

(B) when specifically authorized by the department;

(C) if they are not hunted prior to release; and

(D) if the temporary holding facility is physically separate from any scientific breeder facility and the deer being temporarily held are not commingled with deer being held in a scientific breeder facility. Deer removed from a scientific breeder facility to a temporary holding facility shall not be returned to any scientific breeder facility. No deer shall be released from a temporary holding facility during an open season or within ten days of an open season unless the antlers immediately above the pedicel have been removed.

(3) An individual who does not possess a scientific breeder's permit may possess deer under a transfer permit if the individual is transporting deer within the state and the deer were legally purchased or obtained from a scientific breeder for purposes of release.

(e) Transfer permit.

(1) A transfer permit is valid for 48 consecutive hours from the time of activation.

(2) A transfer permit authorizes the transfer of deer to one and only one receiver.

(3) A transfer permit is activated only by:

(A) notifying the Law Enforcement Communications Center in Austin prior to the transport of any deer; or

(B) utilizing the department's web-based activation mechanism prior to the transport of any deer.

(4) A person in possession of live deer at any place other than within a permitted facility shall also possess on their person a department-issued transfer permit legibly indicating, at a minimum:

(A) the species, sex, and unique number of each deer in possession;

(B) the source and destination facilities, or, if applicable, the specific release location for each deer in possession;

(C) the date and time that the permit was activated.

(5) Not later than 48 hours following the completion of all activities under a transfer permit, the permit shall be:

(A) legibly completed and faxed to the Wildlife Division in Austin by the person designated on the permit as the party responsible for notification of the department; or

(B) completed and submitted using the department's web-based permit-completion mechanism.

(f) Marking of vehicles and trailers. No person may possess, transport, or cause the transportation of deer in a trailer or vehicle under the provisions of this subchapter unless the trailer or vehicle exhibits an applicable inscription, as specified in this subsection, on the rear surface of the trailer or vehicle. The inscription shall read from left to right and shall be plainly visible at all times while possessing or transporting deer upon a public roadway. The inscription shall be attached to or painted on the trailer or vehicle in block, capital letters, each of which shall be of no less than six inches in height and three inches in width, in a color that contrasts with the color of the trailer or vehicle. If the person is not a scientific breeder, the inscription shall be "TXD". If the person is a scientific breeder, the inscription shall be the scientific breeder serial number issued to the person.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505764
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 389-4814

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31 TAC §65.609, §65.610

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

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which provides the Commission with authority to establish the fees for scientific breeder permits.

The proposed repeals affect Parks and Wildlife Code, Chapter 43.

§65.609. Purchase of Deer and Purchase Permit.

§65.610. Transport of Deer and Transport Permit.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505763
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 389-4814

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.39

The Comptroller of Public Accounts proposes amendments to §5.39, concerning hazardous duty pay.

The purpose of the amendments is to conform §5.39 with the hazardous duty pay increase that was enacted into law during the 79th regular session of the legislature. §13.06 of Senate Bill 1863 increased the monthly amount of hazardous duty pay to $10 for each 12-month period of lifetime service credit, not to exceed $300. The increase necessitates these amendments to subsections (c)(1)(B), (f)(3)(A), (f)(3)(C), and (f)(5) of §5.39.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the amendments will be in effect, there will be no foreseeable implications relating to costs or revenues of the state or local governments.

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 adopting the amendments will be helping administer hazardous duty payments to state employees. The rule would not have an adverse effect on small businesses or micro-businesses. There is no significant anticipated economic cost to individuals who are required to comply with the amendments.

Comments on the proposal may be addressed to Joani Bishop, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711. If a person wants to ensure that the comptroller considers and responds to a comment made about this proposal, then the person must ensure that the comptroller receives the comment not later than the 30th day after the issue date of the Texas Register in which this proposal appears. If the 30th day

is a state or national holiday, Saturday, or Sunday, then the first workday after the 30th day is the deadline.

The amendments are proposed under Government Code, §659.308, which authorizes the comptroller to adopt rules to administer Government Code, Chapter 659, Subchapter L. Subchapter L governs hazardous duty pay.

The amendments implement Government Code, Chapter 659, Subchapter L.

§5.39. Hazardous Duty Pay.

(a) Definitions. Except as otherwise provided in this section, in this section:

(1) "Classified position" means a position included in the position classification plan in the General Appropriations Act, Article IX.

(2) "Full-time state employee" has the meaning assigned by Government Code, §659.301(1).

(3) "Hazardous duty position" means a position in the service of the state that:

(A) renders any individual holding that position a "state employee," as defined in paragraph (9) of this subsection; or

(B) requires the performance of hazardous duty.

(4) "Institution of higher education" has the meaning assigned by Government Code, §659.301(3).

(5) "Lifetime service credit" means the number of months that an individual has served in a hazardous duty position during the individual's lifetime.

(6) "Part-time state employee" has the meaning assigned by Government Code, §659.301(4).

(7) "Regular hours" means the number of hours an individual actually works during a month.

(8) "Standard hours" means the total number of hours that an individual would work during a month if the individual worked exactly eight hours during each workday of that month.

(9) "State employee" means an individual who is a state employee under subsection (b)(1)(A) or (b)(2)(A) of this section.

(10) "TYC" means the Texas Youth Commission.

(11) "Type 1 grandfathered employee" means a state employee whose compensation for services provided to the state during any month before August 1987, included hazardous duty pay that was based on total state service performed before May 29, 1987.

(12) "Type 2 grandfathered employee" means an individual who is entitled to receive hazardous duty pay under subsection (g) of this section.

(13) "Workday" has the meaning assigned by Government Code, §659.301(6).

(b) Receiving hazardous duty pay.

(1) Individuals not employed by TYC.

(A) In this paragraph, "state employee" has the meaning assigned by Government Code, §659.301(5).

(B) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in Government Code, §659.302(a), except as provided in subsection (g) of this section, concerning type 2 grandfathered employees.

(C) An individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay entitlement for that month. The full amount of hazardous duty pay must be paid to the individual.

(D) For purposes of Government Code, §659.302(a)(2), the 12 months of lifetime service credit are not required to be 12 continuous months.

(E) This paragraph does not apply to an individual employed by TYC.

(2) Individuals employed by TYC.

(A) In this paragraph, "state employee" means an individual who:

(i) does not work at TYC's central office; and

(ii) has routine direct contact with youth:

(I) placed in a residential facility of TYC; or

(II) released under TYC's supervision.

(B) Except as provided in Government Code, §659.303, TYC may include hazardous duty pay in the compensation paid to an individual for services rendered during a month if the individual:

(i) is a state employee for any portion of the first workday of the month; and

(ii) has completed at least 12 months of lifetime service credit not later than the last day of the preceding month.

(C) Hazardous duty pay may not be paid to an individual who does not satisfy both of the criteria in subparagraph (B) of this paragraph.

(D) An individual's ceasing to be a state employee sometime during a month does not affect the individual's hazardous duty pay eligibility for that month.

(E) For purposes of subparagraph (B)(ii) of this paragraph, the 12 months of lifetime service credit are not required to be 12 continuous months.

(F) This paragraph applies only to an individual employed by TYC.

(c) Amount of hazardous duty pay.

(1) Monthly amount for individuals employed by TYC.

(A) The amount of hazardous duty pay that TYC pays monthly to a full-time state employee must be expressed in terms of a specific dollar amount for each 12 month period of lifetime service credit and, for type 1 grandfathered employees, for each 12 month period of state service credit. The amount must be the same for each type of service credit.

(B) The amount of hazardous duty pay that TYC pays monthly to a full-time state employee may exceed neither:

(i) $10[~~$7~~] for each 12 month period of lifetime service credit accrued by the employee; nor

(ii) $300[~~$210~~].

(C) In this paragraph, "state employee" has the meaning assigned by subsection (b)(2)(A) of this section.

(D) This paragraph applies only to an individual employed by TYC.

(2) Part-time state employees.

(A) The amount of a part-time state employee's hazardous duty pay is equal to the product of:

(i) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(ii) a quotient:

(I) the numerator of which is equal to the number of hours the employee normally works each week, not to exceed 40; and

(II) the denominator of which is equal to 40.

(B) For purposes of subparagraph (A)(ii)(I) of this paragraph, the number of hours that a part- time state employee normally works each week during a particular month is equal to the number of hours that the employee is scheduled to work each week as of the first workday of that month.

(3) Hourly state employees. The amount of an hourly state employee's hazardous duty pay for a particular month is equal to the product of:

(A) the amount of hazardous duty pay that the employee would receive if the employee were a full-time state employee; and

(B) a quotient:

(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(d) Timing for payment of hazardous duty pay.

(1) Employees paid once each month.

(A) This paragraph applies to a state employee only if the employee is normally paid once each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time the compensation is paid to the employee.

(2) Employees paid twice each month.

(A) This paragraph applies to a state employee only if the employee is normally paid twice each month.

(B) Any hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety at the same time that the compensation earned by the employee during the first half of the month is paid to the employee.

(3) Employees paid once every two weeks.

(A) This paragraph applies to a state employee only if the employee is normally paid once every two weeks.

(B) The hazardous duty pay that is included in the compensation earned by a state employee during a particular month must be paid in its entirety on the pay day that is closest to the date that a monthly employee is paid the compensation earned by the employee during that month.

(e) Lifetime service credit.

(1) Accrual. An individual accrues lifetime service credit for the period the individual holds a hazardous duty position.

(2) Amount. The amount of an individual's lifetime service credit at any particular time is equal to the number of months that have elapsed since the individual's effective service date. A month begins on the same day each month as the effective service date and ends on the day before that day during the next month, regardless of how many days are included in the month.

(3) Effective service date.

(A) An individual's effective service date is the first day of the individual's current continuous employment in a hazardous duty position, unless subparagraph (B) of this paragraph applies because the individual accrued lifetime service credit during previous employments in hazardous duty positions.

(B) The effective service date of an individual who accrued lifetime service credit during previous employments in hazardous duty positions is determined by counting backwards from the first day of the individual's current continuous employment in a hazardous duty position. The number of days to count backwards is equal to the individual's "number of days served," which is determined by counting each day of those employments. The individual accrues one full day of credit for any part of a day employed in a hazardous duty position.

(4) Transfers. For the purposes of paragraph (3)(A) of this subsection, an individual's transfer from one state agency to another does not interrupt continuity of employment if no workdays occur between the two employments.

(f) Exceptions for type 1 grandfathered employees.

(1) State service credit. For purposes of this subsection, the amount of an individual's state service credit equals the sum of:

(A) the amount of the individual's lifetime service credit; and

(B) the number of months during the individual's lifetime that the individual has provided services to the state in a position that is not a hazardous duty position.

(2) Applicability of other subsections. Subsections (a)-(e) of this section apply to a type 1 grandfathered employee except as provided in this subsection.

(3) Amount for non-hourly employees.

(A) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is not employed by TYC is equal to the sum of:

(i) $10[~~$7~~] for each 12 month period of state service credit the employee finished accruing before May 29, 1987; and

(ii) $10[~~$7~~] for each 12 month period of lifetime service credit that is accrued after the date, which must be before May 29, 1987, on which the employee finished accruing the last 12 month period of state service credit.

(B) The amount of hazardous duty pay for a type 1 grandfathered employee who is not hourly and who is employed by TYC is equal to the sum of:

(i) the dollar amount specified by TYC under subsection (c)(2) of this section for each 12 month period of state service credit the employee finished accruing before May 29, 1987; and

(ii) the dollar amount specified by TYC under subsection (c)(2) of this section for each 12 month period of lifetime service credit that is accrued after the date, which must be before May

29, 1987, on which the employee finished accruing the last 12 month period of state service credit.

(C) The amount determined under subparagraph (A)(ii) or (B)(ii) of this paragraph may not exceed $300 [$210].

(4) Amount for hourly employees. The amount of hazardous duty pay for an hourly type 1 grandfathered employee is equal to the product of:

(A) the amount calculated under paragraph (3) of this subsection; and

(B) a quotient:

(i) the numerator of which is equal to the number of regular hours for the employee for that month, not to exceed the number of standard hours for that month; and

(ii) the denominator of which is equal to the number of standard hours for that month.

(5) Limitation. A type 1 grandfathered employee may not receive more than $10 [$7] for each 12 month period of state service credit or lifetime service credit, regardless of the number of positions the employee holds or the number of hours the employee works each week.

(g) Exceptions for type 2 grandfathered employees.

(1) Applicability of other subsections. Subsections (a)-(e) of this section apply to a type 2 grandfathered employee as if the employee were a state employee, except as provided in this subsection.

(2) Entitlement for certain Parks and Wildlife Department personnel. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) is one of the commissioned law enforcement personnel of the Parks and Wildlife Department for any portion of the first workday of that month; and

(C) on May 29, 1987, was receiving or was entitled to be receiving hazardous duty pay because the individual on that date was one of the commissioned law enforcement personnel of the Parks and Wildlife Department.

(3) Entitlement for certain employees of the Texas Department of Criminal Justice. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) holds any of the following positions with the Texas Department of Criminal Justice for any portion of the first workday of that month:

(i) correctional officer I through warden;

(ii) a position that requires the individual to work on a unit and have routine direct contact with inmates, e.g., farm manager, livestock supervisor, maintenance foreman, shop foreman, medical assistant, food service supervisor, steward, education consultant, commodity specialist, correctional counselor;

(iii) a position assigned to an administrative office and requiring routine direct contact with inmates, e.g., investigator, compliance monitor, an accountant routinely required to audit unit operations, sociologist, interviewer, classification officer, supervising counselor;

(iv) a position that requires the individual to respond to emergency situations involving inmates, e.g., director, deputy director, assistant director, administrative duty offices, except that not more than 25 administrative duty officers may qualify under this clause;

(v) a position that requires the individual to work within the prison compound or have daily contact with inmates, except that not more than 500 individuals may qualify under this clause; or

(vi) warden I or II, assistant warden, major of correctional officers, captain of correctional officers, lieutenant of correctional officers, sergeant of correctional officers, or correctional officer I, II, or III; and

(C) on May 29, 1987, was receiving or was eligible to receive hazardous duty pay because the individual on that date held a position with the Texas Department of Corrections that is listed in subparagraph (B) of this paragraph.

(4) Entitlement for certain employees of the Texas Alcoholic Beverage Commission. Hazardous duty pay must be included in the compensation paid for services rendered to the state during a month by an individual who:

(A) is not a state employee on the first workday of that month;

(B) holds any of the following positions with the Texas Alcoholic Beverage Commission for any portion of the first workday of that month:

(i) chief or assistant chief of enforcement and marketing practices;

(ii) district supervisor or assistant district supervisor;

(iii) senior agent or agent I, II, or III;

(iv) port of entry supervisor or port of entry inspector I or II;

(v) supervising auditor I or II or auditor I, II, or III;

(vi) assistant director of auditing and tax reporting; or

(vii) senior tax auditor; and

(C) on May 29, 1987, was receiving or was eligible or entitled to receive hazardous duty pay because the individual on that date:

(i) held a position with the Texas Alcoholic Beverage Commission that is listed in subparagraph (B)(i)-(iii) of this paragraph; or

(ii) both:

(I) held a position with the Texas Alcoholic Beverage Commission that is listed in subparagraph (B)(iv)-(vii) of this paragraph; and

(II) was receiving hazardous duty pay on August 31, 1981, because the individual on that date was engaged in full time law enforcement work while holding any of the following classified positions:

(-a-) supervisor tax collector;
(-b-) tax collector I or II;
(-c-) district supervisor;

(-d-) chief or assistant chief, enforcement division;

(-e-) assistant district supervisor;

(-f-) inspector I or II;

(-g-) supervising auditor I;

(-h-) auditor I, II, or III;

(-i-) supervisor or assistant supervisor, marketing practices;

(-j-) special project director;

(-k-) director of auditing; or

(-l-) assistant director of auditing.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505759

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: January 22, 2006

For further information, please call: (512) 475-0387

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PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER A. SERVICE ELIGIBLE FOR MEMBERSHIP

34 TAC §25.4

The Board of Trustees ("Board") of the Teacher Retirement System of Texas (TRS) proposes amendments to §25.4 concerning substitute service for TRS membership eligibility. The proposed amended rule includes language redefining a substitute as a person serving on a temporary basis in the place of a current employee.

The proposed amendments to §25.4 would provide a consistent definition of a substitute. For purposes of employment after retirement, TRS has adopted a revised definition of a substitute to be codified at 34 TAC §31.1. The proposed amendments to §25.4 would make the definition of a substitute in that rule consistent with the one in §31.1. To avoid confusion, the proposed change to the definition of a substitute in §25.4 would apply to the entire Title 34 and not just for purposes related to the determination of membership eligibility or credit.

Further, the proposed amended rule would help TRS implement Senate Bill 1691, 79th Legislature, Regular Session (2005) ("SB 1691"), which became effective September 1, 2005. Subject to certain conditions and exceptions, SB 1691 requires employers who report to TRS the employment of a retiree to pay a pension or health benefit surcharge. For the health benefit surcharge to apply, the reported retiree must also be enrolled in the retirees health benefits program ("TRS-Care"). At its November 2005 meeting, the Board adopted surcharge rules, to be codified at 34 TAC §31.41 and §41.4, that impose the surcharges only on retirees serving in TRS-covered positions. Employers do not have to pay the pension or health benefit surcharge on a retiree serving as a substitute who is serving in a TRS-covered position. The surcharge rules specifically state that the criteria used to determine if a retiree is serving in a TRS-covered position are the same as those used for determining employment eligible for TRS membership. The proposed amendments to §25.4 would therefore clarify the definition of a substitute for purposes of both membership eligibility and application of the surcharges under SB 1691.

In addition, the proposed change in the definition will be used to determine whether an employee is eligible for TRS membership. Changes in the definition of substitute were also recommended that would clarify that a substitute is a person who serves on a temporary basis in the place of a current employee. Service in a vacant position is not substitute service. Historically, the unique nature of the substitute employment relationship has been a difficult concept to explain and confusing for both TRS-covered employers and members. Many TRS-covered employers use the titles "long-term substitute" or "permanent substitute" to describe employment arrangements that may not be accurate descriptions for TRS purposes. Under the proposed amendments to the rule, if the person is serving in a position held by a current employee, the length of time the substitute serves in that position is not limited. If the person is serving in a position that is vacant, the employment cannot be characterized as "substitute." Rather, the employment may be considered temporary if the TRS-covered employer anticipates that the period of employment will be less than four and 1/2 months. Temporary employment is not eligible for TRS membership. If the TRS-covered employer anticipates that the period of employment will be longer than four and 1/2 months or is for an indefinite period, the employment is eligible for membership in TRS, provided it is at least one-half time. Thus, the proposal will provide a clear definition of a substitute without the need to contact the substitute on a daily basis and will make the TRS rules consistent on this topic for both active membership and employment after retirement.

Finally, the amended section, as proposed, would be reformatted from a single implied subsection (a) into seven subsections to make the rule easier to read and apply.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that for each year of the first five years the proposed rule will be in effect, there will be no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the rule.

Mr. Galaviz also states that the public benefit will be to provide employers greater clarity regarding retirees serving as substitutes. There will be no measurable economic cost to persons required to comply with the rule. Because there will be no measurable effect on a local economy or local employment because of the proposed rule, no local employment impact statement is required under §2001.022, Government Code. Moreover, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed new section.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701. To be considered, written comments must be received by TRS no later than 30 days after publication.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §821.001,

Government Code, relating to definitions, including definition of "membership service"; §822.001, Government Code, relating to membership requirement; §824.802, Government Code, relating to participation in Deferred Retirement Option Plan (DROP); §825.403 relating to collection of membership contributions; §30 of SB 1691, to be codified as new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, to be codified as amended §1575.204, Insurance Code, relating to public school contribution under the retirees health benefits program.

§25.4. Substitutes.

(a) Persons who serve as substitutes [~~a substitute~~] in positions [~~a position~~] otherwise eligible for membership may qualify for membership provided that they serve [~~are employed~~] for at least 90 days in one school year.

(b) For purposes of this title, a [~~A~~] substitute is a person who serves on a temporary [~~daily, on-call~~] basis in the place of a current employee [~~in a TRS-covered position usually filled by another regular employee~~]. A substitute may be paid no more than the daily rate of pay set by the employer.

(c) Membership may be established and credit received by verifying the number of days worked as a substitute and salary earned. Verification must be made on a form prescribed by the retirement system.

(d) In no event shall verification of substitute service be accepted after a member has retired from the system and his or her first monthly annuity payment has been issued or after the effective date of a member's participation in the Deferred Retirement Option Plan (DROP).

(e) Once substitute service is verified as provided in subsection (c) of this section, required deposits and fees must be paid before any benefits are paid by TRS on behalf of the member.

(f) Payment for substitute [~~such~~] service required in subsection (e) of this section will be accepted and credit granted only as permissible under the Internal Revenue Code.

(g) Substitute service purchased as provided in this section [~~Such service~~] shall be considered the equivalent of at least four and 1/2 months of service. Members claiming credit for such service will be assessed a fee for delinquent deposits, if applicable, as provided in §25.43 of this title (relating to Deposits for Unreported Service).

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

Filed with the Office of the Secretary of State on December 7, 2005.

TRD-200505647
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 542-6438

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PART 12. STATE EMPLOYEE CHARITABLE CAMPAIGN

CHAPTER 325. GENERAL STATE POLICY COMMITTEE PROVISIONS

34 TAC §325.7

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes an amendment to §325.7, concerning travel expenses.

The amendment corrects the punctuation at the end of subsection (b), before the numerical listing under that subsection, by changing the period to a colon.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the section is in effect there are not foreseeable fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. Dodson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of existing rule. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gay Dodson, c/o SECC State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

This amendment is proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the State Policy Committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rule is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

§325.7. Travel Expenses.

(a) State Employee Charitable Campaign Policy Committee (SPC) and State Employee Charitable Campaign Advisory Committee (SAC) members make their own travel arrangements and seek reimbursement from the State Employee Charitable Campaign (SECC) state campaign manager.

(b) Reimbursements are made at the State of Texas rates for per diem, airfare, car allowances, hotel and lodging expenses, cab fare, and parking with the following special provisions:[~~.~~]

(1) Airfare. Airfare is reimbursed at the average coach airfare at two week advance rate unless approved by the SPC chair.

(2) Mileage. Mileage is reimbursed as provided in the *Texas Mileage Guide*.

(c) Original receipts are required for all reimbursements, with the exception of per diem and parking using a parking meter.

(d) Expenses will be reimbursed within 21 days of receipt of the expense reimbursement form. The reimbursement form must be received in the SECC state campaign manager's office by 30 days following the SPC or SAC meeting to which the expenses pertain.

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

Filed with the Office of the Secretary of State on December 8, 2005.

TRD-200505651
Gay Dodson
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 475-0387

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CHAPTER 326. CAMPAIGN MANAGEMENT

34 TAC §326.3

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes new rule §326.3, concerning additional requirements.

This new rule provides additional requirements with which local campaigns must comply, including the statutory requirement that each Local Employee Committee (LEC) appoint a local campaign manager and the SPC requirement that the LEC assign a representative to attend annual training provided by the State Campaign Manager.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the section is in effect there are not foreseeable fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. Dodson also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification and formalization of existing SPC policy. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gay Dodson, c/o SECC State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

The new rule is proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with (the SECC law) and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

Other statutes, articles, or sections affected by the proposed rule are: Texas Government Code, §659.143, regarding duties of each Local Employee Committee (LEC).

§326.3. Additional Requirements.

Local campaigns must comply with all applicable provisions, including the appointment of a local campaign manager and the designation of the local campaign manager or representative who shall attend a yearly training session that is provided by the State Campaign Manager (SCM).

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

Filed with the Office of the Secretary of State on December 8, 2005.

TRD-200505652
Gay Dodson
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 475-0387

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CHAPTER 329. ELIGIBILITY CRITERIA FOR STATEWIDE FEDERATIONS/FUNDS AND AFFILIATED ORGANIZATIONS

34 TAC §§329.1, 329.3, 329.5, 329.7

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC), proposes amendments to §329.1, concerning audit and review requirements and §329.3, concerning 25% administrative cost cap and proposes new rules §329.5, concerning recertification requirements and §329.7, concerning compliance certification.

The amendment to §329.1 provides that certain charitable organizations may include other documentation besides an IRS Form 990 to indicate what percentage of its budget was used for administrative expenses during the time period being reported in the application. The amendment to §329.3 codifies into rule the legislative exception, available only to certain charitable organizations, to the 25% cost cap that applies to all organizations that apply to participate in the SECC for the first time in 2004 or later. New §329.5 would codify and standardize the process by which federations and affiliated charitable organizations that have been approved in a previous year can re-apply to participate in campaign by submitting a shortened application packet. This allows for more efficient application preparation and review to take place at the federation level and at the SPC level, resulting in less burden on labor and material resources. New §329.7 mirrors the requirements of the federal charitable campaign and is intended to help prevent SECC funds being used for engaging in transactions with entities that are subject to economic sanctions. Some Local Campaign Managers and Federations have raised concerns about potential liability in funding such groups. Similar language is used in the combined federal campaign.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the rules will be in effect, there will be no significant fiscal impact on the state or units of local government.

Ms. Dodson also has determined that for each year of the first five years these rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure that the donations of state employees to participating charitable organizations are going to the programs for which they are intended and not to unreasonably high administrative costs or to certain organizations that are under economic sanctions. There will be

no effect on small or micro businesses. There are no significant anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Gay Dodson, c/o SECC State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

These amendments and new rules are proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

§329.1. Audit and Review Requirements.

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than $100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than $100,000, shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application. Organizations with a budget of more than $100,000, shall submit either a completed Internal Revenue Service (IRS) Form 990 or documentation that verifies their administrative expenses using the calculation method of §329.3 of this title (relating to 25% Administrative Cost Cap).

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation submitted by the certified public accountant who completed the audit or accountant's review.

§329.3. 25% Administrative Cost Cap.

(a) To be eligible to participate in a state employee charitable campaign (SECC), a charitable organization must not spend more than 25% of its annual revenue for administrative and fund raising expenses.

(b) The calculation method used to determine administrative costs will be as follows: Administrative expenses + fund raising costs divided by total revenue = percentage of revenue for administrative costs. For purposes of listing administrative costs in the state employee charitable campaign brochure, calculation of administrative costs will be carried out two places, rounded down if under 0.50, rounded up if 0.50 or over; however, if the costs are any amount over 25%, a temporary exemption by the State Employee Charitable Campaign Policy Committee (SPC) will be required for an organization to participate in a state employee charitable campaign.

(c) The SPC may grant a charitable organization a temporary exemption from the requirement of subsection (a) of this section if the committee finds that:

(1) the organization participated in the SECC at least once during the years 1994 - 2003;

(2) [~~(1)~~] the organization's administrative and fund raising expenses are reasonable under the circumstances; and

(3) [~~(2)~~] the organization has a practical plan to reduce its administrative and fund raising expenses to no more than 25% of its annual revenue within the next 3 [~~three~~] years.

(d) The SPC may grant a temporary exemption to an organization for up to 3 [~~three~~] consecutive years.

(e) The SPC may consider factors to determine whether administrative and fund raising expenses incurred by a charitable organization are reasonable. The factors may include, but are not limited to:

(1) whether there has been a one-time, extraordinary expense and the reasons for that expense;

(2) whether there has been an unanticipated financial crisis or miscalculation and the reasons for that situation;

(3) the number of years the organization has been operating;

(4) whether the organization has recently changed the time periods that comprise its fiscal year; and

(5) whether the organization has changed management and the reasons for that change.

(f) Factors the SPC may consider to determine whether a plan to reduce expenses is practical may include, but are not limited to:

(1) whether the plan explains which expenses are expected to be lower in the future and explains why this is expected;

(2) whether corrective measures have already been instituted; and

(3) whether progress under a previously submitted plan has been made, if organization has been previously granted a temporary exemption.

(g) An organization whose administrative and fund-raising expenses total more than 25% of the organization's annual revenue shall include in its application a document that does not exceed one page in length and that contains the following elements:

(1) an explanation of why administrative and fund-raising expenses exceed 25% that addresses some or all of the factors in subsection (e) of this section; and

(2) a plan to reduce those expenditures to less than 25% within the next 3 [~~three~~] years that addresses some or all of the factors in subsection (f) of this section, specifying the specific steps the organization will take to accomplish that reduction, explaining how those steps will result in lowered expenses, and providing the method the organization used to come to that conclusion.

§329.5. Recertification Requirements.

(a) To be eligible to participate in the State Employee Charitable Campaign and apply via the recertification process:

(1) the statewide federation/fund and affiliates must have not spent more than 25% of their annual revenue for administrative and fund raising expenses in the prior year's campaign; and

(2) statewide federation/fund and affiliates must have participated in the prior year's State Employee Charitable Campaign.

(b) To participate in the State Employee Charitable Campaign via the recertification process the statewide federation/fund must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the State Employee Charitable Campaign via the recertification process;

(2) organization information page including 3 year history of administrative expense percentages;

(3) all documentation in compliance with §329.1 of this title (relating to Audit and Review Requirements); and

(4) current operating budget.

(c) To participate in the State Employee Charitable Campaign via the recertification process the affiliate charitable organization must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the State Employee Charitable Campaign via the recertification process;

(2) affiliate information page including 3 year history of administrative expense percentages; and

(3) Internal Revenue Service (IRS) Form 990, less than 18 months old.

(d) To participate in the State Employee Charitable Campaign via the recertification process the affiliate charitable organization must submit a complete application to the statewide federation/fund.

(e) A complete application with all documentation shall be maintained by the statewide federation/fund for 3 years from the date of application. The SPC may conduct a random audit of any and all documentation prior to approval of the federation/fund or affiliate for any year's State Employee Charitable campaign.

(f) Every third-year the statewide federation/fund must submit a complete application for the federation/fund and affiliates.

(g) Each recertification application is subject to review by the current State Policy Committee, is subject to the current rules, and can be denied for any of the reasons that a full application can be denied.

§329.7. Compliance Certification.

Any charitable organization applying to participate in the State Employee Charitable Campaign must be in compliance with all statutes, executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities, or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control. The organization named in the application is aware that a list of countries subject to such sanctions, a list of Specifically Designated Nationals, and Blocked Persons subject to such sanctions, and overviews and guidelines for each such sanction can be found at http://www.treas.gov/offices/enforcement/ofac/sanctions/. If the organization named on the application becomes noncompliant at any time subsequent to completing this certification, it will notify the State Policy Committee of the State Employee Charitable Campaign immediately.

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

Filed with the Office of the Secretary of State on December 8, 2005.

TRD-200505653
Gay Dodson
Certifying Officer, State Policy Committee
State Employee Charitable Campaign
Earliest possible date of adoption: January 22, 2006
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CHAPTER 330. ELIGIBILITY CRITERIA FOR LOCAL FEDERATIONS/FUNDS, AFFILIATED ORGANIZATIONS, AND LOCAL CHARITABLE ORGANIZATIONS

34 TAC §§330.1, 330.3, 330.7, 330.9

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC), proposes amendments to §330.1, concerning audit and review requirements and §330.3, concerning 25% administrative cost cap and proposes new §330.7, concerning recertification requirements and §330.9, concerning compliance certification.

The amendments to §330.1 provides that certain charitable organizations may include other documentation besides an IRS Form 990 to indicate what percentage of its budget was used for administrative expenses during the time period being reported in the application. The amendment to §330.3 codifies into rule the legislative exception, available only to certain charitable organizations, to the 25% cost cap that applies to all organizations that apply to participate in the SECC for the first time in 2004 or later. New §330.7 would codify and standardize the process by which federations and affiliated charitable organizations that have been approved in a previous year can re-apply to participate in campaign by submitting a shortened application packet. This allows for a more efficient application preparation and review to take place at the federation level and at the SPC level, resulting in less burden on labor and material resources. New §330.9 mirrors the requirements of the combined federal charitable campaign and is intended to help prevent SECC funds being used for engaging in transactions with entities that are subject to economic sanctions. Some Local Campaign Managers and Federations have raised concerns about potential liability in funding such groups. Similar language is used in the combined federal campaign.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the rules will be in effect, there will be no significant fiscal impact on the state or units of local government.

Ms. Dodson also has determined that for each year of the first five years these rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to help ensure that the donations of state employees to participating charitable organizations are going to the programs for which they are intended and not to unreasonably high administrative costs or to certain organizations that are under economic sanctions. There will be

no effect on small or micro businesses. There are no significant anticipated economic costs to persons who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Gay Dodson, c/o SECC State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

These amendments and new rules are proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposed rules is Government Code, §659.146, regarding eligibility criteria for charitable organizations to participate in the state employee charitable campaign.

§330.1. Audit and Review Requirements.

(a) To be eligible to participate in the state employee charitable campaign, if the charitable organization's budget:

(1) is not more than $100,000, the organization shall provide a completed Internal Revenue Service (IRS) Form 990 and an accountant's review that offers full and open disclosure of the organization's internal operations; or

(2) is greater than $100,000, shall be audited annually in accordance with generally accepted auditing standards of the American Institute of Certified Public Accountants. A copy of the report of such audit shall be provided with the application. Organizations with a budget of more than $100,000, shall submit either a completed Internal Revenue Service (IRS) Form 990 or documentation that verifies their administrative expenses using the calculation method of §330.3 of this title (relating to 25% Administrative Cost Cap).

(b) When a charitable organization submits an audit or accountant's review, a copy of the organization's most recent annual audit or accountant's review must be included with the application. The audit or accountant's review must cover the fiscal year ending not more than 18 months prior to the January of the campaign year in which the organization is applying for participation. The IRS Form 990 and audit or accountant's review must cover the same fiscal period. If the revenue and expenses on these two documents differ, the reconciliation must be included in the IRS Form 990 itself or be included in a letter of reconciliation submitted by the certified public accountant who completed the audit or accountant's review.

§330.3. 25% Administrative Cost Cap.

(a) To be eligible to participate in a state employee charitable campaign (SECC), a charitable organization must not spend more than 25% of its annual revenue for administrative and fund raising expenses.

(b) The calculation method used to determine administrative costs will be as follows: Administrative expenses + fund raising costs divided by total revenue = percentage of revenue for administrative costs. For purposes of listing administrative costs in the state employee charitable campaign brochure, calculation of administrative costs will be carried out two places, rounded down if under 0.50, rounded up if 0.50 or over; however, if the costs are any amount over 25%, a temporary exemption by the State Employee Charitable Campaign Policy Committee (SPC) will be required for an organization to participate in a state employee charitable campaign.

(c) The SPC may grant a charitable organization a temporary exemption from the requirement of subsection (a) of this section if the committee finds that:

(1) the organization participated in the SECC at least once during the years 1994 - 2003;

(2) [~~(1)~~] the organization's administrative and fund raising expenses are reasonable under the circumstances; and

(3) [~~(2)~~] the organization has a practical plan to reduce its administrative and fund raising expenses to no more than 25% of its annual revenue within the next 3 [~~three~~] years.

(d) The SPC may grant a temporary exemption to an organization for up to 3 [~~three~~] consecutive years.

(e) The SPC may consider factors to determine whether administrative and fund raising expenses incurred by a charitable organization are reasonable. The factors may include, but are not limited to:

(1) whether there has been a one-time, extraordinary expense and the reasons for that expense;

(2) whether there has been an unanticipated financial crisis or miscalculation and the reasons for that situation;

(3) the number of years the organization has been operating;

(4) whether the organization has recently changed the time periods that comprise its fiscal year; and

(5) whether the organization has changed management and the reasons for that change.

(f) Factors the SPC may consider to determine whether a plan to reduce expenses is practical may include, but are not limited to:

(1) whether the plan explains which expenses are expected to be lower in the future and explains why this is expected;

(2) whether corrective measures have already been instituted; and

(3) whether progress under a previously submitted plan has been made, if organization has been previously granted a temporary exemption.

(g) An organization whose administrative and fund-raising expenses total more than 25% of the organization's annual revenue shall include in its application a document that does not exceed one page in length and that contains the following elements:

(1) an explanation of why administrative and fund-raising expenses exceed 25% that addresses some or all of the factors in subsection (e) of this section; and

(2) a plan to reduce those expenditures to less than 25% within the next 3 [~~three~~] years that addresses some or all of the factors in subsection (f) of this section, specifying the specific steps the organization will take to accomplish that reduction, explaining how those steps will result in lowered expenses, and providing the method the organization used to come to that conclusion.

§330.7. Recertification Requirements.

(a) To be eligible to participate in the Sate Employee Charitable Campaign and apply via the recertification process:

(1) the local federation/fund and affiliates must have participated in the previous year's campaign; and

(2) the local federation/fund and affiliates must have not spent more than 25% of its annual revenue for administrative and fund raising expenses in the prior year's campaign;

(b) To participate in the State Employee Charitable Campaign via the recertification process the local federation/fund must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the state employee charitable campaign via the recertification process;

(2) organization information page including 3 year history of administrative expense percentages;

(3) all documentation in compliance with §330.1 of this title (relating to Audit and Review Requirements); and

(4) current operating budget.

(c) To participate in the State Employee charitable Campaign via the recertification process, the affiliate charitable organization must submit the following:

(1) letter from the State Policy Committee stating eligibility to apply to the state employee charitable campaign via the recertification process;

(2) affiliate information page including 3 year history of administrative expense percentages; and

(3) Internal Revenue Service (IRS) Form 990, less than 18 months old.

(d) To participate in the State Employee Charitable Campaign via the recertification process the affiliate charitable organization must submit a full application to the local federation/fund.

(e) A complete application with all documentation shall be maintained by the local federation/fund for 3 years after the date of application. The LEC or the SPC may conduct a random audit of any and all documentation prior to approval of the federation/fund or affiliate for any year's state employee charitable campaign.

(f) Every third-year the local federation/fund will be required to submit a complete application for the federation/fund and affiliates.

(g) A local unaffiliated charitable organization is not eligible to apply to the State Employee Charitable Campaign via the recertification process at any time. A full application with all required documentation must be submitted each year.

(h) Each recertification application is subject to review by the current State Policy Committee or Local Employee Committee, is subject to the current rules, and can be denied for any of the reasons that a full application can be denied.

§330.9. Compliance Certification.

Any charitable organization applying to participate in the State Employee Charitable Campaign must be in compliance with all statutes, executive orders, and regulations restricting or prohibiting U.S. persons from engaging in transactions and dealings with countries, entities, or individuals subject to economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control. The organization named in the application is aware that a list of countries subject to such sanctions, a list of Specifically Designated Nationals, and Blocked Persons subject to such sanctions, and overviews and guidelines for each such sanction can be found at http://www.treas.gov/offices/enforcement/ofac/sanctions/. If the organization named on the application becomes noncompliant at any time subsequent to completing this certification, it will notify the State Policy Committee of the State Employee Charitable Campaign immediately.

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

Filed with the Office of the Secretary of State on December 8, 2005.

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CHAPTER 333. CAMPAIGN MATERIALS

34 TAC §333.7

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC), proposes amendments to §333.7, concerning campaign materials guidelines.

These amendments modify the punctuation contained in subsection (a) of the current rule so as to identify the SPC and the State Advisory Committee (SAC) consistently throughout the rules.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the rule will be in effect, there will be no significant fiscal impact on the state or units of local government.

Ms. Dodson 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 a clearer understanding of the rule. There will be no effect on small or micro businesses. There are no significant anticipated economic costs to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Gay Dodson, c/o SECC State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

The amendment is proposed under Government Code, §659.139, which provides that the State Employee Charitable Campaign (SECC) must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees.

The other statute, article, or section affected by the proposal is Government Code, §659.140, regarding the duties of the SPC, including the duty to approve campaign materials.

§333.7. Campaign Materials Guidelines.

(a) Local materials not ordered through the state campaign manager must be submitted each year to the State Advisory Committee (SAC) [~~state advisory committee~~] for recommendation to the State Policy Committee (SPC) [~~state policy committee~~] for approval.

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

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

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CHAPTER 334. GRIEVANCE PROCEDURES

34 TAC §334.1, §334.3

The State Policy Committee (SPC) of the Texas State Employee Charitable Campaign (SECC) proposes amendments to §334.1, concerning procedures for grievances involving local campaign issues and §334.3, concerning procedures for grievances involving statewide campaign issues.

These amendments will allow for the rules to be read more easily by avoiding the use of redundant words.

Gay Dodson, Certifying Officer for the SPC, has determined that for the first five-year period the sections are in effect there are not foreseeable fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Dodson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing SPC rules. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposals may be submitted to Gay Dodson c/o State Campaign Manager, United Ways of Texas, 3724 Executive Center Drive, Suite 210, Austin, Texas 78731.

The amendments are proposed under the authority of Texas Government Code, §659.139, which provides that the state employee charitable campaign must be managed fairly and equitably in accordance with the SECC law and the policies and procedures established by the state policy committee. The SPC interprets this statute to authorize the adoption of rules to the extent that the policies and procedures adopted are of general applicability and affect the rights of third parties, namely charitable organizations, local campaign managers, local employee committees, the state advisory committee, the state campaign manager, and state employees. The proposed rules also are proposed under the authority of Texas Government Code, §659.140(e)(6) which requires the SPC to perform other duties prescribed by comptroller rules. Texas Administrative Code, Title 34, Part 1, Chapter 5, §5.48(n)(2)(I) authorizes the SPC to establish policies and procedures about the hearing of any grievance concerning the operation and administration of the campaign.

Other statutes, articles, or sections affected by the proposed rules are: Texas Government Code, §659.140(e)(5), which requires the SPC to oversee the state employee charitable campaign to ensure that all campaign activities are conducted fairly and equitably to promote unified solicitation on behalf of all participants.

§334.1. Procedures for Grievances Involving Local Campaign Issues.

The State Employee Charitable Campaign (SECC) is conducted in accordance with state law, the comptroller's rules and State Employee Charitable Campaign Policy Committee (SPC) rules. While the SPC is responsible for oversight of the SECC and insuring compliance by all parties, the day-to-day oversight of the SECC rests with the Local Employee Committees. The Local Employee Committee (LEC), composed of 5 to 10 local state employees and the local chair, is responsible for oversight of the local SECC to ensure that all campaign activities are conducted in accordance with state law and that they fairly and equitably promote unified solicitation on behalf of all participants. In order to expedite the handling of complaints and grievances pertaining to SECC and to ensure the input of all concerned parties, the [~~following~~] grievance policy detailed in paragraphs (1) - (6) of this section, shall be followed.

(1) A state employee or charitable organization, including a federation/affiliate charity representative, may lodge a grievance pertaining to the conduct of the SECC at the local level or regarding an LEC, local campaign manager (LCM), or local charitable organization or local federation or fund. The grievance shall be submitted in writing to the LEC chair in whose area the grievance originates.

(2) The chair of the LEC shall provide a written response to the grievance within 10 business days.

(3) If the aggrieved party has received no response within the specified time frame or is not satisfied with the response provided by the LEC, the aggrieved party may submit the grievance to the State Policy Committee by delivery to the address of the State Campaign Manager.

(4) The grievance shall contain a copy of the original grievance submitted to the LEC and the LEC response. If the LEC failed to respond to the original grievance within the specified time frame, the failure to respond should be stated in the submission to the SPC.

(5) Any grievance submitted to the SPC without first being submitted to the LEC will not be acted upon but will be returned to the appropriate LEC for action.

(6) A grievance properly received by the SPC will be reviewed and may be acted upon at the next scheduled SPC meeting, if possible.

§334.3. Procedures for Grievances Involving Statewide Campaign Issues.

State Employee Charitable Campaign (SECC) is conducted in accordance with state law, the comptroller's rules and SPC rules. While the State Employee Charitable Campaign Policy Committee (SPC) is responsible for oversight of the SECC and insuring compliance by all parties, the day-to-day oversight of the SECC rests with the Local Employee Committees. The Local Employee Committee (LEC), composed of 5 to 10 local state employees and the local chair, is responsible for oversight of the local SECC to ensure that all campaign activities are conducted in accordance with state law and that they fairly and equitably promote unified solicitation on behalf of all participants. In order to expedite the handling of complaints and grievances pertaining to SECC and to ensure in put of all concerned parties, the [~~following~~] grievance policy detailed in paragraphs (1) - (4) of this section, shall be followed.

(1) A state employee or charitable organization, including a federation/affiliate charity representative may lodge a grievance per-

taining to the conduct of the State Employee Charitable Campaign at the statewide level, regarding any SECC matter occurring at the statewide level, or regarding the SPC, the state campaign manager (SCM), or a statewide charitable organization, including a statewide federation or fund. Grievances shall be sent to the State Policy Committee by delivery to the address of the State Campaign Manager.

(2) The aggrieved party shall cooperate with the SPC to investigate the grievance. The decision of the SPC shall be final.

(3) Any grievance submitted to the SPC may be referred to the appropriate LEC for review and action if the grievance concerns local issues.

(4) A grievance properly received by the SPC will be reviewed and may be acted upon at the next scheduled SPC meeting, if possible.

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

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission (HHSC) proposes to amend Title 40, Chapter 101, of the rules of the Department of Assistive and Rehabilitative Services, concerning the Rehabilitation Council of Texas. HHSC proposes a new Subchapter K, Administrative Rules and Procedures Pertaining to the Rehabilitation Council of Texas, §101.8103 and a new Subchapter L, Administrative Rules and Procedures Pertaining to the State Independent Living Council, §101.9101. New §101.8103 was formerly located in Chapter 107 as §107.1803 and new §101.9101 was formerly located in Chapter 107 as §101.1805. Chapter 107, Subchapter O, Advisory Committees/Councils, is deleted in its entirety. The repeal and replacements are necessary to change the date upon which the Council will be abolished from December 31, 2005, to December 31, 2009, as provided for in Government Code §2110.008(b), and to restructure the rules to better reflect the organization and functioning of the Department.

Elsewhere in this issue of the *Texas Register*, the Texas Health and Human Services Commission contemporaneously proposes the repeal of §§107.1801, 107.1803 and 107.1805.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the new rules are in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the new rules are in effect, the public benefit anticipated as a result of adopting the proposed new rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the new rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed new rules will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER K. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE REHABILITATION COUNCIL OF TEXAS

40 TAC §101.8103

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.8103. Rehabilitation Council of Texas.

(a) Legal basis. The Rehabilitation Council of Texas is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §725, and the Texas Human Resource Code, §111.016. The federal law requires that the department establish the Rehabilitation Council of Texas in order to receive federal financial assistance. Failure to establish the Council would prohibit federal financial assistance.

(b) Purpose. The Rehabilitation Council of Texas advises the Department of Assistive and Rehabilitative Services regarding the performance of the responsibilities of the department in the provision of services to individuals with disabilities.

(c) Tasks. The council shall:

(1) review, analyze, and advise the department regarding the performance of responsibilities, particularly responsibilities relating to:

(A) eligibility (including order of selection);

(B) the extent, scope, and effectiveness of services provided; and

(C) functions performed by state agencies that affect or that potentially affect the ability of individuals with disabilities in achieving rehabilitation goals and objectives;

(2) advise the department and at its discretion, assist in the preparation of applications, the state plan, the strategic plan, and amendments to the plans, reports, needs assessments, and evaluations required;

(3) to the extent feasible, conduct a review and analysis of the effectiveness of, and consumer satisfaction with:

(A) the functions performed by state agencies and other public and private entities responsible for performing functions for individuals with disabilities; and

(B) vocational rehabilitation services:

(i) provided, or paid for from funds made available, under 29 United States Code Annotated, §725, or through other public or private sources; and

(ii) provided state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities;

(4) coordinate with other councils within the state, including the State Independent Living Council established under 29 United States Code §796d, the advisory panel established under 20 United States Code §1431(a)(12), the State Planning Council described in 42 United States Code §6024, and the State Mental Health Planning Council established under 42 United States Code §300x-4(e);

(5) advise the department and provide for coordination and the establishment of working relationships between the department and the State Independent Living Council and centers for independent living within the state; and

(6) perform such other functions consistent with the Rehabilitation Act of 1973, as amended, as the council determines to be appropriate that are comparable to other functions performed by the council.

(d) Reports. The council shall:

(1) prepare and submit an annual report to the governor or appropriate state entity and the commissioner on the status of vocational rehabilitation programs operated within the state, and make the report available to the public; and

(2) submit to the commissioner such periodic reports as the commissioner may reasonably request, and keep such records as the commissioner finds necessary to verify such reports.

(e) Funding. The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

(f) Duration of council. The council will be abolished on December 31, 2009.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505678
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 424-4050

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SUBCHAPTER L. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO THE STATE INDEPENDENT LIVING COUNCIL

40 TAC §101.9101

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.9101. State Independent Living Council.

(a) Legal basis. The State Independent Living Council is created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code §796d. Failure to establish the council would prohibit federal financial assistance.

(b) Purpose. The Rehabilitation Act of 1973, as amended, 29 United States Code §796d, requires that each state shall establish a State Independent Living Council (SILC).

(c) Tasks. The State Independent Living Council shall:

(1) in conjunction with the Department of Assistive and Rehabilitative Services, jointly develop and submit the State Plan for Independent Living services as required by federal law;

(2) monitor, review, and evaluate the implementation of the State Plan for Independent Living;

(3) coordinate activities with the Rehabilitation Council of Texas set out in §101.8103 of this title (relating to the Rehabilitation Council of Texas) and other councils that address the needs of specific disability populations and issues under other federal law;

(4) ensure that all regularly scheduled meetings of the council are open to the public and sufficient advance notice is provided,

(5) submit to the federal government such periodic reports as the federal government may reasonably request, and keep such records as the federal government finds necessary to verify such reports, and

(6) report to the Department of Assistive and Rehabilitative Services Council at least annually on the council's actions and the results of the council's work.

(d) Funding. The council is funded primarily by federal funds and its existence is required in order to receive and expend federal funds.

(e) Duration of council. The council will be abolished on December 31, 2009.

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

Filed with the Office of the Secretary of State on December 9, 2005.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 424-4050

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CHAPTER 107. REHABILITATION SERVICES SUBCHAPTER O. ADVISORY COMMITTEES/COUNCILS

40 TAC §§107.1801, 107.1803, 107.1805

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

The Texas Health and Human Services Commission proposes to amend Title 40, Chapter 107, Subchapter O, of the rules of the Department of Assistive and Rehabilitative Services, concerning the Rehabilitation Council of Texas, by repealing §§107.1801, 107.1803 and 107.1805. Section 107.1801 is being repealed as unnecessary. Section 107.1803 is being moved to Chapter 101, in a new Subchapter K, Administrative Rules and Procedures Pertaining to the Rehabilitation Council of Texas as new §101.8103. Section 107.1805 is being moved to Chapter 101, in a new Subchapter L, Administrative Rules and Procedures Pertaining to the State Independent Living Council as new §101.9101. The repeal of §107.1803 and moving to §101.8103 in the new Subchapter K and the repeal of §107.1805 and moving to §101.9101 in the new Subchapter L are being proposed to change the date upon which the Council will be abolished from December 31, 2005, to December 31, 2009, as provided for in Government Code §2110.008(b), and to restructure the rules to better reflect the organization and functioning of the Department. This repeal will delete Subchapter O, Advisory Committees/Councils, in its entirety.

Elsewhere in this issue of the *Texas Register*, the Texas Health and Human Services Commission contemporaneously proposes new §101.8103 and new §101.9101.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeals are in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of adopting the proposed repeals will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the repeals as proposed. There should be no material effects to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeals will not affect a local economy.

Comments on the proposals may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§107.1801. Purpose.

§107.1803. Rehabilitation Council of Texas.

§107.1805. Statewide Independent Living Council.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505677
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Earliest possible date of adoption: January 22, 2006
For further information, please call: (512) 424-4050

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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 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 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER A. VOTER REGISTRATION

1 TAC §81.10

The Office of the Secretary of State, Elections Division, adopts the repeal of §81.10, concerning distribution of surplus computer equipment to counties under §18.063 of the Texas Election Code without changes to the proposal as published in the October 28, 2005, issue of the *Texas Register* (30 TexReg 6983).

The rule is no longer necessary since the county eligibility formula outlined in §81.10 no longer applies; however, the state will continue to distribute surplus computer equipment in accordance with Title 1, Part 5, Chapter 126, Subchapter A of the Texas Administrative Code, which governs the use and distribution of surplus and salvage property owned by the State of Texas.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Election Code, §31.003, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

No other statutes affect this repeal.

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

Filed with the Office of the Secretary of State on December 7, 2005.

TRD-200505641
Ann McGeehan
Director of Elections
Office of the Secretary of State
Effective date: December 27, 2005
Proposal publication date: October 28, 2005
For further information, please call: (512) 463-5562

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.501

The Health and Human Services Commission (HHSC) adopts the amendment to §355.501, Reimbursement Methodology for Program for All-Inclusive Care for the Elderly, without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6018) and will not be republished.

The amended rule revises the calculation of the upper payment limit and the associated payment rate for each PACE contract for clients who are eligible for Medicare services and for Medicaid services (i.e., dual-eligible clients) to exclude the historical cost of any prescription medication that is in a category covered by Medicare Part D.

This amendment is adopted to comply with new federal requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Beginning January 1, 2006, individuals, including PACE clients, who are eligible for both Medicare and Medicaid services (i.e., dual-eligible clients) must obtain prescription drugs through a Medicare Part D prescription drug plan rather than through Medicaid.

Section 355.501 is amended to exclude prescription costs from the calculation of the upper payment limit and the associated payment rate, for each PACE contract, for dual-eligible clients effective January 1, 2006, in accordance with federal regulations at 42 CFR §423.906, General Payment Provisions.

HHSC did not receive any comments regarding the proposed rule during the comment period.

The amendment is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

Filed with the Office of the Secretary of State on December 8, 2005.

TRD-200505649

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 424-6900

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 23. EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT (EPSDT) MEDICAL PHASE

The Texas Health and Human Services Commission (HHSC) adopts the repeal of §355.8441 (Early and Periodic Screening, Diagnosis and Treatment Comprehensive Care Program Providers (EPSDT-CCP)); §355.8443 (Maximum Payment); and §355.8445 (Explanation of Maximum Payment Terms); and new §355.8441 (Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program (EPSDT-CCP) Services). The repeal is adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6519) and will not be republished. New §355.8441 is adopted with changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6519). The text of the rule will be republished.

The three rules proposed for repeal all relate to providers and reimbursement for the Texas Health Steps-Comprehensive Care Program (THSteps-CCP). THSteps-CCP provides medically necessary care to children through age 21 who are enrolled in Medicaid. The newly proposed §355.8441 consolidates the dental reimbursement information that had previously been in §355.8443 and §355.8445 with the reimbursement information for other THSteps-CCP providers that had been in the previous version of §355.8441.

Most of the differences between the rules proposed for repeal and the new proposed version of §355.8441 are intended to clarify current reimbursement methodologies for services, to remove program policy wording that is not appropriate for reimbursement methodology rules, and to provide additional information regarding how various providers are reimbursed for each type of service. There are, however, three sets of substantive changes to these reimbursement methodology rules that result in an estimated fiscal impact to THSteps-CCP.

The first set of substantive changes is to the reimbursement methodology for private duty nursing (PDN) services. This set of changes adds reimbursement for the provision of PDN services through delegation by a registered nurse (RN) to a qualified aide. Delegation of tasks, where appropriate and in accordance with the Board of Nurse Examiners rules, provides an additional and cost-effective resource for the delivery of PDN services. The adopted changes also provide for a different fee for PDN services delivered by a home health agency (HHA) licensed vocational nurse/licensed practical nurse (LVN/LPN) from the fee for PDN services delivered by a HHA RN. Finally, this set of changes allows for the reimbursement of assessment services delivered by RNs, which have not previously been reimbursable.

The second set of substantive changes is to the reimbursement methodology for Medicare-certified outpatient rehabilitation facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs). CORFs and ORFs are currently reimbursed by the Texas Medicaid Program for THSteps-CCP physical therapy, occupational therapy, and speech-language-pathology services. The current CORF and ORF reimbursement is based on reasonable costs. CORFs and ORFs are reimbursed at an interim payment rate based on the provider's most recent Medicaid cost settlements. The interim rate is applied to the provider's billed charges to determine the provider's allowed amount per claim detail. Any applicable adjustments are then applied to arrive at the actual payment to the provider. HHSC adopts to reimburse CORFs and ORFs based on a prospective payment system (PPS) fee schedule, using the same methodology used for physicians and certain other practitioners at 1 TAC §355.8085, which allows for resource-based fees or access-based fees.

The third set of substantive changes is to the reimbursement methodology for THSteps-CCP therapy services delivered by HHAs. Currently, the Texas Medicaid Program reimburses HHAs for all professional services delivered, excluding PDN services, based on statewide visit rates. HHSC proposes to reimburse HHAs for THSteps-CCP therapies using a PPS fee schedule based on actual face-to-face time spent with each client and in accordance with 1 TAC §355.8085.

HHSC received comments during the 30-day comment period, which included a public hearing on October 26, 2005. Comments were received at the hearing from the Texas Association for Home Care (TAHC), Easter Seals Coalition Serving Texans, the Texas Outpatient Rehabilitation and CORF Association (TORCA), the Coalition for Nurses in Advanced Practice, and MedCare Professional Group. Advocacy, Incorporated, Southern Disability Law Center, and Sheehy, Serpe & Ware, Attorneys at Law, submitted written comments to the proposed rule. The rule was modified in response to the comments. A summary of the comments and HHSC's responses follows:

Comment: The Coalition for Nurses in Advanced Practice requested that language be added to clearly explain that the reimbursement methodologies for other Medicaid services provided to clients under age 21 are located elsewhere in Chapter 355 of the Texas Administrative Code and that the reimbursement methodologies included in 1 TAC §355.8441 are applicable to Medicaid services provided only to clients under age 21.

Response: The first paragraph of 1 TAC §355.8441 has been modified to address these comments.

Comment: The Coalition of Nurses in Advanced Practice requested that 1 TAC §355.8441(1) be revised to address only those counseling and psychotherapy services provided under THSteps-CCP.

Response: The wording of 1 TAC §355.8441(1) has been modified to address these comments.

Comment: TAHC provided suggested revised wording for 1 TAC §355.8441(4).

Response: The wording of 1 TAC §355.8441(4) has been modified to include as much of the revised wording suggested by TAHC as HHSC feels can reasonably be made at this time.

Comment: TAHC and MedCare Professional Group requested that the reimbursement methodology for THSteps-CCP therapies delivered by home health agencies continue to be based on

statewide visit rates. TAHC provided suggested revised wording for 1 TAC §355.8441(5) - (7).

Response: At this time, HHSC agrees to maintain the current statewide visit rate reimbursement methodology for THSteps-CCP therapies delivered by home health agencies. The wording of 1 TAC §355.8441(5) - (7) has been modified to include as much of the revised wording suggested by TAHC as HHSC feels can be reasonably made at this time.

Comment: TORCA and Easter Seals Coalition Serving Texans commented in favor of the change in reimbursement methodology for THSteps-CCP therapies delivered by Medicare-certified outpatient rehabilitation facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs) from one based on cost reimbursement to one based on prospective payment system (PPS) fees. Although in favor of the rule as proposed, TORCA and Easter Seals are opposed to the proposed fees that result from application of the rule methodology. The proposed fees are scheduled to be implemented January 1, 2006. Both entities asked that either the fees be increased to their recommended levels or that implementation of the PPS fee system be delayed until additional analyses can be performed.

Response: HHSC appreciates the support of TORCA and Easter Seals Coalition Serving Texans in the transition to PPS fees for THSteps-CCP therapies delivered by CORFs/ORFs. However, HHSC declines to delay implementation of these rules. The associated fees are outside the scope of this rule adoption process.

Comment: Comments were received by Sheehy, Serpe & Ware, Attorneys at Law, which, speaking on behalf of ORFs and CORFs, suggested that the proposed rule fails to: (1) provide for adequate information gathering in order to set rates; (2) take into consideration costs for services in various parts of Texas; and (3) guarantee that rates will be sufficient to ensure access to services for all recipients. Sheehy, Serpe & Ware also requested that specific, detailed reimbursement methodology language be added to 1 TAC §355.8441(5) - (7) for THSteps-CCP therapies delivered by CORFs/ORFs.

Response: HHSC appreciates the comments provided by Sheehy, Serpe & Ware, Attorneys at Law. HHSC disagrees with the comments and will rely on information-gathering practices already in place for other types of Medicaid providers. HHSC believes that rates may be set that will permit a substantial majority of providers to continue to operate throughout the state. However, the rates themselves are outside the scope of this rule adoption process. No change was made to the rule in response to these comments.

Comment: Comments were received regarding 1 TAC §355.8441(4) by Advocacy, Incorporated, and the Southern Disability Law Center that federal regulations require that private duty nursing services be provided by "a registered nurse or licensed practical nurse."

Response: HHSC acknowledges the comments but has determined that the delegation of nursing services, in accordance with rules promulgated by the Board of Nurse Examiners (BNE), complies with the federal definition of private duty nursing in the Code of Federal Regulations, Title 42, §440.80. In accordance with BNE rules, a registered nurse (RN) may determine whether or not to delegate skilled nursing tasks to a qualified aide. HHSC also believes that an aide provides a cost effective alternate service delivery modality and that the use of qualified aides to provide delegated nursing services will increase participation in private duty nursing services, especially in rural areas of the state. No change was made to the rule in response to the comments.

Comment: Advocacy, Incorporated, and the Southern Disability Law Center requested that language be added to ensure that payments resulting from these reimbursement methodologies result in payments that are consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available to the extent that such care and services are available to the general population.

Response: HHSC appreciates these comments; however, HHSC does not feel that the rule needs to be modified to specifically include the assurances requested. Rather, HHSC contends that, under its authority to administer the Medicaid program in Texas in accordance with the Texas Government Code, §531.021(a) - (b), and the Human Resources Code, §32.021, it has the duty to ensure that all Medicaid payments, and not just those covered by 1 TAC §355.8441, are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available to the extent that such care and services are available to the general population in the geographic area.

Comment: Comments were received by Advocacy, Incorporated, and the Southern Disability Law Center concerning new §355.8441. The commenters request that specific detailed reimbursement methodology language be added to the reimbursement methodology for THSteps-CCP PDN services. The commenters maintain that new §355.8441 does not provide the public with the specific methodology used to establish rates. The commenters complain that the "current rule appears to allow HHSC to pick and choose from various methodologies."

Response: HHSC appreciates these comments. New §355.8441 would employ an existing rule and methodology, which have been approved and used for other Medicaid provider types. For example, see the access-based fee section of 1 TAC §355.8085. This methodology permits HHSC to draw from a variety of data sources, including actual provider cost reports or cost information, review of other states' reimbursement for the same or similar services, and/or other available data sources. This methodology is not prescriptive and allows HHSC some discretion in rate setting. Because of the complexity of the factors being scrutinized, some discretion is desirable. No change was made to the rule in response to these comments.

1 TAC §§355.8441, 355.8443, 355.8445

The repeal is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505738

Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 424-6900

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1 TAC §355.8441

The new rule is adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§355.8441. Reimbursement Methodologies for Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program (EPSDT-CCP) Services.

The following are reimbursement methodologies for services provided under the Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program (EPSDT-CCP), also known as Texas Health Steps-CCP (THSteps-CCP), only to clients under age 21. Reimbursement methodologies for services provided to all Medicaid clients, including clients under age 21, are located elsewhere in this chapter.

(1) THSteps-CCP counseling and psychotherapy services are reimbursed to freestanding psychiatric hospitals and facilities in accordance with §355.8063 of this title (relating to Reimbursement Methodology for Inpatient Hospital Services). The reimbursement methodologies for counseling and psychotherapy services provided to all Medicaid clients are located elsewhere in this chapter.

(2) Expendable medical supplies, including nutritional products, are reimbursed in the same manner as expendable medical supplies under home health services at §355.8021(b) of this title (relating to Reimbursement Methodology for Home Health Services).

(3) Durable medical equipment is reimbursed in the same manner as durable medical equipment under home health services at §355.8021(c) of this title.

(4) Private duty nursing services, including, but not limited to, registered nurse (RN) services, licensed vocational nurse/licensed practical nurse (LVN/LPN) services, skilled nursing services delegated to qualified aides by RNs in accordance with the licensure standards promulgated by the Texas Board of Nurse Examiners (BNE), and nursing assessment services, are reimbursed based on the lesser of the provider's billed charges or fees established by the Texas Health and Human Services Commission (HHSC) for each of the applicable provider types as follows:

(A) Independently enrolled RNs and LVNs/LPNs, §355.8085 of this title (relating to Texas Medicaid Reimbursement Methodology (TMRM) for Physicians and Certain Other Practitioners); and

(B) Home health agencies (HHAs). Fees for these services will be reviewed every two years and will be adjusted, within available funding, based on historical charges, a review of Medicaid fees paid by other states, a survey of costs for a representative sample of providers, an analysis of cost reports provided by HHAs for similar nursing services, a review of Medicaid fees for similar services, modeling using an analysis of other data available to HHSC, or a combination thereof.

(5) Physical therapy (PT) services are reimbursed in accordance with the existing Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title (relating to Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services);

(B) HHAs, §355.8021 of this title;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title (relating to Payment for Hospital Services).

(6) Occupational therapy (OT) services are reimbursed in accordance with the existing Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title;

(B) HHAs, §355.8021 of this title;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title.

(7) Speech-language pathology (SLP) services are reimbursed in accordance with the existing Medicaid reimbursement methodologies for the applicable provider type as follows:

(A) independently enrolled therapists, §355.8081 of this title;

(B) HHAs, §355.8021 of this title;

(C) Medicare-certified outpatient facilities known as comprehensive outpatient rehabilitation facilities (CORFs) and outpatient rehabilitation facilities (ORFs), §355.8085 of this title;

(D) freestanding rehabilitation hospitals, §355.8063 of this title; and

(E) outpatient hospitals, §355.8061 of this title.

(8) Nutritional services provided by licensed dietitians are reimbursed according to the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this title.

(9) Providers are reimbursed for the administration of immunizations according to the lesser of the provider's billed charges or fees determined by HHSC in accordance with §355.8085 of this title.

(10) Vaccines not covered elsewhere are reimbursed according to the lesser of the provider's billed charges or the actual cost of the vaccine.

(11) Dental services provided by independently enrolled dentists are reimbursed in accordance with §355.8081 of this title. The fees are calculated as access-based fees under §355.8085 of this title and are based on a percentage of the billed charges (i.e., the usual-and-customary amount providers charge non-Medicaid clients for similar services) reported on Medicaid dental claims for each dental service, excluding billed charges that are less than or equal to the published Medicaid fee for that service. The fees are reviewed at least every two years. Dental services provided by federally qualified health centers (FQHCs) are reimbursed in accordance with §355.8261 of this title (relating to Reimbursement).

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505739
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Effective date: January 1, 2006
Proposal publication date: October 14, 2005
For further information, please call: (512) 424-6900

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CHAPTER 363. COMPREHENSIVE CARE PROGRAM

SUBCHAPTER C. PRIVATE DUTY NURSING SERVICES

1 TAC §§363.303, 363.307, 363.311, 363.313, 363.315

The Texas Health and Human Services Commission (HHSC or Commission) adopts amendments to §363.303, Definitions; §363.307, Client Eligibility Criteria; §363.311, Private Duty Nursing Benefits and Limitations; §363.313, Plan of Care; and §363.315, Termination of Authorization for Private Duty Nursing Services. Section 363.303 and §363.311 are adopted with changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6522). The text of the rules will be republished. Sections 363.307, 363.313 and 363.315 are adopted without changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6522) and will not be republished.

The amendments to the rules provide an additional resource for the delivery of private duty nursing (PDN) services to Medicaid recipients under the age of 21 years through the delegation of skilled nursing services by a registered nurse (RN) to a qualified aide. The amendments define nurse delegation in accordance with the criteria for nurse-delegated tasks as determined by the Board of Nurse Examiners. The amendments also remove obsolete language, clarify the current processes and procedures related to the provision of PDN services, and add the word "services" to "private duty nursing" where appropriate to reflect the array of options available in the delivery of PDN services. In addition, the amendments replace the term "department" with "HHSC."

The Commission received comments during the 30-day comment period, which included a public hearing on November 8, 2005. Comments were received from the Texas Association for Home Care (TAHC), the Board of Nurse Examiners (BNE), Kinder Hearts Home Health (KHHH), and Advocacy, Incorporated. The rules were modified in response to some of the comments. A summary of comments and HHSC's responses follows.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(1) and the definition of "Alternate Caregiver." Advocacy maintains that nothing in the federal statute or regulations governing the Medicaid program allows HHSC to require Medicaid beneficiaries to obtain medically necessary services from a third party who is not legally responsible to provide these services and that HHSC is required to provide all medically necessary services to Medicaid beneficiaries under the age of 21. Advocacy asks that this definition be deleted.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. HHSC, however, is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. Nonetheless, HHSC notes the definition, as written, does not impose requirements on an alternate caregiver. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(2) and the definition of "Client." Advocacy asks that the definition be rewritten to clarify that virtually all Medicaid beneficiaries under the age of 21 are entitled to all medically necessary services, not just private duty nursing services. Advocacy, Inc. also asks that, to the extent that there are any Medicaid beneficiaries under the age of 21 who are not entitled to the full scope of EPSDT services, HHSC identify any such group in §363.303 to make clear that there is only a limited number of beneficiaries who fall into the category.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. Nonetheless, the Commission notes that the definition is located in a subchapter that deals only with private duty nursing, applies only to the private duty nursing subchapter, and that, therefore, the definition appropriately addresses only eligibility for private duty nursing services. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the TAHC, the BNE, KHHH, and Advocacy, Inc., concerning §363.303(5) and the definition of "Delegated Nursing," stating that, for clarity, the reference to "delegation" in paragraph (5) should include a citation to the rules of the BNE.

Response: HHSC concurs with the recommendations and will incorporate into §363.303(5) a citation to Title 22, Chapters 224 and 225, of the Texas Administrative Code, concerning delegation of nursing tasks.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(7) and the definition of "Early and Periodic Screening, Diagnosis and Treatment." Advocacy asks that this rule be re-written to track the federal definition for this term at 42 U.S.C. §1396d(r)(5).

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. HHSC, however, is unable to make changes in response to comments on portions of a rule for

which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(11) and the definition of "Primary care giver." Advocacy asks that the definition be re-written to make clear the legal obligations of a parent or guardian and the legal obligations of HHSC.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. HHSC, however, is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(13) and the definition of "Private duty nursing." Advocacy recommended that the definition should be re-written so that it comports with the definition agreed on in a settlement reached in *Alberto N. et al. v. Hawkins, et al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. The only proposed change to the definition of private duty nursing was language to permit delegation of nursing tasks to a qualified aide. Any change to other language in the definition would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the BNE concerning §363.303(13) and the definition of "Private duty nursing." The BNE asked that the proposed rule be amended for the purpose of updating the reference to the Texas Occupation Code as it relates to licensed vocational nurses.

Response: HHSC agrees with the recommendations but cannot make the changes to the definition, which are beyond the scope of the amendment. HHSC will consider the recommendations when future amendments to §363.303 are proposed. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the TAHC and KHHH concerning §363.303(15) and the definition of "Qualified Aide." TAHC and KHHH request that the defined term be changed from "Qualified Aide" to "Home Health Aide," since the aide performing delegated tasks will be the employee of the home health agency. The commenters expressed the opinion that the only qualification necessary should be the qualifications required under the home health licensure rules.

Response: HHSC acknowledges the comments made by TAHC and KHHH. After careful consideration of this recommendation, HHSC has decided not to change the designation of qualified aide to home health aide. HHSC believes it is necessary to use the umbrella term "qualified aide" to describe the types of aides, including home health aides, that would be appropriate to perform delegated tasks. In response to the comment, we have added a sentence to clarify that a qualified aide may include different types of aides.

Comment: HHSC received a comment from Advocacy, Inc., concerning §363.303(15) and the definition of "Qualified Aide." Advocacy states that federal regulation requires that private duty nursing services be provided by "a registered nurse or licensed practical nurse."

Response: HHSC acknowledges the comment but has determined that the delegation of nursing services, in accordance with the BNE rules, complies with the federal definition of private duty nursing in the Code of Federal Regulations, Title 42, §440.80. In accordance with the BNE rules, a registered nurse may determine who is a qualified aide and who may perform a delegated task. Also, HHSC believes that an aide will benefit clients and increase participation in private duty nursing services, especially in rural areas of the state. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(17) and the definition of "Skilled nursing." The commenter stated that the definition does not comport with the definition in the settlement agreement reached in *Alberto N. et al. v. Hawkins, et al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC does not understand the comment to be addressing the proposed amendment to the definition and is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the BNE concerning §363.303(17) and the definition of "Skilled nursing." The commenter asks that the section be updated to reflect the current citation to the BNE rules related to the supervision of licensed vocational nurses.

Response: HHSC acknowledges the comment and agrees with the commenter. HHSC has revised the rule to update the citation to the BNE rules related to the supervision of licensed vocational nurses.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(18) and the definition of "Stable and predictable." The commenter states that this definition does not comport with the medical necessity standard found in the settlement agreement reached in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.303(19) and the definition of "Texas Health Steps Comprehensive Care Program (THSteps-CCP)." Advocacy asks that this definition be re-written to make clear which groups of Medicaid beneficiaries are entitled to EPSDT services.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. The Commission notes, however, that the definition identifies the group of Medicaid beneficiaries eligible for Texas Health Steps-CCP (the federal Early and Periodic Screening, Diagno-

sis and Treatment (EPSDT) program) as those beneficiaries who are less that 21 years of age and cross-references the definition of EPSDT. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.307(a)(3)(D), Client Eligibility Criteria. Advocacy contends that this provision is vague as written and does not comport with the medical necessity standard described in the settlement agreement reached in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.307(a)(4) and client eligibility criteria. Advocacy maintains that the language used in this provision does not track the analogous provisions in the settlement agreement reached in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. The proposed amendment to subsection (a)(4) is only to update citations to administrative rules. Advocacy's comments do not address the citation updates and are beyond the scope of the proposed amendment. HHSC may not make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.307(a)(5) and client eligibility criteria. To be eligible for Medicaid private duty nursing services, recipients (Medicaid beneficiaries under the age of 21) must have an identified primary and an alternate caregiver. Advocacy maintains that this requirement violates federal law if the caregiver is required to perform any task that could be defined as a nursing task by the BNE.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(a)(1) and private duty nursing benefits and limitations. Advocacy maintains that the provision does not comport with definitions found in the settlement agreement reached in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the BNE concerning §363.311(a)(1)(B)(ii) and private duty nursing benefits and limitations. The BNE requests specifically that "quality care in the most appropriate environment" be amended to say "least restrictive" environment.

Response: HHSC appreciates the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(a)(2)(A) and (B) addressing private duty nursing benefits and limitations. Advocacy maintains that the provisions do not comport with the medical necessity standard and process for determining medical necessity found in the settlement agreement in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(a)(2)(C) addressing private duty nursing benefits and limitations. Advocacy maintains that the provision does not comport with the settlement agreement in *Alberto N., et al. v. Hawkins, et al*. Advocacy states that HHSC may not place limits on the amount of medically necessary private duty nursing services for recipients under the age of 21.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(b)(1) addressing private duty nursing benefits and limitations. Advocacy requests that this provision be re-written to define the terms in §363.311(b)(1)(A), (B), (C), and (D) and clarify that private duty nursing services are not authorized solely for the purposes of providing the care described in these sections, but that these types of care may be provided incidentally to the provision of private duty nursing services and that private duty nursing services may be provided in conjunction with other services providing these types of care and in settings in which these types of care are being provided.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the BNE concerning §363.311(b)(1)(E) and private duty nursing benefits and limitations. The BNE recommends that the section be updated to read: "individualized, comprehensive case management beyond

the service coordination required by the Texas Nursing Practice Act, Texas Occupations Code, §301.001 et seq."

Response: HHSC appreciates the comment made by the BNE and has replaced the reference to the Texas Civil Statutes with a reference to the Texas Occupations Code.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(b)(2) and private duty nursing benefits and limitations. Advocacy requests that the provision be re-written to describe HHSC's obligation to provide all medically necessary private duty nursing services. Advocacy further states that HHSC cannot negate this obligation by requiring a parent, foster parent, guardian, other family member or alternate caregiver to provide any portion of the beneficiary's daily care if the care could be defined as a nursing task.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.311(b)(3) related to private duty nursing benefits and limitations. Advocacy asks that this provision be re-written to reflect the prior authorization process described in the settlement agreement in *Alberto N. et al. v. Hawkins, et al*. Advocacy further contends that the term "modification" is not consistent with the federal statute and regulations concerning notice and fair hearings. Advocacy maintains that a reduction of requested private duty nursing hours is not a modification of a request but, rather, a denial of a request.

Response: HHSC appreciates Advocacy's comments. Advocacy's request that the entire paragraph be re-written, however, is beyond the scope of the current proposed amendments. HHSC could not make changes to the portions of the paragraph that HHSC is not proposing to amend in this rulemaking without violating the notice provision of the Administrative Procedures Act. Nonetheless, HHSC agrees with the comment concerning the word "modification" and has deleted the word from the rule.

Comment: HHSC received comments from the TAHC and KHHH concerning §363.311(b)(3) and private duty nursing benefits and limitations. TAHC and KHHH request specifically that the rule be amended to add the following language to subparagraph (I): "If the authorization decision is a denial or reduction of services the HHSC is responsible for reimbursing the requested hours provided by the provider during the authorization process period until such time as the provider is notified of the reduction or denial."

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the TAHC and KHHH related to §363.313(b), regarding plans of care. The commenters suggest that the requirement for home health agencies to meet the Medicare plan of care requirements is not necessary as home health agencies are not required to be Medicare certified to provide CCP services. The commenters further recommend the removal of the plan of care requirements in paragraphs (13) and (14) since they are already addressed on the Addendum to the Plan of Care.

Response: HHSC agrees with the recommendations but cannot make the changes to portions of the rule to which no amendment was proposed. HHSC will reconsider the recommendations when future amendments to §363.313 are proposed. No change was made to the rule in response to the comment.

Comment: HHSC received comments from the BNE related to §363.313(b)(1) and plans of care. The BNE requests that the rule be clarified by amending "all pertinent diagnoses" to read "all pertinent medical diagnoses." The BNE explains that this is necessary to avoid confusion between the physician's "medical plan of care" and a "nursing care plan."

Response: HHSC agrees with the recommendation but cannot make the changes to portions of the rule to which no amendment is being proposed. HHSC will reconsider the recommendation when future amendments to §363.313 are proposed. No change was made to the rule in response to the comment.

Comment: HHSC received comments from Advocacy, Inc., concerning §363.315(13) and (14). Advocacy recommends that these paragraphs be deleted. Advocacy contends that the provisions do not comport with the medical necessity standard and prior authorization process described in the settlement agreement in *Alberto N. et al. v. Hawkins, et. al*.

Response: HHSC acknowledges the comment and will consider it for future changes to the rule. However, HHSC is unable to make changes in response to comments on portions of a rule for which no amendment was proposed. Any such change would violate the notice requirement of the Administrative Procedures Act. No change was made to the rule in response to the comment.

The amendments are adopted under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

§363.303. Definitions.

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

(1) Alternate care giver--An individual identified by the primary care giver who agrees to be trained and to maintain the skills necessary to provide care competently for the client when the primary care giver is unable to do so. An alternate caregiver living with the client is not eligible for Medicaid (Title XIX) reimbursement for rendering care to the client.

(2) Client--An individual who is eligible to receive private duty nursing services under THSteps-CCP from a provider enrolled in the Texas Medicaid program.

(3) Commission--Health and Human Services Commission.

(4) Continuous--Ongoing throughout a 24-hour period.

(5) Delegated Nursing--Nursing services delegated by a Registered Nurse (RN) to a qualified aide in accordance with the nurse delegation rules of the Board of Nurse Examiners, 22 TAC Chapter 224 (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel for Clients with Acute Conditions or in Acute Care Environments) and 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(6) Dependent on technology--Requiring medical devices to compensate for the loss or impairment of a vital body function.

(7) Early and Periodic Screening, Diagnosis and Treatment-Comprehensive Care Program (EPSDT-CCP)--A mandatory Medicaid program for persons under 21 years of age who meet certain economic eligibility criteria. In Texas EPSDT-CCP is called the Texas Health Steps Comprehensive Care Program (THSteps-CCP).

(8) Home and Community Support Services Agency--A public or private agency or organization licensed by the Department of Human Services under 40 TAC Chapter 97 (relating to Home and Community Support Services Agencies) to provide licensed home health or licensed and certified home health services.

(9) Individualized comprehensive case management--A structured process by which the orderly provision of services and supports intended to facilitate individual well being and functioning is planned by a provider other than the service provider.

(10) Plan of care--A written regimen established and periodically reviewed by a physician in consultation with the home health agency staff or an enrolled independently practicing nurse provider which meets the plan of care standards at §363.313 of this title (relating to Plan of Care).

(11) Primary care giver--An individual(s) who has agreed to accept the responsibility for a client's routine daily care and the provision of food, shelter, clothing, health care, education, nurturing, and supervision. Primary care givers may include but are not limited to parents, foster parents, guardians, or other family members by birth or marriage. A primary care giver provides daily, uncompensated care for the client, and participates in the development and implementation of the client's plan of care. The primary care giver or other person living with the client is not eligible for Medicaid (Title XIX) reimbursement for rendering care to the client.

(12) Primary physician--A doctor of medicine or doctor of osteopathy (MD or DO) legally authorized to practice medicine or osteopathy at the time and place the service is provided, who in addition provides continuing medical care of the client and continuing medical supervision of the client's plan of care.

(13) Private duty nursing--Skilled nursing reimbursed hourly for clients who meet the THSteps-CCP medical necessity criteria and who require individualized, continuous skilled care beyond the level of skilled nursing visits normally authorized under §§354.1031 - 354.1041 of this title (relating to Medicaid Home Health Services). Skilled nursing services are provided by a registered nurse, licensed vocational nurse, or as a delegated service provided by a qualified aide through a licensed home and community support services agency, by a registered nurse enrolled as an independent provider, or by a licensed vocational nurse enrolled as an independent provider in the Texas Medicaid Program.

(14) Provider--A licensed home and community support services agency enrolled in the Texas Medicaid Program or an independently practicing registered nurse or licensed vocational nurse enrolled in the Texas Medicaid Program.

(15) Qualified Aide--an unlicensed person, in accordance with 40 TAC Chapter 94 (relating to Nurses Aides), 40 TAC Chapter 95 (relating to Medication Aides-Program Requirements), and 40 TAC Chapter 97 (relating to Licensing Standards for Home and Community Support Services Agencies). A qualified aide may be a home health aide, a medication aide, or a nurse aide.

(16) Respite--Services provided for the purpose of relief to the primary care giver.

(17) Skilled nursing--Services provided by a registered nurse or by a licensed vocational nurse, as authorized by Chapter 301 of the Occupations Code, regulating the practice of nursing, §301.002, Definitions and 22 TAC §217.11 (relating to Standards of Nursing Practice and 22 TAC §217.12 (relating to Unprofessional Conduct).

(18) Stable and predictable--A situation in which the client's clinical and behavioral status and nursing care needs are non-fluctuating and consistent, including settings where the client's deteriorating condition is expected.

(19) Texas Health Steps Comprehensive Care Program (THSteps-CCP)--A federal program known as EPSDT which is required of states by Medicaid for children under 21 years of age who meet certain economic criteria for eligibility. See definition for Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program (EPSDT-CCP).

§363.311. Private Duty Nursing Benefits and Limitations.

(a) Private duty nursing benefits include the following services.

(1) Direct skilled nursing care and caregiver training and education intended to:

(A) optimize client health status and outcomes; and

(B) promote and support family-centered, community-based care as a component of an array of service options by:

(i) preventing prolonged and/or frequent hospitalizations or institutionalization;

(ii) providing cost-effective, quality care in the most appropriate environment; and

(iii) providing training and education of caregivers.

(2) Amount and duration.

(A) The amount and duration of private duty nursing services requested will be evaluated based upon review of the following documentation:

(i) frequency of skilled nursing interventions;

(ii) complexity and intensity of the client's care;

(iii) stability and predictability of the client's condition; and

(iv) identified problems and goals.

(B) The amount of private duty nursing should be re-evaluated when:

(i) one or more of the client's problems documented in the plan of care are resolved;

(ii) one or more of the goals documented in the plan of care are met;

(iii) there is a change in the frequency of skilled nursing interventions, or the complexity and intensity of the client's care;

(iv) alternate resources for comparable care become available; or

(v) the primary care giver becomes able to meet more of the client's needs.

(C) 24-hour private duty nursing will be authorized only:

(i) for limited periods of time with defined end dates when medically necessary and appropriate based on the needs of the client;

(ii) for limited periods of time with defined end dates related to the medical needs of the primary care giver, only when the alternate care giver is not available; and

(iii) in the absence of both the primary care giver and the alternate caregiver, if another alternate person is designated who can legally make decisions on behalf of the client and who will reside in the client's home during the time 24-hour private duty nursing will be provided.

(b) Private duty nursing service limitations include the following:

(1) THSteps-CCP will not reimburse for private duty nursing services used for or intended to provide:

(A) respite care;

(B) child care;

(C) activities of daily living for the client;

(D) housekeeping service; or

(E) individualized, comprehensive case management beyond the service coordination required by the Texas Nursing Practice Act, Texas Occupations Code, §301.001 et seq.

(2) Private duty nursing shall neither replace parents or guardians as the primary care giver nor provide all the care that a client requires to live at home. Primary care givers remain responsible for a portion of a client's daily care, and private duty nursing is intended to support the care of the client living at home.

(3) Authorization of services.

(A) Authorization is required for payment of services.

(B) Only those services that are determined by HHSC or its designee to be medically necessary and appropriate will be reimbursed.

(C) No authorization for payment of private duty nursing services may be issued for a single service period exceeding six months. Specific authorizations may be limited to a time period less than the established maximum based on the stability and predictability of the client.

(D) The family will be notified in writing by HHSC or its designee of the approval, reduction, or denial of requested private duty nursing services.

(E) The provider will be notified in writing by the HHSC or its designee of the approval, reduction, or denial of requested private duty nursing services.

(F) Authorization requests for private duty nursing services must include the following:

(i) current HHSC authorization form, completed by the primary physician and provider;

(ii) plan of care, recommended, signed and dated by the client's primary physician. The primary physician reviews and revises the plan of care with each authorization, or more frequently as the physician deems necessary; and

(iii) current HHSC form, THSteps-CCP Private Duty Nursing Services Addendum to Plan of Care.

(G) If inadequate or incomplete information is provided, the provider will be requested to furnish additional documentation to enable HHSC to make a decision on the request.

(H) For authorization of extensions beyond the initial authorization period or revisions to an existing authorization, the provider must submit requests in writing. Required documentation for extending or revising authorization includes:

(i) current HHSC authorization form;

(ii) plan of care, recommended, signed and dated by the client's primary physician; and

(iii) current HHSC form, THSteps-CCP Private Duty Nursing Services Addendum to Plan of Care, signed and dated by the client's primary physician.

(I) During the authorization process, providers are required to deliver the requested services from the start of care date. Providers are responsible for a safe transition of services when the authorization decision is a denial or reduction in the private duty nursing services being delivered.

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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Texas Health and Human Services Commission
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Proposal publication date: October 14, 2005
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CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts the following amendments to Chapter 370, State Children's Health Insurance Program: §370.1, Purpose, §370.4, Definitions, §370.10, Duties and Responsibilities of the Commission, §370.20, Availability and Method of Initiating an Application, §370.21, Application Assistance, §370.22, Completion of Telephone Applications, §370.23, Contents of Completed Applications, §370.25, Incomplete Applications, §370.30, Applicant Rights, §370.42, Age Limits, §370.43, Citizenship and Residency, §370.44, Income and Assets, §370.45, Medicaid Eligibility, §370.46, Waiting Period, §370.49, Medicaid Referrals, §370.50, Matters Subject to Review and Reconsideration of Eligibility Denials and Temporary Enrollment, §370.51, Deadline and Method for Requesting Review of Initial Decision, §370.52, Disposition of Request for Review, §370.53, Request for Consideration by HHSC, §370.54, Temporary Enrollment

Pending Disposition of Review or Reconsideration, §370.301, CHIP Enrollment Packet, §370.303, Completion of Enrollment Process, §370.305, Children with Complex Special Health Care Needs (CCSHCN), §370.307, Continuous Enrollment Period, and §370.309, Incomplete or Missing Information. Sections 370.1, 370.10, 370.21, 370.22, 370.42 - 370.45, 370.50, 370.52, 370.53, 370.303, 370.305 and 370.307 are adopted without changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6527) and will not be republished. Sections 370.4, 370.20, 370.23, 370.25, 370.30, 370.46, 370.49, 370.51, 370.54, 370.301 and 370.309 are adopted with changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6527). The text of the rules will be republished.

HHSC also adopts the repeal of the following rules: §370.2, Scope, §370.3, Non-Entitlement, §370.31, Applicant Responsibilities, §370.40, Determining Eligibility, and §370.48, Completion of Application Process. In each case, the rule proposed for repeal has been incorporated in another rule. Section 370.24, Electronic Entry of Application Information, is repealed as it includes obsolete information. The repeals are adopted without changes to the proposal as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6529) and will not be republished.

Amended §370.1 consolidates the information currently contained in §§370.1, 370.2, and 370.3. Sections 370.2 and 370.3 will, therefore, be deleted. The list of definitions in §370.4 is revised: to include terms related to request for reviews or reconsiderations, to specify the age of a sibling included in the Budget Group, to exclude student income from consideration in determining eligibility; to delete the definitions that are no longer relevant. The definitions of Alien, Child, Cost-Sharing, Day, and Designee are added. Since implementation of CHIP has been accomplished, the references in §370.10 to implementation are obsolete and are, therefore, deleted. Basic application information appears in §§370.20, 370.21, and 370.22 including information concerning establishing a file date. In §370.23 an exception to the requirement for a social security number is added for newborns and an obsolete reference to 90-day prior insurance coverage is deleted. Changes are made to the process and time frames outlined in §370.25 in an effort to expedite the application process. Those changes include shortening the deadline for HHSC action on incomplete applications from 90 to 45 days.

The information in §370.31 is consolidated into §370.30. Wording in §370.42 is clarified slightly. In §370.43 the provision concerning temporary absence is amended to provide a reasonable time limit for such an absence, i.e., not longer than 12 months. Changes in §370.44 include deleting the deduction for business expenses from self-employment income, adding interest income to the list of countable income components, and including Office of Attorney General data to the list of deduction verification sources. Section 370.45 is expanded by consolidating revised information from §370.48 with §370.45. An obsolete reference to 90-day prior insurance coverage is deleted in §370.46. Special procedures for moving pregnant CHIP members from CHIP to Medicaid are added to §370.49. Wording in §§370.50, 370.51, 370.52, 370.53 and 370.54 is updated.

The information in §370.301 is clarified, as is §370.303 and §370.305. Exceptions to continuous enrollment are added to §370.307. A terminology change throughout the chapter replaced the term "TexCare" with HHSC, the Commission, or designee. References to TDHS were deleted.

The following repeals are adopted by HHSC: §370.2, Scope, §370.3, Non-Entitlement, §370.31, Applicant Responsibilities, §370.40, Determining Eligibility, and §370.48, Completion of Application Process. In each case, the rule adopted for repeal has been incorporated in another rule. Section 370.24, Electronic Entry of Application Information, is repealed as it includes obsolete information. The amended rules include changes to update terminology and to reorganize content. A number of changes are being made to align CHIP more closely with Medicaid. This should facilitate the ongoing HHSC project to integrate eligibility determinations, allowing a single point of application to determine eligibility for multiple assistance programs.

Minor grammatical changes were made to §§370.4, 370.25, 370.46, 370.54 and 370.309.

HHSC received written comments on the proposed rule from a representative of the Center for Public Policy Priorities (CPPP). A summary of the comments and the HHSC's responses follow. The HHSC Council voted to support the proposal at its September 13, 2005 meeting.

The Center for Public Policy Priorities (CPPP) submitted written comments on the proposed rules during the comment period as follows:

CPPP asked why a change in cost-sharing status is no longer treated as an action. §370.4(1)

Response: HHSC disagrees with the comment and has not changed the rule as proposed. A change in cost sharing status is not an action under federal law. *See* 42 CFR §457.1130(a). Moreover, changes a household reports during the continuous enrollment period that would increase the cost-sharing obligation, for example an increase in income and a resulting increase in the FPL, are disregarded. The increase is considered only when eligibility is redetermined. For this reason, only a reported change that decreases the cost-sharing obligation may be applied during a continuous enrollment period (in which case the household is notified of the decreased obligation).

CPPP asked how will an application submitted via the internet include a signature. §370.20(b)(1)

Response: HHSC agrees with the comment that the rule as proposed lacked clarity. An electronic signature is acceptable for the purpose of establishing the file date; a written signature is also required and can be later submitted. HHSC has made changes to the rule for increased clarity.

CPPP suggested the term "pre-populated" requires a definition. §370.20(b)(2)(B)

Response: HHSC agrees this term was not defined in the rule proposal, and because it may be confusing, the term has been removed from the rule.

CPPP asked where has information concerning health insurance status been moved to as this information is needed for both CHIP eligibility and the Health Insurance Premium Program. §370.23(2)(H)

Response: HHSC agrees that information concerning health insurance status needs to be included in the contents of an application, and HHSC has changed the rule accordingly.

CPPP asked why the deadline for providing missing information is not specified. §370.25(a)

Response: HHSC disagrees with the comment and has not changed the rule as proposed. The rule provides that the deadline is stated in the notice that requests the missing information. The deadline will also be stated in the CHIP business rules and CHIP policy.

CPPP commented that the 60 day time-frame to reopen a denied application should begin on the date of the eligibility decision instead of on the file date of the denied application. §370.25(b)(3)

Response: HHSC disagrees with the comment and has not changed the rule as proposed. Consistent with an integrated eligibility system, the 60-day timeframe is to align CHIP policy with Medicaid policy under integrated eligibility.

CPPP commented that the term "file-date" is not defined. §370.25(b)(3)

Response: HHSC disagrees with the comment. The term "file date" is defined by the language of rule §370.20.

CPPP requested the word "it's" be changed to "its." §370.30(a)(3)

Response: HHSC agrees with the comment and has changed the rule accordingly.

CPPP commented that §370.49 is not clear and should be re-written. §370.49

Response: HHSC agrees with the comment and has made changes to the rule language for increased clarity.

CPPP asked why rule language relating to an increase in the budget group's cost-sharing obligation was being deleted from the list of actions that could be reviewed and reconsidered. §370.50(b)(3)

Response: HHSC disagrees with the comment and has not changed the rule as proposed. A change in cost sharing status is not an action under federal law. See 42 CFR §457.1130(a). Moreover, changes a household reports during the continuous enrollment period that would increase the cost-sharing obligation, for example an increase in income and a resulting increase in the FPL, are disregarded. The increase is considered only when eligibility is redetermined. For this reason, only a reported change that decreases the cost-sharing obligation may be applied during a continuous enrollment period (in which case the household is notified of the decreased obligation).

CPPP suggested that language concerning the timeframe for an applicant's request for review should be changed from the date of action to the date of notice of the action. §370.51

Response: HHSC agrees with the comment and has changed the rule language accordingly.

CPPP commented that the rule language should be changed to be consistent with the language used in rule §370.321. §370.301

Response: HHSC agrees with the comment and has changed the rule language accordingly.

SUBCHAPTER A. PROGRAM ADMINISTRATION

1 TAC §§370.1, 370.4, 370.10

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.4. Definitions.

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

(1) Action--

(A) Denial of CHIP eligibility;

(B) Disenrollment from CHIP:

(C) The failure of the Health and Human Services Commission (HHSC) or its designee to act within 45 days on an Applicant's request for CHIP eligibility determination.

(D) "Action" does not include expiration of a time-limited service.

(2) Alien--A person who is not a native born or naturalized citizen of the United States of America.

(3) Applicant--An individual who lives with the child and applies for health care coverage on behalf of the child. An applicant can only be:

(A) a child's parent, whether biological or adoptive;

(B) a child's grandparent, relative or other adult who provides care for the child;

(C) a minor not living with an adult relative applying for himself/herself; or

(D) a child's step-parent.

(4) Application--The standardized, written document that an applicant must complete to apply for health care coverage through CHIP.

(5) Budget Group--The group of individuals who live in the home with the child for whom an application for health care coverage is submitted and whose information is used to establish family size and calculate income. Individuals receiving Supplemental Security Income payments are not included in the Budget Group. Budget Group members include only:

(A) the child seeking health coverage;

(B) the child's siblings under age 19 who live with the child (biological, adopted, or step-siblings);

(C) the child's biological or adoptive parents;

(D) the child's step-parent;

(E) the child's spouse, if married, and they have children.

(6) Child--An individual under the age of 19.

(7) Children's Health Insurance Program or CHIP or Program--The Texas State Children's Health Insurance Program established under Title XXI of the federal Social Security Act (42 U.S.C. §§1397aa, et seq.) and chapters 62 and 63, Health and Safety Code.

(8) Children's Health Insurance Program Service Area or CSA--One of the designated areas in the state that is served by one or more of the CHIP Health Plans or the CHIP Exclusive Provider Organization.

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

(10) Cost Sharing--Any enrollment fees or co-payments the enrollee is responsible for paying.

(11) Countable Income--For the month of receipt any type of payment that is a regular and predictable gain or a benefit to a Budget Group that is not specifically exempted. Regular and predictable income is income received in one month that is either likely to be received in the next month and was received on a regular and predictable basis in past months. It does not include income that was received on an irregular and unpredictable basis in past months, or is received by the child or sibling member of the Budget Group who is under age 18 and enrolled in school fulltime, or in school part-time and working less than 30 hours per week.

(12) Countable Liquid Assets--Personal Property that is cash or that an Applicant can readily convert to cash that is used in calculating a child's eligibility for CHIP.

(A) Countable liquid assets include the balances, less income received or deposited in the current month of the following:

(i) cash on hand;

(ii) cash in the bank;

(iii) cash in a Temporary Assistance to Needy Families (TANF) Electronic Benefit Transfer account;

(iv) money remaining from the sale of a homestead; and

(v) accessible trust funds.

(B) Countable Liquid Assets do not include:

(i) any resource exempted by federal law from consideration for purposes of determining eligibility or benefit levels for any federally funded needs-based program, such as TANF and Assets for Independence Act (AFIA) Individual Development Accounts; or

(ii) any financial instrument subject to rules limiting use of its proceeds, including penalties and/or tax liabilities incurred for early liquidation, such as individual retirement accounts and Keogh plans; or

(iii) the cash value of any insurance policy; or

(iv) Internal Revenue Code 529 qualified college savings program accounts, such as Texas Guaranteed Tuition Plan accounts; or

(v) funds received as educational grants or scholarships.

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

(14) Designee--A contractor of HHSC authorized to act on behalf of HHSC under this chapter.

(15) Enrollment--The process by which a child determined to be eligible for CHIP is enrolled in a CHIP health plan serving the CHIP Service Area in which the child resides.

(16) Exempt Income--Income received by the Budget Group that is not counted in determining income eligibility.

(17) FPL--Federal Poverty Level Income Guidelines.

(18) Gross Budget Group Income--Monthly Countable Income before any payroll deductions.

(19) Health Plan--A licensed health maintenance organization, indemnity carrier, or authorized exclusive provider organization that contracts with the Commission to provide health benefits coverage to CHIP members.

(20) Household--The Budget Group plus any SSI recipient who is the child's:

(A) sibling who lives with the child (biological, adopted, or step-sibling);

(B) biological or adoptive parent; or

(C) step-parent.

(21) Member--A child enrolled in a CHIP Health Plan.

(22) Qualified Alien--An alien who, at the time of application, satisfies the criteria established under 8 U.S.C. §1641(b).

(23) SSI--Supplemental Security Income.

(24) State Fiscal Year--The 12-month period beginning September 1 of each calendar year and ending August 31 of the following calendar year.

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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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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1 TAC §370.2, §370.3

The repeals are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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SUBCHAPTER B. APPLICATION SCREENING, REFERRAL AND PROCESSING

DIVISION 1. APPLICATION PROCESSES

1 TAC §§370.20 - 370.23, 370.25

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.20. Application Availability and File Date.

(a) The application may be obtained via the following methods:

(1) in writing using an Application obtained via telephone, an internet request, or other means;

(2) by computer using printable Applications or an online application process available over the Internet;

(3) by telephone through the State's toll-free telephone number or through TDD; or

(4) in person, by visiting an HHSC authorized agent.

(b) Establishing a file date

(1) For applications received via fax or mail, the file date is the date HHSC, DADS or an HHSC agent receives an application that contains, at a minimum, the applicant's name, address, and signature. An HHSC agent means HHSC's designee or an HHSC contractor that is authorized to receive applications for HHSC.

(2) For applications received via telephone or internet, the file date is established in one of the following two ways:

(A) The date all information required under §370.23 of this title (relating to Application Contents) is provided except for a written signature, as long as the applicant provides a written signature by the 39th day.

(B) The date the applicant provides, at a minimum, the applicant's name and address, as long as a written signature is provided within 10 calendar days of the date the name and address is provided. HHSC's designee sends the applicant an application requesting a signature, enclosing a letter that explains the file date policy. If it is not returned by the 10th day, the vendor may deny eligibility on the basis that no valid application has been received. If a signature is not provided until after the 10-day deadline, the file date is the date the signature is received.

§370.23. Application Contents.

In order to be considered complete, an Application must include the following:

(1) Information concerning the Applicant, consisting of:

(A) The Applicant's full name;

(B) The Applicant's home address (including city, county, state and zip code); and

(C) The Applicant's mailing address (including city, county, state, and zip code) if different from the home address;

(2) Information concerning each child for whom an Application is filed, consisting of:

(A) The child's full name;

(B) A description of the Applicant's relationship to the child;

(C) The child's date of birth;

(D) The child's Social Security Number or proof of application to the Social Security Administration to receive a social security number. A social security number is not required for newborns until six months after birth or the next eligibility determination, whichever occurs earlier;

(E) The child's citizenship or immigration status;

(F) The full name of the child's mother or father; and

(G) If the child has income reported on the Application, the child's school status.

(H) Confirmation by the applicant whether the child currently has health insurance, or had health insurance within 90 days prior to the date the application is being completed for Medicaid.

(3) Information concerning the Budget Group, including:

(A) income, the name of the person receiving the income, the employer or source of the income, the amount received, and the frequency of receipt;

(B) whether anyone in the Budget Group is pregnant;

(C) whether anyone in the Budget Group pays for child or disabled adult care to permit a budget group member to work or receive training; (This information is not used to determine CHIP income eligibility but is used to screen for Medicaid eligibility);

(D) whether anyone in the Budget Group pays child support and/or alimony to anyone outside the home; (This information is not used to determine CHIP eligibility but is used to screen for Medicaid eligibility); and

(E) Countable assets.

(4) the Applicant's signature and the date of signature; and

(5) required verification of income, immigration status, and income deductions.

§370.25. Missing Information.

(a) HHSC or its designee enters incomplete applications into the State's database and sends a follow-up letter to the Applicant, requesting the missing information and stating a deadline by which it must be provided.

(b) Disposition.

(1) HHSC will certify or deny an Application no later than 45 calendar days from the application file date.

(2) If missing information is not provided by the deadline as explained in subsection (a) of this section, HHSC may deny the application by the deadline.

(3) An application that is denied based on missing information may be reopened, upon request, within 60 calendar days of the file date.

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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DIVISION 1. TEXCARE PARTNERSHIP APPLICATION PROCESS

1 TAC §370.24

The repeal is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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DIVISION 2. APPLICANT RIGHTS AND RESPONSIBILITIES REGARDING APPLICATION AND ELIGIBILITY

1 TAC §370.30

The amendment is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.30. Applicant Rights and Responsibilities.

(a) An Applicant has the right to:

(1) be treated fairly and equally regardless of race, color, religion, national origin, gender, political beliefs, or disability;

(2) request a review of an action; and

(3) file a complaint with HHSC or its designee within 30 working days from the date of an incident.

(b) An Applicant is responsible for:

(1) correctly and truthfully completing the Application regardless of where the Application was obtained;

(2) submitting the completed, signed Application; and

(3) providing all required verifications.

(c) If an Applicant intentionally misrepresents information on an Application to receive a program benefit, HHSC may terminate eligibility. The Applicant:

(1) is responsible for reimbursing the State for the cost of improperly paid benefits; and

(2) may be subject to prosecution under the Texas Penal Code.

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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1 TAC §370.31

The repeal is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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DIVISION 3. ELIGIBILITY DETERMINATION

1 TAC §370.40

The repeal is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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DIVISION 4. ELIGIBILITY CRITERIA

1 TAC §§370.42 - 370.46, 370.49

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.46. Waiting Period.

(a) The waiting period is a delay in the start of health care coverage and applies to a child determined to be CHIP eligible, and extends for a period of 90-days after:

(1) the first day of the month in which the child is determined eligible for CHIP, if the day of eligibility is on or before the 15th day of the month; or

(2) the first day of the month after which the child is determined eligible for CHIP, if the day of eligibility is after the 15th day of the month.

(b) Health Insurance, for purposes of this section, is not workers compensation or personal injury protection under an automobile insurance policy.

(c) The 90-day waiting period specified in subsection (a) of this section does not apply to a child under the following circumstances:

(1) The child's Budget Group lost health insurance coverage for the child because:

(A) The employment of a member of the budget group was terminated due to:

(i) a layoff;

(ii) a reduction-in-force; or

(iii) a business closure;

(B) Insurance benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. No. 99-272) terminated;

(C) The marital status of a parent of the child has changed;

(D) The child's Medicaid eligibility was terminated because:

(i) the Budget Group's earnings or resources exceed allowable amounts for Medicaid eligibility; or

(ii) the child reached an age for which Medicaid benefits are no longer available; or

(E) Other circumstances similar to those described in this subparagraph that result in an involuntary loss of insurance coverage;

(2) The child had health insurance coverage provided by ERS, or CHIP in another state;

(3) The child's health insurance coverage costs more than 10 percent of the Budget Group's gross monthly income;

(4) The child has access to group-based health insurance coverage and will participate in the premium payment reimbursement program administered by the Commission; or

(5) The Commission grants an exception to the waiting period under subsection (d) of this section.

(d) The Commission may grant an exception to the 90-day waiting period prescribed by this section if it determines good cause exists to grant an exception and either:

(1) An Applicant requests an exception:

(A) Prior to submission of an Application;

(B) At the time of Application; or

(C) As part of a request for review or reconsideration of a denial of eligibility under §370.52 or §370.54 of this chapter; or

(2) The Commission reaches a determination that good cause exists based either on information provided by an Applicant or information otherwise obtained by the Commission.

§370.49. Medicaid Referrals for Pregnant CHIP Members.

Pregnant CHIP members may be referred for a Medicaid eligibility determination. Those pregnant CHIP members who are determined to be Medicaid eligible will be disenrolled from CHIP. Medicaid coverage will be coordinated to begin when CHIP enrollment ends to avoid gaps in health care coverage. In the event HHSC or its designee remains unaware of a member's pregnancy until delivery, the delivery will be covered by CHIP. HHSC or it's designee will set the mother's eligibility expiration date at the later of

(1) the end of the second month following the month of the baby's birth or

(2) the date when the mother's eligibility would have expired.

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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1 TAC §370.48

The repeal is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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DIVISION 5. REVIEW AND RECONSIDERATION OF ELIGIBILITY DENIALS AND TEMPORARY ENROLLMENT

1 TAC §§370.50 - 370.54

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.51. Deadline and Method for Requesting Review.

An applicant may request a review by contacting HHSC's designee in writing within 30 working days from the notice of the action.

§370.54. Temporary Enrollment Pending Disposition of Review or Reconsideration.

(a) There is no retroactive enrollment in CHIP.

(b) If HHSC determines that an applicants request for review indicates the action was in error, HHSC may approve temporary enrollment of the child pending completion of the review and reconsideration by HHSC.

(c) A child will remain enrolled until the review and any HHSC reconsideration is complete.

(d) If the review/reconsideration upholds the action, the child is disenrolled as of the next cut-off date.

(e) Temporary enrollment for a child on the basis of a review is limited to only once every 6 months.

(f) If a child who is temporarily enrolled under this section ultimately is determined ineligible for CHIP, no repayment for health care costs during the period of temporary enrollment will be sought by HHSC's or its designee.

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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Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER C. ENROLLMENT, DISENROLLMENT, AND RENEWAL OF MEMBERSHIP

DIVISION 1. ENROLLMENT

1 TAC §§370.301, 370.303, 370.305, 370.307, 370.309

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

§370.301. CHIP Enrollment Packet.

Within 5 business days of determining a child is CHIP eligible, HHSC's designee must send the Applicant a CHIP enrollment packet containing:

(1) an explanation of CHIP benefits;

(2) information about the value-added services provided by Health Plans in areas where there is a choice of Health Plans;

(3) an enrollment form and instructions for completing the form;

(4) a provider directory for each health plan available in the Applicant's CHIP Service Area (CSA);

(5) a CHIP member guide;

(6) cost-sharing information specific to the Budget Group's percentage of Federal Poverty Level (FPL), which includes:

(A) the enrollment fee, if any;

(B) a schedule of co-payments, if any; and

(C) information about the cost-sharing cap.

(7) the process for requesting review of an action; and

(8) information specifying the earliest date coverage can begin and the latest date the completed enrollment form must be received by HHSC or its designee to ensure enrollment on the first day of the appropriate month; and

(9) information summarizing the importance of appropriate Health Plan and Primary Care Provider (PCP) choices for Applicants who live in CSAs covered by more than one Health Plan.

§370.309. Incomplete or Missing Information.

(a) HHSC or its designee sends a reminder notice to Applicants who have failed to:

(1) sign the enrollment form;

(2) return the enrollment form; or

(3) complete the enrollment form properly.

(b) If the Applicant does not respond to the initial reminder notice, HHSC or its designee will send a second reminder notice.

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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DIVISION 2. COST-SHARING REQUIREMENTS

The Health and Human Services Commission (HHSC) adopts the amendments to §370.321, Cost-Sharing Requirements and Exemptions, and §370.325, Annual Cost-Sharing Cap and the repeal of §370.323, Cost Sharing Exemptions, without changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6538) and will not be republished.

The amended rules establish an enrollment fee to replace monthly premium payments for the Children's Health Insurance Program (CHIP). This provides for a single payment at each certification, rather than multiple monthly payments over the period of eligibility. Additionally, cost-sharing cap percentages are updated to reflect current caps for each six-month CHIP coverage period. Other changes update terminology and reorganize content.

The rule at 1 TAC §370.321 is amended to replace the CHIP monthly premium with an enrollment fee and incorporates the cost-sharing exemption information in §370.323. Section 370.323, Cost-Sharing Exemptions, is repealed since the information in this rule is included in §370.321. Section 370.325 reflects the current cost-sharing caps for each six-month CHIP coverage period.

HHSC did not receive any comments regarding the proposed rules during the comment period, which included a public hearing on November 1, 2005.

1 TAC §370.321, §370.325

The amendments are adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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1 TAC §370.323

The repeal is adopted under the authority granted to HHSC by Government Code, §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties and the Texas Health and Safety Code, §62.051(d), which directs HHSC to adopt rules as necessary to implement the Children's Health Insurance Program.

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

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

4 TAC §40.5

The Texas Animal Health Commission adopts amendments to Chapter 40, which is entitled "Chronic Wasting Disease" ("CWD"). The adopted amendments create a new §40.5, entitled "monitoring requirement for elk". New §40.5 is adopted without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5889) and will not be republished.

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 for animal identification, recordkeeping and reporting.

CWD is a disease that affects certain susceptible cervid species including white tail deer and elk. In Texas white tail deer are considered indigenous to the state and are under the regulatory jurisdiction of Texas Parks and Wildlife. However, elk are not indigenous to this state and are classified as exotic livestock and fall under the regulatory jurisdiction of the Commission. Captive white-tail deer are under a surveillance program for CWD at the direction of Texas Parks and Wildlife. This proposed rule will

provide a mechanism to ensure that a surveillance system for elk is in place.

The adopted 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 free ranging elk. The requirement will provide a necessary and valuable tool for disease surveillance that 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 states in the proposal that both the buyer and seller have equal reporting responsibility to ensure compliance. However, based on a review of comments this subsection could be amended 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 the national program develops and evolves changes and additions to this rule maybe necessary to avoid conflicts with the national standard. The rule also contains a recommendation that elk located within the state that die of natural or unnatural causes 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.

The commission received three comment letters and the Commission provides a response below but because there was no change the rules will not be republished. Two of the comment letters were from representatives of the Exotic Wildlife Association and both of these comments expressed support for the package as proposed. The third comment letter was from the Texas Deer Association (TDA) which posed the question of "can a rule ensure that a disease surveillance system is in place if there is not a requirement to test for that disease?" The TDA comments go on to state that "[t]esting is the foundation of any surveillance system" and TDA wants the agency to require mandatory testing of all elk in the state.

The Commission appreciates the response, but would state that there are a number of reasons why the Commission is not supportive of that at this time for the following reasons: First, and foremost it is important to recognize that there is no national CWD program in place with appropriate requirements and standards. The national program standard is still under development by the United States Department of Agriculture and we await the implementation of the national program prior to implementing any type mandatory testing program. Secondly, the Commission currently provides a voluntary CWD Monitoring Program which includes testing requirements for participation. It is important to remember that it is in the best interest of the industry as a whole to participate in this voluntary monitoring program because it provides a level of assurance that the herd is not affected with animals which have CWD which improves the marketability of animals from the herd and improves their ability to move interstate and market them, . Finally, and perhaps most importantly, results of meetings with members of both EWA and TDA--one meeting hosted by legislators and one meeting hosted by a TAHC commissioner--there was general agreement that the initial CWD surveillance effort in elk would be voluntary, as was the initial CWD surveillance effort in white tail deer. The rule as proposed captures the elements agreed to during these two important meetings.

The commission believes, for reasons stated above, that for now the most appropriate approach to CWD surveillance in elk is through voluntary participation by owners of elk. If a sufficient level of surveillance cannot be achieved through this approach, the Commission will revisit the issue.

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.

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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Gene Snelson
General Counsel
Texas Animal Health Commission
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CHAPTER 43. TUBERCULOSIS

The Texas Animal Health Commission (commission) adopts the repeal of Chapter 43, Subchapter A, §§43.1 - 43.3 and new §§43.1 - 43.5, concerning "Tuberculosis." The repeal of §§43.1 - 43.3 and new §43.2 and §43.5 are adopted without changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5119) and will not be republished. Section 43.1 is adopted with a minor gramatical correction to paragraph (26). Sections 43.3 and 43.4 are also adopted with changes to the proposed text as published in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5119). The text of the rules will be republished.

USDA adopted new Uniform Methods and Rules (UM&R) on January 20, 2005. They were established for the maintenance of tuberculosis-free accredited herds of cattle and bison and provide the minimum standards for the maintenance of a State's or zone status in the U.S. Department of Agriculture's (USDA) tuberculosis eradication program. These minimum standards do not preclude the adoption of more stringent standards by any State or zone. By statute the commission may cooperate with the USDA in a cooperative program for the eradication of tuberculosis among cattle and the establishment of areas based on prevalence of the disease. As part of a cooperative program, the commission or its representative may examine, test, and retest any cattle in this state as necessary to maintain an area of this state as a tuberculosis modified accredited advanced area or to establish or maintain each area of this state as a tuberculosis free area under the uniform methods and rules of the United States Department of Agriculture and the rules of the commission. The commission or its representative may test or retest all or part of a herd of cattle at intervals considered necessary or advisable by the commission to control and eliminate tuberculosis in animals.

The current rules for Tuberculosis were primarily located in Section 43.1 and entitled "Cattle." The Commission is repealing the existing rule for Tuberculosis in Cattle as found in Subchapter A of this chapter and proposing the new requirements in an expanded format to better place the rules into more manageable Sections. The rules as proposed contain five (5) sections. The five sections are organized as follows:

Section 43.1, Definition; This contains definitions for terms that are used in Subchapter A. The commission is including some of the definitions from the CFR that will help in explaining the application of the requirements. The Commission also provided definitions of specific terms used by the Commission in establishing specific state standards.

Section 43.2, General Requirements; This section contains the following subsections (a) Tuberculosis: This section provides that the Subchapter is established for the prevention, surveillance, control, management and eradication of bovine tuberculosis in Texas.

(b) Movement Restrictions: This section provides that whenever the Commission has reason to believe that any livestock or exotic livestock have been exposed to or is infected with tuberculosis, that premises and all livestock and exotic livestock thereon shall have movement restricted, using either a "hold order" or "quarantine," and subject to a determination or results of tuberculosis test.

(c) Official Tests: This section provides that all official tuberculosis's tests shall be conducted by a designated personnel employed by the Commission, or the United States Department of Agriculture (USDA) or by an accredited veterinarian designated to perform approved tuberculosis test by the Executive Director.

(d) Reporting: This section provides that all official tests shall be reported on VS Form 6-22 and continuation sheet VS Form 6-22B and mailed to the Commission within seven days of reading the results.

(e) Identification. This section provides that all animals tested must be permanently individually identified by an official identification device, an official registration tattoo or an official registration brand as specifically recognized or authorized by the Commission.

(f) Tuberculin Test Interpretation, Classification, and Reporting Requirements. This section provides for how a veterinarian administers a tuberculin test and the reporting to the Commission.

(g) Disposition of Suspects and Reactors This section provides how suspects and reactors to the tuberculin test are handled.

(h) Requirements on Dealer Recordkeeping: This section provides that any dealer must maintain records of livestock and exotic livestock that are purchased or sold.

(i) Slaughter Plant Collections and Submissions: This section provides that slaughter plants for cattle are required to collect and submit diagnostic specimens for the purpose of testing for tuberculosis as directed by state or federal inspection personnel.

(j) Retesting and release of movement restrictions. This section provides for the handling of retesting and release of movement restrictions are handled.

(k) This section provides that a person may protest an initial test or a herd plan for a herd classified as increased risk for Tuberculosis

(l) Tuberculosis accredited herd. This section provides that a herd must meet the standards of the Uniform Methods and Rules (UM&R) as provided in Part IV.

(m) Interstate Movement Requirements: This section provides that the Interstate Movement Requirements are found in Chapter 51, Section 51.8 of this Title.

Section 43.3, Approved Feedlots/Approved Pens: This section provides the standards and procedures for approving a feedlot or pen for feeding restricted livestock or exotic livestock.

Section 43.4, Increased Risk Herds or Animals This section provides the standards for the testing of increased-risk herds.

Section 43.5, Indemnification: This section provides the procedures and standards for obtaining indemnity.

The commission received one comment letter and the Commission provides a response below and changes the following sections, §43.3(c)(3) and §43.4(a)(4)(B), for the reason provided in the response to comments. The Commission received one comment letter from the Texas Cattle Feeders Association. They are opposed to vacating, cleaning and disinfecting approved pens and approved feedyards. These requirements for non-approved pens, non-approved feedyards should be on a case by case basis as determined by the DTE. There will likely be instances where these requirements are not appropriate for non-approved pens given the specific circumstances. The two sections implicated in the comment are found in §43.3(c)(3) and §43.4(a)(4)(B).

In response to the comment the commission would note that this issue was raised at the most recent meeting of the United States Animal Health Association (USAHA) in November of this year. At that meeting their Committee on Tuberculosis meet where they considered and approved a recommendation to USDA to change the wording of their Tuberculosis requirements to exempt approved feedlots and approved pens from the requirement to hold pens vacant for 30 days when they are confirmed to have held tuberculosis infected cattle. Because of this Resolution to change the federal Tuberculosis program, the commission believes it is appropriate to modify the aforementioned Sections to reflect that impending change.

Section 43.3(c)(3) is rewritten to provide as follows: Biosecurity standards: Approved facilities may not be required to be cleaned and disinfected between groups of cattle unless specifically directed by the DTE to clean and disinfect all or portions of the pen or other parts of the facility. Additionally, approved facilities shall not be required to vacate pens, that have contained tuberculosis infected animals, for thirty (30) days unless specifically required by the DTE to vacate the pens.

Section 43.4(a)(4)(B) is rewritten to provide as follows: Tracebacks to a feedlot: Except for approved feedlots and approved pens, livestock and exotic livestock in feedlots known to be exposed to tuberculosis shall have movement restrictions in place and exposed animals shall be moved under permit for direct shipment to slaughter. When an affected lot originates from a non approved pen or feedyard, the pen must be cleaned and disinfected as directed by the DTE. In addition, this pen must be vacated for 30 days or as directed by the DTE. When an affected lot originates from an approved pen or feedlot, the requirements for cleaning and disinfection shall be according to the provisions specified in §43.3(c)(3) of this Chapter.

SUBCHAPTER A. CATTLE

4 TAC §§43.1 - 43.3

STATUTORY AUTHORITY

The repeals are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. 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. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

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

Chapter 162 has statutory authority for "Tuberculosis Control." Section 162.002, entitled "Cooperative Program," which provides that the commission may cooperate with USDA for the eradication of tuberculosis. Section 162.003, entitled "Testing," which authorizes the commission by rule to prescribe the method and system of testing cattle for tuberculosis. Section 162.004, entitled "Certificate of Test or Vaccination of Cattle or Other Animal," which provides for required test information. Section 162.005, entitled "Identification of Cattle," provides for identification and reporting requirements for positive cattle. Section 162.006, entitled "Quarantine," and provides the commission to issue quarantines. Section 162.010, entitled "Duty of Owner or Caretaker to Assist," requires an owner or caretaker of cattle to submit the cattle to be tested.

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

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SUBCHAPTER A. CATTLE AND BISON

4 TAC §§43.1 - 43.5

STATUTORY AUTHORITY

The new rules are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. 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. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

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

Chapter 162 has statutory authority for "Tuberculosis Control". Section 162.002, entitled "Cooperative Program," which provides that the commission may cooperate with USDA for the eradication of tuberculosis. Section 162.003, entitled "Testing," which authorizes the commission by rule to prescribe the method and system of testing cattle for tuberculosis. Section 162.004, entitled "Certificate of Test or Vaccination of Cattle or Other Animal," which provides for required test information. Section 162.005, entitled "Identification of Cattle," provides for identification and reporting requirements for positive cattle. Section 162.006, entitled "Quarantine," and provides the commission to issue quarantines. Section 162.010, entitled "Duty of Owner or Caretaker to Assist," requires an owner or caretaker of cattle to submit the cattle to be tested.

§43.1. Definitions.

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

(1) Accredited Veterinarian--A veterinarian jointly approved by the Executive Director of the Commission and the Administrator of APHIS, to perform functions required by cooperative State-Federal animal disease control and eradication programs.

(2) Adjacent herds--A herd of livestock or exotic livestock that occupies a premises that lies within one mile of "an affected herd."

(3) Affected herd--A herd of livestock or exotic livestock in which there is strong and substantial evidence that *Mycobacterium bovis* exists. This evidence should include, but is not limited to, any of the following: histopathology, polymerase chain reaction (PCR) assay, bacterial isolation or detection, testing data, or epidemiologic evidence such as contact with known sources of infection.

(4) Approved feedyard/approved pens--A confined area, either the entire feedyard or designated pens within the feedyard, jointly approved by the Executive Director of the Commission and the Administrator of APHIS for feeding of restricted livestock and exotic livestock. Biosecurity standards, to include requirements for geographic separation, shall be enforced to prevent potential spread of diseases to other livestock on the premises and adjacent premises. Procedures for accountability of inventory, animal identification, and movement control shall be enforced to ensure that restricted livestock and exotic livestock remain within approved facilities until verification of slaughter.

(5) Approved livestock facility--A stockyard, livestock market, buying station, concentration point, or any other premises under State or Federal veterinary supervision where livestock are assembled and that has been approved under Title 9, Code of Federal Regulations (9 CFR), Section 71.20.

(6) Approved slaughtering establishment--A slaughtering establishment operating under the provisions of the Federal Meat Inspection Act (21 U.S.C. 601 et seq.), or a State-inspected slaughtering establishment that has inspection by a State inspector at the time of slaughter.

(7) Bovine Tuberculosis Eradication--Uniform Methods and Rules (UM&R)--The minimum standards adopted and approved by the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection, for the maintenance of tuberculosis-free accredited herds of cattle and bison, and the maintenance of State or zone status in the U.S. Department of Agriculture's (USDA) tuberculosis eradication program.

(8) Certificate--An official document for movement of livestock, including a certificate of veterinary inspection, or other approved document, issued by an accredited veterinarian, state or federal animal health official or other approved official at the point of origin for the shipment of animals. The document shall include the official identification, age, breed, and sex of each animal to be moved;

the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and consignee; and the results of all tests required for movement.

(9) Commuter herd--A herd that has been recognized and approved by the state animal health officials and the AVIC in both the state of origin and the state of destination for movement of animals interstate or interzone, without change of ownership, during the course of normal production operations

(10) Dealer--All persons engaged in the business of buying or selling livestock in commerce either on their own account or as the employees or agents of the vendor, purchaser, or both, or all persons engaged in the business of buying or selling livestock in commerce on a commission basis. The term shall not include persons who:

(A) buy or sell livestock as part of their own bona fide breeding, feeding, or dairy or beef operations;

(B) are not engaged in the business of buying, selling, trading, or negotiating the transfer of livestock; or

(C) receive livestock exclusively for immediate slaughter on their own premises.

(11) Designated Accredited Veterinarian--An Accredited Veterinarian trained and approved to conduct specific tuberculosis tests and/or other tuberculosis program activities as determined by the commission.

(12) Designated Tuberculosis Epidemiologist (DTE)--A State or Federal epidemiologist designated in each State to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and to manage the tuberculosis program. The DTE must be selected jointly by the cooperating Chief State Animal Health Official, the AVIC, and the Regional Tuberculosis Epidemiologist. The National Center for Animal Health Programs Eradication and Surveillance Team Staff of VS must concur with the appointment. The DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of herds, assist in development of individual herd plans, and coordinate disease surveillance and eradication programs within his or her geographic area of responsibility. The DTE has authority to make independent decisions concerning the use and interpretation of diagnostic tests and the management of herds when those decisions are supported by sound disease eradication principles.

(13) Direct shipment to slaughter--The shipment of livestock from a premises, without unloading, directly to a slaughter establishment under State or Federal inspection and without diversion to assembly points, such as auctions, dealers, commission firm premises, public stockyards, or feedlots.

(14) Executive Director--The Executive Director of the Texas Animal Health Commission or his designee.

(15) Exotic Livestock--Grass-eating or plant-eating, single-hoofed or cloven-hoofed mammals that are not indigenous to this state and are known as ungulates, including animals from the swine, horse, tapir, camel, llama, rhinoceros, elephant, deer, and antelope families.

(16) Exposed animals--Any livestock or exotic livestock that have been exposed to bovine tuberculosis by reason of associating with other livestock or exotic livestock in which *M. bovis* has been diagnosed.

(17) Feedyard--A confined dry lot area for feeding of animals on concentrated feed. All animals in a feedyard are considered a "herd" for purposes of these regulations.

(18) Geographic separation--A minimum of 30 feet of separation, between groups of animals for which there are no common or shared handling facilities or equipment, watering or feeding facilities, or feed vehicles that enter the pens, pastures, or premises, of herds of different status.

(19) Herd--

(A) All livestock under common ownership or supervision that are grouped on one or more parts of any single premises, feedlot, farm, or ranch; or

(B) All livestock under common ownership or supervision on two or more premises that are geographically separated, but in which the animals have been interchanged or had contact with animals from different premises. It will be assumed that contact between units or groups of animals on the different premises has occurred unless the owner establishes otherwise and the results of the epidemiologic investigation are consistent with the lack of contact between premises; or

(C) All livestock on common premises, such as community pastures or grazing association units, but owned by different persons. Other groups of animals owned or co-owned by the persons involved that are located on other premises are considered to be part of a herd unless the epidemiologic investigation establishes that animals from an affected herd have not had the opportunity for direct or indirect contact with animals from that specific premises.

(20) Herd test--An official tuberculosis test of all test eligible livestock and exotic livestock in a herd.

(21) High risk herd--A herd that is epidemiologically determined by a state-federal veterinarian to have a high probability of having or developing tuberculosis. A high risk herd need not be located on the same premises as an infected or adjacent herd.

(22) Hold Order--A written commission document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(23) Individual herd plan--A written disease management plan that is developed by the herd owner(s) and/or their representative(s), and/or the owner's veterinarian and a State or Federal veterinarian to eradicate tuberculosis from an affected herd while reducing animal and human exposure to the disease. The herd plan will include appropriate herd test frequencies, tests to be employed, and any additional disease management or herd management practices deemed necessary to eradicate tuberculosis from the herd in an efficient and effective manner. The plan must be approved by the Executive Director of the Commission and AVIC, and have the concurrence of the DTE or Regional Tuberculosis Epidemiologist.

(24) Movement Restrictions--A "Hold Order," "Quarantine," or other written document issued or ordered by the Commission to restrict the movement of livestock or exotic livestock.

(25) No gross lesion (NGL)--Any animal that has no visible lesion(s) of bovine tuberculosis detected upon necropsy or slaughter inspection.

(26) Official identification device--An identification device approved by the Commission and/or by the APHIS Administrator that provides unique identification for each individual animal.

(27) Official identification/officially identified--The identification of livestock by means of an official identification device, official eartag, registration tattoo, or registration brand, or any other method approved by the Commission and/or Administrator of APHIS, that provides unique identification for each animal.

(28) Official tuberculosis test--A test for bovine tuberculosis, approved by the Commission and APHIS, applied and reported by designated personnel in accordance with the UM&R and these rules. The official tuberculosis tests for cattle and bison are the:

(A) Caudal fold tuberculin (CFT) test

(B) Comparative cervical tuberculin (CCT) test

(C) Cervical tuberculin (CT) test

(D) Bovine interferon gamma assay (cattle only)

(29) Quarantine--A written commission document restricting movement of animals because of the existence of or exposure to tuberculosis. The commission may establish a quarantine on the affected animals or on the affected place. The quarantine of an affected place may extend to any affected area, including a county, district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen. The commission may establish a quarantine to prohibit or regulate the movement of any article or animal that the commission designates to be a carrier of tuberculosis and/or an animal into an affected area, including a county district, pasture, lot, ranch, farm, field, range, thoroughfare, building, stable, or stockyard pen.

(30) Permit--An official document issued by a VS representative, a State representative, an Accredited Veterinarian, a designated Accredited Veterinarian or other designated person that is required to accompany any reactor, suspect, exposed livestock, or animals of unknown status to an approved destination, or to slaughter.

(31) Premises identification number--A Commission and/or APHIS-approved method of identification that includes the assignment of a unique number or alpha-numeric number to a premises by State or Federal animal health officials.

(32) Reactor--Any livestock or exotic livestock that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or DTE in accordance with the policy established by the cooperating State and Federal animal health officials and the test classification requirements defined in the UM&R, or any suspect animal that is classified a reactor by the DTE upon slaughter inspection or necropsy, histopathological examination, PCR assay, and/or culture of selected tissues collected by the Federal or State veterinarian performing or supervising the slaughter inspection or necropsy.

(33) Responder--Any livestock or exotic livestock that has a visible or palpable response at the site of a tuberculin test injection.

(34) Suspect--Any livestock or exotic livestock that show a response to a presumptive diagnostic test (CFT test in cattle and bison, SCT test in exotic bovidae and cervidae) and are not classified as reactor; or that have been classified as suspect by CCT test; the bovine interferon gamma assay; or any other official test for tuberculosis.

§43.3. Approved Feedyards/Approved Pens.

(a) Approved Feedyards/Approved Pens: A confined area, either the entire feedyard or designated pens within the feedyard, jointly approved by the Executive Director of the Commission and the Administrator of APHIS for feeding of restricted livestock and exotic livestock.

(b) Designation Agreement: In order to be recognized as an approved feedyard or approved pen there shall be a signed designation agreement with TAHC and USDA-APHIS-VS indicating that the facility can meet the necessary standards to accept restricted cattle, bison or exotic livestock. The agreement will contain standards and procedures which the facility must meet in order to be approved. The Agreement will provide for isolation of animals, to separate and prevent contact, with restricted animals and unrestricted animals through fencing and geographic separation; official identification; biosecurity standards; and recordkeeping requirements, which include information for all animals entering and leaving a facility. Failure to meet and maintain those standards and procedures will cause a facility to have the approve status rescinded. Known exposed animals must be tested negative within 60 days and be "S" branded prior to entering the approved feedyard. These animals will be placed under hold order and permitted out to slaughter.

(c) Standards and procedures

(1) Geographic separation: Adequate isolation of animals which separate and prevent contact with tested animals and untested animals by fencing and geographic separation. Geographic separation shall be sufficient to meet the minimum standards in the UM&R as well as to prevent potential spread of diseases to other livestock on the premises and adjacent premises.

(2) Official identification: All animals entering and leaving the facility must be officially identified and that information is to be recorded and maintained as required by paragraph (4) of this subsection.

(3) Biosecurity standards: All approved facilities may not be required to be cleaned and disinfected between groups of cattle unless specifically directed by the DTE to clean and disinfect all or portions of the pen or other parts of the facility. Additionally, approved facilities shall not be required to vacate pens, that have contained tuberculosis infected animals, for thirty (30) days unless specifically required by the DTE to vacate the pens.

(4) Recordkeeping requirements: An approved facility shall maintain records which indicated the movement of all animals that enter and leave a facility. An approved facility must maintain the records as required by §43.2(i) of this title (relating to Requirements on Dealer Record Keeping).

(5) Grazing: In order for the Commission to recognize an approved facility having grazing the, commission must enter into a MOU with USDA-APHIS and the facility must be able to show an ability to maintain isolation of those animals from other animals. Any provisions for grazing or pasturing restricted cattle or bison entering an approved feedlot/approved pens must be formalized in a Memorandum of Understanding (MOU) by the Chief State Animal Health Official and the Administrator. The MOU must include adequate isolation and fencing requirements as recommended by the DTE and the Regional Tuberculosis Epidemiologist. An animal leaving the confined area must be destined to either another approved feedlot or approved pen, or to an approved slaughter facility.

(6) The approved status must be renewed by the operator every two years provided that the requirements specified in these regulations and the approved agreement continue to be met by the feedyard. If the Executive Director determines the feedyard's failure to comply with the Approved Pens Agreement or these regulations then he can rescind the agreement.

§43.4. Increased Risk Herds or Animals.

Testing of increased-risk herds.

(1) In herds where *Mycobacterium bovis* infection has been confirmed but the herd not depopulated, the herd shall remain under quarantine until all requirements of their individual herd plan have be completed as well as all applicable statutory and regulatory requirements.

(2) In a newly assembled herd on premises where a tuberculosis affected herd has been depopulated, two annual herd tests shall

be applied to all livestock and exotic livestock ; the first test shall be applied approximately six months after assembly of the new herd. If the premises are vacated for one year, these requirements may be waived.

(3) In herds that are an increased risk for *Mycobacterium bovis* infection as determined by the Designated Tuberculosis Epidemiologist or the Executive Director in order to control or eradicate Bovine Tuberculosis from this state.

(4) Slaughter traceback investigations

(A) Tracebacks to a herd: Herds indicated as the source of slaughter traceback case investigations shall have movement restrictions in place and all livestock and exotic livestock shall be tested. The testing will be conducted by a representative of the Texas Animal Health Commission or USDA personnel.

(B) Tracebacks to a feedlot: Except for approved feedlots and approved pens livestock and exotic livestock in feedlots known to be exposed to tuberculosis shall have movement restrictions in place and exposed animals shall be moved under permit for direct shipment to slaughter. When an affected lot originates from a non approved pen or feedyard, the pen must be cleaned and disinfected as directed by the DTE. In addition, this pen must be vacated for 30 days or as directed by the DTE. When an affected lot originates from an approved pen or feedlot, the requirements for cleaning and disinfection shall be according to the provisions specified in §43.3(c)(3)of this title (relating to Standards and Procedures).

(5) Other increased risk herds: Herds located adjacent to an affected herd, herds that have contained known exposed animals, and herds that have been implicated as the source of animals found to be affected in an affected herd shall then have movement restricted until all conditions specified in the UM&R have been satisfied.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505743
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: January 1, 2006
Proposal publication date: September 2, 2005
For further information, please call: (512) 719-0714

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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §51.3, §51.13

The Texas Animal Health Commission (commission) adopts amendments to Chapter 51, §51.3 and §51.13, concerning Entry Requirements, without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6021) and will not be republished.

The amendments are in regards to entry requirements for equine.

The rules of the Commission require all livestock entering Texas have a certificate of veterinary inspection (CVI) and a permit issued by the Commission, unless specifically exempted. A permit is obtained from the Commission by calling a number 24 hours a day and providing them your contact information then you will be given a number to identify as having obtained a permit. For equine entering Texas there is an exception for entering without a CVI if moved directly to a veterinary clinic for treatment or for usual veterinary procedures when accompanied by a permit issued by the Commission. The Commission also has a requirement that equine entering Texas have a current, equine infectious anemia (EIA) test within the last twelve (12) months

Some equine have come to Texas under the exception for veterinary treatment and gone to a market where they are tested for EIA and sold. There have been discussions between the market owner, the market veterinarian and agency personnel to clarify that equine coming to a market to an EIA on-site laboratory did not constitute the type of activity covered by the exception, provided above. In response the Commission received a request to change commission rules to allow equine to be delivered directly from a farm of origin to a USDA specifically approved livestock market by owner or consignee when accompanied by a permit number issued by the Texas Animal Health Commission. In response to the request the Commission authorized staff to bring forth this proposal. The proposal does makes two changes to allow untested equine to enter Texas to be tested and sold provided they have a permit from the Commission and they obtain a CVI prior to sale.

The first change is in Section 51.3, entitled "Exceptions". The proposal provides an exception for a CVI when entering for sale if they obtain a CVI from a hospital or clinic prior to sale.

The second change is to Section 51.13, entitled "Equine" The proposal allows equine to enter Texas without a current EIA test provided they were issued a permit from the Commission and consigned to a market with an approved EIA laboratory or to a clinic to be tested.

This rule adoption allows more flexibility for selling horses from other states, with minimal disease risk. This will be more consistent with adjacent state requirements and more user friendly for seller of horses, CVI can be issued upon arrival by same vet who draws blood for EIA. Prior permit requirement would still allow some traceability and advance notice of animal movements. The CVI would also be more current, and have more validity than one presented that is up to 45 days old.

No comments were received regarding adoption of the rules.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. 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. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in Section 161.048.

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

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505744
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: January 1, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 719-0714

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TITLE 10. COMMUNITY DEVELOPMENT

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §255.7

The Office of Rural Community Affairs (Office) adopts amendments to §255.7 concerning eligibility criteria to receive Community Development Block Grant (CDBG) non-entitlement area funds under the Texas Community Development Program (TCDP) without changes to the proposed text as published in the October 21, 2005, issue of the *Texas Register* (42 TexReg 6878) and will not be republished. The approved amendments detail the application and selection criteria for the programs under the Texas Capital Fund.

The approved amendments delete language to be consistent with previous changes to 10 TAC §255.7(a)(13) that were made when program rules were established under the CDBG-TCDP 2003 and later Action Plans. The CDBG-TCDP Action Plan is submitted to the U.S. Department of Housing and Urban Development (HUD) to receive HUD funding under the State of Texas Consolidated Plan One Year Action Plan. Other approved amendments have been made to §255.7 to reflect the Texas Capital Funds use of quarterly county poverty and unemployment rates in the selection criteria as a result of the Texas Workforce Commission decision to stop generating the unemployment rates for many small cities eligible under the Texas Capital Fund.

No comments were received regarding adoption of the amendment.

The amendments are adopted under the Government Code, §487.052, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505784
Charles S. Stone
Executive Director
Office of Rural Community Affairs
Effective date: January 1, 2006
Proposal publication date: October 21, 2005
For further information, please call: (512) 936-6734

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 101. ASSESSMENT

SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.33

The State Board of Education (SBOE) adopts an amendment to §101.33, concerning student assessment. The amendment is adopted without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7113) and will not be republished. Section 101.33 addresses the release of tests. The adopted amendment allows for the release of State-Developed Alternative Assessment II tests in 2005.

In September 2003, the SBOE adopted a schedule for the release of tests to comply with amendments made to Texas Education Code, §39.023(e), by the 78th Texas Legislature, which required that the release of test items be reduced to every other year. At the May 2004 meeting, the SBOE adopted a revised schedule for the release of tests to release all tests for the Texas Assessment of Knowledge and Skills (TAKS), State-Developed

Alternative Assessment (SDAA), and Reading Proficiency Tests in English (RPTE) in every even-numbered year beginning in 2004.

The SDAA II, which assesses more of the Texas Essential Knowledge and Skills (TEKS) than the SDAA did and asks questions in more authentic ways, was first administered in 2005. The SBOE is amending its rule to adopt a different two-year release cycle for SDAA II since it is a fundamentally different test than SDAA. One advantage of revising the test release schedule is that the new SDAA II can be viewed and used for appropriate educational purposes before the scheduled release in the summer of 2006. This will, however, place the SDAA II release schedule on a different release schedule than all other assessments.

The adopted amendment adds language to allow the release of all test items and answer keys for the SDAA II beginning with the 2005 assessment administered in the 2004 - 2005 school year and subsequent odd-numbered years.

In accordance with Texas Education Code, §7.102(f), the SBOE approved this rule action for final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2006, in order to release the newest version of the SDAA II to parents and students for use in the 2005 - 2006 school year. The effective date of the adopted amendment is 20 days after filing as adopted.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §39.023(e), which authorizes the State Board of Education to adopt rules relating to the release of statewide assessments and answer keys after the last time the instruments are administered for a school year.

The amendment implements the Texas Education Code, §39.023(e).

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

Filed with the Office of the Secretary of State on December 5, 2005.

TRD-200505608
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 25, 2005
Proposal publication date: November 4, 2005
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The Texas Board of Professional Engineers adopts amendments to §131.81, relating to Definitions, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5898) and will not be republished.

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

No comments were received regarding the Board's adoption of the amended section.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505720
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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CHAPTER 133. LICENSING

SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.11

The Texas Board of Professional Engineers adopts an amendment to §133.11, relating to the Types of Licenses, without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6027) and will not be republished. The adopted amendment includes a minor citation change.

The adopted amendment modifies a citation in the rule to §133.69, Waiver of Examinations.

No comments were received regarding the Board's adoption of the amended section.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505721
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 23, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER C. APPLICATION REQUIREMENTS

22 TAC §133.25

The Texas Board of Professional Engineers adopts amendments to §133.25, relating to Applications from Engineering Educators, with a non-substantive change to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5899). The text of the rules will be republished. The adopted amendments clarify the requirements for licensure for engineering.

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

Comments were received from the Texas Council of Engineering Companies regarding the requirements for engineering educators, and regarding a potential conflict with proposed §133.69 regarding the required number of years required to apply for a waiver by engineering educators. A non-substantive change was made to the proposed text and was adopted by the Board.

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

§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 ABET Accreditation Yearbook and or the current version of the 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 examinations, the applicant must meet the experience requirements of §133.69(d), consisting 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;

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

(8) 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 adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505722
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER D. EDUCATION

22 TAC §133.31

The Texas Board of Professional Engineers adopts amendments to §133.31, relating to Educational Requirements for Applicants, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5901) and will not be republished.

The adopted amendments clarify references to ABET and ABET accreditation.

No comments were received regarding the Board's adoption of the amended section.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505723
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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22 TAC §133.33

The Texas Board of Professional Engineers adopts an amendment to §133.33, relating to Proof of Educational Qualifications, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5902) and will not be republished.

The adopted amendment clarifies references to accreditation by ABET.

No comments were received regarding the Board's adoption of the amended section.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505724
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER E. EXPERIENCE

22 TAC §133.41

The Texas Board of Professional Engineers adopts an amendment to §133.41, relating to the Supplementary Experience Records, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5903) and will not be republished. The adopted amendment clarifies the required number of years to be documented for licensure.

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

No comments were received regarding the Board's adoption of the amended section.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

TRD-200505725
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: January 1, 2006
Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER G. EXAMINATIONS

22 TAC §133.69

The Texas Board of Professional Engineers adopts amendments to §133.69, relating to the Waiver of Examinations, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5904) and will not be republished. The adopted amendments revise the requirements for application for licensure via a waiver of the required examinations.

The adopted 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 adopted 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.

Comments were received from the Texas Council of Engineering Companies (TCEC) regarding the requirements for engineering educators, and regarding the structure and readability of the proposed rule language. It was agreed that the Board would address these issues in a future revision to the adopted rule language.

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

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

Filed with the Office of the Secretary of State on December 12, 2005.

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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CHAPTER 135. FIRMS AND SOLE PROPRIETORSHIPS REGISTRATIONS

22 TAC §135.3

The Texas Board of Professional Engineers adopts an amendment to §135.3, relating to the Application for a Certificate of Registration, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5905) and will not be republished. The adopted amendment relates to the requirements for registration of an engineering firm.

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

No comments were received regarding the Board's adoption of the amended section.

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

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

22 TAC §137.7

The Texas Board of Professional Engineers adopts an amendment to §137.7, relating to License Expiration and Renewal, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5906) and will not be republished. The adopted amendment clarifies methods of payment for license renewals.

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

No comments were received regarding the Board's adoption of the amended section.

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

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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22 TAC §137.9

The Texas Board of Professional Engineers adopts amendments to §137.9, relating to Renewal for Expired License, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5907) and will not be republished. The adopted amendments include language related to license renewal fees resulting from the enactment of HB1817, 79th Regular Session (2005).

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

No comments were received regarding the Board's adoption of the amended section.

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

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

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

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22 TAC §137.14

The Texas Board of Professional Engineers adopts new §137.14, concerning Voluntary Surrender of License, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5908) and will not be republished.

The Board adopts this action to clarify the process for a license holder to voluntarily surrender a license.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

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

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

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

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22 TAC §137.17

The Texas Board of Professional Engineers adopts amendments to §137.17, relating to the Continuing Education Program, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5908) and will not be republished. The adopted amendments clarify the requirements for the Continuing Education Program.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

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

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

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SUBCHAPTER B. SEALING REQUIREMENTS

22 TAC §137.33

The Texas Board of Professional Engineers adopts an amendment to §137.33, relating to Sealing Procedures, without changes to the proposed text as published in the September 16,

2005, issue of the *Texas Register* (30 TexReg 5909) and will not be republished. The adopted amendment includes language related to sealing procedures resulting from the enactment of HB1817, 79th Regular Session (2005).

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

No comments were received regarding the adoption of the amended section.

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

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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Dale Beebe Farrow, P.E.
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SUBCHAPTER D. FIRM, SOLE PROPRIETORSHIP AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.77

The Texas Board of Professional Engineers adopts an amendment to §137.77, relating to Firm Registration Compliance, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5910) and will not be republished. The adopted amendment relates to the requirements for registration of an engineering firm.

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

No comments were received regarding the Board's adoption of the amended section.

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

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 139. ENFORCEMENT

SUBCHAPTER B. COMPLAINT PROCESS AND PROCEDURES

22 TAC §139.21

The Texas Board of Professional Engineers adopts an amendment to §139.21, relating to Reporting Complaint Status to the Board, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5911) and will not be republished. The adopted amendment includes language related to the handling of frivolous complaints or complaints without merit. The adopted amendment is a result of the enactment of HB1817, 79th Regular Session (2005).

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

No comments were received regarding the Board's adoption of the amended section.

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

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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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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Proposal publication date: September 16, 2005
For further information, please call: (512) 440-7723

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SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.35

The Texas Board of Professional Engineers adopts an amendment to §139.35, relating to Sanctions and Penalties, without

changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5912) and will not be republished. The adopted amendment includes citation changes and adds a violation related to reporting of criminal convictions by license holders.

The adopted 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.

No comments were received regarding the Board's adoption of the amended section.

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

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

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SUBCHAPTER D. SPECIAL DISCIPLINARY PROVISIONS FOR LICENSE HOLDERS

22 TAC §139.43

The Texas Board of Professional Engineers adopts an amendment to §139.43, relating to License Holders with Criminal Convictions, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5913) and will not be republished. The adopted amendment clarifies the process used in evaluating criminal convictions by license holders.

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

No comments were received regarding the Board's adoption of the amended section.

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

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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22 TAC §139.49

The Texas Board of Professional Engineers adopts new §139.49, concerning License Suspension or Revocation Based on License Holder's Status Review, without changes to the proposed text as published in the September 16, 2005, issue of the *Texas Register* (30 TexReg 5913) and will not be republished. The Board adopts this action to clarify the process for a review of the status of a license holder per §1001.453 of the Act.

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

No comments were received regarding the Board's adoption of the new section.

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

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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Dale Beebe Farrow, P.E.
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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §§153.1, 153.5, 153.9, 153.11, 153.13, 153.18, 153.20, 153.25, 153.27

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.1 Definitions, §153.5 Fees, §153.9 Appli-

cations, §153.11 Examinations, §153.13 Educational Requirements, §153. 20 Guidelines for Revocation, Suspension or Denial of Licensure or Certification, §153.25 Temporary Non-Resident Registration, and §153.27 Certification and Licensure by Reciprocity without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6170) and will not be republished.

The adopted amendment to Section 153.1 defines the terms sponsor and authorized supervisor. Section 153.5 adopted amendments set the same application fee for certified or licensed applicants regardless of method of application and increases the licensure history fee to $25. Section 153.9 adopted amendments eliminate obsolete language regarding application processing. Also, effective March 1, 2006, applications for certification, licensure and appraiser trainee will expire one year from the date the original application is submitted. Section 153.11 adopted amendment removes outdated text regarding services now provided by the contracted testing service. Section 153.13 adopted amendments incorporate the new educational requirements for certification and licensure that are consistent with the Appraiser Qualifications Board (AQB) Criteria. Also, for appraiser trainee applications received after February 28, 2006, the minimum educational requirements for appraiser trainees are set to be consistent with the recommendations of the AQB Criteria. Clarification is provided when a current Board member or staff is able or eligible to teach or guest lecture in an TALCB approved qualifying or continuing education course. Section 153.20 adopted amendment defines the statute of limitation in which the Board may investigate a complaint submitted to the Board. Section 153.25 adopted amendment increases the term of the temporary practice registration to six months, in compliance with the Appraisal Subcommittee's requirement. Section 153.27 adopted amendment sets the application fee for a non-resident applicant applying for certification or licensure to be equal to the fee paid by a Texas resident to become certified or licensed.

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.18 Appraiser Continuing Education, with changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6170) and will be republished.

Section 153.18 adopts amendments reflecting the new continuing education requirements for appraiser trainee applications received after February 28, 2006, that are consistent with the recommended guidelines of AQB Criteria.

The Board tabled adoption of proposed amendments to §153.15 Experience Required for Certification or Licensing and §153.21 Appraiser Trainees and Sponsors as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6137) until the February 10, 2006, Board meeting.

Three written comments were received. The Foundation Appraiser Coalition of Texas (FACT) wrote in support of proposed rules with the exception for §153.15, §153.18 and §153.21.

The Board accepted FACT's recommended rewording to the posted amendment §153.18 which will be republished. FACT's comment regarding §153.15 indicated that the provision limits experience to "1,000 hours of credit each year" and implies that a minimum of two years would be required to obtain the 2,000 hours of experience necessary for a state real estate appraiser license. The Board tabled action on §153.15 and §153.21 until the February 10, 2006, Board meeting. One comment was received from the Appraisal Foundation regarding §153.18 clarifying the Appraiser Qualifications Board effective date for appraiser trainee's continuing education.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP). The courses must comply with the requirements set out in subsection (d) of this section.

(b) Renewing an Appraiser Trainee Approval

(1) For a trainee Whose Application Was Accepted by the Board Prior to March 1, 2006. As a condition for renewing an appraiser trainee authorization, a trainee must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with the fundamental education requirements for application for licensing and certification as set out in 153.13(f) - (o) of this title (relating to Educational Requirements):

(A) For the first annual renewal and every other annual renewal thereafter (third, firth, seventh, etc) a total of 45 classroom hours which shall include a minimum of 30 classroom hours of fundamental real estate appraisal courses and 15 classroom hours in a course devoted to the USPAP. The courses must specifically be approved by the board and shall include successful completion of an examination; and

(B) For the second annual renewal and every other annual renewal thereafter (fourth, sixth, etc.), a minimum of 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board, which shall include the successful completion of an examination.

(2) For a Trainee Whose Application Was Accepted by the Board After February 28, 2006. As a condition for renewing an appraiser trainee authorization, a trainee shall be required to successfully complete 14 classroom hours of appraiser continuing education courses with each annual renewal. The renewal requirement includes successful completion of a 7 hour national USPAP update course, or the equivalent, every two years.

(c) The appraiser continuing education requirement as set forth in section 153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(d) In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A) - (L) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that complies with the guidelines of the AQB and is recognized by the Appraisal Subcommittee that a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;

(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(f)(2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;

(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education, and which specifically has been approved by the board.

(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(F) Distance education courses, provided that the course is approved by the board and meets one of the following conditions listed in clauses (i) - (iv) of this subparagraph:

(i) the course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance, and is a minimum of two classroom hours and meets the requirements for continuing education courses established by the AQB; or

(ii) the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has received either the American Council on Education's Program on Non-collegiate Sponsored Instruction (ACE/PONSI), or its successor, approval for college credit or the AQB's approval through the AQB Course Approval Program; and the course meets the following requirements listed in subclauses (I) - (II) of this clause:

(I) the course is equivalent to a minimum of two classroom hours in length and meets the requirements for real estate appraisal-related courses established by the Appraiser Qualifications Board; and

(II) the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation with demonstrated mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(H) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) be the National USPAP Update Course or National USPAP Course or its equivalent as determined by the AQB;

(ii) use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; additionally,

(iv) providers may include up to one additional hour of supplemental Texas specific information. This may include such topics as the TALCB Act, TALCB Rules, processes and procedures, enforcement issues, or other topics deemed to be appropriate by the board

(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.

(J) As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(K) Appraiser continuing education credits may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(L) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

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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Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3950

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CHAPTER 157. RULES RELATING TO PRACTICE AND PROCEDURE
SUBCHAPTER B. CONTESTED CASE HEARINGS

22 TAC §157.11

The Texas Appraiser Licensing and Certification Board adopts amendments to §157.11, without changes to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6028) and will not be republished.

The adopted amendments to §157.11 provide for the use of the agency's in-house administrative law judge for contested cases.

No comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

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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Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
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For further information, please call: (512) 465-3950

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SUBCHAPTER C. POST HEARING

22 TAC §§157.15, 157.18, 157.20

The Texas Appraiser Licensing and Certification Board adopts amendments to §§157.15, 157.18, and 157.20, without changes to the proposed text as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6177) and will not be republished.

The adopted amendments to §157.15 provide clarification in terminology by replacing "proposal for decision or proposed decision" with the term "decision." Section 157.18 adopted amendments provide clarification in terminology by replacing "order by the board" with the term "order by the administrative law judge." And the period in which the Board must take action on a final decision increases from 45 days to 90 days. Section 157.20 adopted amendment states that the respondent will pay the cost of preparing a copy of any contested case transcripts.

No written comments were received.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

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

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For further information, please call: (512) 465-3950

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22 TAC §157.16, §157.17

The Texas Appraiser Licensing and Certification Board adopts the repeal of §157.16, Exceptions and Replies, and §157.17, Final Decisions and Orders, as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6178).

The repeal of §157.16 and §157.17 removes outdated language that is no longer applicable to the current complaint process, because of changes in the statute due to the implementation of Senate Bill 382, 79th Legislature.

No comments were received.

The repeals are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under Sec.1103.151 Rules Relating to Certification and Licenses.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505715
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: December 29, 2005
Proposal publication date: September 30, 2005
For further information, please call: (512) 465-3950

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.210, 535.216, 535.218

The Texas Real Estate Commission (TREC) adopts amendments to §535.210, concerning Fees, §535.216, concerning Renewal of License or Registration, and §535.218, concerning Inspector Continuing Education without changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7162) and will not be republished.

The amendments are adopted to implement revisions to Texas Occupations Code Chapter 1102 enacted during the 79th Legislative Session, Regular Session, by Senate Bill 810, and to reflect the fact that home inspector licenses will go from a one-year renewal to a two-year renewal cycle in 2006 as authorized by revisions to Texas Occupations Code Chapter 1102 enacted during the 78th Legislative Session, Regular Session, by House Bill 1508.

Chapter 1102 was revised to required licensing and renewal of corporations and limited liability companies that engage in professional home inspecting for buyers and sellers in Texas. The amendments to §535.210 add a $10 fee to be charged corporations and limited liability companies applying for a Texas professional inspector license, and clarify that the $100 Inspector Recovery Fund fee does not apply to corporations and limited liability companies that apply for a professional inspector license. The amendments to §535.216 clarify that in order to renew a professional inspector license issued to a corporation or limited liability company, the entity must designate an officer, manager, or employee of the entity who meets the requirements of Chapter 1102, including continuing education requirements. The amendments to §535.218 clarify that a licensed apprentice, real estate or professional inspector must take the required hours of continuing education within the term of the current license, and further clarify that the commission may not give continuing education course credit twice for the same course taken by a licensee within a 2-year period. The commission was given authority under HB 1508 during the 78th Legislative Session to issue or renew an inspector license for a period not to exceed 24 months. Given this authority, the commission plans to implement the 2-year licensing and renewal program in April 2006. The amendments to §535.218 change the references from a 1-year period to a 2-year period for completion of continuing education to parallel the 2-year license.

The reasoned justification for the amendments is to provide clarity in the implementation of the statutory requirements for licensing of corporations and limited liability companies that engage in home inspections in Texas and to provide consistency with the implementation of a 2-year renewal program in April, 2006.

No comments were received regarding the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties and to establish standards of conduct and ethics for its licensees in keeping with the purpose and intent of the Act to insure compliance with the provisions of the Act.

The statutes affected by the amendments are Texas Occupations Code, Chapters 1101 and 1102 and Senate Bill 810, 79th Legislature, R.S. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505662
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: December 29, 2005
Proposal publication date: November 4, 2005
For further information, please call: (512) 465-3900

CHAPTER 543. RULES RELATING TO THE PROVISIONS OF THE TEXAS TIMESHARE ACT

22 TAC §§543.1 - 543.11

The Texas Real Estate Commission (TREC) adopts amendments to §543.1, concerning Registration, §543.2, concerning Amendments, §543.3, concerning Fees, §543.4, concerning Forms, §543.5, concerning Violations, §546.6, concerning Complaints and Disciplinary Proceedings, and adopts new §543.7, concerning Contract Requirements, §543.8, concerning Disclosure Requirements, §543.9, concerning Exemptions, §543.10, concerning Escrow Requirements, and §543.11, concerning Maintenance of Registration. Sections 543.1, 543.2, and 543.4 - 543.6 are adopted with changes to the proposed text as published in the November 4, 2005, issue of the *Texas Register* (30 TexReg 7163). The forms to §543.4 are also adopted with changes from the proposal as submitted to the *Texas Register*. Sections 543.3, and 543.7 - 543.11 are adopted without changes and will not be republished.

The amendments and new rules implement revisions to the Texas Timeshare Act, Chapter 221, Texas Property Code enacted during the 79th Legislative Session, Regular Session, by House Bill 1045. The amendments are also adopted in connection with TREC's on-going review of its rules. The amendments conform the sections to the language used in other TREC rules, and adopt by reference revised and new forms to be used by timeshare developers when registering a timeshare plan, amending a registration, obtaining authorization to conduct pre-sales of timeshares, and registering under an abbreviated registration process under limited circumstances.

The modifications to the existing rules, among other things, revise the registration form to verify the content of the timeshare disclosure statement that a developer must provide to a purchaser prior to the sale of a timeshare interest; verify required purchase contract provisions, including the purchaser's rescission period, processing of purchaser refunds, and disclosure of the rescission period in the purchase contract; and verify that a

developer provides a statement to the purchaser that, on an annual basis, the sum of the nights that purchasers are entitled to use the accommodations does not exceed the number of nights the accommodations are available for use by the purchasers.

The rules also adopt by reference a new application for pre-sale authorization form which a developer must use if authorized by TREC to conduct pre-sales prior to completion of registration if the application is administratively complete and if the developer otherwise complies with specific statutory requirements. The rules adopt by reference a new form to be used in an abbreviated registration process for an out-of-state developer whose plan is appropriately registered in another jurisdiction and who provides certain documentation to TREC. The rules and revisions to the existing amendment form clarify when amendments to a timeshare plan registration must be filed. Finally, the amendments revise the fee provisions that are applicable for each type of registration and clarify TREC's powers to conduct hearings, initiate disciplinary actions and assess administrative penalties.

Comments were received from the American Resort Development Association (ARDA).

The adopted amendments, new rules and forms adopted by reference differ from the proposed rules and forms to correct various non-substantive typographical errors and spacing in the forms, and to include multiple suggestions based on comments received from ARDA. In addition, three forms that were included with the registration form were separated from the form and given new form numbers. The three additional forms are the Escrow Surety Bond, Construction Surety Bond, and Consent to Service of Process.

In addition to pointing out spacing and typographical errors, ARDA suggested the following revisions to the forms and rules:

Comment: In section G, page 1 of TSR1-4, Application to Register a Timeshare Plan, regarding ownership options that are being sold, a question is asked as to whether all of the check boxes are necessary.

Response: If any of the options apply to the plan being registered, then all relevant boxes should be checked.

Comment: In Part I (A), item 8 of TSR1-4, ARDA suggests clarification regarding whether the seven questions apply only to the three persons listed in item 8 or to all officers and directors. In addition, ARDA suggests that questions (f) and (g) regarding past disciplinary actions may not be required by Chapter 221, Property Code (the Act).

Response: The Commission agrees with the suggestion and has clarified that the questions do not apply to all officers and directors. Regarding sections (f) and (g), the Commission requests additional information regarding disciplinary actions pursuant to §221.032(b)(26), (c)(9), and (d)(32) of the Act.

Comment: Regarding item 9 of Part I (A), TSR1-4, ARDA suggests clarification as to whether item 9 requires information on every state in which the timeshare plan is registered.

Response: The Commission has clarified in the form that item 9 requires information on every jurisdiction in which the timeshare plan is registered.

Comment: Regarding item 15 of Part I (A), TSR1-4, ARDA suggests that the Commission clarify that an escrow agreement is not required if an alternate assurance such as a bond is used by inserting the phrase "If applicable, " at the beginning to account for that possibility.

Response: The Commission agrees with ARDA's suggestion and has revised the form accordingly.

Comment: Regarding item 16 of Part I (A), TSR1-4, ARDA suggestions inserting the phrase "in Texas" immediately following the word "conducted".

Response: The Commission agrees with ARDA's suggestion and has revised the form accordingly.

Comment: Regarding Item Q of Part II, TSR1-4, ARDA suggests that the Commission clarify that the receipt acknowledgment need only be separate from the exchange disclosure statement required by the Act.

Response: The Commission agrees with ARDA's suggestion and has revised the form accordingly. In addition, the Commission made a similar change to Item N regarding the timeshare disclosure statement.

Comment: Regarding Part IV, Oath of TSR1-4, ARDA suggests that the first (1) should include the language "or another provision of the" inserted following Section 221.021, and that the second (1) should be reworded to read: "Where required by the Texas Timeshare Act, escrow 100% of any deposits received from purchaser or provide alternative financial assurances where permitted." ARDA also recommends that the second (4) should be revised to be consistent with the provisions of §221.024 by replacing the word "occurrence" with the phrase "developer knows or should know."

Response: The Commission agrees with ARDA's suggestions and has revised the form accordingly. In addition, the Commission has revised similar language in the Oath on the Abbreviated Registration Form.

Comment: Regarding, Part IV, Oath of TSR1-4, a suggestion was made to clarify that the second (5) applies to purchasers who request an accounting only for timeshare plans in which the purchaser owns a timeshare interest pursuant to §221.074 of the Act.

Response: The Commission believes it is unnecessary to further clarify because it is clear in §221.074 of the Act that the requirement applies only to the timeshare plans in which the purchaser owns an interest.

Comment: Regarding the Escrow Surety Bond Form TSR 5-0, ARDA suggests that the bond should provide that the purchaser should first look to the Principal for payment before going to the Surety, and recommends that the form should be rewritten with language similar to that contained in the Construction Surety Bond.

Response: The Commission agrees with ARDA's suggestion and has revised the form accordingly.

Comment: Regarding the Presale Authorization for a Timeshare Plan TSR 4-0, ARDA suggests that the last sentence should be reworded to read: "I confirm that I am providing an administratively complete Application to Register a Timeshare Plan, Abbreviated Registration of a Timeshare Plan, or Application to Amend a Timeshare Registration, and the applicable filing fee concurrently with this written request for pre-sale authorization."

Response: The Commission agrees with ARDA's suggestion and has revised the form accordingly.

Comment: Regarding amendments to §543.1(c), ARDA suggests adding the word "promptly" to require the Commission to promptly notify the applicant if the applicant has failed to satisfy

any requirement for registration; and suggests that the phrase "if the applicant fails to submit a response to the commission within" be added to the last sentence of the subsection.

Response: The Commission agrees with ARDA's suggestion and has revised the rule accordingly.

Comment: Regarding amendments to §543.2(b), ARDA suggests revisions to clarify the types of information that will be considered "materially adverse" and "material" and which must be provided to the commission by amendment to an existing registration; suggests adding cites to §221.032(b)(26) and (d)(32) which permit the Commission to request additional information; suggests amending the subsection that defines "promptly" as that term is no longer in the Act; and suggests adding the term "promptly" to subsection (g) to require the Commission to promptly notify the applicant if the applicant has failed to satisfy any requirement to amend the registration.

Response: The Commission agrees with ARDA's suggestions and has revised the rule accordingly. In addition, the Commission further revised §543.2(c)(7) and (8) to require a developer to notify the Commission of a change of more than 20% in the amount of an original surety bond or original alternative assurance.

Comment: Regarding amendments to §543.5, ARDA comments that certain acts defined as material violations may be beyond the scope of §221.024 of the Act.

Response: The Commission respectfully disagrees with this statement. The Commission believes that it is in the best interest of the public to further clarify certain acts for which disciplinary action may be taken against developers and further believes that defining such acts in the rules is within the scope of the Commissions powers under §221.024 of the Act. In addition, the Commission notes that subsections (c) and (d) are existing rules promulgated under existing language in §221.024 that was not amended by House Bill 1045.

Comment: Regarding amendments to §543.6, ARDA suggests adding a cite to §221.024 of the Act.

The Commission agrees with ARDA's suggestions and has revised the rule accordingly.

The amendments and new sections are adopted under the Texas Government Code, §221.024, which authorizes the Texas Real Estate Commission to prescribe and publish forms and adopt rules necessary to carry out the provisions of The Texas Timeshare Act.

The statute affected by this adoption is the Texas Government Code, Chapter 221.

§543.1. Registration.

(a) A developer who wishes to register a timeshare plan shall submit an application for registration using forms approved by the commission. The commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) If the commission determines that an application for registration of a timeshare plan satisfies all requirements for registration, the commission shall promptly register the timeshare plan. The commission shall notify the applicant in writing that the timeshare plan has been registered, specifying the anniversary date of the registration and shall assign a registration number to the timeshare plan.

(c) If the commission determines that an application for registration of a timeshare plan fails to satisfy any requirement for registration, the commission shall promptly notify the applicant of any deficiency in writing. The commission may require an applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly register the timeshare plan and provide the applicant with the written notice required by these rules. An application will be terminated and the commission shall take no further action if the applicant fails to submit a response to the commission within 90 days after the commission mails a request to the applicant for curative action.

§543.2. Amendments.

(a) A person who wishes to amend the registration of a timeshare plan shall submit an application to amend the registration using forms approved by the commission. A developer may file an application to amend a registration prior to the occurrence of the change. The commission may not accept for filing an application submitted without a completed application form and the appropriate filing fee.

(b) For the purposes of Section 221.023 and Section 221.032, subsections (b)(26), (c)(9) and (d)(32) of the Texas Timeshare Act, a developer shall file amendments to the registration reporting to the commission any material or materially adverse change in any document contained in a registration.

(c) "Material" includes, but is not limited to:

(1) a change of developer;

(2) a change of exchange company or association with an additional exchange company;

(3) an increase in assessments of 15% or more;

(4) any substantial change in the accommodations that are part of the timeshare plan;

(5) an increase or decrease in the number of timeshare interests in the timeshare plan registered by the commission;

(6) a change of escrow agent or type of escrow or other financial assurance;

(7) a change of more than 20% in the amount of an original surety bond;

(8) if applicable, an increase of more than 20% in an original alternative assurance as defined by Section 221.063(a) of the Texas Timeshare Act;

(9) a change to a substantive provision of the escrow agreement between the escrow agent and the developer;

(10) a change of management company; or

(11) a change to a substantive provision of the management agreement.

(d) "Materially adverse" means any material change to the timeshare plan that substantially reduces the benefits or increases the costs to purchasers.

(e) Material or materially adverse does not include the correction of any typographical or other nonsubstantive changes.

(f) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would continue to satisfy all requirements for registration, the commission shall promptly notify the applicant in writing that the

registration has been amended, specifying the effective date of the amendment.

(g) If the commission determines that a registration, if amended in the manner indicated in an application to amend a registration, would fail to satisfy a requirement for registration, the commission shall promptly notify the applicant of any deficiency. The commission may require the applicant to revise and resubmit written documents filed with the application or to provide additional information if the commission determines that the application or written material filed with the application is incomplete or inaccurate. Upon submission by an applicant of a response sufficient in the opinion of the commission to cure any deficiency in the application, the commission shall promptly notify the applicant that the registration has been amended, specifying the effective date of the amendment.

§543.4. Forms.

(a) The Texas Real Estate Commission adopts by reference revised Application to Register a Timeshare Plan, Form TSR 1- 4, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(b) The Texas Real Estate Commission adopts by reference revised Application to Amend a Timeshare Registration, Form TSR 2- 4, approved by the commission in 2005. This form is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(c) The Texas Real Estate Commission adopts by reference Application for Abbreviated Registration of a Timeshare Plan, Form TSR 3-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(d) The Texas Real Estate Commission adopts by reference Application for Pre-sale Authorization, Form TSR 4-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(e) The Texas Real Estate Commission adopts by reference Escrow Surety Bond, Form TSR 5-0, approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(f) The Texas Real Estate Commission adopts by Construction Surety Bond, Form TSR 6-0 approved by the commission in 2005 . This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us.

(g) The Texas Real Estate Commission adopts by reference Consent to Service of Process, Form TSR 7-0 approved by the commission in 2005. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, www.trec.state.tx.us .

(h) Applicants may reproduce the forms adopted by the commission from printed copies and by computer. With the exception of the changes to the forms which are permitted by this section, the applicant shall reproduce the text of the forms verbatim and the spacing, length of blanks, fonts and placement of text on the page must appear to be substantially similar to that used by the commission in the printed version of the form.

(i) When using the forms, the applicant must comply with the following:

(1) The applicant may select the type and size of the fonts, provided the fonts are no smaller than those used in the printed version of the form adopted by the commission.

(2) The forms must be printed on letter sized ("8 1/2 by 11") paper.

(3) Whether a form is reproduced by computer or is preprinted by the applicant, the applicant may allocate such space for narrative responses where noted as the applicant deems necessary or may attach additional pages containing narrative responses to the application.

(4) The applicant may renumber the pages of a form to correspond with any changes made necessary due to adjusting the space for narrative responses.

(5) The applicant may not alter the text of a promulgated application form.

§543.5. Violations.

(a) It is a material violation of the Texas Timeshare Act (the Act) for a person to engage in any of the acts described in Section 221.071(a) of the Act.

(b) It is a material violation of the Act for a developer to represent to a potential purchaser of a timeshare interest by advertising or any other means that a timeshare plan has been approved by the State of Texas or the Texas Real Estate Commission or to represent that the State of Texas or the Texas Real Estate Commission has passed upon the merits of a timeshare plan. It is not a material violation of the Act for a registrant to represent that a timeshare plan has been registered if the registrant discloses at the same time and in the same manner that the State of Texas and the Texas Real Estate Commission have not approved the timeshare plan or passed upon the merits of the timeshare plan.

(c) It is a material violation of the Act for a developer to fail to file an application to amend a registration within 30 days of the occurrence of a material or materially adverse change in any document contained in the registration or to fail to submit a response together with any related material in a good faith effort to cure a deficient application to amend a registration within 90 days after the commission has mailed to the applicant a request for curative action.

(d) It is a material violation of the Act for a person to procure or attempt to procure a registration or amendment to a registration by fraud, misrepresentation or deceit or by making a material misstatement of fact in an application filed with the commission.

(e) It is a material violation of the Act for a person to disregard or violate a rule of the commission.

(f) It is a material violation of the Act for a developer to fail to make good a check issued to the commission within 30 days after the commission has mailed a request for payment by certified mail to the developer's last know permanent mailing address as reflected by the commission's records.

(g) It is a material violation of the Act for a developer to fail within 10 working days to provide information or documents requested by the commission or a commission representative in the course of the investigation of a complaint.

§543.6. Complaints and Disciplinary Proceedings.

(a) Complaints regarding registered timeshare plans shall be in writing and signed by the person filing the complaint.

(b) The commission shall not investigate a complaint submitted more than four years after the date of the transaction that is the subject of the complaint.

(c) Disciplinary proceedings, including appeals, shall be conducted in accordance with the provisions of Section 221.024 of the Texas Timeshare Act, Chapter 533 of this title and the Administrative Procedure Act, Chapter 2001, Government Code.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505663
Loretta R. DeHay
General Counsel
Texas Real Estate Commission
Effective date: January 15, 2006
Proposal publication date: November 4, 2005
For further information, please call: (512) 465-3900

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TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 25. MEMBERSHIP CREDIT

SUBCHAPTER B. COMPENSATION

34 TAC §25.35

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts new §25.35, concerning the administration of employer payments to the pension trust fund for new members. The new section implements the requirement that employers shall pay the equivalent of the state contribution to the pension trust fund for new members in their first ninety days of employment. The new section is adopted without changes to the text of the proposed rule as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4606).

In accordance with Senate Bill 1691, 79th Legislature, Regular Session, the new section implements the new employer payment requirement. It provides guidance to employers regarding the start and end of the ninety-day payment period as well as guidance on how to coordinate the end of a person's membership waiting period with the new payment requirement.

TRS received one comment from an office manager of an independent school district. The comment noted that the rule change penalizes school districts with extra cost associated with hiring new employees. She also said that benefits to employees are not going up but cost for the district is. The comment addressed the enactment of the statute requiring the additional employer payment for new members, not the way in which the proposed new rule would implement the enacted legislation. Because the commenter did not address a matter within TRS's discretion, her submission provides the Board no basis for changing the proposed rule as published.

Statutory Authority: §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §29 of Senate Bill 1691, 79th Legislature, Regular Session, which establishes new §825.4041, Government Code, requiring employers to pay the equivalent of the state contribution to the pension trust fund for new members in their first ninety days of employment; §821.001(7), Government Code, which defines "employer" for purposes of administering the system; §825.408, Government Code, which provides for interest on employer deposits of contributions and fees; and §830.102, Government Code, relating to participation in the optional retirement program.

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

Filed with the Office of the Secretary of State on December 7, 2005.

TRD-200505648
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: December 27, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 542-6438

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CHAPTER 29. BENEFITS

SUBCHAPTER A. RETIREMENT

34 TAC §29.4, §29.12

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §29.4, concerning changes to the computation of compensation for the purpose of calculating a standard annuity at retirement and new §29.12, concerning repeal of the subsidized early age retirement benefit. Amended §29.4 is adopted without changes to the text of the proposal as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4608). New §29.12 is adopted with minor changes to the text of the proposed rule as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4608).

The amendments to §29.4 will allow TRS to implement Senate Bill 1691, 79th Legislature, Regular Session (SB 1691), which changes the basis for computing compensation from a three-year to a five-year salary average for the purpose of calculating a standard annuity at retirement. The statutory amendment is effective September 1, 2005. SB 1691, however, also contains a grandfathering provision to preserve the current computation of compensation based on a three-year salary average for members who meet one or more of the grandfathering requirements on or before August 31, 2005. The Board has adopted new 34 TAC §51.12 to address the applicability of certain laws in effect before September 1, 2005. New §51.12 sets out the details for applying the grandfathering requirements to amended §29.4. Amended §29.4 sets out the new five-year salary average for those who are not grandfathered and, to administer the grandfathering provision, preserves the current three-year salary average as part of the amended rule for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

TRS received no public comments on the proposed amendments to §29.4.

New §29.12 will allow TRS to implement the section of SB 1691 that affects what is commonly referred to as the "subsidized

early age retirement benefit," which has been available to members who are at least age 55 and have at least 20 years of service credit but do not meet the requirements for normal age retirement, such as rule of 80. Under SB 1691, the subsidized early age retirement benefit is repealed effective September 1, 2005. SB 1691, however, also contains a grandfathering provision to preserve current law on the subsidized early age retirement benefit for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, sets out the details for applying the grandfathering requirements to new §29.12. To administer the grandfathering provision, new §29.12 preserves the subsidized early age retirement benefit requirements as part of the new section for reference by TRS staff and the membership when the repealed statute no longer will appear in official statutory texts.

TRS received no public comments on proposed new §29.12.

As adopted, new §29.12 contains minor changes to the text as published. The changes expressly designate the first paragraph as subsection (a) and add a new subsection (b). New subsection (b) clarifies that actuarial factors in existence before the enactment of SB 1691 and the recent amendment of Board rule 34 TAC §29.11, factors based on age expressed in years and months rather than whole years, continue to apply to grandfathered members. The actuarial factors based on age in years and months provide a slightly higher percentage for members than new statutory factors based on age in whole years. The early age retirement reduction factors applicable to grandfathered members are not included as part of the text of new §29.12 because they are adopted by reference under 34 TAC §29.11 and remain applicable to grandfathered members. The changes do not require republication of the rule because they are a logical outgrowth of the proposed rule and do not materially alter the issues raised in the proposed rule. The changes merely clarify the applicability of existing actuarial factors that use age in years and months to members who are grandfathered under SB 1691.

Statutory Authority for amended §29.4: §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute for amended §29.4: §12 of SB 1691, 79th Legislature, Regular Session, which amends §824.203, Government Code, and §58 of SB 1691, which contains the grandfathering requirements related to the legislative amendment of §824.203, Government Code.

Statutory Authority for new §29.12: §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute for new §29.12: §11 of SB 1691, 79th Legislature, Regular Session, which amends §824.202, Government Code, and §58 of SB 1691, which contains the grandfathering requirements related to the legislative amendment of §824.202, Government Code.

§29.12. Early Age Retirement Benefit Calculated on Law in Effect Before September 1, 2005.

(a) If a member eligible under §51.12 of this title (relating to Applicability of Certain Laws in Effect Before September 1, 2005) is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under §824.202(a)(2), Government Code, to a percentage derived from the following table, as provided by §824.202(c), Government Code, prior to its repeal effective September 1, 2005, by Senate Bill 1691, 79th Legislature, Regular Session (2005):
Figure: 34 TAC §29.12(a)

(b) Actuarial tables adopted under §29.11 of this title for early age retirement reduction factors using age in years and months derived from the table in subsection (a) of this section using age in whole years remain in effect for retirement after September 1, 2005 for members eligible under §51.12 of this title.

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

Filed with the Office of the Secretary of State on December 9, 2005.

TRD-200505688
Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
Effective date: December 29, 2005
Proposal publication date: August 12, 2005
For further information, please call: (512) 542-6438

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34 TAC §29.11

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §29.11, concerning actuarial tables for subsidized early age retirement reduction factors for TRS members who do not meet the grandfather provisions of Senate Bill 1691, 79th Legislature, Regular Session (SB 1691). The amended rule is adopted without changes to the text of the proposal as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6251).

In accordance with SB 1691, amended §29.11 specifies that actuarial tables furnished by the TRS actuary will be used for computation of benefits. Early age retirement reduction factors are adopted by reference under this rule. However, after August 31, 2005, the existing early age reduction factors previously applicable to all members should be amended to be applicable only for members who meet the grandfather provisions. For members who are not grandfathered, the reduction factors adopted by reference under §29.11 should be clarified with respect applicability to non-grandfathered members to correspond to the statutory table in §824.202(b), Government Code, for members eligible for early age retirement. The amended rule revises the reduction factor tables to preserve them for grandfathered members but make appropriate changes for non-grandfathered members.

TRS received no public comments on the proposed amended rule.

Statutory Authority: §824.202, Government Code, which authorizes the Board to adopt tables for reduction of benefits for early retirement; §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §11 of SB 1691, which amends §824.202(b), Government Code, to provide early age reduction factors for members not grandfathered under the provisions of SB 1691.

Cross-reference to Statute: §11 of SB 1691, which amends §824.202(b), Government Code, to provide early age reduction factors for members not grandfathered under the provisions of SB 1691.

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

Filed with the Office of the Secretary of State on December 9, 2005.

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Ronnie G. Jung
Executive Director
Teacher Retirement System of Texas
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For further information, please call: (512) 542-6438

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SUBCHAPTER E. DEFERRED RETIREMENT OPTION PLAN

34 TAC §29.63

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §29.63, concerning the Deferred Retirement Option Plan ("DROP") and the deadline to purchase special service credit as a DROP participant. The amended rule is adopted without changes to the text of the proposal as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6252).

The amendments to §29.63 address the new statutory window for participants in DROP to revoke their DROP participation no later than December 30, 2005, and clarify the effect of DROP revocation on the eligibility to purchase special service credit. The amendments implement provisions of Senate Bill 1691, 79th Legislature, Regular Session (2005) (SB 1691), amending §824.805, Government Code, relating to the window to revoke DROP participation.

TRS received no public comments on the proposed amended rule.

Statutory Authority: §825.102, Government Code, which authorizes the Board to adopt rules for the administration of the funds of the retirement system.

Cross-reference to Statute: §19 of SB 1691, which amends §824.805, Government Code, to provide a window for DROP participants to revoke their DROP participation.

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

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SUBCHAPTER F. PARTIAL LUMP-SUM PAYMENT

34 TAC §29.72

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts new §29.72, concerning eligibility to select a partial-lump sum option (PLSO). The new rule is adopted without changes to the text of the proposed rule as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4609).

New §29.72 allows TRS to implement the section of Senate Bill 1691, 79th Legislature, Regular Session (SB 1691), that changes the eligibility requirement for a PLSO to require that the member meet the rule of 90 (age and service credit equal at least 90).

SB 1691 also reduces the amount of a PLSO for early age retirement, as applicable. The statutory amendment is effective September 1, 2005. SB 1691, however, also contains a grandfathering provision to preserve the current PLSO eligibility requirements for members who meet one or more of the grandfathering requirements on or before August 31, 2005. New 34 TAC §51.12, concerning the applicability of certain laws in effect before September 1, 2005, sets out the details for applying the grandfathering provision to new §29.72. To administer the grandfathering provision, new §29.72 preserves the current PLSO eligibility requirements as part of the rule for reference by TRS staff and the membership when the current text of the statute is replaced by the law as amended under SB 1691 in official statutory texts.

TRS received no public comments on proposed new §29.72.

Statutory Authority: §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option; §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system. Cross-reference to Statute: §13 of SB 1691, 79th Legislature, Regular Session, which amends §824.2045, Government Code, and §58 of SB 1691, which contains the grandfathering requirements related to the legislative amendment of §824.2045, Government Code.

Cross-reference to Statute: §13 of SB 1691, 79th Legislature, Regular Session, which amends §824.2045, Government Code, and §58 of SB 1691, which contains the grandfathering requirements related to the legislative amendment of §824.2045, Government Code.

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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Ronnie G. Jung
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For further information, please call: (512) 542-6438

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CHAPTER 31. EMPLOYMENT AFTER RETIREMENT
SUBCHAPTER A. GENERAL PROVISIONS

34 TAC §31.1

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §31.1, concerning definitions related to employment after retirement. The amended rule is adopted without changes to the text of the proposal as published in the September 30, 2005, issue of the *Texas Register* (30 TexReg 6253).

The adopted amendments modify the definition of "substitute" contained in subsection (b) of §31.1.

The Board adopts the amended rule to implement Senate Bill 1691, 79th Legislature, Regular Session (2005) (SB 1691), which became effective September 1, 2005. Subject to certain conditions and exceptions, SB 1691 requires employers who report to TRS the employment of a retiree to pay a pension or health benefit surcharge. For the health benefit surcharge to apply, the reported retiree must also be enrolled in the retiree health benefits program (TRS-Care). The amended definition of a substitute in §31.1 relates to the implementation of the surcharges under SB 1691. Employers do not have to pay the pension or health benefit surcharge on a retiree serving as a substitute. In addition, the amended definition will be used to determine eligible service under the related return to work exception that allows a retiree to serve as a substitute without forfeiting an annuity. The amended rule will provide employers greater clarity regarding reported retirees serving as substitutes.

TRS received no public comments on the proposed amended rule.

Statutory Authority: §824.602, Government Code, which requires the Board to adopt rules governing the employment of a substitute; §825.102, Government Code, which authorizes the Board to adopt rules for eligibility for membership and the administration of the funds of the retirement system. Cross-reference to Statute: §824.602, Government Code, relating to exceptions to loss of benefits on resumption of service; §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retiree health benefits program.

Cross-reference to Statute: §824.602, Government Code, relating to exceptions to loss of benefits on resumption of service; §30 of SB 1691, which establishes new §825.4092, Government Code, relating to employer contributions for employed retirees; §42 of SB 1691, which amends §1575.204, Insurance Code, relating to public school contribution under the retiree health benefits program.

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

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CHAPTER 51. GENERAL ADMINISTRATION

34 TAC §51.12

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts new §51.12, concerning the applicability of certain benefits laws in effect before September 1, 2005. The new rule is adopted with a minor change to the text of the proposed rule as published in the August 12, 2005, issue of the *Texas Register* (30 TexReg 4612).

The new section implements a grandfathering provision in Senate Bill 1691, 79th Legislature, Regular Session (SB 1691), to preserve current law on three benefit provisions for members who timely meet one or more of the grandfathering requirements.

SB 1691 modifies the following benefit provisions: amends §824.202, Government Code, to eliminate what is commonly referred to as "subsidized early age retirement;" amends §824.203, Government Code, to change the three-year salary average to a five-year average for determining the standard annuity amount at retirement; and §824.2045, Government Code, to change eligibility requirements for the Partial Lump Sum Option (PLSO) to require a retiree to meet a rule of 90. These statutory changes are effective September 1, 2005. However, SB 1691 also contains a grandfathering provision to preserve current law on these three benefit provisions for members who timely meet one or more of the grandfathering requirements. In accordance with the legislative enactment, the new rule implements and sets out the grandfathering provision, which requires that, on or before August 31, 2005, the member must attain the age of 50, meet the "rule of 70" (the sum of age plus years of service credit must equal 70 or greater), or have at least 25 years of service credit. The new rule also provides guidance on the effect of termination of membership after meeting one or more grandfathering requirements and on using service credit in another Texas public retirement system for purposes of applying either the rule of 70 or the provision requiring 25 years of service credit.

As adopted, the new rule contains a minor change to the text as published. In subsection (c) of the new section, the additional text "on or before August 31, 2005" is inserted between the phrases "Service that is credited" and "with another Texas public retirement system." This change clarifies the nature of the service in another pubic retirement system that may be used to meet the grandfather provisions. This change does not require republication of the rule because it is a logical outgrowth of the proposed rule and does not materially alter the issues raised in the proposed rule.

TRS received no public comments on proposed new §51.12.

Statutory Authority: §825.102, Government Code, which authorizes the Board of Trustees of TRS to adopt rules for the administration of the funds of the retirement system; §824.2045, Government Code, which authorizes the Board to adopt rules for the implementation of §824.2045, relating to the partial lump-sum option. Cross-reference to Statute: §§11, 12, 13, and 58 of SB 1691, to be codified as amended §§824.202, 824.203, and 824.2045, Government Code.

Cross-reference to Statute: §§11, 12, 13, and 58 of SB 1691, to be codified as amended §§824.202, 824.203, and 824.2045, Government Code.

§51.12. Applicability of Certain Laws in Effect Before September 1, 2005.

(a) A person who retires under the Teacher Retirement System of Texas on or after September 1, 2005, and who meets one or more of the following requirements on or before August 31, 2005, is governed by provisions of state law relating to early retirement with at least twenty years of service credit under §824.202(c), Government Code, three year salary average under §824.203, Government Code, and the partial lump sum option (PLSO) under §824.2045, Government Code, as those provisions existed prior to September 1, 2005:

(1) the person has attained age 50;

(2) the sum of the person's age and amount of service credit in the retirement system equals 70 or greater; or

(3) the person has at least 25 years of service credit in the retirement system.

(b) A member who meets at least one of the requirements of subsection (a) of this section by August 31, 2005, before termination of membership through withdrawal of member contributions or absence from service shall be considered as continuing to be eligible under subsection (a) of this section upon resumption of membership.

(c) Service that is credited on or before August 31, 2005 with another Texas public retirement system and that meets all requirements to be used for retirement eligibility under the proportionate retirement program or the ERS/TRS transfer program may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section.

(d) Purchased or reinstated service credit in the retirement system may be considered to determine eligibility of a TRS member under paragraphs (2) and (3) of subsection (a) of this section if credited in accordance with uniform administrative requirements, including payment deadlines, established by the retirement system in order to complete processing for members who request purchase of service credit before August 31, 2005.

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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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 46. CONTRACTING TO PROVIDE ASSISTED LIVING AND RESIDENTIAL CARE SERVICES

SUBCHAPTER B. PROVIDER CONTRACTS

40 TAC §46.13

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §46.13, in Chapter 46 governing contracting to provide assisted living and residential care services, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5747).

The amendment is adopted to revise requirements for providers contracting to provide assisted living and residential care services through the Community Based Alternatives Assisted Living/Residential Care (CBA AL/RC) Program and the Community Care for the Aged and Disabled Residential Care (CCAD RC) Program to comply with Health and Safety Code, §247.069, as added by Senate Bill 1055 of the 79th Legislature. Section 247.069 requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility if the facility meets certain requirements.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility, if the facility meets certain requirements.

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

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TRD-200505659

Phoebe Knauer
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED
SUBCHAPTER J. 1915(c) MEDICAID HOME AND COMMUNITY-BASED WAIVER SERVICES FOR AGED AND DISABLED ADULTS WHO MEET CRITERIA FOR ALTERNATIVES TO NURSING FACILITY CARE

40 TAC §48.6033, §48.6034

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts the repeal of §48.6033 and §48.6034 in Chapter 48 governing Community Care for Aged and Disabled, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5749).

The repeal is adopted to delete the general contracting requirements and the requirements for housing options for providers contracting to provide assisted living and residential care services to individuals receiving services through the Community Based Alternatives Program. The current general contracting requirements are found in 40 TAC §46.11, while the current provisions concerning housing options are found in 40 TAC §46.13, and, therefore, §48.6033 and §48.6034 are unnecessarily duplicative.

DADS received no comments regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program.

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

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TRD-200505660
Phoebe Knauer
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Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 50. §1915(c) CONSOLIDATED WAIVER PROGRAM

40 TAC §50.28

The Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts an amendment to §50.28, in Chapter 50 governing the §1915(c) Consolidated Waiver Program, without changes to the proposed text published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5750).

The amendment is adopted to revise requirements for providers contracting to provide assisted living and residential care services through the Consolidated Waiver Program to comply with Health and Safety Code, §247.069, as added by Senate Bill 1055 of the 79th Texas Legislature. Section 247.069 requires DADS to allow an individual receiving assisted living or residential care services to choose an assisted living facility without regard to the number of units in the facility if the facility meets certain requirements.

DADS received no comments regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Health and Safety Code, §247.069, which requires DADS to allow an individual receiving services through the community based alternatives or the residential care programs to choose an assisted living facility without regard to the number of units in the facility, if the facility meets certain requirements.

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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General Counsel
Department of Aging and Disability Services
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 809. CHILD CARE AND DEVELOPMENT

SUBCHAPTER B. GENERAL MANAGEMENT

40 TAC §809.20

The Texas Workforce Commission (Commission) adopts amendments to §809.20, concerning Leveraging Local Resources *without* changes to the proposed text as published in the October 7, 2005, issue of the *Texas Register* (30 TexReg 6418).

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The Commission adopts amendments to 40 TAC §809.20 relating to leveraging local resources for use as match for federal Child Care and Development Funds (CCDF). The purpose of the adopted amendments is to clarify requirements that private donations, public transfers of funds, and certification of public expenditures must meet in order to be used as match for CCDF. Additionally, the adopted amendments clarify that it is the responsibility of the Commission, rather than the Boards, to accept and certify donations from private entities.

The Social Security Act (42 U.S.C. 618) provides the federal requirements for states to secure federal matching funds for child care services. Child Care and Development Fund Final Rules, 45 C.F.R. §98.53, further delineate the matching fund provisions by requiring that the funds used as match be for allowable services or activities as described in the CCDF State Plan. Additionally, 45 C.F.R. §98.53 allows states to use funds from both public and private sources in order to secure federal matching funds. However, the federal regulations place different requirements on these two sources of funds in order for the funds to be used as match for CCDF.

Regulations in 45 C.F.R. §98.53(e)(1) specify that public funds used as CCDF match must be:

- appropriated directly to the Lead Agency (the Texas Workforce Commission is the Lead Agency in Texas), or

- transferred from another public agency to the Lead Agency and under its administrative control; or

- certified by the contributing public agency as representing expenditures on CCDF allowable activities eligible for federal match.

In addition, the regulations specify that public funds must:

- not be used to match other federal funds; and

- not be federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

Regulations in 45 C.F.R. §98.53(e)(2) specify that private funds used as CCDF match must:

- be donated from private sources;

- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution;

- not revert to the donor's use or facility; and

- not be used to match other federal funds.

In Fiscal Year 2004, the Commission authorized Local Workforce Development Boards (Boards) to secure local match by certifying expenditures on allowable CCDF activities from private sources. Additionally, in January 2004, the Commission amended §809.20 of its Child Care and Development rules to allow for the use of certified expenditures from private sources.

In written guidance to the Texas Workforce Commission issued June 2, 2005, the United States Department of Health and Human Services, Administration for Children and Families (ACF), determined that the state's rules promulgated on January 23, 2004, relating to the child care program [40 TAC §809.20(a)(1)(B)] do not comport with CCDF regulations at 45 C.F.R. §98.53(e) and (f). ACF further stated that in order for private donated funds to be considered for federal match, such funds must be donated to the Commission as the Lead Agency for CCDF and are subject to its administrative control. Private donated funds remaining in the hands of private organizations or under the administrative control of those organizations cannot be considered "donated" for purposes of CCDF matching requirements.

The amendments to Chapter 809 clarify that the only allowable sources of local match are:

- funds donated from a private entity to the Commission;

- funds transferred from a public entity to the Commission; or

- public expenditures on allowable CCDF activities certified by a public entity as expenditures eligible for federal match.

Further, the amendments clarify that the local matching funds must be for activities that are included in the CCDF State Plan and allowable under this chapter.

Additionally, the amendments clearly distinguish between the Boards' responsibility for securing and managing local matching funds and the Boards' responsibility for providing necessary information to the Commission in order for the Commission to receive and certify private donations, and accept certifications of public expenditures and public transfers of funds.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH PUBLIC COMMENTS AND RESPONSES

§809.20. Leveraging Local Resources

The Commission adopts amendments to §809.20(a) to emphasize that it is the Boards' responsibility to leverage federal matching funds by securing available local resources. The amendment to §809.20(a) will move the types of local funds that are allowable as match from the current §809.20(a) to a new §809.20(b). The purpose of this amendment is to clarify the roles and responsibilities regarding securing and accepting local match. Section 809.20(a) states that it is the Boards' responsibility to secure lo-

cal match, while §809.20(b) provides that it is the Commission's role to accept the local match funds.

Additionally, the Commission adopts the removal of the provision, currently in §809.20(a)(1)(B), relating to the certification of private expenditures by a private entity as an allowable source of local match. The elimination of this language implements the guidance the Commission received from ACF clarifying the meaning of 45 C.F.R. §98.53(e)(2), by no longer allowing private certification of expenditures as a source of local match.

The new §809.20(b) describes the types of local funds that the Commission may accept as match for federal child care funds. The section provides that the Commission may accept private donated funds, public transferred funds, and public certifications of expenditures.

Section 809.20(b)(1) provides the requirements that must be met for the Commission to accept donations of funds from private entities. Section 809.20(b)(1) reflects the requirements under CCDF as specified in the Social Security Act and further delineated in the federal regulations in 45 C.F.R. §98.53(e). Section 809.20(b)(1) states that private donated funds must:

- be donated without restrictions that would require their use for a specific individual, organization, facility, or institution, or for an activity not included in the CCDF State Plan or allowed under this chapter;

- not revert to the donor's facility or use;

- not be used to match other federal funds; and

- be certified by both the donor and the Commission as meeting the foregoing requirements.

Section 809.20(b)(2) specifies the requirements for transfers of funds from public entities and emulates federal regulations in 45 C.F.R. §98.53(e)(1). The language allows the Commission to accept the transfer of public funds as a source of local match when the public funds are:

- transferred without restrictions that would require their use for an activity not included in the CCDF State Plan or allowed under this chapter;

- not used to match other federal funds; and

- not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

Section 809.20(b)(3) sets forth the requirements for the Commission to accept the certifications of expenditures from public entities. Section 809.20(b)(3), which emulates federal regulations in 45 C.F.R. §98.53(e)(1), states that expenditures by a public entity may be eligible for federal matching funds when the public entity certifies that the expenditures are:

- for activities included in the CCDF State Plan or allowed under this chapter;

- not used to match other federal funds; and

- not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

The Commission renumbers §809.20(b)(1) as §809.20(c)(1) and modifies the language to clarify the Boards' responsibilities with regard to securing local funds in order to receive federal matching funds in their local workforce development areas (workforce areas). Those responsibilities include the identification of available local funds, securing those funds, and the completion of agreements. Boards have the responsibility to identify available local funds through the use of private donated funds, transfers of funds by public entities, and certification of expenditures by public entities. Boards have further responsibility to secure those identified local funds by obtaining an agreement with the identified contributor and submitting those agreements to the Commission for acceptance by the Commission. Finally, Boards have the responsibility to ensure that the agreements are completed and fulfilled in accordance with the terms specified in the agreement.

The Commission also renumbers §809.20(b)(2) as §809.20(c)(2) and modifies the language to state that Boards are encouraged to secure additional local funds that exceed the amount required to match federal funds allocated to the Board to maximize its potential to receive additional federal funds--should they become available--rather than requiring the Board to secure additional local funds. The old language implied that the Boards were required to secure more local matching funds than are actually needed to draw down the federal funds allocated to the Boards. The Commission recognizes that requiring Boards to secure additional local match could lead to a situation in which a Board cannot assure contributors that there will be available federal matching dollars to match their donation. This new rule language reflects the Commission's intent to encourage Boards to secure extra local matching funds in case pledges are not completed in full, or to position Boards to be able to utilize reallocated additional federal matching funds should they become available.

Further, the Commission moves the language in §809.20(a)(2), which states that a Board's performance in securing local funds may make the Board eligible for incentive awards, to §809.20(c)(3). The Commission adopts this change in order to place the provisions related to the Board responsibilities regarding the securing of local resources into §809.20(c).

The Commission removes the provision formerly in §809.20(c) that set forth the process of submitting and documenting local match agreements. Administrative processes are more appropriate in other documents such as Workforce Development Letters or contract start-up instructions. In conjunction with removing the specific procedures for submitting and documenting local match agreements, the Commission also adds language in §809.20(d) to specify that a Board shall submit private donations, public transfers, and public certifications to the Commission for acceptance, with sufficient information to determine that the funds meet the necessary requirements.

The Commission amends §809.20(e), regarding completing private donations, public transfers, and public certifications, in order to specify the three types of sources for local match.

The Commission removes the provision formerly in §809.20(f), regarding Board reporting requirements related to local match. The Board local match reporting requirements are stipulated in adopted §809.20(c) regarding the submission of local match agreements, and adopted §809.20(d) regarding the completion of local match agreements. Further, Boards are required to submit monthly expenditure reports, including expenditures related to child care local match agreements, in accordance with §800.72 of this title, relating to Reporting Requirements.

Further, the Commission renumbers §809.20(g) as §809.20(f), and clarifies the types of local match that Boards must monitor.

The Commission received no comments on the proposed rule language.

PART III. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards and the Texas Association of Workforce Boards (TAWB). The Commission provided the concept papers regarding these rule amendments to the Boards and TAWB for consideration and review. The Commission also conducted conference calls with Board executive directors and Board staff on June 10, 2005, and August 5, 2005, to discuss the concept papers. Additionally, during the June 14, 2005, Commission meeting, a representative of TAWB and a representative of the Executive Directors' Council provided input to the Commission regarding the impact of this rule change. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved. As noted above, the Commission received no additional public comments on the proposed rule language.

The amendments are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities, the Texas Human Resources Code §44.002, regarding Administrative Rules, and the Texas Labor Code §301.021, which authorizes the Commission to accept donations in an open meeting by a majority of the voting members of the Commission.

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

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

TRD-200505611
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: December 26, 2005
Proposal publication date: October 7, 2005
For further information, please call: (512) 936-4148

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 Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Texas Administrative Code, Title 16, Part 4, Chapter 71, concerning Warrantors of Vehicle Protection Products. This review and consideration is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Tamala Fletcher, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, facsimile (512) 475-3032, or by e-mail, tamala.fletcher@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rules section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §71.1. Authority.

16 TAC §71.10. Definitions.

16 TAC §71.21. Registration Requirements--General.

16 TAC §71.22. Registration Requirements--Financial Security Requirements.

16 TAC §71.25. Registration Requirements--Renewal.

16 TAC §71.70. Responsibilities of Registrant.

16 TAC §71.80. Fees.

16 TAC §71.90. Administrative Penalties and Sanctions.

TRD-200505821
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: December 14, 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: 16 TAC §82.120(e)

CURRICULUM TO PREPARE A STUDENT FOR THE EXAMINATION FOR THE TEACHER'S CERTIFICATE 1,000 HOURS			
(1)	orientation, consisting of		8 hours
	(A)	rules and regulations of the school	
	(B)	introductions to school personnel and students	
	(C)	layout of school facilities	
(2)	instruction in theory, consisting of		125 hours
	(A)	lesson planning	15
	(B)	personality and professional conduct	15
	(C)	development of a barber course	15
	(D)	student learning principles	10
	(E)	principles of teaching	10
	(F)	basic teaching methods	10
	(G)	teaching aids	10
	(H)	testing	10
	(I)	Self evaluation	10
	(J)	teaching adults	10
	(K)	classroom problems	5
	(L)	classroom management	5
(3)	instruction in practical work, consisting of		867 hours
	(A)	assisting with senior students	346
	(B)	assisting with junior students	321
	(C)	theory class (assisting teacher, observing, teaching)	125
	(D)	learning office procedures and state laws	50
	(E)	grading test papers (assisting teacher, observing, grading)	25

Figure: 16 TAC §82.120(f)

CURRICULUM TO PREPARE A STUDENT FOR THE EXAMINATION FOR THE CLASS A BARBER CERTIFICATE 1,500 HOURS				
(1)	orientation, consisting of			8 hours
	(A)	rules and regulations of the school		
	(B)	introduction to school personnel and students		
	(C)	outlay of school facilities conducted		
(2)	theory, consisting of			180 hours
	(A)	anatomy, physiology, and histology, consisting of the study of		50 hours
		(i)	Hair	
		(ii)	Skin	
		(iii)	Muscles	
		(iv)	Nerves	
		(v)	Cells	
		(vi)	circulatory system	
		(vii)	Digestion	
		(viii)	Bones	
	(B)	Texas Barber Law		35
	(C)	bacteriology, sterilization, and sanitation		30
	(D)	disorders of the skin, scalp, and hair		10
	(E)	Salesmanship		5
	(F)	barbershop management		5
	(G)	chemistry		5
	(H)	Shaving		5
	(I)	scalp, hair treatments and skin		5
	(J)	Sanitary professional techniques		4
	(K)	professional ethics		4
	(L)	Scientific fundamentals of barbering		4
	(M)	cosmetic preparations		3
	(N)	shampooing and rinsing		2
	(O)	cutting and processing curly and over-curly hair		2
	(P)	haircutting, male and female		2
	(Q)	theory of massage of scalp, face and neck		2
	(R)	hygiene and good grooming		1
	(S)	barber implements		1
	(T)	honing and stropping		1
	(U)	mustaches and beards		1
	(V)	facial treatments		1
	(W)	electricity and light therapy		1
	(X)	history of barbering		1
(3)	instruction in practical work, consisting of the study of:			1312 hours
	(A)	dressing the hair, consisting of:		800
		(i)	men's haircutting	
		(ii)	children's haircutting	
		(iii)	women's haircutting	
		(iv)	cutting and processing curly and over-curly hair	
		(v)	razor cutting	

	(B)	Shaving	80
	(C)	Styling	55
	(D)	shampooing and rinsing	40
	(E)	bleaching and dyeing of the hair	30
	(F)	waving hair	28
	(G)	Straightening	25
	(H)	Cleansing	25
	(I)	professional ethics	22
	(J)	barbershop management	22
	(K)	hair weaving and hairpieces	17
	(L)	Processing	15
	(M)	Clipping	15
	(N)	beards and mustaches	15
	(O)	Shaping	15
	(P)	Dressing	15
	(Q)	Curling	15
	(R)	first aid and safety precautions	11
	(S)	scientific fundamentals of barbering	10
	(T)	barber implements	10
	(U)	haircutting or the process of cutting, tapering, trimming, processing, and molding and scalp, hair treatments, and tonics	10
	(V)	message and facial treatments	10
	(W)	Arranging	10
	(X)	Beautifying	10
	(Y)	Singeing	7
	(Z)	Manicuring	Optional

Figure: 16 TAC §82.120(g)

CURRICULUM TO PREPARE A STUDENT FOR THE EXAMINATION FOR THE MANICURIST LICENSE 600 HOURS--MINIMUM OF 16 WEEKS			
(1)	orientation, consisting of		8 hours
	(A)	rules and regulations of the school	
	(B)	introduction to school personnel and students	
	(C)	layout of school facilities	
(2)		instruction in theory, consisting of	37 hours
	(A)	bacteriology, sterilization, and sanitation	8
	(B)	manicuring, equipment, and procedures	4
	(C)	the nail and disorders	4
	(D)	Texas barber laws	4
	(E)	anatomy and physiology	4
	(F)	skin	4
	(G)	professional ethics	3
	(H)	hygiene and good grooming	3
	(I)	advanced nail techniques	3
(3)	instruction in practical work, consisting of:		555 hours
	(A)	shaping nails	96
	(B)	applying polish	74
	(C)	trimming cuticle and buffing nails	59
	(D)	hand and arm massage	57
	(E)	removal of polish	57
	(F)	application of artificial and gel nails	44
	(G)	applying cuticle remover and loosening	40
	(H)	preparation of manicure table	40
	(I)	softening cuticle	37
	(J)	bleaching under free edge	18
	(K)	cleaning under free edge	18
	(L)	applying cuticle oil or cream	15

Figure:16 TAC 82.120(h)

CURRICULUM TO PREPARE A STUDENT FOR THE EXAMINATION FOR THE BARBER TECHNICIAN LICENSE 300 HOURS			
(1)	orientation, consisting of		8 hours
	(A)	rules and regulations of the school	
	(B)	introduction to school personnel and students	
	(C)	layout of school facilities	
(2)	instruction in theory, consisting of		37 hours
	(A)	hygiene, bacteriology, sterilization, and sanitation	10
	(B)	common disorders of the skin; facial treatments	4
	(C)	shampooing, equipment, and procedures	4
	(D)	Texas barber laws	4
	(E)	cosmetic applications and massage	3
	(F)	professional ethics	3
	(G)	good grooming; preparing patron and making appointments	3
	(H)	theory of massage, and structure of head, neck, and face	2
	(I)	rinsing, types and procedures	2
	(J)	scalp and hair treatments	2
(3)	instruction in practical work, consisting of		255 hours
	(A)	application of shampoo and shampooing	45
	(B)	application of rinses and removal	35
	(C)	makeup application	33
	(D)	facial manipulations	20
	(E)	application of conditioner and rinsing	20
	(F)	scalp manipulations	20
	(G)	brushing and drying	18
	(H)	sanitation and sterilization	15
	(I)	draping and scalp examination	11
	(J)	application and removal of creams	10
	(K)	application and removal of packs	8
	(L)	set-up for facial	8
	(M)	preparation of work area for shampooing	7
	(N)	patron protection	5

Figure:16 TAC §82.120(i)

CURRICULUM FOR A BARBER REFRESHER COURSE 300 HOURS			
(1)	theory instruction in Texas barber laws		10 hours
(2)	instruction in practical work, to include		290 hours
	(A)	Haircutting	160
	(B)	permanent waving and chemical application	75
	(C)	styling, curling, and blow-drying	55

Figure: 16 TAC §83.120(a)

OPERATOR CURRICULUM

PRIVATE, PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS, AND ADULT EDUCATION PROGRAMS (1,500 HOURS)		
(A)	haircutting, styling and related theory	500 hours
(B)	hair coloring and related theory	200 hours
(C)	cold waving and related theory	200 hours
(D)	orientation, rules and laws	100 hours
(E)	manicuring and related theory	100 hours
(F)	shampoo and related theory	100 hours
(G)	chemistry	75 hours
(H)	salon management and practices	75 hours
(I)	hair and scalp treatment and related theory	50 hours
(J)	chemical hair relaxing and related theory	50 hours
(K)	facials and related theory	50 hours
PUBLIC SECONDARY PROGRAM FOR HIGH SCHOOL STUDENTS (1,000 HOURS)		
(A)	haircutting, styling, and related theory	400 hours
(B)	hair coloring and related theory	150 hours
(C)	cold waving and related theory	100 hours
(D)	manicuring and related theory	100 hours
(E)	orientation, rules and laws	75 hours
(F)	shampoo and related theory	75 hours
(G)	chemical hair relaxing and related theory	50 hours
(H)	facials and related theory	25 hours
(I)	hair and scalp treatment and related theory	25 hours

Figure: 16 TAC §83.120(b)

SPECIALIST CURRICULUM

FACIAL CURRICULUM (750 HOURS)		
(A)	facial treatment, cleansing, masking, therapy	225 hours
(B)	anatomy and physiology	90 hours
(C)	electricity, machines, and related equipment	75 hours
(D)	makeup	75 hours
(E)	orientation, rules and laws	50 hours
(F)	chemistry	50 hours
(G)	care of client	50 hours
(H)	sanitation, safety, and first aid	40 hours
(I)	management	35 hours
(J)	superfluous hair removal	25 hours
(K)	aroma therapy	15 hours
(L)	nutrition	10 hours
(M)	color psychology	10 hours
MANICURE CURRICULUM (600 HOURS)		
(A)	procedures:	320 hours
	basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	
(B)	bacteriology, sanitation and safety:	100 hours
	definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	
(C)	professional practices:	80 hours
	manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	
(D)	arms and hands:	70 hours
	major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	
(E)	orientation, rules, laws and preparation	15 hours
(F)	equipment, implements and supplies	15 hours
HAIR WEAVING/BRAIDING CURRICULUM (300 HOURS)		
(A)	hair weaving/braiding:	150 hours
	basic hair weaving/braiding, repair on hair weaving/braiding, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	

(B)	shampooing client, weft and extensions:	50 HOURS
	basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	
(C)	professional practices:	40 hours
	hair weaving/braiding as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	
(D)	anatomy and physiology-scalp:	30 hours
	major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	
(E)	chemistry in hair weaving/braiding:	10 hours
	elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving/braiding	
(F)	sanitation and safety measures:	10 hours
	definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	
(G)	safety measures: client protection	10 hours
WIG CURRICULUM (300 HOURS)		
(A)	combing out	50 hours
(B)	styling	50 hours
(C)	coloring, tinting, bleaching	37 hours
(D)	rolling	30 hours
(E)	cutting and shaping, scissors and razor	20 hours
(F)	hot iron	19 hours
(G)	cleaning	10 hours
(H)	alterations, installation of elastic	10 hours
(I)	conditioning	10 hours
(J)	brushing technique prior to styling	10 hours
(K)	identification and recognition definition-wigs, wiggery, wigology-pertaining to any human, synthetic, or animal hairpiece	10 hours
(L)	sanitation, disinfecting, required rules and laws	10 hours
(M)	eye tabbing	10 hours
(N)	sizing	5 hours
(O)	drying	5 hours
(P)	measuring head for proper size	5 hours
(Q)	preparation of wig on block	5 hours
(R)	history, background, and salesmanship	3 hours
(S)	knowledge of coloring: J L	1 hour

SHAMPOO AND CONDITIONING CURRICULUM (150 HOURS)		
(A)	procedures:	100 hours
	basic shampooing techniques on all types of shampoo, application and removal of all types of conditioners, removal of hair color stains; application of weekly rinses or semi-permanent rinses, removal of bleaches requiring shampoo, scalp and neck massage, removing hair tints requiring shampoo, cleansing and conditioning of all hair goods, hair and scalp analysis, and scalp and hair manipulations	
(B)	scalp and neck, anatomy and physiology:	10 hours
	major bones and functions; major muscles and functions, major nerves and functions, major blood vessels and functions, skin structure, functions, appendages, conditions and lesions	
(C)	chemistry of shampoo and conditioner	10 hours
	elements, compounds, mixtures, acid and alkali (pH), chemistry of water, composition and uses of shampoo and conditioner	
(D)	sanitation and safety:	10 hours
	definitions, rules, laws, and methods	
(E)	shampooing and conditioning skills:	10 hours
	purposes and effects, preparation, equipment, implements and supplies	
(F)	professional practices	5 hours
	shampooing as a profession, vocabulary and ethics	
(G)	salon procedures:	5 hours
	hygiene, grooming, professional attitudes, salesmanship and public relations	

Figure: 16 TAC §83.120(c)

STUDENT-INSTRUCTOR CURRICULUM

STUDENT-INSTRUCTOR CURRICULUM (750 HOURS)		
(A)	instruction and theory and lab/clinic operation	350 hours
(B)	teaching and lab/clinic management	350 hours
(C)	orientation, rules and laws	50 hours
STUDENT/INSTRUCTOR WITH TWO YEARS EXPERIENCE CURRICULUM (250 HOURS)		
(A)	lesson plans	60 hours
(B)	methods of teaching	60 hours
(C)	classroom management	30 hours
(D)	evaluation techniques	30 hours
(E)	state laws and forms	20 hours
(F)	visual aids preparation and use	20 hours
(G)	learning theory	20 hours
(H)	orientation, rules, and laws	10 hours

Figure: 16 TAC §83.120(d)

PRACTICAL APPLICATIONS OF THE CURRICULUM

EACH COSMETOLOGY STUDENT MUST COMPLETE PRACTICAL APPLICATIONS OF THE CURRICULUM ACCORDING TO THE SCHOOL'S PUBLISHED RULES ON MINIMUM PRACTICAL APPLICATIONS OR BY THE FOLLOWING SCHEDULE, WHICHEVER IS GREATER		
(A)	client protection	600 applications
(B)	hairdressing: arranging, cutting, dressing, shampooing, curling, pressing, and fingerwaving	600 applications
(C)	sanitation	500 applications
(D)	haircoloring: temporary, semi-permanent, permanent, bleaching and dimensional, coloring, color mixing	100 applications
(E)	chemical hair services: minimum of 15 services in each category: (i) restructuring (ii) permanent waving (iii) straightening and relaxing	100 applications
(F)	facials: minimum of 5 services in each category: (i) skin analysis and care (ii) manipulation and massage (iii) skin care (iv) removal of hair by wax, tweezers, or depilatories (v) make-up and brow arch	30 applications
(G)	scalp and hair treatments	30 applications
(H)	manicuring and pedicuring	30 applications
THE ABOVE PRACTICAL APPLICATIONS MAY BE PERFORMED ON A MANNEQUIN, A STUDENT OR A PATRON AND MOCK APPLICATIONS MAY BE USED WHERE APPROPRIATE AND NECESSARY. IT SHALL BE THE RESPONSIBILITY OF THE STUDENT TO KEEP A RECORD OF THE NUMBER OF PRACTICAL APPLICATIONS PERFORMED, BUT SHALL BE VERIFIED BY AN INSTRUCTOR SIGNATURE.		

Figure: 22 TAC §1.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 1.62	Administrative penalty or reprimand
Practice of architecture while registration is inactive	Rule 1.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 1.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 1.102 Rule 1.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 1.103(a) Rule 1.103(d) Rule 1.103(f) Rule 1.103(h)(2) Rule 1.103(i) Rule 1.105(a)(4) Rule 1.122(b)[~~(e)~~] Rule 1.122(f)[~~(e)~~]	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 1.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 1.104(e) [~~1.103(e)~~]	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 1.103(g) Rule 1.105(b) Rule 1.122(e)[~~(d)~~]	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 1.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 1.103(h)(3) Rule 1.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 1.104(b)	Administrative penalty or reprimand
Violation of requirements regarding prototypical design	Rule 1.105(a)(1) Rule 1.105(a)(2) Rule 1.105(a)(3) Rule 1.105(a)(5)	Administrative penalty, reprimand, or suspension
Failure to provide Statement of Jurisdiction	Rule 1.106	Administrative penalty or reprimand
Failure to enter into a written agreement of association when required	Rule 1.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	Rule 1.122(b)[~~(a)~~]	Suspension or revocation
Failure to exercise Responsible Charge over the preparation of a document as required	Rule 1.122(f)[~~(e)~~]	Suspension or revocation
Failure to list a business entity or association on behalf of which architectural services are rendered	Rule 1.124(a)	Administrative penalty or reprimand

Violation	Rule(s) Cited	Recommended Penalty
Failure to notify the Board upon ceasing to provide architectural services on behalf of a business entity or association listed in registration records [~~after filing an Architect of Record affidavit~~]	Rule 1.124(b)[~~(c)~~]	Administrative penalty or reprimand
Gross incompetency	Rule 1.142	Suspension or revocation
Recklessness	Rule 1.143	Suspension or revocation
Dishonest practice	Rule 1.144(a) Rule 1.144(c)	Suspension or revocation
Dishonest practice	Rule 1.144(b)	Administrative penalty or reprimand
Conflict of interest	Rule 1.145	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	Rule 1.146(a)	Suspension or revocation
Failure to uphold responsibilities to the architectural profession	Rule 1.146(b) Rule 1.146(c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	Rule 1.147	Administrative penalty or reprimand
Unauthorized practice or use of title "architect"	Rule 1.148	Suspension, revocation, or denial
Criminal conviction	Rule 1.149	Suspension or revocation
Violation by Applicant	Rule 1.148 Rule 1.149 Rule 1.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 1.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 1.171	Administrative penalty

Figure: 22 TAC §3.232(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 3.62	Administrative penalty or reprimand
Practice of landscape architecture while registration is inactive	Rule 3.68	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 3.69	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 3.102 Rule 3.104(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 3.103(a) Rule 3.103(d) Rule 3.103(f) Rule 3.103(h)(2) Rule 3.103(i) Rule 3.122(d)[~~(e)~~] Rule 3.122(f)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 3.103(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 3.104(e) [~~3.103(e)~~]	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 3.103(g) Rule 3.122(e)[~~(d)~~]	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 3.103(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 3.103(h)(3) Rule 3.104(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 3.104(b)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	Rule 3.105	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	Rule 3.105(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	Rule 3.122	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	Rule 3.122(b)[~~(a)~~]	Suspension or revocation
Failure to list a business entity or association on behalf of which landscape architectural services are rendered	Rule 3.124(a)	Administrative penalty or reprimand
Failure to notify the Board upon ceasing to provide landscape architectural services on behalf of a business entity or association listed in registration records [~~after filing a Landscape Architect of Record affidavit~~]	Rule 3.124(b)[~~(c)~~]	Administrative penalty or reprimand
Gross incompetency	Rule 3.142	Suspension or revocation
Recklessness	Rule 3.143	Suspension or revocation

Violation	Rule(s) Cited	Recommended Penalty
Dishonest practice	Rule 3.144(a) Rule 3.144(c)	Suspension or revocation
Dishonest practice	3.144(b)	Administrative penalty or reprimand
Conflict of interest	Rule 3.145	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	Rule 3.146(a)	Suspension or revocation
Failure to uphold responsibilities to the landscape architectural profession	Rule 3.146(b) Rule 3.146(c)	Administrative penalty or reprimand
Failure to act in a manner consistent with the Professional Services Procurement Act	Rule 3.147	Administrative penalty or reprimand
Unauthorized practice or use of title "landscape architect"	Rule 3.148	Suspension, revocation, or denial
Criminal conviction	Rule 3.149	Suspension or revocation
Violation by Applicant	Rule 3.148 Rule 3.149 Rule 3.151	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 3.170	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 3.171	Administrative penalty

Figure: 22 TAC §5.242(j)

Violation	Rule(s) Cited	Recommended Penalty
Unauthorized duplication of certificate of registration or failure to display certificate of registration as required	Rule 5.72	Administrative penalty or reprimand
Practice of interior design while registration is inactive	Rule 5.78	Administrative penalty
Failure to fulfill mandatory continuing education requirements	Rule 5.79	Administrative penalty or suspension
Failure to use appropriate seal or signature	Rule 5.112 Rule 5.114(c)	Administrative penalty or reprimand
Failure to seal documents or insert statement in lieu of seal as required	Rule 5.113(a) Rule 5.113(d) Rule 5.113(f) Rule 5.113(h)(2) Rule 5.113(i) Rule 5.132(d)[~~(e)~~] Rule 5.132(f)	Administrative penalty or reprimand
Failure to mark incomplete documents as required	Rule 5.113(b)	Administrative penalty or reprimand
Removal of seal after issuance of documents	Rule 5.114(e) [~~5.113(e)~~]	Administrative penalty or reprimand
Failure to maintain a document for 10 years as required	Rule 5.113(g) Rule 5.132(e)[~~(d)~~]	Administrative penalty or reprimand
Failure to notify the original design professional as required	Rule 5.113(h)(1)	Administrative penalty or reprimand
Sealing a document prepared by a person not working under the respondent's Supervision and Control	Rule 5.113(h)(3) Rule 5.114(a)	Suspension or revocation
Unauthorized use of a seal or modification of a document	Rule 5.114(b)	Administrative penalty or reprimand
Failure to provide Statement of Jurisdiction	Rule 5.115(a)	Administrative penalty or reprimand
Failure to report a course of action taken against the respondent's advice as required	Rule 5.115(b)	Administrative penalty, reprimand, or suspension
Failure to enter into a written agreement of association when required	Rule 5.132	Administrative penalty or reprimand
Failure to exercise Supervision and Control over the preparation of a document as required	Rule 5.132(b)[~~(a)~~]	Suspension or revocation
Failure to list a business entity or association on behalf of which interior design services are rendered	Rule 5.134(a)	Administrative penalty or reprimand
Failure to notify the Board upon ceasing to provide interior design services on behalf of a business entity or association listed in registration records [~~after filing an Interior Designer of Record affidavit~~]	Rule 5.134(b)[~~(c)~~]	Administrative penalty or reprimand
Gross incompetency	Rule 5.152	Suspension or revocation
Recklessness	Rule 5.153	Suspension or revocation

Violation	Rule(s) Cited	Recommended Penalty
Dishonest practice	Rule 5.154(a) Rule 5.154(c)	Suspension or revocation
Dishonest practice	Rule 5.154(b)	Administrative penalty or reprimand
Conflict of interest	Rule 5.155	Suspension or revocation
Failure to uphold responsibilities to the interior design profession	Rule 5.156(a)	Suspension or revocation
Failure to uphold responsibilities to the interior design profession	Rule 5.156(b) Rule 5.156(c)	Administrative penalty or reprimand
Unauthorized practice or use of title "interior designer" or term "interior design"	Rule 5.157	Suspension, revocation, or denial
Criminal conviction	Rule 5.158	Suspension or revocation
Violation by Applicant	Rule 5.157 Rule 5.158 Rule 5.160	Reprimand, administrative penalty, suspension, rejection, denial of right to reapply
Failure to submit a document as required by the Architectural Barriers Act	Rule 5.180	Reprimand or administrative penalty
Failure to respond to a Board inquiry	Rule 5.181	Administrative penalty

Figure: 22 TAC §801.351(y)

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS AND THIS NOTICE OF INFORMAL CONFERENCE WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

Figure: 22 TAC §801.362(c)

FAILURE TO APPEAR

YOUR FAILURE TO APPEAR, IN PERSON OR BY REPRESENTATIVE, ON THE ABOVE DATE, TIME, AND PLACE, WILL BE CONSIDERED A WAIVER OF YOUR RIGHT TO A HEARING. THE FACTUAL ALLEGATIONS AND THIS NOTICE OF [HEARING/INFORMAL CONFERENCE] WILL BE DEEMED ADMITTED AS TRUE AND THE PROPOSED DISCIPLINARY ACTION WILL BE GRANTED BY DEFAULT.

Figure: 34 TAC §29.12(a)

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
At least 20 but less than 21	90%	92%	94%	96%	98%	100%
At least 21 but less than 22	92%	94%	96%	98%	100%	100%
At least 22 but less than 23	94%	96%	98%	100%	100%	100%
At least 23 but less than 24	96%	98%	100%	100%	100%	100%
At least 24 but less than 25	98%	100%	100%	100%	100%	100%

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 Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Family and Protective Services), announces the issuance of a Request for Proposals (RFP) #303-6-10664. TBPC seeks a five-year lease of approximately 1,233 square feet of office space in Conroe, Montgomery County, Texas.

The deadline for questions is January 6, 2006; and the deadline for proposals is January 16, 2006 at 3:00 P.M. The award date is February 1, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=62386.

TRD-200505822
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: December 14, 2005

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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 December 2, 2005, through December 8, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on December 14, 2005. The public comment period for these projects will close at 5:00 p.m. on January 13, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Willacy County Navigation District; Location: The project is located from the Gulf of Mexico jetty entrance of the Channel to Port Mansfield to the Port Mansfield Harbor entrance in Laguna Madre, Willacy County, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: South of Potero Lopeno SE and Port Mansfield, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 672430 (POB)/656880 (POE); Northing: 2939130 (POB)/2938200 (POE). Project Description: The applicant proposes to maintenance dredge approximately 1.4 million cubic yards of silt and sand from the Channel to Port Mansfield with the use of a hydraulic dredge. The proposed dredging will occur in select locations beginning at the entrance of the Port Mansfield jetties at Station -2+600, and extending to the entrance of the Port Mansfield Harbor at Station 7+500. Historically, this dredging has been accomplished as a federal project by the federal government and the Willacy County Navigation District (WCND) as the local sponsor; however funding is not currently available therefore WCND now proposes to accomplish the dredging. The dredging is proposed within the previously federally authorized channel limits. The proposed placement of dredged material is also intended to be within the general limits of which was previously authorized, however some changes may occur as a result of this coordination. CCC Project No.: 06-0073-F1; Type of Application: U.S.A.C.E. permit application #23926 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.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200505805
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: December 14, 2005

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Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of consulting contract award in connection with the Request for Proposals (RFP #173a) for statistician consulting services to advise the Comptroller on statistical issues and provide other related services in connection with the Comptroller's annual Property Value Study (Study).

Comptroller announces that the contract was awarded to Analytical Systems, Inc., 20 Colony Park Circle, P.O. Box 3041, Galveston, Texas 77551-3041. The total amount of this contract is not to exceed

$30,000.00. The term of the contract is December 7, 2005 through August 31, 2006. The reports submitted under this contract will be due on or before August 31, 2006.

The notice of request for proposals (RFP #173a) was published in the August 26, 2005, issue of the *Texas Register* (30 TexReg 5046).

TRD-200505693
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: December 9, 2005

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Notice of Contract Award

Pursuant to Chapters 403, 2305, and 2254, Subchapter A, Texas Government Code, the Comptroller of Public Accounts (Comptroller) State Energy Conservation Office (SECO) announces the following contract awards:

The notice of request for proposals (RFP #172h) was published in the June 24, 2005, issue of the *Texas Register* (30 TexReg 3746).

The contractors will provide energy engineering monitoring for the Texas LoanSTAR Revolving Loan Program.

Three contracts were awarded as follows:

1. Carter & Burgess, Inc., 777 Main Street, P.O. Box 901058, Fort Worth, Texas 76101-2058. The total amount of this contract is not to exceed $250,000.00. The term of the contract is October 16, 2005 through August 31, 2006;

2. ccrd partners dba Texas Energy Engineering, Inc., 808 Travis Street, Suite 200, Houston, Texas 77002. The total amount of this contract is not to exceed $200,000.00. The term of the contract is October 16, 2005 through August 31, 2006; and

3. Kinsman & Associates Consulting Engineers, 1701 N. Greenville Avenue, Suite 600, Richardson, Texas 75801. The total amount of this contract is not to exceed $150,000.00. The term of the contract is October 16, 2005 through August 31, 2006.

The project reviews will be completed on or before August 31, 2006.

TRD-200505798
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: December 13, 2005

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/19/05 - 12/25/05 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/19/05 - 12/25/05 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment, or other similar purpose.

TRD-200505786
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: December 13, 2005

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East Texas Council of Governments

Public Notice

The East Texas Council of Governments (ETCOG), as administrative unit for the East Texas Workforce Development Board, is soliciting proposals for a subcontractor to provide Child Care Services (CCS) in the East Texas Workforce Development Area (WDA). The contract period would begin October 1, 2006 and run through September 30, 2007 with the availability of four one year additional options. It is anticipated that the funding available will be similar to the current fiscal year which is approximately $12,767,620.

Counties that comprise the East Texas WDA are Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood.

The mission of the East Texas Workforce Development Board is to improve the quality of life in this area through economic development by providing a first-class workforce for present and future businesses. The purpose of this Request for Proposals is to identify a subcontractor that will assist with achieving this mission by offering Child Care to eligible families and to arrange for the delivery and payment of child care through the Child Care Services (CCS) system.

Requests for Proposals will not be released prior to December 9, 2005. The anticipated deadline for receipt of proposals will be February 9, 2006.

Persons or organizations wanting to receive a Request for Proposals (RFP) package should request by letter, email or by fax. Request letters should be addressed to Paul Macaluso, Regional Planner, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or email to paul.macaluso@twc.state.tx.us or fax at 903-983-1440, Attention: Paul Macaluso.

Questions concerning the RFP process should be addressed by email or fax to Gary Allen, Section Chief, Planning and Board Support or Paul Macaluso, Regional Planner at gary.allen@twc.state.tx.us or paul.macaluso@twc.state.tx.us or fax at 903-983-1440.

TRD-200505650
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: December 8, 2005

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Texas Commission on Environmental Quality

Notice of District Petition

Notices mailed December 6, 2005

TCEQ Internal Control No. 11082005-D06; Nelson Homestead Family Partnership, Ltd., and Paloma Lake Development, Inc., (Petitioners) filed a petition for creation of Paloma Lake Municipal Utility District No. 1 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative

Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property. to be included in the proposed District; (3) the proposed District will contain approximately 379.04 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-05-09-22-14G3, effective September 22, 2005, the City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $32,295,000.

TCEQ Internal Control No. 11082005-D05; Nelson Homestead Family Partnership, Ltd., and Paloma Lake Development, Inc., (Petitioners) filed a petition for creation of Paloma Lake Municipal Utility District No. 2 of Williamson County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property. to be included in the proposed District; (3) the proposed District will contain approximately 347.17 acres located within Williamson County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Round Rock, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. R-05-09-22-14G3, effective September 22, 2005, the City of Round Rock, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control local storm waters; and (4) purchase, construct, acquire, improve, maintain, and operate additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately $24,680,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505816
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2005

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Notice of Intent to Perform Removal Action at the Hicks Field Sewer Corporation State Superfund Site, Saginaw, Tarrant County, Texas

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) hereby issues public notice of intent to perform a removal action for the Hicks Field Sewer Corporation state Superfund site (the site), as provided by Texas Health and Safety Code (THSC), §361.133. The site, including all land, structures, appurtenances, and other improvements, is approximately 3.8 acres located approximately 1.8 miles west of the intersection of United States Highway 81-287 and Farm-to-Market Road 156 in Saginaw, Tarrant County, Texas. The site also includes any areas where hazardous substances have come to be located as a result of, either directly or indirectly, releases of hazardous substances from the site.

The facility operated from the early 1970s to mid-1994, providing sewage treatment services for a nearby industrial park. A metal finishing facility operated in the industrial park from the early 1970's until it ceased operations in early 1981. The metal finishing facility discharged pretreated process rinse waters containing metals. Investigation of the plant indicates that the chemicals of concern at the site are arsenic, cadmium, chromium, lead, and zinc. The media of concern is soil.

The site is proposed for listing under THSC, Chapter 361, Subchapter F. The removal action is being conducted so that the metals do not impact the groundwater in the future, and to prevent runoff of contaminants into the nearby stream. A removal can be completed without extensive investigation and planning that will achieve a significant cost reduction for the site and will help protect human health and the environ-

ment. The removal action will consist of excavation of contaminated soils. Thus, a detailed and extensive design process is unnecessary in this case, and the significant costs associated with that process can be averted.

A portion of the records for this site is available for review during regular business hours at the John E. Keeter Public Library, 355 West McLeroy Boulevard, Saginaw, Texas 76179, (817) 232-2100. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, MC 199, 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 is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

For further information, please contact Kristian A. Mauricio, TCEQ Project Manager, Remediation Division, at (800) 633-9363, extension 2493, or Bruce McAnally, TCEQ Community Relations Coordinator at (800) 633-9363, extension 2141.

TRD-200505800
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 13, 2005

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Notice of Water Quality Applications

The following notices were issued during the period of November 29, 2005 through December 8, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF BLANKET has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014618001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 35,000 gallons per day. The facility is located approximately 160 feet west of County Road 620 and approximately 1,500 feet south of the intersection of County Road 620 and Farm-to-Market Road 1467 (Main Street) in Brown County, Texas.

CITY OF BURKBURNETT has applied for a renewal of TPDES Permit No. WQ0010002001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,200,000 gallons per day. The facility is located on the east side of Kelly Street, just north of Third street (State Highway 240) in the City of Burkburnett in Wichita County, Texas.

CITY OF CAMP WOOD has applied for a renewal of Permit No. 12334-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 101,000 gallons per day via surface irrigation of 14.0 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located south of Camp Wood, east of the Nueces River and west of State Highway 55, approximately 4,000 feet due south of the intersection of State Highway 55 (Nueces Street) and South Street in Real County, Texas.

CITY OF CHILDRESS has applied for a renewal of TPDES Permit No. 10076-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 495,000 gallons per day. The facility is located approximately « mile south of U.S. Highway 287 and approximately 1 mile east of Farm-to-Market Road 2530 in Childress County, Texas.

COMMUNITY ESTATES, INC. has for a renewal of TPDES Permit No. 13903-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 3,925 gallons per day. The facility is located on Farm-to-Market Road 2259, approximately 2.5 miles northwest of the intersection of Farm-to-Market Road 226 and Farm-to-Market Road 2259 and 3.2 miles south-southwest of the intersection of Farm-to-Market Road 226 and State Highway 21 in Nacogdoches County, Texas.

COUNTRY TERRACE WATER COMPANY, INC. has applied for a major amendment to TPDES Permit No. WQ0011955001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 220,000 gallons per day to a daily average flow not to exceed 490,000 gallons per day. This application was submitted to the TCEQ on January 25, 2005. The facility is located approximately 600 feet south of Highlands Reservoir, approximately 0.75 mile northwest of the intersection of Wallisville and Wade Roads in Harris County, Texas.

CITY OF FORT WORTH, TARRANT REGIONAL WATER DISTRICT, AND TEXAS DEPARTMENT OF TRANSPORTATION, which operate the City of Fort Worth Municipal Separate Storm Sewer System (MS4), have applied for a renewal of NPDES Permit No. TXS000901. The draft permit would authorize storm water point source discharges to surface water in the state from the City of Fort Worth Municipal Separate Storm Sewer System (MS4). The permit will be renewed as TPDES Permit No. WQ0004350000. The MS4 is located in the City of Fort Worth, in Denton, Tarrant, and Wise Counties, Texas.

CITY OF KERMIT has applied for a renewal of Permit No. 10200-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 1,000,000 gallons per day via evaporation. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.5 miles south of the intersection of State Highway 18 and State Highway 302 in Winkler County, Texas.

MILLENNIUM RAIL, INC. has applied for a renewal of TPDES Permit No. 12390-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day. The facility is located approximately 1000 feet south of Farm-to-Market Road 1998, approximately 3500 feet east of the intersection of Farm-to-Market Roads 1998 and 2199 in Harrison County, Texas.

MIRANDO CITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 14207-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 125,000 gallons per day. The facility is located due south of the Tex-Mex Railroad and 3,000 feet due west of the intersection of State Highway 359 and Farm-to-Market Road 2895 in Webb County, Texas.

MONARCH UTILITIES I L. P. has applied for a renewal of TPDES Permit No. 14055-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility is located approximately 1,400 feet northwest of the Searcy Cemetery and approximately 0.9 mile northeast of the intersection of State Highway 154 and Farm-to-Market Road 288 in Wood County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 83 has applied for a major amendment to TPDES Permit No.

WQ0014482001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 490,000 gallons per day to a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 4,800 feet west-northwest of the intersection of Northpark Drive and U.S. Highway 59 and approximately 600 feet north of Morton Road in Montgomery County, Texas.

HORACE MARION PEVETO AND BETTY JEAN PEVETO, Oak Leaf Park Wastewater Treatment Facility has applied for a renewal of Permit No. 11316-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.012 million gallons per day via surface irrigation of 18 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1,500 feet north of Interstate Highway 10 and 2,300 feet east of State Highway 62 in Orange County, Texas. The facility and disposal site are located in the drainage basin of Cow Bayou in Segment No. 0511 of the Sabine River Basin.

CITY OF QUITAQUE has applied for a renewal of Permit No. 10727-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 60,000 gallons per day via surface irrigation of 80 acres of non-public access pasture land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 4,500 feet east-northeast of the intersection of State Highway 86 and Farm-to-Market Road 1065 and 1,200 feet north of State Highway 86, east of the City of Quitaque in Briscoe County, Texas.

SABINE VALLEY REGIONAL MENTAL HEALTH AND MENTAL RETARDATION CENTER has applied for a renewal of TPDES Permit No. 11361-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day. The facility is located on the north side of State Highway 154, approximately 5.5 miles northwest of the intersection of U.S. Highway 80 and Loop 390 in Harrison County, Texas.

SKY RANCHES, INC. has applied for a renewal of TPDES Permit No. 14318-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 49,500 gallons per day. The facility is located on County Road 448 approximately 1 mile south of the intersection of Farm-to-Market Road 1805 and County Road 448 in Smith County, Texas.

UNIVERSITY OF TEXAS has applied for a renewal of TPDES Permit No. WQ0011370001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 7,500 gallons per day. The facility is located at McDonald Observatory on Mount Locke approximately 10 miles southeast of the intersection of State Highway 166 and State Highway 118 about 10 miles northwest of Fort Davis in Jeff Davis County, Texas.

CITY OF WICHITA FALLS which operates the Cypress Water Treatment Plant, a municipal potable water treatment facility, has applied for a renewal of TPDES Permit No. WQ0004419000, which authorizes the discharge of reverse osmosis reject water and ultra-filtration/micro-filtration backwash water at a daily maximum flow not to exceed 6,000,000 gallons per day via Outfall 001. The facility is located on the north side of Johnson Road between Barnett Road and Fairway Boulevard, approximately 2100 feet southeast of the intersection of U.S. Highway 82 (Kell Freeway) and Barnett Road, in the southwest section of the City of Wichita Falls, Wichita County, Texas.

WILLIAMSON COUNTY has applied for a new permit, Proposed Permit No. WQ0014574001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day via surface irrigation of 157 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located on the east side of Sam Bass Road (County Road 175), approximately 6,900 feet north of the intersection of Sam Bass Road and Farm-to-Market Road 1431 in Williamson County, Texas.

TRD-200505817
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2005

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Notice of Water Rights Application

Notice issued December 8, 2005:

APPLICATION NO. 5894; Mallard Lakes at McKinney Homeowners Association, Inc., c/o 506 Wood Duck Lane, McKinney, Texas, 75070, applicant, seeks a Water Use Permit pursuant to Texas Water Code 11.121 and 11.042, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicant seeks authorization to maintain three existing reservoirs on unnamed tributaries of Wilson Creek, a tributary of the East Fork Trinity River, a tributary of the Trinity River, Trinity River Basin, that impound a total of 90.3 acre-feet of water. All three dams are located in the James Herndon Original Survey No. 1, Abstract No. 391, approximately 5.3 miles west of McKinney, in Collin County, Texas. For a complete description of the reservoirs and diversion points, view the complete notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. Applicant further seeks authorization to use the bed and banks of the unnamed tributary to transport approximately 60 acre-feet of raw groundwater per year, piped from a well system into Reservoir No. 2 (Middle Lake) and conveyed to a diversion point on the perimeter of Reservoir No. 1 (Site 3C Reservoir), to be diverted at a maximum diversion rate of 0.78 cfs (350 gpm) for agricultural use to irrigate 20 acres of homeowners common property (there will be no use for irrigating private property/lawns) in Collin County, Texas. Applicant indicates that at least 10% excess well water will be pumped in advance of any irrigation use to allow for evaporation and other loss (this amount included in the 60 acre-foot bed and banks request). Applicant has provided a Well Report of a similarly-sized and -constructed groundwater well in the applicant general vicinity which indicates that these groundwater wells can produce 0.78cfs (351 gpm), or approximately 263 acre-feet every 170 days. The applicant has indicated that the proposed well is being designed to produce 200% of the anticipated peak monthly irrigation load, and will be operated to ensure that a minimum of 110% of the irrigation load is pumped each month, with the 10% excess based on similar irrigation projects in the area, and allowing for evaporation and other losses. In addition, applicant indicates that a sensor will be installed to activate the water well pump, keeping the Middle Lake full at all times, and spilling into the Site 3C Reservoir. Groundwater will be discharged at a maximum rate of 0.78 cfs (350 gpm) into the unnamed tributary of Wilson Creek on the perimeter of Reservoir No. 2. Applicant indicates that water which is diverted but not beneficially used will be returned to the Site 3C Reservoir. Ownership of the land to be irrigated and the portion of land inundated by the reservoirs owned by the applicant is evidenced by a Warranty Deed recorded in Volume 5094, Pages 3454-3471 of the Collin County Clerk, Texas. The Commission will review the application as submitted by the applicant and may or may not grant the application as requested. The application was received on March 30, 2005. Additional information was received on June 7 and July 11, 2005. The application was declared administratively complete and filed with the

Office of the Chief Clerk on July 15, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200505815
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2005

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on December 7, 2005, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Mark Stewart dba Stewart Water and Donna Stewart dba Stewart Water; SOAH Docket No. 582-06-0297; TCEQ Docket No. 2005-0073-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Mark Stewart dba Stewart Water and Donna Stewart dba Stewart Water on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200505818
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: December 14, 2005

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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 **January 23, 2006**. 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 January 23, 2006**. 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: Alkarim, Inc. dba Alvin Pantry; DOCKET NUMBER: 2005-1750-PST-E; IDENTIFIER: Regulated Entity Reference Number (RN) 102354958; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,560; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: City of Alto; DOCKET NUMBER: 2005-1399-MWD-E; IDENTIFIER: RN101721363; LOCATION: Alto, Cherokee County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10546001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for flow, chlorine residual, and total suspended solids (TSS), and by failing to submit the annual sewage sludge report; PENALTY: $8,400; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(3) COMPANY: Apro Corporation dba Flagship Carwash and Lube Center; DOCKET NUMBER: 2005-0230-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Registration Number 50069, RN101637148; LOCATION: Fort Worth, Tarrant County, Texas;

TYPE OF FACILITY: car wash and lube center with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases; and 30 TAC §334.48(c), by failing to conduct inventory control; PENALTY: $4,160; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: City of Arcola; DOCKET NUMBER: 2005-0870-MWD-E; IDENTIFIER: RN102096815; LOCATION: near Arcola, Fort Bend County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13367001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for five-day biochemical oxygen demand (BOD5), TSS, dissolved oxygen (DO), ammonia nitrogen (NH3-N), flow, and chlorine; PENALTY: $6,944; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Atlas Roofing Corporation; DOCKET NUMBER: 2005-1499-AIR-E; IDENTIFIER: RN101633287; LOCATION: Daingerfield, Morris County, Texas; TYPE OF FACILITY: asphaltic roofing products manufacturer; RULE VIOLATED: 30 TAC §122.145(2)(A) and §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification and the corresponding deviation report; PENALTY: $2,440; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(6) COMPANY: Baylor University; DOCKET NUMBER: 2005-1481-AIR-E; IDENTIFIER: RN100215813; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: institutional power generating plant; RULE VIOLATED: 30 TAC §122.145(2) and §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification and deviation reports; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(7) COMPANY: Boral Material Technologies Inc.; DOCKET NUMBER: 2005-1597-AIR-E; IDENTIFIER: RN102598406; LOCATION: Fairfield, Freestone County, Texas; TYPE OF FACILITY: bulk mineral handling plant; RULE VIOLATED: 30 TAC §116.110(a)(1) and THSC, §382.085(b) and §382.0518(a), by failing to renew Permit Number 3617 in a timely manner and continuing to operate without authorization; PENALTY: $1,540; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2005-1307-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to include the preconstruction authorization number of the facility involved in the reportable emissions event in the initial and final notifications; and 30 TAC §116.715(a), Permit Number 7278, and THSC, §382.085(b), by failing to prevent unauthorized emissions during an emissions event; PENALTY: $1,747; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: City of Bridgeport; DOCKET NUMBER: 2005-1200-PWS-E; IDENTIFIER: RN101404846; LOCATION: Bridgeport, Wise County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the maximum contaminant level (MCL) for total trihalomethanes (TTHM) and haloacetic acids (HAA5); PENALTY: $1,310; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: Camp Red Oak Springs; DOCKET NUMBER: 2005-1489-PWS-E; IDENTIFIER: RN101377745; LOCATION: Newton, Newton County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit monthly water samples for bacteriological analysis; and 30 TAC §290.122(c)(2)(B), by failing to provide public notification for the failure to collect water samples; PENALTY: $408; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Chaparral Energy, L.L.C.; DOCKET NUMBER: 2005-1598-AIR-E; IDENTIFIER: RN103051967; LOCATION: Port Aransas, Nueces County, Texas; TYPE OF FACILITY: natural gas exploration and production plant; RULE VIOLATED: 30 TAC §122.145(2)(A) and §122.146(1) and (2), by failing to submit the annual compliance certifications and associated deviation reports; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Ernest Cooper dba County Company Septic Tank and Grease Trap Service; DOCKET NUMBER: 2005-1351-SLG-E; IDENTIFIER: RN103162939; LOCATION: Halletsville, Lavaca County, Texas; TYPE OF FACILITY: sludge transporter operation; RULE VIOLATED: 30 TAC §312.142(a) and §312.145(a)(1), by failing to obtain the necessary sludge transporter registration required prior to the collection, transporting, or disposal of any type of sewage sludge and failing to maintain a record of each individual collection and deposit; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay late fees; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: D & M Water Supply Corporation; DOCKET NUMBER: 2005-1625-MWD-E; IDENTIFIER: RN102287604; LOCATION: Nacogdoches, Nacogdoches County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13927001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for DO, BOD5, TSS, and flow; PENALTY: $3,288; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Thomas J. Green dba Detroit 7-11; DOCKET NUMBER: 2005-1437-PST-E; IDENTIFIER: RN102051471; LOCATION: Detroit, Red River County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,280; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(15) COMPANY: Dixie Chemical Company, Inc.; DOCKET NUMBER: 2005-1734-IWD-E; IDENTIFIER: RN103151445; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 04594, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for chemical oxygen demand and pH; PENALTY: $2,380; ENFORCEMENT COORDINATOR:

Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Dome Hydrocarbons, L.C.; DOCKET NUMBER: 2005-1473-AIR-E; IDENTIFIER: RN100214352; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: isopropyl alcohol and mono isopropylamine distillation plant; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to submit the annual compliance certification; PENALTY: $1,300; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: DSI Transports, Inc.; DOCKET NUMBER: 2005-1400-PST-E; IDENTIFIER: RN100805035; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: bulk transport; RULE VIOLATED: 30 TAC §334.45(c)(3)(A), by failing to install and maintain a secure anchor at the base of each emergency shutoff valve; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding UST fees; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(18) COMPANY: E. I. Du Pont De Nemours and Company; DOCKET NUMBER: 2005-0071-AIR-E; IDENTIFIER: RN101623254; LOCATION: near Gregory, San Patricio County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F), Permit Number 9074, and THSC, §382.085(b), by failing to obtain regulatory authority or meet the demonstration requirements for an emissions event; PENALTY: $6,150; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(19) COMPANY: Elm Ridge Water Company, Inc.; DOCKET NUMBER: 2005-1022-PWS-E; IDENTIFIER: RN101210672; LOCATION: Spring Branch, Comal County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(e) and THSC, §341.033(a), by failing to operate the water system under the direct supervision of a certified water works operator; 30 TAC §290.45(b)(1)(B)(ii) and THSC, §341.0315(c), by failing to provide adequate storage tank capacity; and 30 TAC §290.109(c)(1)(B), by failing to collect monthly routine bacteriological water analysis samples; PENALTY: $672; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: Foremost Holdings, Inc. dba Dyno-Mart of Mexia; DOCKET NUMBER: 2004-1779-PST-E; IDENTIFIER: RN104217856; LOCATION: Mexia, Limestone County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay UST annual registration fees; PENALTY: $1,200; ENFORCEMENT COORDINATOR: Howard Willoughby, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(21) COMPANY: Robert Heiner dba HHH Water System; DOCKET NUMBER: 2005-1077-PWS-E; IDENTIFIER: RN104443734; LOCATION: Groesbeck, Limestone County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the distribution system; 30 TAC §290.39(e)(1) and (m), by failing to submit the required engineering reports and notification to the commission; and 30 TAC §290.41(c)(3)(B), by failing to provide a well casing 18 inches above the ground surface; PENALTY: $342; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: City of Hamlin; DOCKET NUMBER: 2005-1391-PWS-E; IDENTIFIER: RN101392504; LOCATION: Hamlin, Jones County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.111(d)(3)(A), by failing to keep records of combined filter effluent turbidity monitoring; 30 TAC §290.42(f)(1)(E)(ii)(I), by failing to provide required containment for bulk and day tanks for liquid ammonia sulfate and polymer; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices; 30 TAC §290.43(c)(2), by failing to provide a primary roof access opening; and 30 TAC §290.51(a)(3), by failing to pay public health service fees; PENALTY: $342; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(23) COMPANY: Hans Hansen dba Hansen Construction; DOCKET NUMBER: 2005-0323-PST-E; IDENTIFIER: RN104509294; LOCATION: Mineola, Wood County, Texas; TYPE OF FACILITY: construction business; RULE VIOLATED: 30 TAC §30.301(b) and §334.401(a) and (b), by failing to obtain a UST contractor registration and an on-site supervisor license prior to the removal of a UST; PENALTY: $800; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(24) COMPANY: Hill Country Stop, Inc.; DOCKET NUMBER: 2005-1537-PST-E; IDENTIFIER: RN102050853; LOCATION: Mason, Mason County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to test the cathodic protection system for operability and adequacy of protection; PENALTY: $1,700; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013.

(25) COMPANY: City of Houston; DOCKET NUMBER: 2005-1624-MWD-E; IDENTIFIER: RN101607554; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 10495112, and the Code, §26.121(a), by failing to comply with permit effluent limits for TSS, flow, and total chlorine; PENALTY $3,720; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: J.D. Abrams, L.P.; DOCKET NUMBER: 2005-1561-PST-E; IDENTIFIER: RN102274123; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,680; ENFORCEMENT COORDINATOR: David Flores, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: Kaspar Wire Works Inc.; DOCKET NUMBER: 2005-1595-AIR-E; IDENTIFIER: RN102338803; LOCATION: Shiner, Lavaca County, Texas; TYPE OF FACILITY: wire manufacturing; RULE VIOLATED: 30 TAC §§122.143(4), 122.145(2)(A), and 122.146(2), by failing to timely submit an annual compliance certification and the associated deviation report; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363;

REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(28) COMPANY: Lakshmi Balaji Inc. dba Lockhart Xpress FFP 3298; DOCKET NUMBER: 2005-1458-PST-E; IDENTIFIER: RN102346202; LOCATION: Lockhart, Caldwell County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(29) COMPANY: Liberty City Water Supply Corporation; DOCKET NUMBER: 2005-1448-MWD-E; IDENTIFIER: RN102915394; LOCATION: Kilgore, Gregg County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 11179001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for NH3N; and 30 TAC §319.4 and TPDES Permit Number 11179001, by failing to submit a correctly completed annual sludge report; PENALTY: $1,276; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(30) COMPANY: Llano Independent School District; DOCKET NUMBER: 2004-1392-PST-E; IDENTIFIER: RN102050838; LOCATION: Llano, Llano County, Texas; TYPE OF FACILITY: fleet maintenance shop; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(a), by failing to monitor the UST system for releases; 30 TAC §334.8(c)(4)(B) and (5)(A)(i) and the Code, §26.346(a) and §26.3467(a), by failing to submit a UST registration and self-certification form and by failing to ensure that a valid delivery certificate was made available before accepting delivery of a regulated substance; PENALTY: $2,800; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31) COMPANY: Lucky Lady Oil Company dba Western Lucky Lady; DOCKET NUMBER: 2005-1569-PST-E; IDENTIFIER: RN100539691; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,376; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(32) COMPANY: M & D Jacobson Properties, Ltd. dba McFadden & Miller; DOCKET NUMBER: 2005-1364-PST-E; IDENTIFIER: RN101353605; LOCATION: Dallas, Dallas 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 provide proper release detection; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(33) COMPANY: MK Family Limited Partnership dba Jiffy Mart 1; DOCKET NUMBER: 2005-0395-PST-E; IDENTIFIER: PST Facility Identification Number 22736, RN102713831; LOCATION: Cedar Park, Williamson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(34) COMPANY: James T. Marcum Jr. and Joseph H. Marcum; DOCKET NUMBER: 2005-1500-LII-E; IDENTIFIER: RN104707229 and RN104283304; LOCATION: Lewisville, Denton County, Texas; TYPE OF FACILITY: landscape irrigation system; RULE VIOLATED: 30 TAC §30.5(a) and (b), §344.4(a), and Texas Occupations Code, §1903.251, by failing to hold an irrigator license; PENALTY: $500; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(35) COMPANY: Mullin Independent School District; DOCKET NUMBER: 2005-1439-PWS-E; IDENTIFIER: RN101256550; LOCATION: Mullin, Mills County, Texas; TYPE OF FACILITY: public school with water system; RULE VIOLATED: 30 TAC §290.41(c)(3)(O), by failing to secure the well to exclude possible contamination or damage; 30 TAC §290.46(e)(4)(A) and (f)(2), by failing to provide a properly certified operator and by failing to provide water system records at the time of the investigation; and 30 TAC §290.110(b)(4), by failing to maintain a minimum free chlorine residual; PENALTY: $1,624; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(36) COMPANY: Eshetu Teklu dba Niyala Fina; DOCKET NUMBER: 2005-1304-PST-E; IDENTIFIER: RN101535250; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control procedures; 30 TAC §334.50(b)(1)(A) and (d)(1)(B)(ii) and the Code, §26.3475(c), by failing to have proper release detection; and 30 TAC §334.8(c)(5)(A)(i), (B)(ii), and (C), by failing to make available to a common carrier a valid, current delivery certificate, by failing to timely renew a previously issued UST delivery certificate, and by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied on or affixed to either the top of a fill tube, a fill tube, or a non-removable point; PENALTY: $5,888; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: Paul Alan Boskind dba Oasis Water System; DOCKET NUMBER: 2005-1432-PWS-E; IDENTIFIER: RN101652113; LOCATION: Mico, Medina County, Texas; TYPE OF FACILITY: transient non-community water supply system; RULE VIOLATED: 30 TAC §§290.39(h)(1), 290.41(c)(3)(A), and 290.46(n), and THSC, §341.035, by failing to submit and maintain well completion data and constructing a public water supply without obtaining approval of plans and specifications prior to construction; PENALTY: $352; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4495; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(38) COMPANY: Owens Corning; DOCKET NUMBER: 2005-1668-AIR-E; IDENTIFIER: RN100223585; LOCATION: Waxahachie, Ellis County, Texas; TYPE OF FACILITY: fiberglass insulation manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 6093, and THSC, §382.085(b), by exceeding the maximum allowed emission rate for nitrogen oxides; PENALTY: $4,680; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Padre Isles Management Corporation dba Padre Isles Country Club, Inc.; DOCKET NUMBER: 2004-1760-PST-E; IDENTIFIER: PST Facility Identification Number 51405, RN101749299; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: country club; RULE VIOLATED: 30 TAC §37.815(a) and (b),

by failing to demonstrate acceptable financial assurance; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(40) COMPANY: Public Service Company of Oklahoma; DOCKET NUMBER: 2005-1705-AIR-E; IDENTIFIER: RN101062255; LOCATION: Vernon, Wilbarger County, Texas; TYPE OF FACILITY: oklaunion power station; RULE VIOLATED: 30 TAC §116.116(b)(1)(A) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit amendment prior to implementing changes to the station's coal handling system; PENALTY: $1,300; ENFORCEMENT COORDINATOR: Steven Lopez, (512) 239-1896; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(41) COMPANY: Rittiman Plumbing, Inc.; DOCKET NUMBER: 2005-1249-SLG-E; IDENTIFIER: RN100566462 and RN102984234; LOCATION: Boerne and Comfort, Kendall County, Texas; TYPE OF FACILITY: sludge and septage transporting service; RULE VIOLATED: 30 TAC §312.143, by failing to transport wastes to an authorized facility; and 30 TAC §312.12(b)(2) and the Code, §26.121(a), by failing to prevent the disposal of waste at a site which had an expired sludge beneficial use site registration; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(42) COMPANY: City of Robert Lee; DOCKET NUMBER: 2005-0625-PWS-E; IDENTIFIER: RN101198174; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and (5) and THSC, §341.0315(c), by exceeding the MCL for TTHM and HAA5; PENALTY: $416; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013.

(43) COMPANY: Juan Jose Ruiz; DOCKET NUMBER: 2005-1434-LII-E; IDENTIFIER: RN104692660; LOCATION: Cypress, Harris County, Texas; TYPE OF FACILITY: landscape irrigation business; RULE VIOLATED: 30 TAC §305.5(a) and §344.4(a), Texas Occupations Code, §1903.251, and the Code, §37.003, by failing to hold an irrigator license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system, and representing to the public that he could perform a service for which a license is required; PENALTY: $500; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(44) COMPANY: Rukas Enterprises, Inc. dba Mini Mart; DOCKET NUMBER: 2005-1413-PST-E; IDENTIFIER: RN103788618; LOCATION: Wharton, Wharton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,360; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(45) COMPANY: City of Runaway Bay; DOCKET NUMBER: 2005-1248-PWS-E; IDENTIFIER: RN101391431; LOCATION: Runaway Bay, Wise 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 for TTHM; PENALTY: $323; ENFORCEMENT COORDINATOR: Jill McNew, (915) 655-9479; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(46) COMPANY: Sabrina Investments, Inc. dba Corner Store; DOCKET NUMBER: 2005-0086-PST-E; IDENTIFIER: PST Facility Identification Number 8899, RN101722452; LOCATION: Gonzales, Gonzales County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay outstanding fees; PENALTY: $2,140; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(47) COMPANY: Sunshine Stores, Inc. dba Sunshine Grocery Silsbee; DOCKET NUMBER: 2005-1155-PST-E; IDENTIFIER: RN102442209; LOCATION: Silsbee, Hardin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,920; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(48) COMPANY: Han Yeol Bae dba Times Market 97; DOCKET NUMBER: 2005-1407-PST-E; IDENTIFIER: RN102464500; LOCATION: Ingleside, San Patricio County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and (d)(1)(B)(ii), and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases, by failing to monitor pressurized piping, and by failing to reconcile inventory control records; and 30 TAC §334.10(b), by failing to make available for inspection legible copies of all required records; PENALTY: $2,520; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(49) COMPANY: TLT Construction Company, Inc.; DOCKET NUMBER: 2005-1544-PST-E; IDENTIFIER: RN101637718; LOCATION: Sherman, Grayson County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and (4)(C) and the Code, §26.3475(d), by failing to inspect the cathodic protection system at least once every 60 days to ensure that the rectifier and other system components were operating properly and by failing to inspect and test the cathodic protection system for operability and adequacy of protection; and 30 TAC §334.50(b)(1)(A) and (2) and (d)(1)(B)(ii), and the Code, §26.3475(a) and (c)(1), by failing to monitor USTs for releases, by failing to monitor the pressurized piping, and by failing to reconcile inventory control records on a monthly basis; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(50) COMPANY: Wal-Mart Stores, Inc.; DOCKET NUMBER: 2005-0775-IWD-E; IDENTIFIER: RN102180908; LOCATION: Palestine, Anderson County, Texas; TYPE OF FACILITY: distribution center; RULE VIOLATED: 30 TAC §305.125(1) and (17) and §319.4, TPDES Permit Number 03597, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for chlorine residual, five-day carbonaceous biochemical oxygen demand, TSS, DO, flow, copper, and oil and grease, and by failing to submit the discharge monitoring reports; PENALTY: $15,024; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(51) COMPANY: Wholearth Organic Composting, L.L.C.; DOCKET NUMBER: 2005-1687-AIR-E; IDENTIFIER: RN101478071; LOCATION: Elmendorf, Bexar County, Texas; TYPE OF FACILITY: composting; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition caused by liquid grease used in composting operations; PENALTY: $2,100; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 490-3096;

REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(52) COMPANY: Ronald Yeates; DOCKET NUMBER: 2005-1505-PWS-E; IDENTIFIER: RN101232684; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: non-community public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and THSC, §341.033(d), by failing to collect and submit routine bacteriological samples; PENALTY: $2,640; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200505796
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: December 13, 2005

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Department of State Health Services

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Patterson Dental Company of Houston, Texas

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Patterson Dental Company (registrant # R06728-009) of Houston. A total penalty of $12,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505811
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 14, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Patterson Dental Company of San Antonio, Texas

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Patterson Dental Company (registrant #R06728-010) of San Antonio. A total penalty of $44,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505809
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 14, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Patterson Dental Supply Company of Houston, Texas

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Patterson Dental Supply Company (registrant # R06728-009) of Houston. A total penalty of $20,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505810
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 14, 2005

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Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation on Registrant Texas Managed, Inc., dba Texas Urgent Care

Notice is hereby given that the Department of State Health Services (department) issued a notice of violation and proposal to assess an administrative penalty to Texas Managed, Inc., dba Texas Urgent Care (Registration #R28893-000) of Houston. A total penalty of $25,000 is proposed to be assessed to the registrant for alleged violations of 25 Texas Administrative Code, Chapter 289.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505807
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 14, 2005

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Notice of Revocation of the Industrial Radiographer Identification Card of Christopher V. Roudebush

The Department of State Health Services, having duly filed a complaint pursuant to 25 Texas Administrative Code, §289.205, has revoked the following industrial radiographer identification card: Christopher V. Roudebush, Harrisonville, Missouri, Texas Industrial Radiographer Identification Card audit number 14163, December 5, 2005.

A copy of all relevant material is available, by appointment, for public inspection in the office of the Radiation Safety Licensing Branch, Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200505808
Cathy Campbell
General Counsel
Department of State Health Services
Filed: December 14, 2005

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Village Park Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Cedar Brook Elementary, 2121 Ojeman, Houston, Harris County, Texas 77080, at 6:00 p.m. on January 12, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Village Park Apartments Partners, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 419-unit multifamily residential rental development located at 8701 Hammerly Boulevard, Harris 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, 221 East 11th Street, 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-200505806
Edwina P. Carrington
Executive Director
Texas Department of Housing and Community Affairs
Filed: December 14, 2005

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Texas Department of Insurance

Company Licensing

Application for admission to the State of Texas by UNIVERSAL HEALTH CARE INC., a foreign Health Maintenance Organization. The home office is in St. Petersburg, Florida.

Application to change the name of MUTUAL PROTECTIVE INSURANCE COMPANY to MEDICO INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Omaha, Nebraska.

Application to change the name of AMERICAN FOUNDERS LIFE INSURANCE COMPANY to SAGICOR LIFE INSURANCE COMPANY a domestic life, accident and/or health company. The home office is in Dallas, Texas.

Application for admission to the State of Texas by MIDWEST FAMILY MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Minnetonka, Minnesota.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200505820
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 14, 2005

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Notice of Filing

A petition has been filed with the Texas Department of Insurance under Reference No. A-1105-12 proposing amendments to the Plan of Operation (Plan) of the Texas Automobile Insurance Plan Association (TAIPA) for consideration by the Commissioner of Insurance. The petition contains amendments to the Plan of Operation that have been approved by the TAIPA Governing Committee.

The requested approval of the amendments is pursuant to Article 21.81, Insurance Code, which provides in §3(c) that subject to the approval of the Commissioner, the TAIPA Governing Committee may make and amend the Plan of Operation.

TAIPA proposes to change current Section 36 of the Plan, which determines how members of the Governing Committee are selected.

TAIPA proposes to amend Sections 9, 25, and 47 of the Plan to include additional information concerning the annual exemption from membership in TAIPA of insurers organized under Chapter 912 of the Insurance Code (county mutual insurance companies).

The proposed amendment to Section 35 of the Plan provides additional information regarding TAIPA eligibility for insurers organized under Chapter 912 of the Insurance Code (county mutual insurance companies).

These amendments are subject to the Commissioner's consideration for approval without a hearing. Any comments may be filed with the Office of the Chief Clerk, Texas Department of Insurance, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104, within 15 days after publication of this notice. An additional copy is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, Mail Code 104-PC, P.O. Box 149104, Austin, Texas 78714-9104.

For further information or to request a copy of the petition or proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 and provide the reference number of the petition that is the subject of inquiry.

TRD-200505797
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: December 13, 2005

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Texas Parks and Wildlife Department

Notice of Proposed Real Estate Transactions

Texas Parks and Wildlife Commission Meeting

January 25 - 26, 2006

Notice--Jasper County Land Donation

On January 26, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed acceptance of a donation of approximately 200 acres in Jasper County for the site of the future Jasper Fish Hatchery. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. House Bill 1989, 78th Texas Legislature (2003) created the freshwater fishing stamp and dedicated the stamp's proceeds to the repair, maintenance, renovation, replacement of freshwater fish hatcheries. TEXAS PARKS AND WILDLIFE CODE §§43.801 - 43.809. In meetings of the Texas Parks and Wildlife Commission in November 2003, January 2004 and April 2004, staff briefed the Commission regarding the selection of the site of a new fish hatchery to be funded, in part, with freshwater fishing stamp proceeds. On November 3, 2004, the Commission voted to locate a new fish hatchery on property in Jasper County. Jasper County has offered to donate the land on which the hatchery will be located. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlman, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by e-mail at corky.kuhlman@tpwd.state.tx.us.

Notice--Hamilton County Land Donation

On January 26, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed acceptance of a donation of approximately 220 acres in Hamilton County, to be used primarily for the site of a future Game Warden Academy. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. In meetings of the Texas Parks and Wildlife Commission in August 2004 and January 2005, staff briefed the Commission in Executive Session on the status of the possible donation of this property. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Scott Boruff, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by e-mail at scott.boruff@tpwd.state.tx.us.

Notice--Land Donation Brewster County

On January 26, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed acceptance of a donation of approximately 10 acres in Brewster County, in the Brushy Canyon area of Black Gap Wildlife Management Area. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Jack Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by e-mail at jack.bauer@tpwd.state.tx.us.

Notice--Transfer of State Park

On January 26, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed transfer of Lake Houston State Park to the City of Houston. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. In November 2005, the Commission was briefed by Texas Parks and Wildlife Department staff regarding the proposed transfer of this site and staff was authorized to proceed with obtaining public input. On December 5, 2005, a public hearing was held in Harris County regarding the proposed transfer. Before taking action, the Commission will take public comment regarding the proposed transfer. Prior to the meeting, public comment may be submitted to Walt Dabney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by e-mail at walt.dabney@tpwd.state.tx.us.

TRD-200505819
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: December 14, 2005

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 7, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001- 66.016. A summary of the application follows.

Project Title and Number: Application of Time Warner Cable San Antonio, L.P., doing business as Time Warner Cable, for a State-Issued Certificate of Franchise Authority, Project Number 32123 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service includes the service area footprint of all areas within the boundaries of the City of Alamo Heights, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32123.

TRD-200505777
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on December 7, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001- 66.016. A summary of the application follows.

Project Title and Number: Application of Time Warner Cable San Antonio, L.P., doing business as Time Warner Cable, for a State-Issued Certificate of Franchise Authority, Project Number 32124 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service includes the service area footprint of all areas within the boundaries of the City of San Antonio, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll

free at 1-800-735-2989. All inquiries should reference Project Number 32124.

TRD-200505778
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 12, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Texas and Kansas City Cable Partners, L.P. d/b/a Time Warner Cable for a State-Issued Certificate of Franchise Authority, Project Number 32151 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area is all areas within the boundaries of the City of West University Place, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32151.

TRD-200505813
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 14, 2005

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Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on December 9, 2005, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Entertainment-Advance/Newhouse Partnership d/b/a Time Warner Cable for a State-Issued Certificate of Franchise Authority, Project Number 32143 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the City of Mustang Ridge, Texas, the City of Round Rock, Texas, the City of Buda, Texas, the City of Hays, Texas, the City of Liberty Hill, Texas, the City of Marble Falls, Texas, the City of Burnet, Texas, and the City of Pflugerville, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32143.

TRD-200505814
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 14, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 6, 2005, Stratos Telecom, 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 60191. Applicant intends to reflect a change in ownership/control resulting in the merger of Stratos Telecom, Incorporated with Stratos Offshore Services Company.

The Application: Application of Stratos Telecom, Incorporated for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32113.

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 December 29, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32113.

TRD-200505771
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On December 8, 2005, Granite Telecommunications, LLC filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60559. Applicant intends to reflect a change in service area.

The Application: Application of Granite Telecommunications, LLC for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32139.

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 December 29, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32139.

TRD-200505774
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Notice of Application for Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 9, 2005, for designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Texas RSA 8 South Limited Partnership d/b/a Westex Wireless (Westex Wireless) for Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 32142.

The Application: The company is requesting ETC designation in order to be eligible to receive federal and state universal service funding to assist it in providing universal service in Texas. Pursuant to 47 United States Code §214(e), the commission, either upon its own motion or upon request, shall designate qualifying common carriers as ETCs for service areas set forth by the commission. Westex Wireless seeks ETC designation in the study area of Wes-Tex Telephone Cooperative, Inc., and in the exchange of Sterling City which is in the territory of Verizon Southwest, Inc.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than January 17, 2006. 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 32142.

TRD-200505801
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 13, 2005

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on December 6, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Preferred Long Distance, Incorporated for a Service Provider Certificate of Operating Authority, Docket Number 32114 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC and Verizon.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32114.

TRD-200505773
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Notice of Petition for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a petition on December 8, 2005, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator of One Source Communications' request for a new code in the Fort Worth rate center.

Docket Title and Number: Application of One Source Communications for Waiver of NeuStar Denial of Code for LRN. Docket Number 32140.

The Application: One Source Communications submitted an application to the Pooling Administrator to provide it with a new code in the Fort Worth rate center for One Source Communications' new switch, KLLRTX02DS2.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 29, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32140.

TRD-200505775
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: December 12, 2005

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Office of Rural Community Affairs

Request for Proposals - Medically Underserved Community-State Matching Incentive Program

The Office of Rural Community Affairs (ORCA) is issuing a Request for Proposals ("RFP") for the Medically Underserved Community-State Matching Incentive Program. The purpose of this RFP is to provide the applicant with the information necessary to apply for matching state grant funds under the provisions of this program.

The purpose of this program is to increase the number of physicians providing primary care in medically underserved communities, particularly rural.

USE OF FUNDS: The funds can be used to establish a medical office and ancillary facilities for diagnosing and treating patients. The optimum use of funds would be for the purchase of equipment and furnishings that would establish a new practice site. The site will continue to serve the primary care needs of the community beyond the grant period, and the physician will agree to practice for a minimum of two years.

AMOUNT OF AWARDS: The funding available for support of this program during Fiscal Year 2006 is $250,000. Approximately 10 projects will be funded. Under the requirements of this program, the state grants funds of up to $25,000 to **match** the contributions by community groups to cover start-up costs for new physicians.

ELIGIBLE APPLICANTS: An eligible community must be in an underserved area as determined by the U. S. Department of Health and Human Services or the Texas Department of State Health Services. The community must make a commitment of $15,000 - $25,000 in contributions toward the project and contract with a physician eligible to participate in this program.

Eligible physicians include those in family/general practice, general pediatrics, general internal medicine, or general obstetrics/gynecology. The physician must be licensed to practice in the State of Texas, have completed an accredited residency program, and have contracted with the community to provide full-time primary care for at least two years. A physician who completed residency within the last ten years will be given priority consideration.

EVALUATION AND SELECTION: ORCA will prioritize the eligible communities to assure that the neediest are provided grants. The prioritization process will quantify indicators of need that may include, but are not limited to, the following: no practicing primary care physicians; only one primary care physician and a population of at least 2,000; no federally or state-funded primary care clinic; no practicing physician assistants or nurse practitioners; the participating physician will be the only physician practicing in one of the primary care specialties; a large minority population, if the participating physician is a member of the same minority group; designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years; a population-to-primary care provider ratio in the top 25% of all counties in the state; poverty rates above the state average; and median family incomes at least 25% below the state average.

DEADLINE: Applications are available December 12, 2005. Completed applications are due by May 31, 2006. Announcement of the selected applicants will be made by July 31, 2006.

CONTRACT PERIOD: The budget period for applications funded under this RFP will be September 1, 2006 - August 31, 2007.

CONTACT PERSON: To obtain the application, please contact: Office of Rural Community Affairs, P. O. Box 12877, Austin, Texas 78711, (512) 936-6701, e-mail: orca@orca.state.tx.us, web site: www.orca.state.tx.us.

TRD-200505768
Charlie Stone
Executive Director
Office of Rural Community Affairs
Filed: December 12, 2005

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Request for Proposals - Rural Health Facility Capital Improvement Loan Fund

The Office of Rural Community Affairs is issuing a Request for Proposals ("RFP") for the Rural Health Facility Capital Improvement Loan Fund. The purpose of this RFP is to provide the applicant with grant funding for capital improvement projects under the endowment fund created by H. B. 1676.

USE OF FUNDS: Funds are awarded for a specifically defined purpose and may not be used for any other project. Funds may be used to make capital improvements to existing facilities; construct new health facilities; and to purchase capital equipment, including information systems hardware and software.

AMOUNT OF AWARD: Funds are available for projects of up to $50,000. Funding will total approximately $2,100,000, depending on the amount received from the Comptroller of Public Accounts' Office. A 10% match requirement is in effect by the applicant.

ELIGIBLE APPLICANTS: Eligible applicants include rural public and non-profit hospitals located in counties of less than 150,000 persons. Hospitals awarded funds during Fiscal Year 2005 will not be eligible to apply.

EVALUATION AND SELECTION: Applications are initially screened for eligibility and completeness. Applications that do not meet the requirements in the RFP will not be considered for review. After the initial screening, the applications will be scored by a scoring committee. The Executive Director will make a final determination.

DEADLINE: Completed applications are due by February 10, 2006. Announcement of the selected applicants will be made by February 28, 2006.

CONTRACT PERIOD: The first budget period for the applications funded under this RFP will begin April 1, 2006 and continue for six months.

CONTACT PERSON: To obtain the application, please contact: Capital Improvement Fund Administrator, Office of Rural Community Affairs, P. O. Box 12877, Austin, Texas 78711, (512) 936-6701 or (800) 544-2042, e-mail: orca@orca.state.tx.us, web site: www.orca.state.tx.us.

TRD-200505772
Charlie Stone
Executive Director
Office of Rural Community Affairs
Filed: November 12, 2005

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the development of a Needs Assessment of the Transportation Deficits for Senior Citizens within the MPO study area.

A copy of the Request for Proposals (RFP) may be requested by calling Sid Martinez, Senior Transportation Planner, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CST), Friday, January 13, 2006 at the MPO office:

Jeanne Geiger, Deputy Director

San Antonio-Bexar County MPO

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's Selection/Oversight Committee. The Selection/Oversight committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this project, in the amount of $30,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200505657

Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: December 9, 2005

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Request for Proposals

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms for the development of the Regional Planning and Public Transportation Plan for a 12-county area.

A copy of the Request for Proposals (RFP) may be requested by calling Sid Martinez, Senior Transportation Planner, at (210) 227-8651 or by downloading the RFP and attachments from the MPO's website at www.sametroplan.org. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CST), Friday, January 13, 2006 at the MPO office:

Jeanne Geiger, Deputy Director

San Antonio-Bexar County MPO

1021 San Pedro, Suite 2200

San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Policy Board based on the recommendation of the project's Selection/Oversight Committee. The Selection/Oversight Committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this project, in the amount of $250,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200505658
Jeanne Geiger
Deputy Director
San Antonio-Bexar County Metropolitan Planning Organization
Filed: December 9, 2005

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Texas Department of Transportation

Comment Deadline - Concerning Oversize and Overweight Vehicles and Loads and New Subchapter H, Chambers County Permits

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation proposed amendments to §§28.11, 28.14, 28.15, and 28.92 and new §§28.100 - 28.102, as published November 11, 2005 in the *Texas Register* (30 TexReg 7415). Due to an oversight, a comment deadline was not provided. Written comments on the proposed amendments to §§28.11, 28.14, 28.15, and 28.92 and new §§28.100 - 28.102, may be submitted to Carol Davis, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on January 10, 2006.

TRD-200505823
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: December 14, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affecte***d. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).