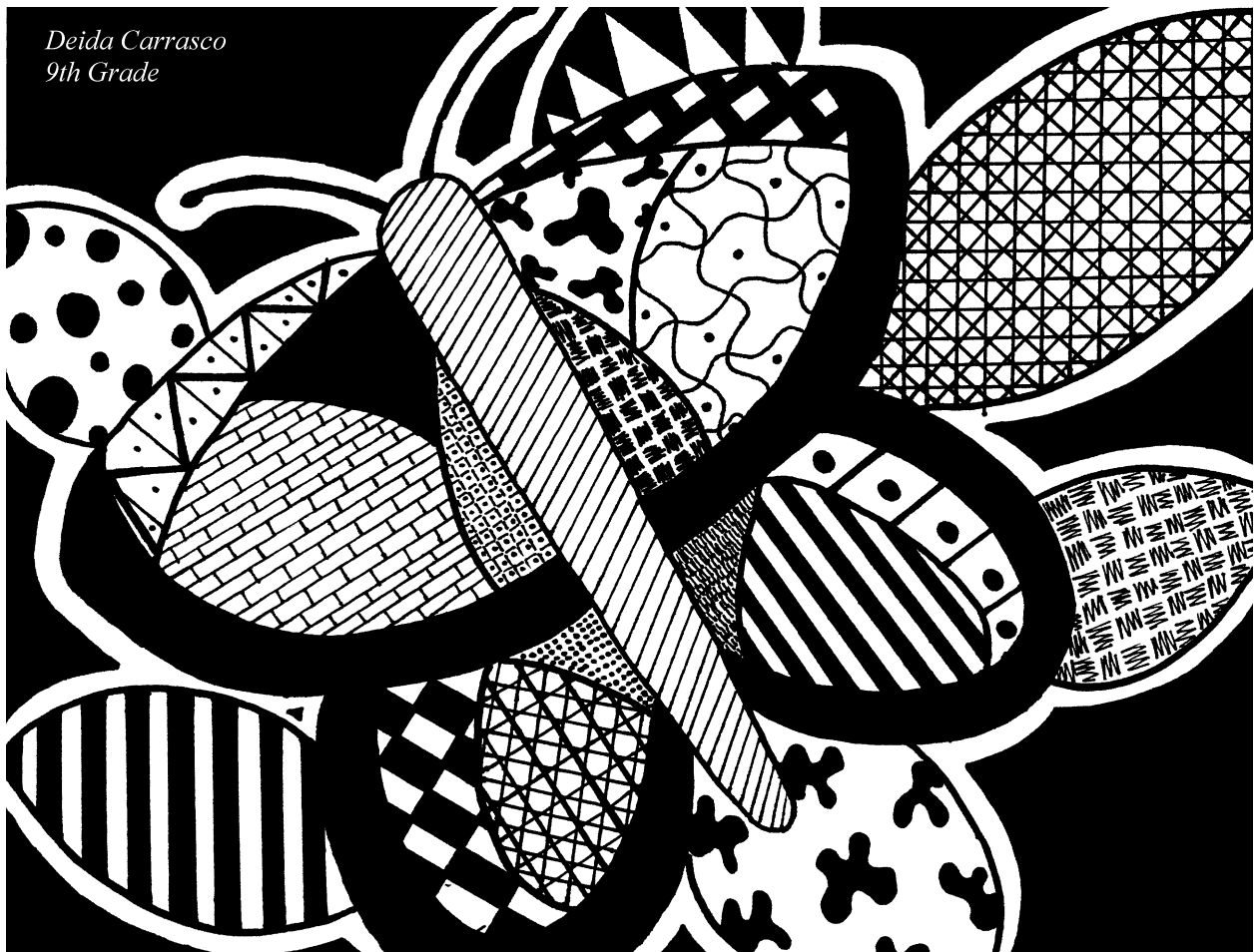

TEXAS REGISTER

Volume 31 Number 14

April 7, 2006

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*Deida Carrasco
9th Grade*



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

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Open Meetings

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

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

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

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

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

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

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

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

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

...

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

THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0462-GA

Requestor:

The Honorable Tim Curry
Tarrant County Criminal District Attorney
401 West Belknap
Fort Worth, Texas 76196-020

Re: County abandonment of a drainage easement (RQ-0462-GA)

Briefs requested by April 24, 2006

RQ-0463-GA

Requestor:

The Honorable Frank J. Corte, Jr.
Chair, Committee on Defense Affairs and State-Federal Relations
Texas House of Representatives
Post Office Box 2910
Austin, Texas 78768-2910

Re: Whether the firearms standards of the Bureau of Customs and Border Protection meet the criteria of Texas law (RQ-0463-GA)

Briefs requested by April 24, 2006

RQ-0464-GA

Requestor:

The Honorable Chris Taylor
Tom Green County Attorney
122 West Harris Avenue
San Angelo, Texas 76903

Re: Whether a county jailer who is a certified peace officer may work as a security guard (RQ-0464-GA)

Briefs requested by April 24, 2006

RQ-0465-GA

Requestor:

Mr. William E. Parham

Waller County Criminal District Attorney

836 Austin Street, Suite 103

Hempstead, Texas 77445

Re: Whether a constable may provide animal control without the approval of the commissioners court (RQ-0465-GA)

Briefs requested by April 24, 2006

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

TRD-200601877

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 29, 2006



Opinions

Opinion No. GA-0409

The Honorable Dianne White Delisi

Chair, Committee on Public Health

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Authority of the Private Security Board to adopt certain rules regulating newly registered alarm installers (RQ-0391-GA)

S U M M A R Y

The Private Security Board does not have authority to adopt a proposed rule requiring that a newly registered alarm installer work under the direct supervision of an alarm installer who has passed the Alarm Level 1 test. To the extent that any particular minimum electronics standard directly pertains to the safety, conduct, or qualifications of a person subject to chapter 1702, Occupations Code, the Private Security Board is authorized to adopt the standard.

Opinion No. GA-0410

Mr. C. Tom Clowe, Jr.
Chair, Texas Lottery Commission
Post Office Box 16630
Austin, Texas 78761-6630

Re: Whether the Texas Lottery Commission may award the cash equivalent of a prize to a person who is at least 18 years of age but not yet 21 years of age (RQ-0393-GA)

S U M M A R Y

For purposes of the State Lottery Act, a "minor" is an individual who has not yet attained the age of 21 years. The Texas Lottery Commission must award the cash equivalent of a prize to a person who is at least 18 years of age but not yet 21 years of age in accordance with the terms of section 466.405 of the Government Code.

Opinion No. GA-0411

Mr. E.G. Rod Pittman
Chair, Texas Water Development Board
Post Office Box 13231
Austin, Texas 78711-3231

Re: Possible conflict between two versions of sections 16.341 and 17.923 of the Water Code, as amended by House Bill 467 and Senate Bill 425, both adopted during the Seventy-ninth Legislature (RQ-0394-GA)

S U M M A R Y

Water Code section 16.341(1) as adopted on May 27, 2005 by the passage of House Bill 467 prevails over the conflicting section 16.341(1) as adopted on May 25, 2005 by the passage of Senate Bill 425.

Water Code section 17.923 has been repealed in its entirety.

Opinion No. GA-0412

The Honorable Mike Stafford
Harris County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002

Re Voting procedures for Board of Managers of Harris County Hospital District (RQ-0395-GA)

S U M M A R Y

The Board of Managers of the Harris County Hospital District has adopted Robert's Rules of Order to govern its meetings. Pursuant to Robert's Rules of Order, the Board must approve an action by a majority vote of the members present and voting at a meeting where a quorum is present. Abstentions are not counted in determining the outcome of the vote.

Opinion No. GA-0413

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

Re: Payment of uncollected fines, fees and court costs by defendants who have been administratively released from community supervision (RQ-0396-GA)

S U M M A R Y

Article 42.12 of the Code of Criminal Procedure provides specific procedures that, if followed, would continue the court's jurisdiction and allow for the collection of owed fines, fees and court costs even after the community supervision period has expired. If, however, those procedures are not followed, then a probation defendant is not subject to the conditions of community supervision, including the payment of fines, fees and court costs, after the date the period of community supervision expires.

Opinion No. GA-0414

Mr. Murray Walton
Executive Director
Texas Structural Pest Control Board
Post Office Box 1927
Austin, Texas 78767-1927

Re: Whether the Texas Structural Pest Control Board may require apartment employees to obtain licenses before they may apply pesticides to the apartment landscape (RQ-0398-GA)

S U M M A R Y

Under section 1951.051 of the Occupations Code, the Texas Structural Pest Control Board may not require an employee of the owner of an apartment building to obtain a license before the employee may use certain substances on the premises other than the apartment building itself.

Opinion No. GA-0415

The Honorable Carlos Valdez
District Attorney
105th Judicial District
Nueces County Courthouse
901 Leopard, Room 206
Corpus Christi, Texas 78401-3681

Re: Whether the nepotism statute applies to a junior college district's employment of a person related to a member of the district's board of regents (RQ-0401-GA)

S U M M A R Y

A nepotism provision, Government Code section 573.041, prohibits Del Mar College from employing an adjunct instructor who is related within a prohibited degree to a member of the college district's Board of Regents. The board's delegation of employment authority to the college president does not insulate the board from the application of the nepotism law.

Opinion No. GA-0416

Mr. Albert Hawkins
Executive Commissioner
Texas Health and Human Services Commission
Post Office Box 13247
Austin, Texas 78711

Re: Whether section 533.035(e) of the Health and Safety Code, which provides that "a local mental health and mental retardation authority may serve as a provider of services only as a provider of last resort," applies to both mental health services and mental retardation services or only to mental retardation services (RQ-0392-GA)

S U M M A R Y

Section 533.035(e) of the Health and Safety Code, which provides that in "assembling a network of service providers, a local mental health and mental retardation authority may serve as a provider of services only as a provider of last resort" and only under certain conditions, applies to both mental health services and mental retardation services.

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

TRD-200601812

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Filed: March 27, 2006



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 Opinions

EAO-468 The Texas Ethics Commission has been asked to consider whether corporate expenditures "for minimal time spent by a corporate employee to deliver a 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. (AOR - 531).

SUMMARY

An expenditure made by a corporation to deliver a political contribution in the form of a check from a general-purpose political committee to a candidate would constitute an administrative expenditure if the delivery originates and is completed in the state of Texas.

EAO-469 The Texas Ethics Commission has been asked to consider whether a former state employee who, while an employee of a state agency testified as an expert on the agency's rules in a lawsuit to which the state was not a party, may represent a litigant in that lawsuit. (AOR - 532).

SUMMARY

An individual formerly employed by a state regulatory agency who, while an employee for the state agency testified as an expert on the

state agency's rules in a lawsuit to which the state of Texas was not a party, may represent a litigant in that lawsuit.

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-200601878
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Filed: March 29, 2006



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 55. CHILD SUPPORT ENFORCEMENT

SUBCHAPTER F. COLLECTIONS AND DISTRIBUTIONS

1 TAC §55.140

The Office of the Attorney General, Child Support Division proposes an amendment to 1 TAC §55.140, concerning the recoupment of child support collections reversed after distribution. The section as amended will clarify the types of child support payments received by all custodial parents or other persons entitled to receive child support, and the Office of the Attorney General's policy for recovering child support payments which have been reversed after they have been disbursed.

Alicia Key, IV-D Director, Child Support Division, has determined that for the first five years the section as proposed is in effect, the State will continue to realize a savings in the efficient collection of sums owed to the state. There will be no fiscal implications on local government as a result of enforcing or administering the section.

Ms. Key has also determined that for each year of the first five years the section is in effect, the public benefit as a result of the section will be continued compliance with state and federal requirements. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the amendment.

Comments may be submitted to Kathy Shafer, State and Federal Operations Section, Child Support Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The amended section is proposed under Texas Family Code §231.002.

The Texas Family Code, Chapter 231 is affected by the amended section.

§55.140. *Recoupment of Collections Reversed After Distribution.*

(a) By receiving and negotiating a child support payment through a state warrant, the Texas Debit card, or direct deposit into a bank account ~~[warrant for child support]~~ from the State of Texas, all custodial parents or other persons entitled to receive child support

consent to the Office of the Attorney General's policy for recovering payments which have been reversed after they have been disbursed.

(b) Any person receiving Child Support Payment Processing ~~[Collection]~~ services from the Office of the Attorney General, who receives and negotiates a child support payment ~~[State Warrant for child support]~~, must repay the amount of that payment ~~[warrant]~~ if the Office of the Attorney General subsequently notifies them that the collection has been reversed. Full payment must be received within 30 days of the Office of the Attorney General sending notice of the reversal. Failure to make timely payment will result in all future child support collections being withheld and applied to the debt until it is fully 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 March 27, 2006.

TRD-200601813

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: May 7, 2006

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.



SUBCHAPTER O. STATE DISBURSEMENT UNIT

1 TAC §§55.801 - 55.804

The Office of the Attorney General, Child Support Division proposes new §§55.801 - 55.804, concerning the operation of the State Disbursement Unit, which is responsible for receiving, disbursing, maintaining and furnishing child support payments and records in accordance with applicable federal and state law. The proposed new sections will describe the operation of the State Disbursement Unit in compliance with federal and state law.

Alicia Key, IV-D Director, Child Support Division, has determined that for the first five years the new sections as proposed are in effect, there will be no significant fiscal implications for state or local government as a result of enforcing or implementing the sections.

Ms. Key has also determined that for each year of the first five years the sections are in effect, the public benefit as a result of the new sections will be compliance with state and federal requirements. There will be no significant fiscal implications for small businesses or individuals. In addition, Ms. Key has determined that there will be no local employment impact as a result of the new sections.

Comments may be submitted to Kathy Shafer, State and Federal Operations Section, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741 or (mailing address) P.O. Box 12017, Mail Code 044, Austin, Texas 78711-2017.

The proposed new §§55.801 - 55.804 are authorized by Texas Family Code §234.006.

The new sections are proposed under Texas Family Code Chapter 234, State Case Registry, Disbursement Unit and Directory of New Hires, Subchapter A.

§55.801. Scope.

The Office of the Attorney General operates the State Disbursement Unit, which is responsible for receiving, disbursing, maintaining and furnishing child support payments and records in accordance with applicable federal and state law. Texas Family Code §234.006 authorizes the adoption of rules in compliance with federal law for the operation of the State Disbursement Unit.

§55.802. Definitions.

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

(1) Office of the Attorney General--The state's Title IV-D agency administered by the Child Support Division of the Office of the Attorney General.

(2) State Disbursement Unit--The unit established and operated by the Title IV-D agency, the Office of the Attorney General Child Support Division, under 42 U.S.C. Section 654(b) that has responsibility for receiving, disbursing, maintaining and furnishing child support payments and records.

(3) Authorization for Release of Information Form 1A004--The form used when a custodial or noncustodial parent wishes to authorize the Office of the Attorney General to release case status information, redirect correspondence or redirect payments to another person, company, organization, or governmental entity.

(4) Revocation of Authorization for Release of Information Form 1A005--The form used when a custodial or noncustodial parent wishes to cancel their authorization for the Office of the Attorney General to release case status information, redirect correspondence or redirect payments to another person, company, organization, or governmental entity previously named on the Authorization for Release of Information Form 1A004.

(5) Direct Deposit Application Form 6A002--The form signed by an obligee that authorizes the State Disbursement Unit to set up direct deposit for all child support payments to be deposited directly into a bank account.

(6) Texas Debit Card--The plastic card used by obligees to gain immediate access to child support payments through the use of electronic fund transfer systems via automated teller machines or the electronic funds transfer point-of-sale system.

(7) Obligee--A person or entity entitled to receive payments of child support, including an agency of this state or of another jurisdiction to which a person has assigned the person's right to support.

§55.803. Forms.

The prescribed forms for Direct Deposit Application (Form 6A002), the Authorization for Release of Information (Form 1A004) and the Revocation of Authorization for Release of Information (Form

1A005) can be obtained on the Office of the Attorney General's website www.oag.state.tx.us under Child Support, Forms.

§55.804. Methods of Disbursement.

(a) The OAG's Child Support Division will disburse child support payments to an obligee through the Texas Debit card unless the obligee has signed an Authorization for Release of Information Form (1A004).

(b) An obligee may opt out of the Texas Debit Card program and receive a state warrant. The opt out form can be obtained by calling 1-866-729-6159 or can be obtained on the Office of the Attorney General's website at www.oag.state.tx.us.

(c) An obligee may choose to receive their child support payment through direct deposit into their bank account by completing the Direct Deposit Application Form (6A002).

(d) An obligee who has signed an Authorization for Release of Information Form (1A004) must revoke that authorization by signing a Revocation of Authorization for Release of Information Form (1A005) to receive their payments through the Texas Debit card.

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 March 27, 2006.

TRD-200601814

Stacey Schiff

Deputy Attorney General

Office of the Attorney General

Earliest possible date of adoption: May 7, 2006

For information regarding this publication, you may contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

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TITLE 10. COMMUNITY DEVELOPMENT

**PART 5. OFFICE OF THE GOVERNOR,
ECONOMIC DEVELOPMENT AND
TOURISM DIVISION**

**CHAPTER 176. ENTERPRISE ZONE
PROGRAM**

10 TAC §§176.1 - 176.10

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

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic Development, proposes the repeal of Chapter 176, §§176.1 - 176.10, setting forth rules of the Enterprise Zone Program.

The repeal of the rules is proposed because Senate Bill 275 of the 78th Legislature made substantive changes to the Program which require substantial changes be made to the existing rules. New rules will be adopted and are proposed in this issue of the *Texas Register*. New rules are needed because the statutory changes to the Enterprise Zone Program require substantial changes be made to the existing rules.

Tracye McDaniel, Executive Director of the Office, has determined that for the first five-year period that the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. McDaniel has also determined that each year of the first five years that the repeal is in effect, the public will benefit from a better understanding of the management of the Program. There will be no effect on small business. There is no anticipated economic cost to persons and no private property rights are affected by the repeal.

Comments on the proposed repeal may be submitted within 30 days of the publication of this notice to Katherine Knight, Assistant General Counsel, 1100 San Jacinto, 4th Floor, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Ms. Knight at (512) 463-1932 or e-mailed to kknight@governor.state.tx.us within 30 days.

The repeal is proposed under Texas Government Code, §2303.051(c), which authorizes the executive director of the Office to adopt rules necessary for the Program, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Texas Government Code, Chapter 2303, the Texas Enterprise Zone Act, are affected by the proposed repeal.

§176.1. *General Provisions.*

§176.2. *Filing Requirements for Applications and Claims.*

§176.3. *Eligibility Requirements for Designation of an Enterprise Zone.*

§176.4. *Application Contents for Designation of Enterprise Zones.*

§176.5. *Requirements for Designation of Enterprise Projects.*

§176.6. *Application Contents for Designation of an Enterprise Project.*

§176.7. *Certification of Neighborhood Enterprise Associations.*

§176.8. *Approval Standards.*

§176.9. *Reporting Requirements.*

§176.10. *Boundary Amendments.*

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 March 24, 2006.

TRD-200601802

Robin Abbott

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 936-0501



10 TAC §§176.1 - 176.5

The Office of the Governor, Economic Development and Tourism Division (Office), formerly the Texas Department of Economic

Development, proposes new Chapter 176, §§176.1 - 176.5, setting forth rules of the Office of the Governor, Economic Development and Tourism Division Enterprise Zone Program.

The new rules are proposed because Senate Bill 275 of the 78th Legislature made substantive changes to the Program which require substantial changes be made to the existing rules. The new rules will replace previous rules proposed for repeal in this issue of the *Texas Register*. New rules are needed because the statutory changes to the Enterprise Zone Program require substantial changes be made to the existing rules.

Proposed §176.1 sets forth the purpose and definitions for the chapter.

Proposed §176.2 sets forth procedures for local government participation in the Program.

Proposed §176.3 sets forth requirements for designation as an Enterprise Project and the number of eligible project designations available for municipalities based on population.

Proposed §176.4 sets forth required elements for Enterprise Project designation applications and authorizes the Bank to approve requests for concurrent project designations, name changes and assignment or assumption of enterprise projects.

Proposed §176.5 sets forth the monitoring and reporting requirements for program participants.

Tracye McDaniel, Executive Director of the Office, has determined that for the first five-year period that the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new rules.

Ms. McDaniel has also determined that each year of the first five years that the rules are in effect, the public will benefit from a better understanding of the management of the Office and the Program. There will be no effect on small business. There is no anticipated economic cost to persons other than an application fee for entities that choose to participate in the Program and no private property rights are affected by the new rules.

Comments on the proposed rules may be submitted within 30 days of the publication of this notice to Katherine Knight, Assistant General Counsel, 1100 San Jacinto, 4th Floor, or P.O. Box 12428, Austin, Texas 78711-2428. Comments may be faxed to Ms. Knight at (512) 463-1932 or e-mailed to kknight@governor.state.tx.us within 30 days.

The new rules are proposed under the Texas Government Code, §2303.051(c), which authorizes the executive director of the Office to adopt rules necessary for the Program, and the Texas Government Code, Chapter 2001, Subchapter B, which prescribes the process for rulemaking by state agencies. Texas Government Code, Chapter 481, creating the Office, Texas Government Code, Chapter 489, creating the Economic Development Bank within the Office, and Texas Government Code, Chapter 2303 are affected by the proposed rules.

§176.1. *General Provisions.*

(a) Purpose. It is the purpose of the Texas Enterprise Zone Act to establish a process that clearly identifies distressed areas and provides incentives by both local and state government to induce private investment in those areas by the provision of tax incentives and economic development program benefits for the creation and retention of high quality jobs. Under this program economic development is encouraged by allowing enterprise projects to be designated outside of an

enterprise zone, with a higher threshold of hiring economically disadvantaged or enterprise zone residents. The purpose of these sections is to provide standards of eligibility and procedures for designation of applications for qualified businesses as enterprise projects.

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

(1) Act--The Texas Enterprise Zone Act, Chapter 2303, Texas Government Code, as amended.

(2) Active designation--The period of time from the designation date to the ending date of the project or activity as provided in the nominating ordinance, order or resolution.

(3) Applicant--The municipality or county filing an application with the Bank on behalf of a qualified business for designation of an enterprise project under the Act, §2303.405, and this chapter.

(4) Application date--The first business day of the months of September, December, March and June, if there are designations available.

(5) Approval date--The application date of an enterprise project as approved by the Bank.

(6) Capital investment--Money paid to purchase capital assets or fixed assets including but not limited to land, buildings, labor used to construct or renovate a capital asset, furniture, manufacturing machinery, computers and software, or other machinery and equipment. Property that is leased under a capitalized lease is considered a qualified capital investment but property that is leased under an operating lease is not considered a qualified capital investment.

(7) Claim period--A twelve-month period, during the active designation period, for which hours are accumulated by qualified employees to be claimed for benefit.

(8) Concurrent designation--Two or more enterprise project designations for the same qualified business in the same enterprise zone for separate projects or activities, with overlapping designation periods.

(9) Controlled group--A group of businesses as defined in Title 26, Subtitle A, Subchapter B, Part II, Section 1563(a), Internal Revenue Code, or business entities with the same ownership.

(10) Director--The Director of the Texas Economic Development Bank.

(11) Distressed county--A county that has a poverty rate above 15.4 percent based on the most recent decennial census; in which at least 25.4 percent of the adult population does not hold a high school diploma or high school equivalency certificate based on the most recent decennial census; and that has an unemployment rate that has remained above 4.9 percent during the preceding five years, based on Texas Workforce Commission data.

(12) Economic Development and Tourism--Economic Development and Tourism Office in the Governor's Office (Office) as established under Chapter 481, Texas Government Code.

(13) Eligible taxable proceeds--Taxable proceeds generated, paid, or collected by a qualified hotel project or a business at a qualified hotel project including hotel occupancy taxes, ad valorem taxes, sales and used taxes, and mixed beverage taxes.

(14) Enterprise project--A designation given to a qualified business by the Bank under the Act, §2303.406, and §176.3 of this title (relating to Qualification for Designation of Enterprise Projects) mak-

ing the qualified business eligible for the state tax incentives provided by law for an enterprise project.

(15) Executive Director--The Executive Director of the Office.

(16) Extraterritorial jurisdiction--Territory in the extraterritorial jurisdiction (ETJ) of a municipality that is considered to be in the jurisdiction of the municipality, as defined by Chapter 42, Local Government Code.

(17) Governing body--The governing body of a municipality or county participating in the program.

(18) Governing body liaison--The person who holds the position set out in the ordinance or order indicating participation in the program, for the municipality or county to communicate and negotiate with the Bank or Office, qualified businesses nominated to be enterprise projects and any other entities affected by the enterprise zone.

(19) Local government--A municipality or county.

(20) Local incentive--Each tax incentive, grant, other financial incentive or benefit, or program to be provided by the governing body to business enterprises through the program.

(21) Ninety-day window--The period 90 days prior to the quarterly application deadline date for which an enterprise project is approved. The period of time in which the project may begin making investment and creating jobs for purposes related to the enterprise project designation.

(22) Nominating body--The governing body of a municipality or county that nominated a project or activity of a qualified business for designation as an enterprise project which is located within the jurisdiction of that governing body.

(23) Primary job--A job to be created or retained for benefit by a designated enterprise project, as defined by the Development Corporation Act of 1979.

(24) Qualified property--Any one or more of the following:

(A) tangible personal property located at the qualified business site that was acquired by a taxpayer not earlier than the 90th day before the date of designation as an enterprise project and was or will be used predominantly by the taxpayer in the active conduct of a trade or business;

(B) real property located at a qualified business site that:

(i) was acquired by the taxpayer not earlier than the 90th day before the date of designation of the enterprise project, and used predominantly by the taxpayer in the active conduct of a trade or business; or

(ii) was the principal residence of the taxpayer on the date of the sale or exchange; or

(C) interest in a corporation, partnership, or other entity if, for the most recent taxable year of the entity ending before the date of sale or exchange, the entity was a qualified business.

(25) Staff--The staff of the Texas Economic Development Bank.

(c) Amendment and suspension of the rules. These sections may be amended by the executive director at any time in accordance with the Administrative Procedure Act, Texas Government Code, Subchapter B, as amended. The executive director may suspend or waive a section, not statutorily imposed, in whole or in part, upon the showing of good cause or when, at the discretion of the executive director,

the particular facts or circumstances render such waiver of the section appropriate in a given instance.

(d) Written communication with the office. Application and other written communication to the office should be addressed to the attention of the Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Enterprise Zone Program, Post Office Box 12428, Austin, Texas 78711-2428, or by overnight mail to Office of the Governor, Economic Development and Tourism, Texas Economic Development Bank, Attn: Texas Enterprise Zone Program, 1100 San Jacinto Street, Austin, Texas 78701, (512) 936-0100.

§176.2. Participation in the Program.

Participation. A local government wishing to participate in the program must submit to the Bank the following:

(1) A copy of all public hearing notices with regard to all public hearings held in conjunction with the nomination of the proposed enterprise project. Three notices must occur at least seven days prior to each public hearing. Required elements for the postings are the date, time and location of the public hearing, the name and address of the proposed project, the designation being sought and notice that tax incentives will be considered, if applicable. The three notices are in the form of a:

- (A) public posting at city hall or county courthouse, as applicable;
- (B) notice in a newspaper of general circulation for the area; and
- (C) written notice to the Bank.

(2) A certified copy of the ordinance or order, as appropriate, with original signatures that:

(A) states that the governing body is in full compliance with Chapter 2303, Texas Government Code prior to nomination of an eligible business;

(B) lists which enterprise zone block groups, if any, are also reinvestment zones;

(C) outlines the local incentives that are offered in the enterprise zone area or areas within its jurisdiction, with at least one incentive being exclusive to the enterprise zone areas;

(D) outlines additional local incentives that are offered in the governing body's jurisdiction;

(E) identifies, by position, a liaison to oversee, communicate and negotiate with the bank, qualified businesses nominated to be enterprise projects, and any other entities effected by the enterprise zone;

(F) states the date a public hearing was conducted with respect to local incentives offered, prior to passing the ordinance or order;

(G) nominates the qualified business for enterprise project designation;

(H) state the type of project requested, i.e. single, double jumbo or triple jumbo enterprise project;

(I) states whether or not the qualified business is located in an enterprise zone, empowerment zone, enterprise community or renewal community; and

(J) is finally adopted no later than the day of the deadline for which the project will be submitted.

(3) A transcript or, in the absence of a transcript, minutes of all public hearings held with respect to local incentives available to business enterprises within the jurisdiction of the governmental entity wishing to participate in the program.

(4) The name, title, address, telephone number, and electronic mail address of the nominating body's liaison.

(5) Provide a summary of the economic objectives to revitalize the jurisdiction, as well as a description of the efforts made to develop and revitalize the jurisdiction of the governing body.

§176.3. Qualification for Designation of Enterprise Projects.

(a) The Bank may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §2303.402, and this chapter;

(2) the qualified business is located in, or has made substantial commitment to locate in an enterprise zone or at a qualified business site;

(3) the applicant's governing body has not reached the maximum number of designation allowed during the biennium;

(4) the applicant's governing body has demonstrated that a high level of cooperation exists between public and private entities;

(5) the designation of the qualified business as an enterprise project will contribute significantly to the achievement of the plans of the applicant for development and revitalization of the area; and

(6) the designation of the qualified business as an enterprise project will further the public purposes of the Act and significantly benefit the goals of the program which include, but are not limited to, high impact projects or activities, targeted industry clusters and creation of primary jobs.

(b) For job creation, a qualified business must be seeking to create new jobs, or for an existing business seeking to expand and increase their current level of employment in Texas. The program, however, does not allow benefit for moving existing jobs from one municipality or county in Texas to another within the state.

(c) For job retention, a qualified business must submit to the governing body a written request for the retained job benefit with documentation verifying which criteria is applicable. The governing body must authenticate the documentation. A copy of the request from the qualified business requesting the retained jobs benefit to the governing body, as well as the backup documentation, must be attached to the application under the applicable Tab. The governing body liaison must verify that the documentation meets at least one requirement for the retained jobs benefit on the application form. In any case, for job retention, the qualified business must maintain the same level of employment that existed 90 days prior to the date of designation. Documentation that the level of employment has been maintained must be submitted with the job certification application to the Comptroller of Public Accounts. Any of the retained jobs that are subsequently vacated must meet the 25% or 35% economically disadvantaged or enterprise zone resident hiring requirement, as applicable, when the vacant position is filled. The retained job benefit may not be used to receive benefit for moving existing jobs from one municipality or county in Texas to another within the state.

(d) Municipalities or counties with a population of 250,000 or more, based on the most recent decennial census, are eligible for up to six enterprise project designations during a state biennium based upon availability.

(e) Municipalities or counties with a population of less than 250,000, based on the most recent decennial census, are eligible for up to four enterprise project designations during a state biennium based upon availability. Once a municipality or county of less than 250,000 based on the most recent decennial census has received four enterprise project designations during a state biennium, the nominating body may submit up to two bonus enterprise project nominations, if there are designations available. Bonus projects will be awarded after all other projects received during the round have been determined for designation, and will be allocated to high-impact projects creating new jobs. The bonus project application must include a local economic impact summary, and describe the impact on the nominating body in terms of local economic objectives, as well as the local Return on Investment outlined in terms of a cost benefit analysis.

(f) The Bank may, at its election, withhold up to six enterprise project designations during a round to be disseminated at a later round during the same biennium.

§176.4. Application for Designation of Enterprise Projects.

(a) An application must be filed in the format provided (letter size) and must contain all information and documentation required under the Act and this chapter, as applicable. Each application for enterprise project designation must be typed directly on the form provided by the Bank.

(b) The application must be submitted hole-punched in a three-ring loose-leaf binder with the application form located behind Tab 1, and must include all applicable attachments hole-punched and placed behind the appropriate Tab sections as specified in the application. An application that is submitted with four or more material deficiencies will be declined as incomplete. Material deficiencies are items such as the governing body application certification with an original signature, the qualified business application certification with original signatures, or any other required tabbed item.

(c) The applicant shall file with the Bank one original application for designation as an enterprise project. All application for enterprise project designation must be received by the Office no earlier than one week before, and no later than 5:00 p.m. Central Standard Time, on the first business day of the following months: September, December, March and June. Further, all application must be accompanied by a \$500 non-refundable application fee in the form of a certified check or money order made payable to the Texas Economic Development Bank. The application is not considered to be received unless it is received at the physical location of the Office and accompanied by the non-refundable application fee. Applications received after a deadline will be returned to the applicant, and must be resubmitted to the Bank in the prescribed timeframe to be considered for designation during the next application deadline.

(d) Applications received during a quarterly round will be reviewed and scored by the Bank in accordance with the Act, this chapter and the goals of the program.

(e) The application for designation of an enterprise project must contain the following information and documentation, as applicable:

(1) The participants. The application must contain the name, street address, mailing address, telephone number, fax number and electronic mail address for each of the following involved in the designation of a qualified business as an enterprise project:

(A) the applicant governing body and the applicant governing body's liaison; and

(B) the qualified business, the primary business's representative and the local business liaison. The local business liaison must be located at the qualified business site.

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the governing body liaison certifying that the contents of the application are true and correct to the best information and belief of the liaison, and that he or she has read the Act and this chapter and is familiar with the provisions thereof;

(B) a certified copy of the nominating ordinance or order under §176.2(1) of this title (relating to Participation in the Program), or if an ordinance or order has already been passed nominating a project for designation, a certified copy of a resolution from the applicant governing body nominating the qualified business for designation as an enterprise project and containing:

(i) nomination of the project or activity as an enterprise project;

(ii) a statement as to whether the project or activity is located in an area designated as an enterprise zone, and, if applicable, that the enterprise zone is also a federal empowerment zone, federal enterprise community, or renewal community;

(iii) reference by number to the nominating ordinance or order indicating participation in the program, with a statement that the local incentives described in the previously issued ordinance or order electing to participate in the enterprise zone program are the same as those made available to the project or activity;

(iv) the active designation period of the project; and

(v) if the project or activity is nominated as a double jumbo enterprise project or a triple jumbo enterprise project, a statement that the designation will count as two or three designations, respectively, against the total number of designations allowed, as applicable.

(C) the block group of the primary business address of the qualified business site, verifiable by the local appraisal district, or an enterprise zone approved prior to September 1, 2003, currently still in effect, if applicable, or the federally-designated zone, if applicable;

(D) the poverty rate for the block group of the primary business address of the qualified business site, the poverty rate of the distressed county in which the qualified business site is located or the poverty rate of the enterprise zone approved prior to September 1, 2003, currently still in effect, as applicable;

(E) an official census map, which clearly identifies the location of the proposed project and the census area where it is located, or a map of the enterprise zone approved prior to September 1, 2003, currently still in effect, which clearly identifies the location of the proposed project, as applicable;

(F) a description of the municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the jurisdiction in which the qualified business is located including a description of the business activity that has occurred in the area within the last year. This description must demonstrate the cooperation among the public and private sectors;

(G) a description of the local effort made by the municipality or county and other affected entities to achieve development and revitalization of the area as described in the Act, §2303.405(c). This includes a brief historical description of the trade and business conducted in the area.

(3) The project. The application must contain the following information and documentation concerning the proposed project:

(A) a statement signed by the primary business representative and the local business liaison certifying that the contents of the application are true and correct to their best information and belief, and that they have read the Act and this chapter and are familiar with the provisions thereof;

(B) a description and introduction of the business applying for the project designation, which includes:

(i) a copy of the articles of incorporation, or the dba statement under which the business operates, filed with the Secretary of State of the State of Texas. The name under which the business is applying for designation must be the same as the business paying state taxes and creating and/or retaining jobs to obtain program benefits;

(ii) the principal owners and history of the business;

(iii) a resolution for corporations or a certificate of authority that provides signatory authority to a person or persons to submit the enterprise project application and sign any contracts or forms on behalf of the business for the enterprise project;

(iv) the number of business locations, total sales, and number of employees in the State of Texas, the United States, and outside the United States;

(v) the federal tax identification number, and/or the Texas Comptroller tax identification number, as applicable, for all participating entities of a controlled group;

(vi) a description of the business' products and services, including NAICS code;

(vii) a description of the business' export history, if applicable; and

(viii) an organizational chart that indicates the business structure, as well as the role of each entity participating in the project;

(C) the plans of the business for expansion, revitalization, and other activity at the qualified business site for the designation period of the project including:

(i) a description of the project location and intended use;

(ii) a summary of short and long-term plans for expansion at the qualified business site;

(iii) the amount of capital investment to be made at the qualified business site during the designation period;

(iv) the status of any required local, state or federal permits or licenses that must be obtained to enable the project to be initiated and completed as represented in the enterprise project application;

(v) a tabular summary of the current number of full-time, part-time and seasonal jobs which includes the titles and/or Standard Occupational Classification by six-digit code and salary ranges of jobs to be maintained at the qualified business site. Full-time positions will be used for baseline information;

(vi) a tabular summary of the number of new jobs, the titles and/or Standard Occupational Classification by six-digit code and salary ranges of full-time jobs to be created;

(vii) a tabular summary of the number of new jobs, the titles and/or Standard Occupational Classification by six-digit code

and salary ranges of full-time jobs to be retained, if applying for retained job benefit; and

(viii) the total projected annual payroll for the jobs that are being considered for benefit;

(D) commitments from the business that include:

(i) a completed form provided by the Bank, certifying the business as a qualified business;

(ii) a statement from a franchise or subsidiary, if applicable, stating that the business will maintain separate payroll and tax records of the business activity conducted at the qualified business site;

(iii) the percentage of new or additional employees hired to occupy the jobs being claimed for benefit that are residents of any enterprise zone in the state, or that are economically disadvantaged; and

(iv) a description of the efforts of the business to develop and revitalize the area as described in the Act, §2303.405(e);

(f) Multiple concurrent enterprise project designations. A qualified business that currently has an enterprise project designation may apply for an additional enterprise project designation in the same enterprise zone. To receive the additional enterprise project designation the governing body must complete an enterprise project application with all of the required nominations and attachments. Additionally, the application must include a breakdown of capital investment and new and/or retained jobs for each designation, clearly delineating what capital investment and jobs will apply to which designation, with timelines for all.

(g) Name change. If the name of a qualified business that has received an enterprise project designation has changed, the Bank may approve the name change for the enterprise project designation. The designated enterprise project must apply for a name change to the Bank no later than 18 months after the enterprise project designation expires, or the business will not be eligible for program benefits. The name change of a project designation by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the last day of the original designation period. The receive Bank approval for a name change, the qualified business must submit through the applicant governing body:

(1) a completed Name Change Application, along with a non-refundable cashiers check or money order made payable to Texas Economic Development Bank, for a processing fee in the amount of \$500; and

(2) a written explanation by the designee of the reasons for the name change, the date the name change occurred and any changes to the commitments made by the business in the original enterprise project application, if applicable; and

(3) written acknowledgment from the applicant governing body that it is aware of the name change for the project as a qualified business operating at the qualified business site within its jurisdiction.

(h) Assignment or Assumption. The Bank may approve the assignment or assumption of a state-designated enterprise project that has transferred through a sale to another entity that will commit to continue operations at the qualified business site in the way originally committed within the initial enterprise project application, or which otherwise demonstrates to the satisfaction of the Bank that the assignment or assumption is warranted to avoid disruption of operations and loss of jobs. The transfer of a project designation by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee and which will end on the last day of

the original designation period. The designated enterprise project must apply to the Bank, through the appropriate governing body, for designation assignment or assumption no later than 18 months after the enterprise project designation expires, or the business will not be eligible for program benefits. The following must be submitted through the applicant governing body to the Bank:

(1) official action by the governing body in the form of a resolution approving the transfer of the enterprise designation to the purchaser;

(2) a completed Enterprise Project Assignment Application, along with a non-refundable cashier's check or money order made payable to Texas Economic Development Bank for a processing fee in the amount of \$500; and

(3) a written relinquishment from the designated project's qualified business to the governing body and Bank to release all claim to the project designation and any benefits represented thereunder and agreeing to the assignment of the designation as of a specific date by the purchaser seeking to assume the designation; and

(4) a written certification from the purchaser on a form to be provided by the Bank that the purchaser will be a qualified business under the Act, §2303.402; and

(5) a letter of commitment from the purchaser addressed to the governing body and the Bank in the same format as the letter of commitment filed in the original application for project designation by the initial qualified business. The letter should outline any modifications proposed by the purchaser to the original commitments made by the qualified business holding the project designation, including capital investment and jobs to be created or retained, as applicable, and a statement as to why the assignment is essential to their operations at the qualified business site; and

(6) a Comptroller of Public Accounts tax identification number and federal tax identification number for the purchaser; and

(7) a copy of the purchasers' articles of incorporation filed with the State of Texas Secretary of State, or the dba statement under which the business operates.

(i) A qualified business may be designated as an enterprise project for no less than one year and no longer than five years. The designation of a qualified business as an enterprise project shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(1) the date requested in the application for designation as an enterprise project as indicated in the nominating ordinance, order or resolution, as applicable; or

(2) five years after the date the designation is made; or

(3) the last day that completes the original project designation period of a qualified business that has assumed the designation of the enterprise project designation through or purchase of a designated qualified business for the purpose of continuing its operations at the applicable qualified business; or

(4) the date the Bank notifies the qualified business and the governing body that the qualified business is not in compliance with any requirement for designation as an enterprise project.

§176.5. Monitoring and Reporting Requirements.

(a) Annual reports and certifications.

(1) Governing Body Annual Report. Each municipality or county that participates in the program must submit an annual report to the Bank on or before October 1 of each year. The report must be in a

form prescribed by the Bank and contain the information listed in the Act, §2303.205(c). If this report is not received by October 1, the Bank may not designate any additional enterprise projects in the governing body's jurisdiction until such report is received.

(2) Comptroller Annual Report. No later than October 1 of each year, the Comptroller shall report to the Bank the statewide total of actual jobs created, actual jobs retained and the tax refunds and credits made under this section during the previous fiscal year as required by the Act.

(3) Qualified Business Certification. An enterprise project approved prior to September 1, 2003, must be annually certified by the Bank as a qualified business to receive its state sales and use tax refunds.

(4) Program Annual Report. The information in the governing body annual report, as well as the Comptroller annual report will be used by the Bank to compile an annual report on the program to the governor, legislature and the Legislative Budget Board by January 1 as required by the Act.

(b) Other reports or documents.

(1) Governing Body Designated Project Status Report. The nominating body shall submit a report to the Bank and Comptroller, conducted either at the time a certificate of occupancy is issued, or at the completion of the enterprise project designation period monitoring the qualified business to determine whether the business or project has followed through on any commitments or goals made in the application for enterprise project designation. This information may also be provided through the Governing Body Annual Report.

(2) Qualified Business Benefit Request Status Report. At the time of submittal of a request for a state tax benefit, the qualified business must provide a certified report to the Bank of the actual amount of capital investment, as well as the actual number of new and/or retained jobs by category and title.

(3) Additional Information as requested. The applicant shall furnish additional information, reports or statements as the Bank from time to time may request in connection 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.

Filed with the Office of the Secretary of State on March 24, 2006.

TRD-200601803

Robin Abbott

Assistant General Counsel

Office of the Governor, Economic Development and Tourism Division

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 936-0501



PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §§303.1, 303.5, 303.7, 303.9, 303.13, 303.15, 303.17, 303.19

The Texas Residential Construction Commission (the "commission") proposes amendments to §§303.1, 303.5, 303.7, 303.9, 303.13, 303.15, 303.17, and 303.19, relating to the registration of builders in the State of Texas as provided for in Title 16, Property Code. The amendments are proposed to clarify procedures and intent and to add additional requirements for registration to the current rules.

Susan K. Durso, General Counsel, has determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect the public will benefit from the clarification of the procedures and great scrutiny of registered builders.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there will be no significant effect on individuals or large, small and micro-businesses because of the adoption of the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed amendments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed amendment. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Registration of Builders" in the subject line. Comments submitted electronically to another electronic address or that do not include "Registration of Builders" in the subject line may not be considered.

The amendments are proposed pursuant to Chapter 416, Property Code, which provides for the registration of builders and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 416.

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

§303.1. Registration Process.

(a) All persons must register with the commission by submitting a Builder/Remodeler Registration Form [~~using a commission-prescribed form~~], in order to conduct business as a builder in the state of Texas. A person must submit a completed [~~application for~~] registration form and filing fee for issuance of a certificate of registration in the name of each entity under which the applicant intends to operate

as a builder in this state. The commission shall issue a certificate of registration to an applicant who meets the eligibility requirements for builder registration within fifteen (15) days of receipt of the completed registration [~~application form~~] and required fee.

(b) A person who submits a registration form as a new builder must also submit a Builder/Remodeler Affidavit form attesting to whether or not that the person has operated as a builder in the State of Texas since March 31, 2004.

(c) If a person submits a registration form as a new builder and has operated as a builder after March 31, 2004 without proper registration the commission may undertake one or more of the following actions as it determines is appropriate:

(1) require the payment of a late fee in addition to the registration fee;

(2) undertake a disciplinary action and impose an administrative penalty;

(3) deny the application; or

(4) refer the matter to the Office of the Attorney General.

(d) If an incomplete application is submitted, the commission will provide the applicant an opportunity to submit complete information. Failure to submit a completed application within fifteen (15) days of the date of notice of a deficiency in the application will result in the administrative withdrawal of the application.

§303.5. [~~Application for~~] Registration.

(a) A builder must identify on the application the type of business form under which the applicant operates and any assumed names or names under which it is doing business (dba). If the builder has registered any assumed names with the Secretary of State's office, the builder must also submit a copy of the Certificate of Assumed Business Name for each assumed name registered with the Secretary of State.

(b) The applicant must identify any affiliates:

(1) that have applied previously for registration with the commission; or

(2) that have had an application submitted to the commission administratively withdrawn; or

(3) that have allowed a certificate of registration with the commission expire for non-payment of renewal fees.

(4) An affiliate is an individual or entity that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the applicant.

(c) [(a)] The application for registration shall contain a request for information from the applicant that is sufficient for the commission to conduct a criminal background check to determine the applicant's eligibility for registration under the Act.

(d) The applicant must disclose on the application for registration:

(1) whether the applicant has entered a plea of guilty or nolo contendere (no contest) to any felony charge or to any misdemeanor charge for a crime involving moral turpitude; or

(2) whether the applicant has been convicted of any felony charge or of a misdemeanor charge for a crime involving moral turpitude and that the time for appeal of the conviction has elapsed or that the conviction was affirmed on appeal.

(e) [(b)] In reviewing an application to determine if an applicant is eligible for registration under this subchapter, the commission

shall consider, among other things, whether the applicant has a criminal history and if so:

(1) the nature and seriousness of any crimes to which the applicant has pled guilty or pled no contest, or for which the applicant has a prior conviction or convictions, including whether such a crime involves moral turpitude;

(2) the extent to which acting as a registered builder might offer the applicant an opportunity to engage in further criminal activity of a same or similar nature as that for which the applicant has a prior conviction;

(3) the extent and nature of the applicant's past criminal activity;

(4) the age of the applicant when any criminal activity discovered occurred;

(5) the remoteness in time between the submission of the application and the date of the applicant's last criminal conviction;

(6) the applicant's overall work history in relation to the dates of any criminal convictions;

(7) evidence of the applicant's successful rehabilitation efforts while incarcerated or after release, including but not limited to, restitution to the victim, completion of probationary requirements and completion of community service; and

(8) other evidence of the applicant's eligibility to serve as a registered builder, as requested by the commission.

(f) The commission will conduct a criminal background check of each designated agent and may conduct a criminal background check on any other person responsible for the registration if the commission determines it necessary to further the purposes of the Act.

(g) Any information obtained from an applicant as a result of the criminal background check that is not a public record at the time the commission obtains the information is deemed confidential. The commission may not release or otherwise disclose the confidential information except pursuant to a court order, subpoena or with the written consent of the applicant.

(h) For purposes of this section, an applicant who has received a deferred adjudication for any felony charge or for any misdemeanor charge for a crime involving moral turpitude shall disclose that charge on the application for registration, regardless of whether the applicant has completed the conditions of the order of deferred adjudication.

(i) An individual must respond completely and truthfully regarding criminal history information. Failure to respond completely and truthfully will be considered evidence that the applicant is not honest and trustworthy and does not have integrity, and may result in denial of the application.

(j) [(e)] An applicant must respond timely to any [a] commission request for further information in reviewing the completed application in order to complete the application process.

(k) Failure to respond truthfully and completely to requests for information to process a completed application may result in the denial of the application.

§303.7. Designated Agents.

(a) To be eligible to receive a certificate of registration under this subchapter all applicants must designate an individual as the primary designated [an] agent.

(b) Each designated agent must adhere to the same registration requirements and meet the same eligibility requirements as any person

applying for builder registration under this subchapter. There is no separate builder registration application form or fee required to register the primary agent designated by a registered builder.

(c) The primary designated agent of a sole proprietorship is limited to the individual proprietor.

(d) [(b)] A corporation must designate one [or more of its officers] as the primary designated agent [agent(s)].

(e) [(e)] A limited liability company must designate one [or more of its managers] as the primary designated agent [agent(s)].

(f) [(d)] A partnership, limited partnership or limited liability partnership must designate one of its managing partners as the primary designated agent or, if there are no individuals serving as a managing partner, a partnership, limited partnership or limited liability partnership must designate an individual officer from among its managing partner entities [partners] as the designated agent.

(g) [(e)] A corporation, limited liability company, partnership, limited partnership or limited liability partnership is not eligible for registration as a builder and may not act as a builder unless the entity's primary designated agent is individually eligible for registration as a builder.

(h) Individuals who are approved as registered designated agents of a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity registered as builder, are registered builders.

(i) A corporation, limited liability company, partnership, limited partnership or limited liability partnership may submit a Secondary Agent Registration Form and fee to register one or more qualified individuals to serve as a secondary registered agent(s).

§303.9. Eligibility Requirements.

(a) At the time the application for registration is filed with the commission: []

(1) individual applicants [an applicant] must be at least 18 years of age and a citizen of the United States or a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the applicant is honest, trustworthy and has integrity.

(2) individuals who apply as the designated agents of a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must be at least 18 years age and citizen of the United States of a lawfully admitted alien and must demonstrate to the satisfaction of the commission that the individual is honest, trustworthy and has integrity.

(3) a corporation, limited liability company, partnership, limited partnership, limited liability partnership or other entity must demonstrate that it is properly registered and in good standing with the Secretary of State and must demonstrate to the satisfaction of the commission that the entity has acted honestly, with trustworthiness and with integrity in its business dealings.

(b) The commission may consider a registered builder's complaint history, history of homeowner-filed requests for participation in the SIRP, compliance with state and federal law, compliance with the commission rules and requests for information, history of unsatisfied judgments and unpaid arbitration awards, history of bankruptcies, compliance history with the Secretary of State regulations and payment of taxes, and history of use of corporate and partnership structures as a means to avoid liability in evaluating whether an applicant is honest, trustworthy and has integrity.

§303.13. Designated Address.

(a) Each builder shall designate in the application for registration a fixed physical address located in this state to serve as its principal place of business.

(b) Each designated agent shall provide in the application for registration a fixed physical address in Texas.

(c) The commission will use the fixed physical address provided as the mailing address for the registered builder in order to verify that the address is valid. If the postmaster will not deliver to a physical address for the builder or if delivery to the physical address is not advisable because of theft, and the builder is required to maintain a Post Office Box, the builder may submit a post office box waiver form in order to utilize a Post Office Box address in lieu of a physical address for the receipt of mail only. A designated agent may submit a Post Office Box as a mailing address in addition to the physical address provided pursuant to subsection (b) of this section.

(d) ~~[(e)]~~ If the builder moves from the physical address designated on its certificate of registration, or if the builder has been authorized to utilize a Post Office Box for the receipt of mail, ~~the [Each] builder shall submit a [commission-prescribed] change of information form and the required fee not later than thirty (30) days from the date of the address change [the builder moves from the address designated on its certificate of registration].~~

(e) ~~[(e)]~~ Each designated agent shall submit a ~~[commission-prescribed]~~ change of information form and the required fee not later than thirty (30) days from the date the designated agent moves from the address provided on its application.

§303.15. *Change of Registered Name.*

(a) Within forty-five (45) days from the date a builder commences operation under a name different from the builder name designated on its current certificate of registration, the registered builder shall submit written notice to the commission of the new entity name under which it is operating with supporting documentation from the Secretary of State, if appropriate.

(b) A change in the name of the registered builder resulting from a change in the form of business organization for that builder requires the submission of a new application for a certificate of registration.

§303.17. *Material Change in Information.*

(a) Except as otherwise expressly provided in this subchapter, each builder and designated agent shall report in writing to the commission ~~[in writing]~~ using a Change of Information Form ~~[commission-prescribed form]~~ any material change in the information ~~[provided to the commission]~~ in the application for certificate of registration provided to the commission within thirty (30) days of the change.

(b) A material change in information includes:

(1) information regarding the refusal, denial, revocation or suspension of a professional or occupational license or certification; or,

(2) an order of conviction, guilty plea, plea of nolo contendere (no contest) or deferred adjudication entered against a designated agent; or,

(3) information regarding judgments and arbitration awards entered against the registered agent, builder or an affiliated entity; or,

(4) any other information supplied to the commission by the applicant upon which the commission may have reasonably relied in determining the eligibility of an applicant or whether to approve an application for registration.

§303.19. *Renewal.*

(a) After March 1, 2004, a person operating as a builder in this state must keep a current certificate of registration and must timely renew its certificate of registration ~~[prior to the expiration of the effective period shown on the certificate of registration].~~

(b) A builder that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year. A builder that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year.

(c) A builder who fails to maintain a current certificate of registration may be subject to a late fee and an administrative penalty or other disciplinary action as determined by the commission.

(d) ~~[(b)]~~ In order to renew a certificate of registration, a builder shall submit a completed application for renewal of a certificate of registration and the required fee to the commission not later than thirty (30) days prior to the end of the applicable registration period as provided in subsection (b) of this section ~~[expiration of the effective period shown on the current certificate of registration].~~

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 March 23, 2006.

TRD-200601790

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 463-2886



10 TAC §303.3, §303.11

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

The Texas Residential Construction Commission (the "commission") proposes the repeal of §303.3, regarding issuance of a provisional registration certificate to builders and §303.11, regarding information related to criminal histories of applicants for builder registration.

Section 303.3 provides by its own terms that it expired on January 1, 2005. The repeal of §303.3 is proposed specifically pursuant to Property Code §416.003, which provides for a provisional registration opportunity to expire January 1, 2005 and, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The repeal of §303.11 is proposed because the language contained therein is being subsumed into another section in this chapter by amendments proposed in this same issue of the *Texas Register*.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed repeals are in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the sections.

Ms. Durso has also determined that for the first five years following the repeals the public will benefit from the conformity of the agency's rules with the statutory language and clarity in the agency rules resulting from consolidation. There is no anticipated economic cost to persons as a result of the proposed repeals.

Ms. Durso has also determined that for each year of the first five-year period the proposed repeals are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed repeals may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475.2453. Comments may also be submitted electronically to susan.durso@trcc.state.tx.us. For comments submitted electronically, please include "Repeal of 303.3 and 303.11" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule repeal proposed.

The statutory provisions affected by the repeal of these rules are those set forth in Property Code, Chapters 408 and 416.

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

§303.3. *Provisional Registration.*

§303.11. *Information Regarding Past Criminal History.*

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 March 23, 2006.

TRD-200601773

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 463-2886



CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER D. POST-SETTLEMENT AND POST-HEARING MATTERS

10 TAC §305.41

The Texas Residential Construction Commission proposes amendments to §305.41, regarding the procedures for motions for rehearing. Specifically, the proposed amendments will conform the language of the rule to the language of the Administrative Procedure Act (Act) so that the time for taking action is calculated from the same date as stated in the Act. This will eliminate any confusion as to the date upon which the commission must take action.

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five-year period that the proposed amended rule is in effect there will be no increase

in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the amended rule is in effect the public will benefit from the conformity of the agency's rules with the statutory language on the same procedure. There is no anticipated economic cost to small businesses or persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amended rule is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475.2453. Comments may also be submitted electronically to susan.durso@trcc.state.tx.us. For comments submitted electronically, please include "Amended Rule 305.41" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rule in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code, Chapter 2001.

The proposed amendment is cross-referenced to Texas Property Code §408.001 and Texas Government Code §2001.146 and §2001.147.

§305.41. *Motions for Rehearing.*

(a) Filing times. A motion for rehearing must be filed with the commission within 20 days after a party has been notified, either in person or by mail, of the order of the commission pursuant to §305.40 of this chapter.

(b) Commission action. Commission action on the motion for rehearing must be taken within 45 days after the date a party has been notified of the commission's order pursuant to subsection (a) of this section [~~the final order is signed~~]. If commission action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law. The commission may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or another suitable means of communication. The commission may by written order extend the period of time for filing the motions and replies and taking commission action, except that an extension may not extend the period for commission action beyond 90 days from the date the party was notified pursuant to §305.40 of this chapter [~~order was signed~~]. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date the party was notified pursuant to §305.40 of this chapter [~~of the final decision or order~~]. The parties may by agreement, with the approval of the commission, provide for a modification of the times provided in 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 March 23, 2006.
TRD-200601789
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: May 7, 2006
For further information, please call: (512) 463-2886



CHAPTER 306. COMPLAINTS

10 TAC §306.1

The Texas Residential Construction Commission ("commission") proposes new §306.1, relating to the complaint process. The proposed new rule sets forth the commission procedures for processing complaints filed against a registrant or other person.

The new section is proposed to inform both the complainant and respondent of the procedure that the commission will follow during the complaint process.

The new section is proposed under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 and Property Code, Chapter 416, and §409.1 which requires the commission to prepare information about the procedures by which complaints are filed with and resolved by the commission.

Susan Durso, General Counsel, has determined that for each year of the first five-year period the proposed new section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed new section.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect the public will benefit from knowing that the procedure the commission follows when it receives a complaint against a registrant.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect there will be no significant effect on individuals or large, small and micro-businesses as a result of the adoption of the proposed rule. There may be a minimal effect on registered builders and remodelers who are required to provide copies of written correspondence to the commission as a result of the new section.

Ms. Durso has also determined that for each year of the first five-year period the proposed new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed rule to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "complaint rule" in the subject line. Comments submitted electronically to another electronic address or that

do not include "complaint rule" in the subject line may not be considered.

The new section is proposed to implement Property Code §408.001, §409.001 and Chapter 416.

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

§306.1. Complaint Process.

(a) All complaints shall be submitted in writing, preferably on the commission's Complaint Form, to the Texas Residential Construction Commission, Attn: Complaints, Post Office Box 13144, Austin, Texas 78711, by fax to (512) 463-9507, or by email to info@trcc.state.tx.us. The commission's Complaint Form may be obtained by calling the agency toll free at 1-877-651-8722 or from the commission's web site at www.trcc.state.tx.us.

(b) All complaints, whether or not submitted on the commission complaint form, must include the following information in order that the commission may make a preliminary determination as to whether the complaint is within the commission's jurisdiction:

- (1) the name and contact information for complainant;
- (2) the name and contact information of the party against which the complaint is made;
- (3) a description of the basis for the complaint;
- (4) the date the information forming the basis of the complaint was discovered;
- (5) the names and contact information for any witnesses;
- (6) any sources of other pertinent information; and
- (7) copies of any documents that support the allegations that form the basis of the complaint.

(c) All complaints, whether or not submitted on the commission complaint form, should include the following information, if known to the complainant and relevant to the complaint:

- (1) whether there is a construction contract and if so, the nature of the construction work (new home, remodel) and total contract price;
- (2) the start and completion date of the construction; and
- (3) if the respondent is a commission registrant, the respondent's registration number.

(d) Upon receipt of a written complaint, the commission will make a preliminary determination as to whether the basis of the complaint is a matter within the commission's jurisdiction. If the complaint information provided is insufficient to make a preliminary determination, the agency will contact the complainant in an effort to develop additional information. If the complainant fails to respond to an information request within 30 days, the commission may close the complaint without prejudice.

(e) If the preliminary determination shows that the commission is the appropriate forum for the subject matter of the complaint, the commission will provide the respondent with a copy of the complaint and request a written response within 30 days of receipt of the letter.

(f) If the preliminary determination shows that the complaint is unwarranted or that another entity has authority over the matter, the commission will notify the complainant and respondent of the intent to close the complaint file and if appropriate, the commission will refer the matter to the proper authority.

(g) If a response is received from the respondent, the commission will evaluate the information received and provide a copy of the response to the complainant.

(h) If the facts supplied by the complainant and any response received from the respondent indicate that a further investigation may lead to evidence of a violation of Title 16 of the Property Code or commission rules, the commission will transfer the complaint to an investigator to conduct an investigation.

(i) If an investigation leads to sufficient evidence to support a disciplinary action, the commission will take disciplinary action pursuant to Chapter 418 of the Property Code and commission rules.

(j) The commission shall report quarterly to both parties on the status of a complaint until the commission closes the complaint or assigns the complaint to an investigator.

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 March 22, 2006.

TRD-200601765

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 463-2886



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

The Public Utility Commission of Texas (commission) proposes an amendment to §25.478, relating to Credit and Deposit Requirements for Residential Customers. The proposed amendment will allow victims of family violence and customers who are 65 years or older whose household income is at or below 150% of the poverty guidelines to satisfy retail electric providers' (REPs) credit and/or deposit requirements. This rule is a competition rule subject to judicial review as specified in PURA §39.001(e). Project Number 31853 is assigned to this proceeding.

Annette Lown Mass, Legal Division, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Mass has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the ability of victims of domestic violence and the elderly in poverty who are unable to pay

a deposit, to choose among all REPs serving their geographic area rather than accepting service from their affiliated REP or POLR.

The commission is not aware of any adverse economic effect on small businesses or micro-businesses as a result of enforcing this section.

There may be economic costs to persons who are required to comply with the proposed section. These costs are the result of waiving the deposits for customers who meet the criteria. However, it is believed that the benefits accruing from implementation of the proposed section will outweigh these costs.

Ms. Mass has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

The commission staff will conduct a public hearing on this rule-making, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 30 days after publication.

Comments on the proposed amendment may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711- 3326, within 30 days after publication. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted within 45 days after publication. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 31853.

The commission proposes this rule amendment pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2005) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically pursuant to PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; PURA §39.102, which provides for retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C and D.

§25.478. *Credit Requirements and Deposits.*

(a) Credit requirements for residential customers. A retail electric provider (REP) may require a residential customer or applicant to establish and maintain satisfactory credit as a condition of providing service pursuant to the requirements of this section.

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

(3) A residential customer or applicant seeking to establish service with an affiliated REP or provider of last resort (POLR) can demonstrate satisfactory credit using one of the criteria listed in sub-

paragraphs (A) through (E) of this paragraph. [A REP other than an affiliated REP or POLR may establish other criteria by which a customer or applicant can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(e) of this title (relating to General Provisions of Customer Protection Rules).]

(A) - (E) (No change.)

(4) A residential customer or applicant seeking to establish service with a REP other than an affiliated REP or POLR can demonstrate satisfactory credit using one of the criteria listed in subparagraphs (A) through (B) of this paragraph. A REP other than an affiliated REP or POLR may establish additional methods by which a customer or applicant not meeting the criteria of subparagraphs (A) or (B) of this paragraph can demonstrate satisfactory credit, so long as such criteria are not discriminatory pursuant to §25.471(c) of this title (relating to General Provisions of Customer Protection Rules).

(A) The residential customer or applicant is 65 years of age or older and the customer is not currently delinquent in payment of any electric service account.

(B) The customer or applicant has been determined to be a victim of family violence as defined in the Texas Family Code §71.004, by a family violence center as defined in Texas Human Resources Code §51.002, by treating medical personnel, by law enforcement personnel, by the Office of a Texas District Attorney or County Attorney, by the Office of the Attorney General, or by a grantee of the Texas Equal Access to Justice Foundation. This determination shall be evidenced by submission of a certification letter developed by the Texas Council on Family Violence. The certification letter may be submitted directly by use of a toll-free fax number to the REP.

(5) [(4)] Pursuant to the Public Utility Regulatory Act (PURA) §39.107(g), a REP that requires pre-payment for metered residential electric service may not charge an amount for electric service that is higher than the price charged by the POLR in the applicable transmission and distribution service territory.

(6) [(5)] The REP may obtain payment history information from any REP that has served the applicant in the previous two years or from a consumer reporting agency, as defined by the Federal Trade Commission. The REP shall obtain the customer's or applicant's authorization prior to obtaining such information from the customer's or applicant's prior REP. A REP shall maintain payment history information for two years after a customer's electric service has been terminated or disconnected in order to be able to provide credit history information at the request of the former customer.

(b) - (l) (No change.)

[(m) This section is effective June 1, 2004.]

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

Filed with the Office of the Secretary of State on March 23, 2006.

TRD-200601778

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 936-7223



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 75. AIR CONDITIONING AND REFRIGERATION CONTRACTORS

16 TAC §§75.10, 75.20 - 75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.71, 75.80, 75.90, 75.100

The Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§75.10, 75.20 - 75.24, 75.26, 75.30, 75.40, 75.65, 75.70, 75.80, 75.90, and 75.100, and new rule §75.71 regarding the air conditioning and refrigeration contractor program.

Rule 75.10 is amended in several areas to clarify language and to remove unnecessary provisions and words. In the definition of "business affiliation" the words "or her" are deleted to avoid use of "his or her". In the definition of "contracting" "verbally" is changed to "orally", and relocated to clarify the language. The definition of "direct supervision" is reworded for better flow of language by replacing "for compliance with", with, "to assure". In addition, the first words of subsection were made lower case to be consistent with other sections of these rules. The definition of "filed" is deleted, as that definition should be in the agency's general rules. In the definition of "full time employee" the word "either" is added to make it clear that there are two ways for employees of a contracting company to be considered as full time employees.

Rule 75.20. Licensing requirements--Application and Experience Requirements. In subsection (b)(3) the reference to the Coordinating Board of Texas College and University System is changed to the Texas Higher Education Coordinating Board. Subsection (c) is deleted because a section addressing administrative penalties is included in the agency's general rules.

Rule 75.21. Licensing requirements--Examinations. Subsections (b) and (c) are deleted since they are not licensing requirements, but are procedural matters that are addressed on the application forms for licensure. In subsection (d), the phrase, "has been" is replaced with "is" for clarification.

Rule 75.22. General License Provisions. Subsection (a) is deleted as the prohibition against a contracting company using a license that is not assigned to it, is included in new §75.71. Subsection (b) provides that a license, rather than a license number, is not transferable. Paragraphs (1) and (2) were added to include the requirements set out in the old subsection (d) that has been deleted. In subsection (d), "either" was replaced by "an" and the word "two" by "combined", to clarify the language. In subsection (e), language is clarified and provides that two different license numbers will be issued on one card and will expire concurrently. Subsection (k) is deleted as the prohibition against altering a license and is moved to §75.70(j). The provision regarding the responsibility of licensees in subsection (i) is deleted as it is addressed in §75.70. Subsection (m) is deleted since it no longer reflects procedures of the agency. Today credit card type licenses are issued to all licensees.

Rule 75.23. Licensing Requirements--Temporary Licenses. In subsection (c), the reference to ten business days is changed to thirty days to make timelines set out in these rules consistent with timelines used in other programs administered by the agency. In subsection (e), the phrase, "temporary method" was replaced with "other temporary methods" to clarify the language.

The provision in subsection (f) allowing the Executive Director to waive any requirement for issuance of a temporary license is deleted.

Rule 75.24. Licensing Requirements--Renewal. In subsection (a) "request" is changed to "application" and the phrase "if any" is added to the end of subsection (a)(2) to make it clear that a licensee may work for a company without assigning his license. In subsection (b), language is added to reference the Administrative Procedure Act.

Rule 75.26. Sale and Use of Refrigerants--Certificate of Registration. The title is amended to refer to the sale and use of refrigerants. Subsection (a) is amended by adding the word "application" before the word "fee" to clarify the type of fee. In subsection (b), "Persons" is changed to "Registrants" since statute defines person as an individual.

Rule 75.30. Exemptions. The exemption in subsection (a)(4) is deleted, as it is not provided for in statute.

Rule 75.40. Insurance Requirements. Subsection (c) is amended to clarify that insurance companies that provide insurance to licensees must be authorized by the Texas Insurance Code to sell insurance, to make this provision consistent with the Texas Insurance Code. In subsection (d) a requirement is added that licensees must file a new insurance certificate when changing an affiliation. Subsection (h) is deleted and moved to §75.70(i).

Rule 75.65. Advisory Board. In subsection (a), "Executive Director" is changed to "Commission" as the board is charged by statute with the duty to advise the Commission. Subsection (b) is deleted since the Executive Director interacts directly with the board. Subsection (c) is deleted since the statute at §1302.208 provides that the presiding officer calls meetings.

Rule 75.70. Responsibilities of the Licensee. The section title is amended by deleting the reference to air conditioning and refrigeration contracting companies. The rule is also amended by deleting references to contracting companies as those matters are addressed in new rule §75.71. In subsection 75.70(a)(1) the phrase, "a business" is replaced by "an air conditioning and refrigeration contracting company" and "or her" is deleted to make this section consistent with other sections of these rules. In subsection 75.70(a)(2), "a bona fide" is replaced by "an". The deleted phrase adds very little to the rule and may cause confusion without an added definition of the term. In subsection 75.70(a)(4), "or her" is deleted and "air conditioning and refrigeration contracting" is added before the word "company", and "through which the licensee provides services" is added to make it clear that a licensee may work for a contracting company without assigning his license to the company. Subsections 75.70(a)(5) and (6) and (b)(1) - (6) are deleted and moved to §75.71. Subsection 75.70(a)(5) is amended to make it clear that licensees, whether or not they are supervising licensees, are responsible for their work. Language is added to subsection 75.70(a)(6) to make it clear that only licensees who have supervisory responsibility for a contracting company have certain responsibilities. Subsection 75.70(a)(7) is amended by adding "assure the" before "mechanical integrity" and adding the phrase "of work and installations performed or supervised by the licensee". New subsection 75.70(a)(9) is added since the enforcement authority is primarily effective with licensees. If a licensee may lose his license for knowingly working for a company that does not comply with the rules, this may put some pressure on companies to comply. Subsections 75.70(g), (i),

and (k) - (n) are deleted and moved to Rule 75.71. Subsection 75.70(f) is amended to prohibit a licensee from allowing another person to use his license. Subsection 75.70(g) is added to state separately from §75.70(f) that a licensee may not allow a company to use his license if the licensee is not affiliated with the company. In subsection (h)(1) the ten day notice requirement is changed to thirty days to be consistent with timelines used in other agency programs. In subsection (h)(2) the ten day notice requirement changed to thirty days, and the requirement to report an address change was dropped since that requirement is set out in §75.70(h)(1). Subsection (i) is new to this rule as it was moved from §75.40(h). Subsection (j) is new to this rule as it was moved from §75.22(k).

Rule 75.71. Responsibilities of the Air Conditioning and Refrigeration Contracting Company. Provisions concerning contracting companies deleted from §75.70 are found in this new rule. No substantive changes were made.

In §75.80, the application and license fees are combined into a single fee. In subsection 75.80(f) the word "application" is added to make it clear that the fee is for the application rather than for the Certificate of Registration.

In §75.90 the words "or entity" are added to make it clear that individuals and organizations may be sanctioned for violations of the statute and the rules.

Rule 75.100. Technical Requirements. The reference to the National Electric Code is changed from "current" to "applicable". In subsection 75.100(d), the word "work" is added to clarify the language.

These proposed rule changes are necessary to update statutory references and to 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.

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

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rule are in effect, the public benefit will be that air conditioning and refrigeration contractor personnel and air conditioning and refrigeration users will have clearer explanations concerning the legal requirements governing air conditioning and refrigeration contractors.

There will be no effect on small or micro-businesses because of the proposed amendments and new rule. 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 Craig Crowell, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-3032, or electronically: craig.crowell@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments and new rule are proposed under Texas Occupations Code, Chapters 51 and 1302, which authorizes the Department to adopt rules as necessary to implement Chapter 51 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 and 1302. No other statutes, articles, or codes are affected by the proposal.

§75.10. Definitions.

The following words and terms have the following meanings:

(1) - (7) (No change.)

(8) Business affiliation--The business organization to which a licensee elects to assign his [or her] license.

(9) (No change.)

(10) Contracting--Agreeing, either orally or in writing, to perform work [either verbally or in writing,] or performing work, either personally or through an employee or subcontractor.

(11) - (13) (No change.)

(14) Direct supervision--Directing and verifying the design, installation, construction, maintenance, service, repair, alteration, or modification of an air conditioning, refrigeration, process cooling, or process heating product or equipment [for compliance with] mechanical integrity. Verification may include, but is not limited to:

(A) personal [Personal] inspection of a job;

(B) contacting [Contacting] the customer by mail, e-mail, or telephone to determine if the customer is satisfied with the installation and service provided;

(C) reviewing [Reviewing] a checklist completed by a person who performed some or all of the work on a job; and

(D) reviewing [Reviewing] an inspection report of the job made by a municipal mechanical inspector.

(15) - (16) (No change.)

~~[(17) Filed--a document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the postmark date of the document.]~~

(17) [(18)] Full time employee--an employee who is present on the job either 40 hours a week, or at least 80% of the time the company is offering air conditioning and refrigeration contracting services to the public, whichever is less.

(18) [(19)] Licensee--an individual holding a license of the class and endorsement appropriate to the work performed under the Act and these rules.

(19) [(20)] Permanent office--Any location, which must be identified by a street address, or other data identifying a rural location, from which a person or business entity conducts the business of an air conditioning and refrigeration contracting company. A location not open to the public, or not located within the state, may serve as a permanent office so long as the department and consumers have access to the licensee required by §1302.252 of the Act to be employed in each permanent office.

(20) [(21)] Primary process medium--a refrigerant or other primary process fluid that is classified in the current ANSI/ASHRAE Standard 34 as Safety Group A1, A2, B1, or B2. Safety Groups A3 and B3 refrigerants are specifically excluded.

(21) [(22)] Proper installation, and service--installing, servicing, repairing, and maintaining air conditioning and refrigeration equipment in accordance with:

(A) applicable municipal ordinances and codes adopted by a municipality where the installation occurs;

(B) the current Uniform Mechanical Code or the current International Mechanical Code and International Fuel Gas Code, in areas where no code has been adopted;

(C) the manufacturer's specifications and instructions; and

(D) all requirements for safety and the proper performance of the function for which the equipment or product was designed.

(22) [(23)] Repair work--diagnosing and repairing problems with air conditioning, commercial refrigeration, or process cooling or heating equipment, and remedying or attempting to remedy the problem. Repair work does not mean simultaneous replacement of the condensing unit, furnace, and evaporator coil.

§75.20. Licensing Requirements--Application and Experience Requirements.

(a) (No change.)

(b) An applicant who uses credit for air conditioning and refrigeration courses to fulfill up to two years of the required 36 months of experience with the tools of the trade must furnish a copy of:

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

(3) transcript of courses taken without earning a certificate or diploma emphasizing hands-on training with the tools of the trade. Transcripts must be from schools authorized or approved by the Texas Workforce Commission, the U.S. Department of Labor, the Texas Higher Education Coordinating Board, [Coordinating Board of the Texas College & University System,] or other organizations recognized by the Department. Credit will be allowed at the rate of one month credit for every two months of completed training. Thirty semester hours are equivalent to six months credit of experience. For schools issuing certificates based on classroom hours, fifteen lecture hours are equivalent to one semester hour and 30 lab hours are equivalent to one semester hour.

~~[(c) Obtaining a license by fraud or false representation is grounds for revocation, license denial, or other administrative sanction and/or penalty.]~~

§75.21. Licensing Requirements--Examinations.

(a) (No change.)

~~[(b) The examinations will be administered to applicants in a format determined by the Department.]~~

~~[(c) Subject to the following provisions, an applicant may request an accommodation in accordance with the Americans with Disabilities Act or language translation.]~~

~~[(1) The request must be in writing on a form approved by the Department.]~~

~~[(2) Proof of disability may be required.]~~

~~[(3) Language translation costs shall be paid by the applicant.]~~

(b) [(d)] An applicant who does not show up for a scheduled examination will forfeit the examination fee.

(c) [(e)] Cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(d) [(f)] An applicant who has passed an exam for a particular class and endorsement and is [has been] licensed or is eligible for licensure in that class and endorsement, may not retake that examination.

§75.22. *General License Provisions [Licensing Requirements—General].*

[(a)] An air conditioning and refrigeration contracting company shall not use a license number that is not assigned to that company.]

(a) [(b)] The term of an [AH] air conditioning and refrigeration contractor's license is [licenses expire] one year [after the date issued, renewed, or reissued].

(b) [(c)] A license [number] is not transferable.

(1) License numbers shall have the following form: Title/Class/Number/Endorsement code-TACL/A/000000/C.

(2) Endorsement codes are as follows:

(A) Environmental Air Conditioning-E;

(B) Commercial Refrigeration & Process Cooling and Heating-R;

(C) Combined Endorsements-C.

[(d)] Endorsement Codes are as follows: Environmental Air Conditioning-E; Commercial Refrigeration & Process Cooling and Heating-R; Combined Endorsements-C. License numbers shall have the following form: Title/Class/Number/Endorsement code-TACL/A/000000/C.]

(c) [(e)] A holder of a Class B license with the proper endorsement may perform air conditioning and refrigeration work in [design, install, construct, maintain, service, repair, alter, or modify individual units of 25 tons or less of cooling capacity or 1.5 million Btu/h or less of heating capacity. In] a building or a complex of buildings having more than one air conditioning or heating unit. The [, the] combined cooling capacity of the units may exceed 25 tons and heating capacity may exceed 1.5 million Btu/h, as long as each complete individual unit does not exceed the capacities stated above.

(d) [(f)] Any contractor who has a Class B license with one or combined [two] endorsements may upgrade an endorsement(s) [either endorsement] by passing the Class A examination for that endorsement.

(e) [(g)] A contractor who has [wishes to have] endorsements of different classes will be issued [must have] a separate license number for each endorsement. The licenses will [not] have concurrent expiration dates and will be printed on a single document. [unless both are issued on the same date.]

(f) [(h)] A contractor may have only one endorsement per license when he has two licenses. Both licenses must have the same business affiliation and permanent and business addresses.

(g) [(i)] The insurance requirement for separate licenses can be met with a single policy with limits at least as high as those required for a Class A license. A waiver of insurance for one license automatically applies to both licenses.

(h) [(j)] Any violation of the law or the rules and regulations resulting in disciplinary action for one license may result in disciplinary action for the other license.

[(k)] Altering a license in any way is prohibited and is grounds for a sanction and/or penalty.]

[(l)] If a licensee contracts with a general contractor or a home warranty company to provide installation or service that requires a li-

ense under the Act, the licensee remains responsible for the proper installation, service, and mechanical integrity of that work.]

[(m)] The wallet card is the actual license and will include, but is not limited to, the licensee's name, business name and address, license number, endorsements, and effective revision (if any) and expiration dates of the license. A wall certificate will be issued to a new licensee.]

§75.23. *Licensing Requirements--Temporary Licenses.*

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

(c) The request for a temporary license must:

(1) be made within thirty [ten business] days from the date the license holder became unavailable;

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

(d) (No change.)

(e) A temporary license number assigned by the Department must be shown on company vehicles, and must appear on invoices and proposals. The number may be taped to vehicles or applied by any other temporary methods [method]. The temporary license shall be numbered by the Department as follows: Title/Class/Number/Endorsement code/Temporary Designation.

[(f)] The Executive Director may waive any provision under this section and issue a temporary license for just cause.]

§75.24. *Licensing Requirements--Renewal.*

(a) A renewal application [request] must contain:

(1) (No change.)

(2) the name, physical address and telephone number of the business with which the licensee is affiliated, if any ;

(3) (No change.)

(4) evidence of compliance with the applicable insurance requirement on a form acceptable to [provided by] the Department or a request for a waiver of insurance, if applicable.

(b) A licensee shall not perform work requiring a license under the Act with an expired license or a license that has been denied renewal, except as allowed by the Administrative Procedure Act.

§75.26. *Sale and Use of Refrigerants--Certificate of Registration.*

(a) Persons exempt under Texas Occupations Code, Chapter 1302, Subchapter B, §1302.054 and §1302.056 who purchase refrigerants and equipment containing refrigerants shall first request a Certificate of Registration on an application form provided by the Department. The Certificate of Registration application fee shall accompany the application.

(b) Registrants [Persons] who purchase refrigerants or equipment containing refrigerants shall, at the time of purchasing such items, provide to the seller a picture identification along with the Certificate of Registration.

(c) (No change.)

(d) A Certificate of Registration is invalid if the exempt person ceases to be employed pursuant to § [as defined under Section] 1302.054 and § [Section] 1302.056 of the Act.

(e) - (f) (No change.)

(g) Equipment that is classified as a small appliance under 40 C.F.R. Section 82.152 as amended containing a half-ounce or less of refrigerant may be purchased without a license or a Certificate of Registration.

~~{(h) Obtaining a Certificate of Registration by fraud or false representation is grounds for an administrative sanction and/or penalty.}~~

§75.30. Exemptions.

(a) License requirements under the Act and these Rules do not apply to:

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

~~{(4) a person who performs air conditioning contracting on unducted fireplace stoves.}~~

(4) ~~{(5)}~~ persons who perform air conditioning contracting on ducted or unducted environment air conditioning equipment of three tons or less on non-commercial boats; and

(5) ~~{(6)}~~ persons who install, repair, or remove a vent hood of the type commonly used in residential and commercial kitchens, as long as the person does not install, repair or remove any other part of the exhaust system.

(b) (No change.)

§75.40. Insurance Requirements.

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

(c) Insurance must be obtained from an insurance provider authorized to sell liability insurance in Texas pursuant to [admitted company or an eligible surplus lines carrier, as defined in Chapter 255 of] the Texas Insurance Code [or other insurance companies that are rated by A.M. Best Company as B+ or higher].

(d) A license applicant or licensee shall file with the Department a completed certificate of insurance or other evidence satisfactory to the Department when applying for an initial license, changing a business name or affiliation, and upon request of the Department.

(e) (No change.)

(f) A licensee who has received a waiver of insurance shall not perform or offer to perform air conditioning and refrigeration contracting under his [or her] license with the general public ~~[unless exempted under Subchapter B of the Act].~~

(g) (No change.)

~~{(h) Failure to maintain insurance or failure to provide a certificate of insurance when requested is grounds for administrative penalties and license sanctions.}~~

§75.65. Advisory Board.

(a) The purpose of the Air Conditioning and Refrigeration Contractors Advisory Board is to advise the Commission [Executive Director] on adopting rules, enforcing and administering the Act, and setting fees.

~~{(b) Recommendations of the Board will be transmitted to the Executive Director through the General Counsel.}~~

~~{(c) Board meetings are called by the chair. Meetings in excess of one every six months may be authorized by the Executive Director.}~~

(b) [(d)] Expense reimbursements [Expenses reimbursed] to board members:

(1) are [is] limited to authorized expenses incurred while traveling to and from board meetings ; and [-]

(2) [(e)] [Expenses paid to board members] 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.

(c) [(f)] 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.

§75.70. Responsibilities of the Licensee [and the Air Conditioning and Refrigeration Contracting Company].

(a) The licensee shall:

(1) if affiliated with an air conditioning and refrigeration contracting company [a business], assign his [or her] license to one company or one permanent office of the company that will use the license;

(2) if affiliated with an air conditioning and refrigeration contracting company, be an [a bona fide] employee or owner of the air conditioning and refrigeration contracting company and must work full time at the company or permanent office of the company;

(3) (No change.)

(4) furnish the Department with his [or her] permanent mailing address and the name, physical address, and telephone number of the air conditioning and refrigeration contracting company through which the licensee provides services;

~~{(5) furnish to the Department copies of assumed name registrations from the Secretary of State and/or County Clerk's office.}~~

(5) [(6)] verify that all work for which he [or she] has supervisory responsibility is performed so that mechanical integrity of installed products, system or equipment is maintained, and that all maintenance, service, and repair work has been done properly; and

(6) if affiliated with an air conditioning and refrigeration contracting company,

[(7)] furnish to municipalities a list of authorized agents that may pull permits under the license, and, if subcontracting jobs to other licensed air conditioning and refrigeration contracting companies, furnish a list of agents of those licensed companies that may pull permits under his license.

~~{(b) An Air Conditioning and Refrigeration Contracting Company shall:}~~

[(1) notify the Department of all licensees who have assigned their licenses to the company; and shall notify the Department within ten business days when any licensee whose license is assigned to the company has left their employ;}

~~{(2) furnish to the Department copies of assumed name registrations from the Secretary of State and/or County Clerk's office.}~~

[(3) maintain records on their license holder showing payroll taxes deducted and reported to the Texas Workforce Commission; and either, hours worked each day or documentation showing that the licensee is on salary and works full time for the contracting company;}

~~{(4) furnish a copy of the company's records, specified in paragraph (3) of this subsection; at the request of the Department;}~~

[(5) furnish to municipalities a list of authorized agents that may pull permits under the license of its license holder, and, if subcontracting jobs to other licensed air conditioning and refrigeration contracting companies, furnish a list of agents of those licensed companies that may pull permits under the license of its license holder; and}

[(6) make available to the department in Austin, Texas the records relating to the business of the air conditioning and refrigeration contracting company conducted through a permanent office for a period of at least three years after completion of a job.}

~~(e) A person or an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting shall:~~

~~(7) [(4)] provide proper installation and [;] service, and assure the mechanical integrity of work and installations performed or supervised by the licensee;~~

~~(8) [(2)] not misrepresent the need for services, services to be provided, or services that have been provided; and~~

~~(9) [(3)] not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services.~~

~~(10) not knowingly provide air conditioning and refrigeration work for or on behalf of an air conditioning and refrigeration contracting company that does not fully comply with the requirements of Occupations Code, Chapter 1302, and with these rules.~~

~~(b) [(4)] A licensee may subcontract portions of work requiring a license under the Act to unlicensed persons, firms, or corporations as long as:~~

~~(1) the licensee actively provides work or service which requires a license, either in person or with the licensee's [bona fide] employees;~~

~~(2) the work or service provided in person or with the licensee's [bona fide] employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and~~

~~(3) the licensee is ultimately responsible to the customer for all work performed by the subcontractor.~~

~~(c) [(e)] The design of a system may not be subcontracted to an unlicensed person, firm or corporation.~~

~~(d) [(f)] A licensee who subcontracts to perform work requiring a license under the Act for an air conditioning and refrigeration contracting company is responsible to the company and the department for the mechanical integrity of all work performed by the subcontractor.~~

~~[(g) Each air conditioning and refrigeration contracting company shall have a licensee employed full time in each permanent office from which work requiring a license under the Act is contracted and supervised. All work requiring a license under the Act shall be under the direct supervision of the licensee for that office.]~~

~~(e) [(h)] The licensee is responsible [under the Act] for all work performed under his [his/her] supervision, regardless of whether [or not] the owners, officers, or managers of the air conditioning and refrigeration contracting company allow the licensee the authority to supervise, train, or otherwise control compliance with the Act.~~

~~[(i) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations shall be used only to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service. The air conditioning and refrigeration contracting company shall provide the address of these other locations to the Department no later than 30 days after the locations are established or changed.]~~

~~(f) [(j)] A licensee shall [may] not allow another individual [permit a person or any company with which his or her license is not affiliated, and by whom he or she is not employed, or contracted with] to use his [or her] license for any purpose.~~

~~(g) A licensee shall not allow any air conditioning and refrigeration contracting company with which he has no business affiliation~~

to use his license for any purpose, except as otherwise allowed by these rules.

~~[(k) Each licensee and air conditioning and refrigeration contracting company shall display the license number and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's license number and company name.]~~

~~[(l) All advertising by licensees and air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business shall include the licensee's license number. The following advertising does not require the license number:]~~

~~[(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;]~~

~~[(2) telephone book listings that contain only the name, address, and telephone number;]~~

~~[(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;]~~

~~[(4) telephone solicitations, provided the solicitor states that the company is licensed by the state. The license number must be provided upon request of a consumer.]~~

~~[(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;]~~

~~[(6) letterheads and printed forms for office use; and]~~

~~[(7) signs located on the contractor's permanent business location.]~~

~~[(m) An invoice shall be provided to the consumer for all work performed. The company name, address, and phone number shall appear on all proposals and invoices. The licensee's license number shall appear on all proposals and invoices for that office. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" shall be listed on:]~~

~~[(1) proposals and invoices;]~~

~~[(2) written contracts; and]~~

~~[(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.]~~

~~[(n) A licensee or an air conditioning and refrigeration contracting company that also acts as a general contractor may provide a one-time notice stating the information above to customers for whom they provide services requiring a license under the Act.]~~

~~(h) [(o)] A licensee shall:~~

~~(1) notify the Department, in writing, within thirty [ten] days of any change in permanent mailing address, company location, company telephone number or change in assignment of license; and~~

~~(2) if the information is printed on the license:]~~

~~[(A) destroy the current original license;]~~

~~[(B) pay the appropriate revision fee required in §75.80; and]~~

(2) [(C)] provide a revised insurance certificate to the Department within thirty [ten] days of a change in the name [or address] of the company to which the license is assigned.

{(p) The permanent address shall be considered the licensee's permanent mailing address and address of record. All correspondence from the Department will be mailed to that address.}

(i) Failure to maintain insurance or failure to provide a certificate of insurance when requested is grounds for imposition of administrative penalties and/or sanctions.

(j) Altering a license in any way is prohibited and is grounds for imposition of administrative penalties and/or sanctions.

§75.71. Responsibilities of the Air Conditioning and Refrigeration Contracting Company.

(a) An Air Conditioning and Refrigeration Contracting Company shall:

(1) notify the Department of all licensees who have assigned their licenses to the company, and shall notify the Department within thirty business days when any licensee whose license is assigned to the company has left its employ;

(2) furnish to the Department copies of applicable assumed name registrations from the Secretary of State and/or County Clerks' office;

(3) maintain records on its license holder showing payroll taxes deducted and reported to the Texas Workforce Commission, and either, hours worked each day or documentation showing that the licensee is on salary and works full time for the contracting company;

(4) furnish a copy of the company's records, specified in paragraph (3) of this subsection, at the request of the Department;

(5) furnish to municipalities a list of authorized agents that may pull permits under the license of its license holder, and, if subcontracting jobs to other licensed air conditioning and refrigeration contracting companies, furnish a list of agents of those licensed companies that may pull permits under the license of its license holder; and

(6) make available to the Department in Austin, Texas the records relating to the business of the air conditioning and refrigeration contracting company conducted through a permanent office for a period of at least three years after completion of a job.

(b) A person or an air conditioning and refrigeration contracting company that performs air conditioning and refrigeration contracting shall:

(1) provide proper installation and service, and assure the mechanical integrity of all work and installations;

(2) not misrepresent the need for services, services to be provided, or services that have been provided; and

(3) not make a fraudulent promise or false statement to influence, persuade, or induce an individual or a company to contract for services.

(c) A contracting company may subcontract portions of work requiring a license to unlicensed persons, firms, or corporations as long as:

(1) the contracting company's employees, working under the supervision of the contracting company's assigned licensee actively provides work or service;

(2) the work or service provided by the employees consists of more than accepting a contract or request for service, scheduling the work, and providing supervision of the work; and

(3) the assigned licensee is ultimately responsible to the customer for all work performed by the subcontractor.

(d) The design of a system shall not be subcontracted to an unlicensed person, firm or corporation.

(e) Each air conditioning and refrigeration contracting company shall have a licensee employed full time for each permanent office. All work requiring a license shall be under the direct supervision of the licensee for that office.

(f) If an air conditioning and refrigeration contracting company uses locations other than a permanent office, those locations shall be used only for air conditioning and refrigeration workers to receive instructions from the permanent office on scheduling of work, to store parts and supplies, and/or to park vehicles. These locations may not be used to contract air conditioning sales or service.

(g) Each air conditioning and refrigeration contracting company shall display the license number of its affiliated licensee and company name in letters not less than two inches high on both sides of all vehicles used in conjunction with air conditioning and refrigeration contracting. When an unlicensed subcontractor is at a job site not identified by a marked vehicle, the site shall be identified either by a temporary sign on the subcontractor's vehicle or on a sign visible and readable from the nearest public street containing the contractor's affiliated license number and company name.

(h) All advertising by air conditioning and refrigeration contracting companies designed to solicit air conditioning or refrigeration business shall include the affiliated licensee's license number. The following advertising does not require the license number:

(1) nationally placed television advertising, in which a statement indicating that license numbers are available upon request is used in lieu of the licensee's license number;

(2) telephone book listings that contain only the name, address, and telephone number;

(3) manufacturers' and distributor's telephone book trade ads endorsing an air conditioning and refrigeration contractor;

(4) telephone solicitations, provided the solicitor states that the company complies with licensing requirements of the state. The affiliated licensee's number must be provided upon request;

(5) promotional items of nominal value such as ball caps, tee shirts, and other gifts;

(6) letterheads and printed forms for office use; and

(7) signs located on the contractor's permanent business location.

(i) An invoice shall be provided to the consumer for all air conditioning and refrigeration work performed. The company name, address, and phone number shall appear on all proposals and invoices. The affiliated licensee's number shall appear on all proposals and invoices for air conditioning and refrigeration work. The following information: "Regulated by The Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, 1-800-803-9202, 512-463-6599" shall be listed on:

(1) proposals and invoices;

(2) written contracts; and

(3) a sign prominently displayed in the place of business if the consumer or service recipient may visit the place of business for service.

(j) An air conditioning and refrigeration contracting company shall not use a license that is not assigned to that company.

§75.80. *Fees.*

- (a) Non-refundable license application fee is \$130 [~~\$50~~].
- (b) (No change.)
- (c) Renewal application [License fees are:]
 - ~~[(1) initial license is \$80 and]~~
 - ~~[(2) [renewal] fee is \$80.~~
- (d) (No change.)
- (e) An [~~The addition of an~~] endorsement to an existing license is \$25. [~~This fee may be waived if the reprint coincides with a renewal or revision, for which required fees are paid.~~]
- (f) Certificate of Registration application fee is \$25.
- (g) (No change.)

§75.90. *Sanctions--Administrative Sanctions/Penalties.*

A person or entity that violates Texas Occupations Code Chapter 1302, or a rule, or order of the Executive Director or Commission relating to the Act, shall be subject to the imposition of administrative sanctions and/or administrative penalties in accordance with the Act or the Texas Occupations Code, Chapter 51 and 16 Texas Administrative Code, Chapter 60 of this title (relating to the Texas Commission [~~Department~~] of Licensing and Regulation).

§75.100. *Technical Requirements.*

- (a) Electrical Connections.
 - (1) (No change.)
 - (2) Licensees may replace and reconnect environmental air conditioning, commercial refrigeration, process cooling or heating systems, or component parts of the same or lesser amperage. On replacement environmental air conditioning, commercial refrigeration, process cooling or heating systems where the electrical disconnect has not been installed and is required by the applicable [~~current~~] National Electrical Code, the licensee may install a disconnect [~~directly adjacent to or on the replacement system~~] and reconnect the system.
 - (3) (No change.)
 - (4) All electrical work shall be performed in accordance with standards at least as strict as that established by the applicable [~~current~~] National Electrical Code.
- (b) - (c) (No change.)
- (d) Process Cooling and Heating.
 - (1) (No change.)
 - (2) Process cooling and heating work is limited to work performed on piping and equipment in the primary closed loop portions of processing systems containing a primary process medium. Once a primary closed loop process system has been deactivated and rendered inert, a non-licensed person may perform repairs on piping, heat exchangers, and vessels.
- (e) (No change.)

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

Filed with the Office of the Secretary of State on March 27, 2006.

TRD-200601823
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 7, 2006
For further information, please call: (512) 475-4879



CHAPTER 83. COSMETOLOGISTS

16 TAC §§83.10, 83.20 - 83.23, 83.25, 83.26, 83.31, 83.40, 83.50, 83.51, 83.53, 83.70 - 83.74, 83.80, 83.100 - 83.102, 83.104, 83.106 - 83.108, 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 - 83.23, 83.25, 83.26, 83.31, 83.40, 83.50, 83.51, 83.53, 83.70 - 83.73, 83.80, 83.100 - 83.102, 83.104, 83.106 - 83.108, 83.114, and 83.120, and proposes new §83.74, regarding the licensing and regulation of cosmetology.

An amendment to §83.10 adds a definition for "hair weaver or braider" to clarify the scope of practice of a hair weaver or braider and renumbers the section accordingly.

An amendment to §83.20, subsection (a), relating to individual licensing and the hair weaving and braiding specialty certificate, deletes the examination requirement to obtain a hair weaving/braiding specialty certificate, reduces the number of hours of the hair weaving/braiding curriculum to 80 hours, and reduces the number of weeks to complete a hair weaving/braiding curriculum to not less than two weeks. The subsection is reorganized and renumbered to reflect this change. The department received numerous public and licensee comments that the hair weaving and braiding curriculum and examination unsatisfactorily meet the rational ends of teaching and testing hair weaving and braiding skills to ensure a safe and competent hair weaver or braider for consumers. Also, an amendment to subsection (a)(5) corrects a typographical error to change "persons" to "person's."

An amendment to §83.20, relating to the shampoo apprentice permit, relocates the fee language stated in subsection (c)(3) to §83.80, "Fees," to locate all cosmetology fees in one section for efficiency. There is no substantive change; the shampoo apprentice permit will continue to be "no charge." An amendment to subsection (c)(4) deletes the statement that curriculum is not required to obtain a shampoo apprentice permit. This amendment is duplicative of statutory language and is not a statement appropriately located in §83.20, "License Requirements--Individuals," as it does not impose a license requirement. An amendment to subsection (c)(5) deletes the statement that credit cannot be earned at a school for time spent while holding a shampoo apprentice permit. This language is superfluous, as no person may earn credit at a cosmetology school unless authorized in §83.120, "Curriculum."

An amendment to §83.20(d), relating to the student permit, deletes the requirement under subsection (d)(1) for a student permit applicant to obtain a law and rules book. This statement is redundant, as every student permit applicant fee includes the law and rules book, as stated in existing §83.80, "Fees."

An amendment to §83.20(e), relating to students who enroll in the instructor curriculum, deletes provisions relating to a student's eligibility to obtain a permit. The eligibility requirements

to become a student in a cosmetology course are stated in Occupations Code, §1602.266(b) and are re-stated in existing rule §83.20(d). Subsection (e) erroneously states license requirements, as prescribed by Occupations Code, §1602.255. The remainder of the section is renumbered accordingly.

An amendment to §83.21(h), relating to examinations, adds a requirement that the department may require parental approval for examination models under the age of 18. Examination models may be required to sign a confidentiality agreement for the purposes of examination security.

An amendment to §83.22, relating to the license requirements for beauty salons and booth rentals, adds "specialty salons" for clarification throughout the section. The section is also reorganized and renumbered accordingly to delete duplicating statements within the section for better readability.

An amendment to §83.23, relating to the license requirements for beauty culture schools, clarifies the requirement under Occupations Code, §1602.303 that only private beauty culture school license applicants must submit a current financial statement in order for the department to assess a private school applicant's financial soundness. The section is renumbered accordingly.

An amendment to §83.25, relating to continuing education, clarifies the date for the calculation of course record fees. The calculation is proposed to be from the date courses are completed, as opposed to the date course completions are submitted to the department.

An amendment to §83.26, relating to license renewals, makes a change to the section title to conform with other chapter 83 section titles, and will state without substantive change, "License Requirements--Renewals." Subsection (e) adds a requirement that student permits may be renewed by completing a department-approved form prior to the expiration date of the student permit, without further requirement. This rule is concurrently proposed with §83.31, to add a two-year license term to student permits.

An amendment to §83.31, relating to license terms, amends subsections (b) and (d) to add a term of two years to student permits for the department's efficiency in calculating the number of active students in beauty culture schools for legislative reporting. A student permit may be renewed in accordance with concurrently proposed §83.26 and §83.80.

An amendment to §83.40(e), relating to the Private Beauty Culture School Tuition Protection Account, clarifies, with no substantive change, that a fee collected for the Private Beauty Culture School Protection Account is only at a time prescribed under existing rule §83.40(b). There is no substantive change to this section.

An amendment to §83.50, relating to inspections of cosmetology establishments, clarifies that except for initial inspections, the department may conduct inspections under the Act and this chapter without advance notice. Pursuant to Occupations Code, §1603.104, the department may enter and inspect at any time during business hours; however, existing rule §83.51 provides for efficiency in conducting initial inspections by providing advance notice because an establishment without an initial inspection should not be open for business.

An amendment to §83.51, relating to initial inspections, clarifies that this section applies only to initial inspections by adding the word "initial" throughout the section. There are no substantive changes.

An amendment to §83.53, relating to risk-based inspections, deletes the words, "In order to," under subsection (a) for grammatical purposes. There is no substantive change.

An amendment to §83.70, relating to the responsibilities of individuals, deletes the requirement in subsection (e) that the last inspection report be posted at each licensee's work station. Only establishments are inspected and there is only one proof of inspection, which will contain all violations noted in the establishment, including violations of individual licensees employed by the establishment. A rule is concurrently proposed in §83.71 to require salons to display, in public view, the most recent proof of inspection. This amendment deletes the duplicate requirement.

Amendments to §83.71, relating to the responsibilities of beauty salons, clarifies the title to indicate the section has provisions relating to beauty salons, specialty salons, and booth rental licensees. Subsection (f) is amended to clarify that the existing equipment requirements are for licensees present and providing cosmetology services. Subsection (i) is deleted because it duplicates the requirement in §83.70(e). Subsection (k) adds a requirement that cosmetology establishments display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

An amendment to §83.72, responsibilities of beauty culture schools, corrects the word "curriculum" to the plural form, "curricula," throughout the section where the plural form is appropriate.

An amendment to §83.72 adds a new subsection (e) to provide a definition for the term "student-instructor," as there is no separate license titled a "student-instructor." A student-instructor is a student permit holder who is enrolled in an instructor curriculum. The section is renumbered accordingly.

An amendment to §83.72(f) creates a requirement that schools display student permits in an album or binder in alphabetical order by last name, then alphabetical order by first name, and finally, if more than one student has the same name, by numerical order of the student permit numbers.

An amendment to §83.72(g)(1) relocates the requirement for schools to maintain attendance records to concurrently proposed new subsection (k).

An amendment to §83.72(g)(2) deletes the requirement that schools submit copies of time clock failure records to the department; however, concurrently proposed subsection (k) will require the school to maintain these records at the school.

An amendment to §83.72(g)(3) relocates the requirement that schools maintain records of a student's hours for the department's inspection to concurrently proposed subsection (k).

An amendment to §83.72(g)(4) relocates the provisions relating to a student's ability to review accrued hours and the department's authority to inspect a school's documents relating to the accrual of student hours to concurrently proposed subsection (k). Also, an amendment to this subsection deletes the requirement for a school to submit copies of hour reports to department inspectors because the department will have an electronic record of student hours in accordance with concurrently proposed subsection (l).

An amendment to §83.72(g)(5) relocates the provision relating to who may prepare hour reports and supporting documents to concurrently proposed subsection (j). An addition to this provi-

sion, to reflect concurrently proposed rules relating to electronic reporting, states that only school owners and school owner designees, including licensed instructors, are allowed to electronically submit information to the department.

An amendment to §83.72(g)(6) relocates, without change, the provision to concurrently proposed subsection (k).

An amendment to §83.72(h) deletes the provision relating to field trips because the language is duplicative, more narrow, and possibly confusing when compared to the existing field trip requirements that are more fully stated in §83.120(d).

An amendment to §83.72(k) deletes regulation of refresher courses. Beauty culture schools are authorized to offer courses only as prescribed under Texas Occupations Code, Chapters 1602 and 1603 and §83.120, "Curriculum," of this chapter.

An amendment to §83.72(l) relocates the provision to concurrently proposed subsection (n) and adds a requirement of electronic reporting.

An amendment to §83.72(m) relocates the existing provision under that subsection to concurrently proposed subsection (l) and adds a requirement of electronic reporting.

An amendment subsection (p), relating to the posted time clock sign, relocates existing language to new subsection (i), with one change: language is added to new subsection (i)(2) to allow flexibility for writing in student hours in situations that are approved by the department.

Proposed new section §83.72, subsection (m), adds a requirement that a school electronically notify the department when a student withdraws or is terminated and requires a school to withdraw or terminate a student who does not attend school for more than 60 days, unless the student is on a documented leave of absence.

Amendments to §83.73 relocate subsections (c) and (d), relating to transfer students and student withdrawals, to concurrently proposed §83.74, Responsibilities--Withdrawal, Termination, Transfer, School Closure. A change in the language of subsection (c)(3) is made to reflect concurrently proposed electronic reporting rules under §83.72. A change to the language of subsection (d)(6)(A) is made pursuant to Occupations Code, §1602.455, which does not limit transfer students from private schools only.

Proposed new §83.74, "Responsibilities--Withdrawal, Termination, Transfer, School Closure," proposes rules relating to student withdrawal, termination, transfer, and school closures. Primarily, this section restates the requirements of existing §83.73(c) and (d), concurrently proposed for deletion. Many of the requirements are simultaneous rights and responsibilities for both student and school licensees, and are more readable when stated in one section, as opposed to responsibilities of either students or schools.

An amendment to §83.80(b)(7) adds a rule to state that a student permit is no charge and renumbers the section accordingly. An amendment to subsection (d) clarifies, with no substantive change, that (1) there is no charge to obtain an inactive status for a license, (2) the renewal fee of a license on inactive status is in accordance with the renewal fees stated in §83.80(b); and (3) the fee to activate a license is \$25 (no change). An amendment is also made to existing subsections (a)(12) and (b)(11) to clarify that the application and renewal fees under those subsections are for both beauty salons and specialty salons. The section is renumbered in accordance with the proposed changes.

An amendment to §83.100(1) and (5) deletes the word "hard" before non-porous.

An amendment to §83.100(4)(B) deletes the statement referring to a type of chlorine bleach solution. The new language will more refer to all types and state "a chlorine bleach solution used in accordance with this chapter."

An amendment to §83.101(b)(2) deletes the single reference to a single type of chlorine bleach because there are three different types of chlorine bleach solutions.

An amendment to §83.102(c) clarifies the statement that chairs do not need to be disinfected prior to use for each client, except as provided in the chapter.

An amendment to §83.102(k) clarifies that towels must be cleaned with hot water and chlorine bleach.

An amendment to §83.104 adds a requirement that facial chairs must be cleaned and disinfected prior to each client service.

An amendment to §83.106(d), clarifies that under Occupations Code, §1602.408 and §1603.352 and §83.106(c) of this chapter, non-disposable instruments used in manicure and pedicure nail services must be sterilized. An amendment also changes the phrase "electric file bits" to "electric drill bits" to conform the language to existing §83.107, relating to electric drill bits.

An amendment to §83.107 clarifies that electric drill bits must be cleaned, disinfected, and sterilized. Under Occupations Code, §1602.408 and §1603.352 and §83.106 of this chapter, non-disposable instruments used in manicure and pedicure nail services must be sterilized.

An amendment to §83.108 adds a requirement that whirlpool foot spa chairs must be cleaned and disinfected prior to each client service.

An amendment to §83.114(b) clarifies that unless as required in that subsection, carpet is permitted in all other areas. An amendment to subsection (e) clarifies that only "chemical" supplies cannot be stored in a restroom.

An amendment to §83.120, throughout the section, corrects a clerical error to state "curricula" as plural, instead of "curriculum," which is singular.

An amendment to §83.120(a) deletes the reference to "Adult Education Programs," to more accurately state the licenses issued by the department for private and public post-secondary cosmetology schools. An amendment also changes the word program to plural for grammatical correction in referring to the 1,000 hour programs. The practical applications of the operator curricula are relocated to subsection (a) for clarification. The title of the practical applications is changed to clarify that those applications are for students enrolled in an operator curricula.

An amendment to §83.120(b), relating to specialist curricula, modifies the hair weaving and braiding curriculum by updating the content to reflect modern descriptions of hair weaving and braiding skills and to update both the "law and rules" and "health and safety" course content and references. The course content is also updated to reflect necessary skills in the following areas: 50% of the curriculum for technical skills ("Hair Weaving and Braiding"), 20% of the curriculum for "Health and Safety," 10% for "Hair Analysis and Scalp Care," 10% for "Shampooing and Conditioning," 6% for Law and Rules, and 4% for "Professional Practices." The curriculum content in its entirety is reorganized and reformatted for better readability for students, schools, and

instructors. Further, the proposed amendment reduces the total hair weaving and braiding course hours to 80 hours. The department received numerous public and licensee comments that the existing curriculum is excessive regulation in that the existing 300 hours are unnecessary to meet the rational end of teaching weaving and braiding skills to ensure a safe and competent hair weaver or braider for consumers.

An amendment to §83.120(c), relating to instructor curricula, re-states the title of "student-instructor" curriculum as the "instructor" curriculum for clarification.

An amendment to §83.120(d), relating to practical applications of the curriculum, relocates this section to be more proximately located with the operator curricula. The title of the practical applications is changed to clarify that those applications are for students enrolled in an operator curricula.

An amendment to §83.120(d)(2)(E) re-states the reference of the "student-instructor" course as "instructor" course, in accordance with concurrently proposed amendments to §83.102(c).

An amendment to §83.120(d)(7) deletes this provision, as the maintenance of field trip records is included in concurrently proposed §83.72(k).

An amendment to §83.120 adds a provision that the changes to §83.120 are effective on September 1, 2006.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and new rule are in effect there will be no cost to state government and no cost to local government as a result of enforcing or administering the proposed rules. Although there will be a cost to the department to develop electronic school reporting, the department anticipates that the cost will be absorbed by current personnel and computer resources, especially in anticipation of future saved personnel costs. Additionally, although there will be a minimal cost to the department to issue student permit renewals without charging a renewal fee, the department anticipates a small volume of students who will study a cosmetology curriculum in excess of the proposed 2-year student permit term.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and new rule are in effect, the public benefit will be rational regulation of hair weaving and braiding licensees, effective health and safety rules, efficient department operations with electronic reporting, and rules that are easier to read.

Mr. Kuntz has determined that there will be minimal economic cost to individual licensees and/or small or micro-business. Licensees required to comply with electronic reporting may report by an alternate method approved by the department if compliance with the proposed rules causes a licensee substantial hardship.

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 amendments and new rule 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, 1602, 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) - (8) (No change.)

(9) Hair weaver or braider--A person authorized by the department to arrange, dress, twist, wrap, weave, add extensions, lock or braid hair by either hand or mechanical appliances. Such practice shall not include shampooing, conditioning, drying, styling, cutting, or trimming hair except to the extent such activity is incidental to a hair weaving or braiding service. Such practice shall not include the application of color chemicals, relaxers, perm solutions, or other preparations to alter the color or to straighten, curl, or alter the structure of hair.

(10) [(9)] Instructor--An individual authorized by the department to offer instruction in any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(11) [(10)] Law and Rules Book--Texas Occupations Code, Chapters 1602 and 1603, and 16 Texas Administrative Code, Chapter 83.

(12) [(11)] License--A department issued permit, certificate, approval, registration, or other similar permission required by law.

(13) [(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.

(14) [(13)] Manicurist--A manicurist may perform only those services defined in Occupations Code §1602.002(10) and (11).

(15) [(14)] Operator--An individual authorized by the department to perform any act or practice of cosmetology under Texas Occupations Code, §1602.002.

(16) [(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.

(17) [(16)] Registered Examination Proctor--An individual authorized by the department to evaluate or grade a practical examination for the department for a license issued under Texas Occupations Code, Chapter 1602.

(18) [(17)] 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.

(19) [(18)] Specialty Instructor--An individual authorized by the 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.

(20) [(19)] 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.

(21) [(20)] 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/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;]~~

(1) ~~[(2)]~~ submit a completed application on a department-approved form;

(2) ~~[(3)]~~ pay the fee required under §83.80;

(3) ~~[(4)]~~ be at least 17 years of age;

(4) ~~[(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 person's ~~[persons]~~ ability to benefit from training; and

(5) ~~[(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 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/braiding specialty certificate, 80 ~~[300]~~ hours of instruction completed in not less than two ~~[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; and ~~[-]~~

(6) for an operator license, facialist specialty license, manicurist specialty license, wig specialty certificate, or shampoo/conditioning specialty certificate, pass a written and practical examination required under §83.21. No examination is required for a hair weaving/braiding specialty certificate.

(b) (No change.)

(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 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;]~~

(1) ~~[(2)]~~ submit a completed application on a department-approved form; and

(2) ~~[(3)]~~ pay the fee required under §83.80.

~~[(e) In addition to the requirements of subsection (d); to be eligible to be a student instructor, an applicant must:]~~

~~[(1) have completed the 12th grade or its equivalent; and]~~

~~[(2) have one of the following:]~~

~~[(A) for an instructor license, an active operator license;]~~

~~[(B) for an manicule instructor specialty license, an active operator or manicule specialty license; or]~~

~~[(C) for a facial instructor specialty license, an active operator or facialist specialty license.]~~

(e) ~~[(f)]~~ To be 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 training course;

(4) submit a completed application on a department-approved form; and

(5) pay the applicable fee under §83.80.

(f) ~~[(g)]~~ A license application is valid for one year from the date it is filed with the department.

§83.21. *License Requirements--Examinations.*

(a) - (g) (No change.)

(h) Models used in an examination are required to be at least 16 years of age. The department may require parental approval for models under 18 years of age.

§83.22. *License Requirements--Beauty Salons, Specialty Salons, and Booth Rentals (Independent Contractors).*

(a) To be eligible for a beauty salon, specialty salon, or booth rental license, an applicant must:

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

(3) submit a completed application on a department-approved form; and

(4) pay the fee required under §83.80; and ~~[-]~~

(5) for a booth rental license, hold an active department-issued cosmetology license.

(b) A beauty salon or specialty salon applicants must be inspected and approved by the department prior to the operation of the beauty or specialty salon. To ensure timely inspection, an applicant should submit a completed application at least 45 days in advance of the anticipated opening date.

~~[(e) To be eligible for a booth rental (independent contractor) license, an applicant must:]~~

~~[(1) hold an active department-issued cosmetology license;]~~

~~[(2) obtain the current law and rules book;]~~

~~[(3) comply with the requirements of the Act or this chapter;]~~

~~[(4) submit a completed application on a 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) - (2) (No change.)

(3) submit a completed application on a department-approved form; ~~[and]~~

(4) one of the following:

(A) (No change.)

(B) for a public beauty culture school, pay the applicable inspection fee required under §83.80; ~~and [-]~~

(5) for a private beauty culture school, 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 within 180 days of the application.

~~[(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.]~~

~~[(b) [(e)] A beauty culture 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.~~

~~[(c) [(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 building official approving or confirming compliance with applicable laws and ordinances; and

(5) a copy of the curriculum approved by the department for each course offered.

~~[(d) [(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 building official approving or confirming compliance with applicable laws and ordinances; and

(5) a copy of the curriculum approved by the department for each course offered.

§83.25. *License Requirements--Continuing Education.*

(a) - (i) (No change.)

(j) A provider shall pay to the 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 ~~courses completed [course completions submitted to the 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. *License [Licensing] Requirements--Renewals.*

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

(e) A student permit must be renewed prior to the expiration date of the student permit by submitting a completed application on a department-approved form.

§83.31. *Licenses--License Terms.*

(a) The following licenses have a term of two (2) years:

(1) - (9) (No change.)

(10) booth rental (independent contractor) license; ~~[and]~~

(11) beauty and specialty salon license; ~~and [-]~~

(12) student permit.

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

~~[(d) A student permit is 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) - (d) (No change.)

(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 as determined under subsection (b) before a license will be issued.

(f) (No change.)

§83.50. *Inspections--General.*

(a) (No change.)

(b) Inspections shall be performed during the normal operating hours of the cosmetology establishments. Except for initial inspections, the department may conduct inspections under the Act and this chapter without advance notice.

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

§83.51. *Initial Inspections--Inspection of Cosmetology Establishments Before Operation.*

(a) (No change.)

(b) The cosmetology establishment owner shall request an initial inspection from the department and pay the fee required by §83.80. In order for the department to schedule the initial inspection in a timely

manner, the initial inspection request and fee should be submitted to the department no later than forty-five (45) calendar days prior to the opening date of the establishment.

(c) Upon receipt of the owner's request and the fee, the department shall schedule the initial inspection date and notify the owner.

(d) Upon completion of the initial inspection, the owner shall be advised in writing of the results. The inspection report will indicate whether the cosmetology establishment meets or does not meet the minimum requirements of the Act and this chapter.

(e) - (f) (No change.)

§83.53. *Risk-based Inspections.*

(a) Risk-based inspections are those required in addition to periodic inspections required under §83.52, for cosmetology establishments determined by the department to be a greater risk to public health or safety. ~~To [in order to]~~ determine which establishments will be subject to risk-based inspections, the department has established criteria and frequencies for inspections. The owner of the cosmetology establishment shall pay the fee required under §83.80 for each risk-based inspection, in a manner established by the department.

(b) - (g) (No change.)

§83.70. *Responsibilities of Individuals.*

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

(e) Individual licenses and ~~;~~ booth rental (independent contractor) licenses ~~and the last inspection report~~ must be posted at the licensee's work station in the public view.

(f) - (j) (No change.)

§83.71. *Responsibilities of Beauty Salons, Specialty Salons, Booth Rentals.*

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

(f) In addition to the requirements of subsection (e):

(1) beauty salons shall provide the following equipment for each licensee present and providing services:

- (A) one working station ~~[for each operator];~~
- (B) one styling chair ~~[for each operator];~~
- (C) (No change.)

(D) one hand-held hair dryer or hood hair dryer, with or without chair ~~[for each operator].~~

(2) manicure salons shall provide the following equipment for each licensee present and providing services:

- (A) one manicure table with light ~~[for each manicurist];~~
- (B) one manicure stool ~~[for each manicurist];~~ and
- (C) (No change.)

(3) facial salons shall provide the following equipment for each licensee present and providing services:

- (A) one facial couch/chair ~~[for each facialist];~~ and
- (B) one mirror ~~[for each facialist].~~

(4) (No change.)

(5) wig salons shall provide the following equipment for each licensee present and providing services:

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

(6) hair weaving/braiding salons shall provide the following equipment for each licensee present and providing services:

- (A) one work station ~~[for each hair weaver/braider];~~
- (B) one styling chair ~~[for each hair weaver/braider];~~
- (C) - (D) (No change.)

(g) - (h) (No change.)

~~[(i) Booth rental (independent contractor) licensees must post the original or a duplicate booth rental license issued by the department at each practice location.]~~

~~(i) [(j)]~~ Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

~~(j) [(k)]~~ A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.

~~(k) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.~~

§83.72. *Responsibilities of Beauty Culture Schools.*

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

(d) The curricula ~~[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.

(e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor curriculum of a beauty culture school.

~~(f) [(e)]~~ 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.

~~(g) [(f)]~~ Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall [should] be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

~~(h) [(g)]~~ 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 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 on a 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 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 representative. One copy of the monthly hour report, signed by a school official, must be given to the 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.]~~

(i) Beauty culture schools shall post a sign at the time clock that states the following department requirements:

(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 or other situations approved by the department.

(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.

(j) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents; however only school owners and school owner designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(k) 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. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) student hours accrued as demonstrated by the following documents:

(A) time clock record(s);

(B) record of time clock failure(s) and repair record(s);

(C) record of field trip hours in accordance with §83.120(d)(5);

(3) practical applications of the operator curriculum in accordance with §83.120(a); and

(4) all other relevant documents that account for a student's accrued hours under this chapter.

(l) Schools shall submit an electronic record of each student's accrued hours and, if applicable, accrued number of practical applications, in a format prescribed by the department at least one time per 15 calendar days. A school's initial submission of student hours shall include all student hours accrued at the school. Subsequent submissions shall include hours that each student completed since the prior submission of student hours. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(m) Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 15 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 60 days.

(n) Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

~~[(h) 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.]~~

(o) [(i)] All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula [curriculum] required under §83.120.

(p) [(j)] 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 rules.

~~[(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 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 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 heat processors or hand-held hair dryers;
- (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 a non-porous material that can be cleaned and disinfected, 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;
 - (J) paraffin bath and paraffin wax; and
- (22) if providing manicure or pedicure nail services, a department-approved sterilizer.

(s) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

[(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) - (b) (No change.)

[(c) 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 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.]

[(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) 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.]

[(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 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

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.}~~

§83.74. Responsibilities--Withdrawal, Termination, Transfer, School Closure.

(a) 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.

(b) 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 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.

(c) A student may not graduate until all previously accrued hours, upon re-entry to that school or transferring from another school, have been reported.

(d) A student may withdraw from school at any time by notifying the school in writing.

(e) 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.

(f) A student who withdraws from a cosmetology school is entitled to a refund in accordance with Texas Occupations Code, Chapter 1602.

(g) 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.

(h) Enrollment is defined as the time elapsed between the actual starting date and the date of the student's last day of attendance.

(i) 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.

(j) Any student of an out-of-state private or public cosmetology school may submit a request to the 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 curricula of the department not taught in another state must be taken in an approved Texas school prior to taking the Texas examination.

(k) 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.

§83.80. Fees.

(a) Application fees.

(1) - (11) (No change.)

(12) Beauty and specialty salons--\$106

(13) - (14) (No change.)

(b) Renewal fees.

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

(7) Student Permit--No charge.

(8) [~~7~~] Instructor License--\$70

(9) [~~8~~] Facial Instructor Specialty License--\$70

(10) [~~9~~] Manicure Instructor Specialty License--\$70

(11) [~~40~~] Examination Proctor Registration--\$25

(12) [~~44~~] Beauty and specialty salons--\$69

(13) [~~42~~] Booth Rental (Independent Contractor) License--\$67

(14) [~~43~~] Private Beauty Culture School--\$200

(c) License by Reciprocity or Endorsement--\$100

(d) Inactive License Status [~~No charge. Activate License--\$25~~]

(1) Change from active status to inactive status--no charge.

(2) Renewal of license on inactive status--renewal fees as stated in §83.80(b).

(3) Change from inactive status to active status--\$25.

(e) - (k) (No change.)

§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 three categories based on concentration and exposure time:

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

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

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

(A) (No change.)

(B) a chlorine bleach solution used in accordance with this chapter [~~consisting of 3/4 cup of 5.25% per gallon of water~~]; or

(C) (No change.)

(5) EPA-registered bactericidal, fungicidal, and 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) - (9) (No change.)

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

(a) (No change.)

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

(1) (No change.)

(2) Chlorine bleach solutions shall be mixed daily [at the following minimum standard: one-third (1/3) cup of 5.25% bleach per gallon of water].

(3) - (6) (No change.)

(c) (No change.)

§83.102. *Health and Safety Standards--General Requirements.*

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

(c) Multi-use equipment, implements, tools or materials not addressed in this chapter shall be cleaned and disinfected before use on each client. Except as otherwise provided in this chapter, chairs [Chairs] and dryers do not need to be disinfected prior to use for each client.

(d) - (j) (No change.)

(k) Clean towels shall be used on each client. Towels must be washed in hot water and chlorine bleach.

(l) - (n) (No change.)

§83.104. *Health and Safety Standards--Facial Services.*

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

(c) Facial chairs and beds, including headrest for each, shall be cleaned and disinfected prior to providing service to each client. The chair shall be made of or covered in a non-porous material that can be disinfected.

(d) - (g) (No change.)

§83.106. *Health and Safety Standards--Manicure and Pedicure Services.*

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

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

(e) - (g) (No change.)

§83.107. *Health and Safety Standards--Electric Drill Bits.*

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

(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, then sterilized in accordance with this chapter.

(d) (No change.)

§83.108. *Health and Safety Standards--Footspas.*

(a) - (f) (No change.)

(g) Footspa chairs shall be cleaned and disinfected prior to providing service to each client. The chair shall be made of or covered in a non-porous material that can be disinfected.

§83.114. *Health and Safety Standards--Establishments.*

(a) (No change.)

(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 all other areas [the reception area].

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

(e) Every establishment shall provide at least one restroom located on or near the premises of the establishment. For public safety, chemical supplies shall not be stored in the restroom.

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

§83.120. *Technical Requirements--Curricula [Curriculum].*

(a) Operator Curricula [Curriculum]

Figure: 16 TAC §83.120(a)

(b) Specialist Curricula [Curriculum]

Figure: 16 TAC §83.120(b)

(c) Instructor Curricula [Student-Instructor Curriculum]

Figure: 16 TAC §83.120(c)

~~{(d) Practical Applications of the Curriculum}~~

~~[Figure: 16 TAC §83.120(d)]~~

(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 instructor [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.]~~

(e) The changes in this section, as adopted by the commission on June 5, 2006, take effect September 1, 2006, unless a later effective date is prescribed by Texas Government Code, §2001.036.

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 March 27, 2006.

TRD-200601822
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: May 7, 2006
For further information, please call: (512) 463-7348



TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning Internship Training Schedule.

Paragraph (12) is amended because it is not the board's position to limit proprietorship. Paragraph (14) is amended because the rule was in conflict with other statutes. Paragraph (17)(A) is amended for general grammatical clean-up.

Frank DiTucci, Executive Officer, Polygraph Examiners Board, has determined that for the first five year period the amendment is in affect, there will be no fiscal implications to state or local government as a result of enforcing the amendment as proposed.

Mr. DiTucci 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 an updated rule. There will be no effect on small or micro businesses. There are no anticipated economic costs to individuals required to comply with the rule as proposed.

Comments on the amendment may be submitted to: Frank DiTucci, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773-0001. Comments will be accepted for 30 days from the date of publication of the proposed rule in the *Texas Register*.

The amendment is proposed under the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Texas Occupations Code, Chapter 1703.

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

§391.3 Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

- (1) History and development of polygraph--four hours.
- (2) Legal and ethical aspects of polygraph.
 - (A) Texas Polygraph Examiners Act--10 hours.
 - (B) Statements and reports, civil rights, examiner and professional ethics--10 hours.
- (3) Physiology--24 hours.
 - (A) Nervous system, autonomic nervous system.

- (i) Sympathetic system.
 - (ii) Parasympathetic system.
 - (B) Circulatory system and the heart.
 - (C) Respiratory system.
 - (D) Effects of drugs, alcohol, and illness.
- (4) Psychology--24 hours.
 - (A) General.
 - (B) Abnormal.
 - (C) As applied to polygraph.
 - (5) Interrogation and interviews--100 hours.
 - (A) Receiving case briefing.
 - (B) Pre-test interview.
 - (C) Post-test interview.
 - (6) Chart interpretation--120 hours.
 - (A) All types of tests and responses.
 - (B) Chart marking.
 - (C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.
 - (7) Question formulation and test construction--120 hours.
 - (A) All types of tests.
 - (B) All types of questions.
 - (C) Semantics.
 - (8) Instrumentation--10 hours.
 - (A) Construction and maintenance.
 - (B) Trouble shooting.
 - (C) Nomenclature.
 - (9) Summary and general review--10 hours.
 - (10) Supervised testing and interviewing--minimum of 30 tests.
 - (11) Counseling and critique as required in opinion of sponsor.
 - (12) A list of approved polygraph schools shall be maintained ~~at~~ the Board office and will be made available upon request. Board approval of a polygraph school will be based on the school's training schedule. The board may recognize American Polygraph Association (A.P.A.) accredited schools. [current American Polygraph Association (A.P.A.) accreditation.]
 - (13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.
 - (14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application, ~~[and completed a minimum of 40 hours of continuing education in the two years immediately preceding the sponsorship. Dec-~~

umentation of this continuing education must be on file with the Board office prior to approval of the examiner as a sponsor.]

(15) No licensed examiner shall have more than two (2) interns under his/her sponsorship at any one time.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the first day of class [date of the first class day], of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

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

Filed with the Office of the Secretary of State on March 24, 2006.

TRD-200601806

Frank DiTucci

Executive Director

Polygraph Examiners Board

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 424-2058



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.10 concerning Board Committees.

The amendment to §505.10 will eliminate the Major Case Committee and replace it with a second Technical Standards Review Committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not add new committees, just replaces one for another.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not add new committees, just replaces one for another.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not add new committees, just replaces one for another.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be an increase in the speed in which complaints regarding violations of technical standards are processed and resolved.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment applies to the Board's committees and does not place any burden on members of the public to comply.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not concern small businesses.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.10. Board Committees.

(a) Committee appointments. Appointments to standing committees and ad hoc committees shall be considered annually by the

board's presiding officer to assist in carrying out the functions of the board under the provisions of the Public Accountancy Act. Committee appointments shall be made by the presiding officer for a term of two years but may be terminated at any point by the presiding officer. Committee members may be re-appointed at the discretion of the presiding officer. The board's presiding officer shall be an ex officio member of each standing committee and ad hoc committee and chair of the executive committee.

(b) Committee actions. The actions of the committees are recommendations only and are not binding until ratification by the board at a regularly scheduled meeting.

(c) Committee meetings. Committee meetings shall be held at the call of the committee chair, and a report to the board at its next regularly scheduled meeting shall be made by such chair or, in the absence of the chair, by another board member serving on the committee.

(d) Vacancies. If for any reason a vacancy occurs on a committee, the board's presiding officer may appoint a replacement in accordance with subsection (a) of this section.

(e) Standing committee structure and charge to committees. The standing committees shall consist of policy-making committees and working committees comprised of the following individuals and shall be charged with the following responsibilities.

(1) The executive committee shall be a policy-making committee comprised of the board's presiding officer, assistant presiding officer, secretary, treasurer, immediate past presiding officer of the board if still serving on the board, and at least one other officer elected by the board. The Executive Committee shall also be the board's audit committee. The executive committee may act on behalf of the full board in matters of urgency, or when a meeting of the full board is not feasible; the executive committee's actions are subject to full board ratification at its next regularly scheduled meeting. The functions of the executive committee shall be to advise, consult with, and make recommendations to the board concerning matters requested by the board's presiding officer, including:

(A) litigation;

(B) emergency suspensions pursuant to board rule §519.43 of this title;

(C) cease and desist orders pursuant to board rule §518.2 of this title and violations of cease and desist orders pursuant to board rule §518.3 of this title;

(D) proposed changes in the board rules of professional conduct (the rules);

(E) amendments to the Act;

(F) responses/positions relating to papers, reports, and other submissions from national associations or boards;

(G) legislative oversight, including, but not limited to, budget, performance measures, proposed changes in legislation affecting the board, and computer utilization and;

(H) special issues.

(2) The continuing professional education committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the mandatory continuing professional education program as it relates to reporting and attendance requirements, regis-

tration and monitoring of continuing professional education sponsors, disciplinary actions, reporting forms, and office procedures;

(B) investigations of sponsor compliance with the terms of the sponsor agreements, including the related recordkeeping requirements;

(C) the results of monitoring continuing professional education courses for the purpose of evaluating the facilities, course content as presented, and the adequacy of the course presenter(s);

(D) any significant deficiencies observed in carrying out subparagraphs (B) and (C) of this paragraph; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the mandatory continuing professional education program as it relates to licensees and to relations with sponsors of continuing professional education.

(3) The qualifications committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) the educational qualifications of an applicant for the Uniform Certified Public Accountant Examination in accordance with §§511.51 through 511.59 of this title (relating to Educational Requirements);

(B) the administration, security, discipline, and other aspects of the conduct of the Uniform Certified Public Accountant Examination in Texas;

(C) the work experience qualifications of an applicant for the certified public accountant certificate in accordance with §§511.121 through 511.124 of this title (relating to Experience Requirements); and/or

(D) where applicable, the equivalency examination measuring the professional competency of an applicant for a CPA certificate by reciprocity; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the qualifications process.

(4) The licensing committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding:

(A) applications for certification, registration, and licensure;

(B) requests or applications for reinstatement of any certificate, registration, or license which the board previously has revoked, suspended, or refused to renew; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies as they relate to the licensing process.

(5) The behavioral enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) study complaints involving suspected violations of the Act and the board's rules and make recommendations to the board as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to the behavioral restraints of the rules and the Act.

(6) The technical standards review 1 committee and the technical standards review 2 committee shall be [a] working committees each [committee] comprised of at least two board members, one of whom shall serve as chair, assisted by at least three non-board members who shall serve in an advisory capacity. The committees [committee] shall:

(A) study complaints from any source involving suspected violations of the technical standards included in the rules and shall make recommendations to the board as appropriate;

(B) follow up on board orders to insure that certificate or registration holders and others adhere to sanctions prescribed by or agreements with the board; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies related to enforcement of technical standards.

(7) The peer review committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall:

(A) conduct a periodic review and evaluation of reports publicly filed with the State of Texas (or any board, commission, or agency thereof) and of each of the various types of reports, as defined by board rule, of each practice unit, as defined by board rule, which is engaged in the practice of public accountancy in the State of Texas;

(B) refer to the technical standards review committee egregious substandard reports issued by practice units for which educational rehabilitation has not been effective; and

(C) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the peer review program.

(8) The board rules committee shall be a policy-making committee comprised of at least three board members, one of whom shall serve as chair. The committee shall make recommendations to the board concerning the board's rules, opinions and policies. All working committees shall refer proposed changes to the board's rules, opinions and policies to the rules committee for consideration for recommendation to the board.

~~(9) The major ease enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. At least one committee member shall be a public member of the board. The committee shall make recommendations to the board regarding legal matters on litigation or potential litigation, and other major cases to which the board is a party. The committee shall make recommendations to the board's policy-making committees (the executive committee and the rules~~

~~committee) concerning proposed changes in board rules, opinions, and policies related to major ease enforcement. The committee shall have the authority to act on behalf of the board in instances where disclosure of facts to the full board could cause the board's objectivity to be jeopardized, subject to final approval by the board. The board shall have authority to determine whether cases shall be heard by the major ease enforcement committee or other enforcement committee.]~~

(9) ~~[(10)]~~ The peer assistance oversight committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by at least two non-board members who shall serve in an advisory capacity. The committee shall oversee the peer assistance program administered by the Texas Society of Certified Public Accountants as required under the Texas Health and Safety Code, Chapter 467.001(B), and insure that the minimum criteria as set out by the Texas Commission on Alcohol and Drug Abuse are met. It shall make recommendations to the board and the TSCPA regarding modifications to the program and, if warranted, refer cases to other board committees for consideration of disciplinary or remedial action by the board. The committee shall report to the board on a semi-annual basis, by case number, on the status of the program.

(10) ~~[(11)]~~ The constructive enforcement committee shall be a working committee comprised of at least two board members, one of whom shall serve as chair, assisted by non-board CPA members who shall also serve as investigators. At least one Committee member shall be a public member of the board. The committee shall approve the constructive enforcement program, coordinate its activities with board committees and staff, and supervise the training of committee members. A staff attorney of the board shall supervise the day to day administration of the constructive enforcement program and activities of the committee's non-board members on behalf of the committee chairman. The committee shall:

(A) investigate matters forwarded to the committee from any other board committee or board staff in accordance with board instruction and policy;

(B) prepare, as appropriate, investigative reports regarding each referred matter;

(C) inform referring board committees or board staff of the results of its investigations;

(D) inform the appropriate committee when possible violations of board rules and the Public Accountancy Act are observed; and

(E) make recommendations to the board's policy-making committees (the executive committee and the rules committee) concerning proposed changes in board rules, opinions, and policies relating to the constructive enforcement program.

(f) Ad hoc advisory committees. Ad hoc advisory committees may be established by the board's presiding officer and members and advisory members appointed as appropriate.

(g) Policy guidelines. All advisory committee members performing any duties utilizing board facilities and/or who have access to board records, shall conform and adhere to the standards, board rules, and personnel policies of the board as described in its personnel manual and to the laws of the State of Texas governing state employees.

(h) Conflicts of interest. To avoid a conflict of interest or the appearance of a conflict of interest, no committee member may provide a report or expert testimony for or otherwise advocate on behalf of a complainant or a respondent in a disciplinary matter pending before the board while serving on a standing committee of the board. A Committee member is not in violation of this rule by reason of testimony

given or a report prepared as part of a litigation support engagement in another forum being considered by a committee of the board in an enforcement action; provided however, the board's rules on recusal of that committee member apply.

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 March 23, 2006.

TRD-200601779

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 305-7848



22 TAC §505.11

The Texas State Board of Public Accountancy (Board) proposes an amendment to §505.11 concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

The amendment to §505.11 will broaden the rule to include all CPA candidates. As the rule is currently written CPA candidates who have completed the CPA examination are excluded.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional responsibilities on the Board.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional responsibilities on the Board.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional responsibilities on the Board.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be encouragement for a larger number of potential license holders to seek help should they need it.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not impose costs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose costs upon firm license holders.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§505.11. Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee.

(a) The Texas State Board of Public Accountancy has established the Peer Assistance Oversight committee to oversee the activities of the Texas Society of Certified Public Accountants' peer assistance program as mandated under the Texas Health and Safety Code, Chapter 467.

(b) The Peer Assistance Oversight Committee operates under the premise that impairments caused by substance abuse and mental illness are treatable.

(c) The Peer Assistance Oversight Committee's responsibilities include, but are not limited to:

(1) protecting the public from CPAs whose ethical, behavioral, and technical violations due to chemical dependency and/or mental illness have harmed, or have the potential to harm, the public;

(2) encouraging CPAs, CPA [examination] candidates, and accounting students to seek assistance for impairment due to chemical dependency and/or mental illness;

(3) cooperating with the Texas Society of CPAs peer assistance program in promoting confidential assistance to CPAs, CPA [examination] candidates, and accounting students who suffer from chemical dependency and/or mental illness; and

(4) disseminating information about the peer assistance program to CPAs, CPA [examination] candidates, and accounting students.

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 March 23, 2006.

TRD-200601780

Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 7, 2006
For further information, please call: (512) 305-7848



CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.58

The Texas State Board of Public Accountancy (Board) proposes an amendment to §511.58 concerning Definitions of Related Business Subjects.

The amendment to §511.58 will define ethical reasoning, integrity, objectivity and independence as core values for the ethics course requirement.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional costs on the Board.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional costs on the Board.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment does not impose or reduce additional costs on the Board.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a greater clarification regarding the ethics courses the Board requires potential CPAs to take.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not create additional costs.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not impose additional costs.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is

believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.58. *Definitions of Related Business Subjects.*

(a) An individual who holds a baccalaureate degree from a recognized educational institution may take related business courses offered at an accredited community college, provided they are recognized as upper division courses for a 4-year BBA degree from an institution recognized by the board.

(b) Effective July 1, 2005, the board will accept not fewer than 21 passing semester hours of upper division courses (for the purposes of this subsection, economics and statistics at any college level will count as upper division courses) as related business subjects (without repeat), taken at a recognized educational institution shown on official transcripts or accepted by a recognized educational institution for purposes of obtaining a baccalaureate degree or its equivalent, in the following areas. Not more than 6 semester hours taken in any subject area may be used to meet the minimum hour requirement.

- (1) business law, including study of the Uniform Commercial Code;
- (2) economics;
- (3) management;
- (4) marketing;
- (5) business communications;
- (6) statistics;
- (7) technical writing (covering subjects such as opinions, tax planning reports, and management advisory services reports and management letters);
- (8) finance;
- (9) information systems or technology; and
- (10) other areas related to accounting.

(c) In addition to the 21 hours required in subsection (b) of this section, effective July 1, 2005, the board requires that 3 passing semester hours be earned as a result of taking a course in ethics. The course must be taken at a recognized educational institution and should include core values such as ethical reasoning, integrity, objectivity [;] and independence[and other core values].

(d) Credit for hours taken at recognized colleges and universities using the quarter system shall be counted as 2/3 of a semester hour for each hour of credit received under the quarter system.

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 March 23, 2006.
TRD-200601781
Rande Herrell
General Counsel
Texas State Board of Public Accountancy
Earliest possible date of adoption: May 7, 2006
For further information, please call: (512) 305-7848



CHAPTER 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.1 concerning License.

The amendment to §515.1 will stagger firm license renewal every twelve month period, rather than at the beginning of the year.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the change does not affect license fees.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the change does not affect license fees.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the change does not affect license fees.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a clarification of firm license renewal procedure.

The probable economic cost to persons required to comply with the amendment will be zero because the change does not affect license fees.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because this change does not affect the fees paid by small firms for firm licenses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of

compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.1. License.

(a) Individuals certified or registered by this board must obtain a license for each 12-month interval.

(b) Subject to §515.3 of this title (relating to License Renewal for Individuals and Firm Offices) firms[Firms] registered by[with] this board must obtain an annual license for each office associated with the firm.

(c) A license shall not be issued or renewed unless all required fees, continuing professional education and a completed application have been received by the board.

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

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Rande Herrell
General Counsel
Texas State Board of Public Accountancy
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22 TAC §515.3

The Texas State Board of Public Accountancy (Board) proposes an amendment to §515.3 concerning License Renewal for Individuals and Firm Offices.

The amendment to §515.3 will change the expiration date of a firm license from December 31st of each year to the last day of the month of the firm's registration.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because the change does not affect firm license fees.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because the change does not affect firm license fees.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the change does not affect firm license fees.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result

of adoption of the proposed amendment will be a more efficient method of processing firm license renewals.

The probable economic cost to persons required to comply with the amendment will be an initial license fee that will include the standard annual fee plus additional fees for each extra month added to accommodate the new staggered schedule; persons affected by this amendment will be required to pay only the annual fee for all subsequent annual license renewal periods.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because other than the additional fee for the initial license renewal period to accommodate staggered expiration dates, the change does not affect firm license fees.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§515.3. *License Renewal for Individuals and Firm Offices.*

(a) Licenses for individuals will have staggered expiration dates based on the last day of the individuals' birth months. The license will be issued for a 12-month period.

(b) At least 30 days before the expiration of an individual's license, the board shall send written notice of the impending license expiration to the individual at the last known address according to board records.

(c) Licenses for offices of firms will have staggered expiration dates that will be the last day of an assigned renewal month. All offices of a firm will have the same expiration date. Conversion to staggered license expiration dates will begin on January 1, 2007. After conversion to staggered license expiration dates is complete, all firm licenses will be issued for a 12-month period.

(e) ~~The expiration date of a firm's office license is December 31. The license will be issued for a 12-month period.~~

(d) At least 30 days before the expiration of a firm's office license, the board shall send written notice of the impending license expiration to the main office of the firm at the last known address according to the records of the board.

(e) A firm's office license shall not be renewed unless the sole proprietor, each partner, officer, director, or shareholder of the firm who is listed as a member of the firm and who is certified or registered under the Act has a current individual license.

(f) If a firm is subject to peer review, then a firm's office license shall not be renewed unless the office has notified the board of the peer review date assigned by a board approved sponsoring organization.

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 March 23, 2006.

TRD-200601783

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848

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CHAPTER 517. TEMPORARY PRACTICE IN TEXAS

22 TAC §517.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §517.2 concerning Application for Temporary Permit.

The amendment to §517.2 will clarify that firms practicing public accountancy under a Temporary Practice Permit are subject to the same terms and conditions of practice as firms that hold a Texas Firm License.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because current resources can implement the changes in the amendment.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because current resources can implement the changes in the amendment.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be an estimated increase of about \$50 per firm that chooses a temporary permit over a firm license.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be out-of-state firms that are subject to the Board's jurisdiction even if they operate with temporary licenses.

The probable economic cost to persons required to comply with the amendment will be about \$100 per year.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the charge does not affect the fees paid to practice under a temporary license in this state, although there is an increase of about \$50 per firm that chooses a temporary permit over a firm license.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§517.2. Application for Temporary Permit.

(a) An application for a temporary permit shall be made on a form prescribed by the board and submitted to the executive director for approval.

(1) The application must contain:

(A) the identity of the firm;

(B) the firm address;

(C) a list of all partners or individuals of the firm who will be practicing in Texas under provisions of the permit;

(D) a verification by the state or country that has permanent regulatory authority over the partnership, corporation, limited liability company, limited liability partnership or sole proprietorship is in good standing and is licensed to practice public accountancy in that state or country.

(2) The application must be submitted with the requisite fee.

(3) Upon approval of the application the board shall issue a temporary permit to be valid for not more than 1 year.

(b) A firm that practices public accountancy in this state under a temporary practice permit is subject to the same terms and conditions of practice as a firm licensed by the board.

(c) A temporary practice permit may be renewed annually.

(d) [(b)] A firm coming into this state to perform a peer review or report review under an approved peer review program is exempt from obtaining a temporary permit but must conduct the review in conformity with the Act, the laws of Texas and the Board's Rules of Professional Conduct.

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 March 23, 2006.

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Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.144

The Texas State Board of Public Accountancy (Board) proposes an amendment to §523.144, concerning Board Registered CPE Sponsors after January 1, 2005.

The amendment to §523.144 will make a change to Figure: 22 TAC §523.144(c) chart only. The amendment to the chart changes the total annual registration fee for 1 - 4 course titles offered from \$750 down to \$600.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because fees assessed in the amendment will be more in line with actual cost.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because fees assessed in the amendment will be more in line with actual cost.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be a reduction of about \$52,000.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be a sponsor review program where the revenues are more in line with costs.

The probable economic cost to persons required to comply with the amendment will be a reduction in sponsor fees of 20%.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on May 2, 2006. Comments should be addressed to Rande Herrell, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to her attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the change is a reduction in fees paid by education sponsors.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§523.144. *Board Registered CPE Sponsors after January 1, 2005.*

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

(c) Each organization applying to become a board registered CPE sponsor must submit an application on registration forms provided by the board. The application must be complete in all respects and must be accompanied with payment of a non-refundable registration fee unless the sponsor is exempt from paying the fee in accordance with this rule. Sponsors that offer regularly scheduled course titles that are at least one hour and up to four hours in length may accumulate these course titles into an eight-hour course block when determining fees. A maximum of 24 hours may be accumulated into three eight-hour course blocks. Refer to interpretative comment in subsection (j) of this section for explanation. The registration fee is based on the number of course titles offered and is identified in the following chart:
Figure: 22 TAC §523.144(c)

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on March 23, 2006.

TRD-200601785

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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For further information, please call: (512) 305-7848



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 141. MASSAGE THERAPISTS

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§141.1 - 141.3, 141.5 - 141.7, 141.10, 141.11, 141.13 - 141.17, 141.20, 141.21, 141.24 - 141.27, 141.29 - 141.34, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53 - 141.55, 141.60 - 141.62, and 141.64 - 141.66 and the repeal of §141.12, concerning the licensing and regulation of massage therapy.

BACKGROUND AND PURPOSE

Revisions to the rules are necessary to implement provisions of House Bill 2696, 79th Legislature, Regular Session (2005), which amended Occupations Code, Chapter 455, relating to the regulation of massage therapy. The bill specifically changes the massage therapy registration to a license. The Massage Therapy Licensing Program is a regulatory program that issues and renews licenses for licensed massage therapists, licensed massage therapy establishments, licensed massage therapy education programs, licensed massage therapy instructors, and approved continuing education providers. The program also administers examinations, through a contracted agency, to determine the eligibility and competency of massage therapists in Texas in order to protect and promote public health, safety, and welfare. Examination fees, including an administrative fee, are collected by the contracted agency that is approved by the department. Examination review fees, which are collected by the department, are being modified to eliminate the in-person review of written examination questions. In the future, written examination review will consist of providing a written analysis of performance, which will not require a fee.

SECTION-BY-SECTION SUMMARY

Amendments to §§141.1 - 141.3, 141.5 - 141.7, 141.10, 141.11, 141.13 - 141.17, 141.20, 141.21, 141.25 - 141.27, 141.29 - 141.33, 141.36, 141.37, 141.40, 141.50, 141.51, 141.53 - 141.55, 141.60 - 141.62, and 141.64 - 141.66 reflect changes to Texas Occupations Code, Chapter 455 due to recent legislation. The changes are necessary in order to change the terms "registration, registered, certificate of registration, and registrant" to "license, licensed, and licensee."

Amendments to §141.1 clarify that the Act, regulating massage therapy, was formerly codified at Texas Civil Statutes, Article 4512k, add a definition for the commissioner of the Department of State Health Services (department), reflect the change in agency name, include the use of lubricants, jacuzzi, sauna, and steam baths in the definition of massage therapy. New §141.1(10) adds a definition for licensee. This section has been renumbered to reflect deletions and insertions.

Amendments to §141.2 reflect change in agency name, remove language regarding application fees for a one-year license due to House Bill 2292, 78th Legislature, Regular Session (2003), and remove language regarding fees for the written examination review. New language §142.2(e)(4)(A) and (B) will require massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing agency practices.

Amendments to §141.3 delete the reference to the temporary registration, and changes "letter of approval for examination" to

"notice of approval for examination" to allow for electronic notification.

New §141.5(t) requires licensees to cooperate during investigation of a complaint.

Amendments to §141.6 prohibit the practice of massage therapy or other massage services while partially nude.

Amendments to §141.10 require applicants for licensure to be at least 18 years of age.

Amendments to §141.11 delete the requirement that applications must be submitted by established deadlines.

Repeal of §141.12 (relating to the issuance of a temporary registration) is being proposed in accordance with House Bill 2696 of the 79th Regular Legislative Session.

Amendments to §141.13 require applicants for licensure to be at least 18 years of age and reflect that a licensee is licensed by the department.

Amendments to §141.14 delete references to the temporary registration, require an applicant to submit a new application and begin the examination process again if the applicant has not passed both the written and practical examination within one year of being approved for examination, clarify that only the videotape from the practical exam may be reviewed by the candidate. New §141.14(b) requires the applicant to pass the written examination before they are eligible to sit for the practical exam unless the applicant requires the examination in a language other than English or an interpreter is needed.

Amendments to §141.24 remove language regarding one-year approvals for continuing education providers.

New §141.32(h) and (i) will require massage therapy educational programs to pay late renewal fees to align the fee structure with standard licensing practices.

New language §141.34(j) to clarify that students may only complete 50 hours of internship before they are required to be licensed in accordance with Texas Occupations Code, §453.053(7), relating to massage schools.

Amendments to §141.37 reflect agency name change. New §141.37(a)(16)(B) requires massage therapy education programs to inform prospective students that a person is ineligible for licensure until the fifth anniversary date of a conviction for a misdemeanor involving moral turpitude or a felony.

Amendments to §141.50 require businesses that advertise or offer other massage services to be licensed.

New §141.51(i) prohibits a massage establishment from employing an individual who is not a United States citizen or legal permanent resident, employing a minor without parental consent, allowing a nude or partially nude employee to practice massage therapy or other massage services, allowing employees to engage in sexual contact, allowing employees to wear clothing that is designed to arouse or gratify a sexual desire. New §141.51(j) requires massage therapy establishments to maintain and secure client intake forms, billing records, and session notes and to make them available at the departments request. New §141.51(k) defines nude and "sexual contact."

Amendments to §141.54 exclude the office of an occupational therapist from licensure requirements, and add an exemption for the practice of other massage services.

New §141.55(e) requires massage establishments to obtain a new license if the location of the establishment changes.

Amendments to §141.62 change board to executive commissioner to reflect that the executive commissioner adopts rules.

Amendments to §141.64 replace board with department to clarify that the department is responsible for implementing terms of final court or attorney general orders and that the department may not modify, remand, reverse, vacate, or stay a court or attorney general's order to suspend a license for failure to pay child support.

FISCAL NOTE

Kathy Perkins, Manager, Health Care Quality Section, has determined that for each year of the first five years the sections are in effect, there will be a decrease in revenue to the state as a result of enforcing or administering the sections as proposed. The decrease in revenue is related to the elimination of the written examination review fee. In fiscal year 2005, 11 applicants who failed the written examination elected to pay the written examination review fee of \$15. This represents a decrease in revenue of \$165 for the first and each succeeding fiscal year that the rules will be in effect. There may be an increase in revenue that will come from massage therapy education programs that renew late. The specific increase to revenue cannot be determined because there is no way to know how many massage therapy education programs will renew late and be required to pay the additional fees. There are currently 100 licensed massage therapy education programs. Due to the issuance of two-year licenses approximately 50 education programs renew each year. Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has determined that there will be fiscal implications for small businesses or micro-businesses that are required to comply with the sections as proposed. Some massage therapy education programs are small businesses or micro-businesses and they will be required to pay late renewal fees if they do not renew on time. The cost to small businesses or micro-businesses will be the amount of the late renewal fee. There is no anticipated cost to persons who are required to comply with the sections as proposed.

PUBLIC BENEFIT

In addition, Ms. Perkins 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 continue to ensure public health and safety through the licensing and regulation of massage therapy.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

The department 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 Heather Muehr, Program Director, Massage Therapy Licensure Program, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628 or by e-mail to heather.muehr@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

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

SUBCHAPTER A. THE DEPARTMENT

25 TAC §§141.1 - 141.3

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Words and terms defined in the Texas Occupations Code, Chapter 455 (the Act relating to the regulation of massage therapy) shall have the same meaning in this chapter as assigned in the Act.

(1) Act--Texas Occupations Code, Chapter 455 [~~and Texas Revised Civil Statutes, Article 4512k~~], relating to the regulation of massage therapists, massage therapy instructors, massage therapy schools and massage establishments.

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

(5) Commissioner--The Commissioner of the Department of State Health Services.

(6) [(5)] Department--Department of State Health Services [~~Texas Department of Health~~].

(7) [(6)] Health and hygiene--The study of recognized methods of sanitation and cleanliness including prophylaxis or disease prevention as applied to massage therapy services and current knowledge of elements of healthy life styles.

(8) [(7)] Hydrotherapy--The use of generally accepted methods of external application of water for its mechanical, thermal, or chemical effect.

(9) [(8)] Instructor--A person employed at a licensed [~~registered~~] massage school who instructs one or more students in any section of the course of instruction, other than Swedish massage therapy techniques or the internship.

(10) Licensee--A person or entity licensed under the Act as a massage therapist, massage school, massage therapy instructor, or massage establishment.

(11) [(9)] Massage therapy--The manipulation of soft tissue by hand or through a mechanical or electrical apparatus for the purpose of body massage. The term includes effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve strokes, and Swedish gymnastics. Massage therapy may include the use of oil, lubricant, salt glows, heat lamps, hot and cold packs, or tub, shower, jacuzzi, sauna, steam or cabinet baths. Equivalent terms for massage therapy are massage, therapeutic massage, massage technology, myo-therapy, body massage, body rub, or any derivation of those terms. Massage therapy is a health care service when the massage is for therapeutic purposes. The terms "therapy" and "therapeutic" do not include diagnosis, the treatment of illness or disease, or any service or procedure for which a license to practice medicine, chiropractic, physical therapy, or podiatry is required by law. Massage therapy does not constitute the practice of chiropractic.

(12) [(10)] Massage therapy educational program--The supervised 300 hour course of instruction described in the Act, §455.156, required for licensure [~~registration~~] provided by a licensed [~~registered~~] massage school or massage therapy instructor.

(13) [(11)] Massage therapy instructor--A licensed [~~registered~~] massage therapist who provides to one or more students instruction approved by the department in massage therapy.

(14) [(12)] Owner--An owner is, in the case of a massage therapy educational program or establishment, an individual, a partnership and any partners, a corporation, or any other legal business entity.

(15) [(13)] Physiology--The study of the normal vital processes of the human body including the processes of cells, tissues, and organs including the contractibility of muscle tissue; coordination through the nervous system; digestion; circulatory reproduction; and secretions.

[(14)] ~~Registrant--A person or entity registered under the Act as a massage therapist, massage school, massage therapy instructor or massage establishment.~~

(16) [(15)] State approved educational institution--An institution which is approved by the Texas Education Agency or which is an institution of higher education as defined in the Texas Codes Annotated, Texas Education Code, Chapter 61 or a higher education institution approved by a similar agency in another state.

(17) [(16)] Swedish gymnastics--Passive and active joint movements, nonspecific stretches, passive and active exercise, or any combination of these.

(18) [(17)] Swedish massage therapy techniques--The manipulation of soft tissue utilizing effleurage (stroking), petrissage (kneading), tapotement (percussion), compression, vibration, friction, nerve stroke, and Swedish gymnastics.

§141.2. Fees.

(a) All fees are non-refundable and shall be submitted in the form of a personal check, certified check or money order made payable to the Department of State Health Services [~~Texas Department of Health~~]. Cash payments may be made in person only.

(b) (No change.)

(c) The fees related to the licensure [registration] of massage therapists are as follows:

~~{(1) application fee for applications filed on or before December 31, 2004 (includes temporary and initial registration)--\$53;}~~

~~(1) [(2)] application fee [for applications filed on or after January 1, 2005 (includes temporary and initial registration)]--\$106;~~

~~(2) [(3)] examination fee--to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is scheduled for an examination;~~

~~(3) [(4)] re-examination fee--to be determined by the agency approved by the department to administer the examination plus an administrative fee determined by the department at the time the applicant is to be rescheduled for an examination;~~

~~(4) [(5)] written translation fee--the actual costs to the department of translating or having the examination translated into a foreign language, including salaries, travel expenses, and out of pocket expenses plus an administrative fee determined by the department;~~

~~(5) [(6)] practical examination review fee--\$25;{:~~

~~{(A) practical and written--\$40;}~~

~~{(B) practical only--\$25;}~~

~~{(C) written only--\$15;}~~

~~(6) [(7)] fee for a renewal license [registration] issued for a one-year period--\$50;~~

~~(7) [(8)] fee for a renewal license [registration] issued for a two-year period--\$100;~~

~~(8) [(9)] late renewal fees;~~

~~(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or~~

~~(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.~~

(d) The fees related to massage establishments are as follows:

~~{(1) massage establishment application and registration fee for applications filed on or before December 31, 2004--\$150;}~~

~~(1) [(2)] massage establishment application fee [for applications filed on or after January 1, 2005]--\$300;~~

~~(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$150;~~

~~(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$300;~~

~~(4) [(5)] late renewal fees;~~

~~(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or~~

~~(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.~~

(e) The fees related to massage therapy educational programs (massage schools and massage therapy instructors offering the 300-hour course of instruction for licensure [registration]) are as follows:

~~{(1) application and registration fee for applications filed on or before December 31, 2004 (includes inspection)--\$1,400;}~~

~~(1) [(2)] application and licensure [registration] fee [for applications filed on or after January 1, 2005] (includes initial inspection and annual inspection)--\$2,800;~~

~~(2) [(3)] fee for a renewal license [registration] issued for a one-year period (includes inspection)--\$1,000;~~

~~(3) [(4)] fee for a renewal license [registration] issued for a two-year period (includes annual inspections)--\$2,000;~~

~~(4) late renewal fees:~~

~~(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or~~

~~(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.~~

~~(5) [registration fee for a] change of instructional address for main campus (includes inspection)--\$375; and~~

~~{(6) application and renewal fee for an additional educational program location separate from the main campus filed on or before December 31, 2004 (includes inspection)--\$375; and}~~

~~(6) [(7)] application and renewal fee for an additional educational program location separate from the main campus [filed on or after January 1, 2005] (includes initial inspection and annual inspection)--\$750.~~

(f) The fees related to massage therapy instructors are as follows:

~~{(1) application and registration fee for applications filed on or before December 31, 2004--\$100;}~~

~~(1) [(2)] application and licensure [registration] fee [for applications filed on or after January 1, 2005]--\$200;~~

~~(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$100;~~

~~(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$200;~~

~~(4) [(5)] late renewal fees for massage therapy instructors;~~

~~(A) a fee that is equal to one and one-half times the normally required renewal fee when renewed on or within 90 days of expiration; or~~

~~(B) a fee that is equal to two times the normally required renewal fee when renewed more than 90 days, but less than one year after expiration.~~

(g) The fees related to pre-approved providers for continuing education are as follows:

~~{(1) fee for applications submitted on or before December 31, 2004--\$100;}~~

~~(1) [(2)] application fee [for applications submitted on or after January 1, 2005]--\$200;~~

~~(2) [(3)] fee for a renewal license [registration] issued for a one-year period--\$100;~~

~~(3) [(4)] fee for a renewal license [registration] issued for a two-year period--\$200.~~

(h) License [Registration certificate] and identification card replacement fee--\$20.

(i) - (j) (No change.)

§141.3. *Processing Applications.*

(a) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(1) letter of acceptance of application for massage therapist license [registration or temporary registration]--20 working days;

(2) (No change.)

(3) issuance of license [registration] renewal after receipt of documentation of all renewal requirements--10 working days; and

(4) letter of acceptance or notice of deficiency of application for massage school, massage therapy instructor, or massage establishment license [registration]--30 working days.

(b) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:

(1) notice [letter] of approval for examination--20 working days;

(2) initial letter of approval for licensure [registration]--30 days;

(3) letter of denial of licensure [registration]--30 days; and

(4) issuance of license [registration] renewal after receipt of documentation of all renewal requirements--10 working days.

(c) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. Good cause for exceeding the time period is considered to exist if the number of applications for licensure [registration] and licensure [registration] renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(d) (No change.)

(e) The time periods for contested cases related to the denial of licensure [registration] or licensure [registration] renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

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

Filed with the Office of the Secretary of State on March 24, 2006.

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Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 7, 2006

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



SUBCHAPTER B. CODE OF ETHICS

25 TAC §§141.5 - 141.7

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.5. *General Ethical Requirements.*

(a) A licensee [registrant] shall not make deceptive, untrue, or fraudulent representations in the practice of massage or employ a trick or scheme in the practice of massage, including, but not limited to, warranty of results of such services and false claims of proficiency in any field.

(b) A licensee [registrant] shall not use a work area, equipment or clothing that is unclean or unsanitary.

(c) A licensee [registrant] shall not practice massage therapy fraudulently, with gross incompetence, with gross negligence on a particular occasion, or with negligence or incompetence on more than one occasion.

(d) A licensee [registrant] shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(e) For each client, a licensee [registrant] shall keep accurate records of the dates of massage therapy services, types of massage therapy and billing information. Such records must be maintained for a minimum of two years.

(f) A licensee [registrant] must obtain the written consent of a parent or guardian to provide massage therapy services to a person under the age of 17.

(g) On the written request of a client, a client's guardian, or a client's [clients] parent if the client is a under the age of 17, a licensee [registrant] shall provide a written explanation of the charges for massage therapy services previously made on a bill or statement of the client. This requirement applies even if the charges are to be paid by a third party.

(h) A licensee [registrant] shall provide an initial consultation to each client(s) prior to the first massage session and obtain the signature of the client on the consultation document. The consultation document shall include:

(1) the type of massage techniques the licensee [registrant] anticipates using during the massage therapy session;

(2) (No change.)

(3) a statement that the licensee [registrant] shall not engage in breast massage of female clients without the written consent of the client;

(4) a statement that draping will be used during the session, unless otherwise agreed to by both the client and the licensee [registrant];

(5) a statement that if uncomfortable for any reason, the client may ask the licensee [registrant] to cease the massage and the licensee [registrant] will end the massage session; and

(6) the signature of both the client and the licensee [registrant].

(i) If the client's reason for seeking massage changes at any time and any of the information in subsection (h)(1) - (4) of this section is modified, the licensee [registrant] must provide an updated consultation reflecting any changes and modifications to the techniques used or the parts of the client's body to be massaged.

(j) A licensee [registrant] shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of massage therapy or massage therapy instruction.

(k) A licensee [registrant] may not persistently or flagrantly overcharge or over treat a client.

(l) A licensee [registrant] shall not practice in an unlicensed [unregistered] massage establishment or massage school.

(m) A licensee [registrant] shall not allow an unlicensed [unregistered] person to engage in activity for which licensure [registration] is required.

(n) A licensee [registrant] shall not provide false information on material submitted to the department.

(o) A licensee [registrant] shall not interfere with a department investigation by the willful misrepresentation of facts to the department or its authorized representative, or by the use of threats, retaliation, or harassment against any person.

(p) A licensee [registrant] shall comply with any formal order issued by the department relating to the licensee [registrant].

(q) A licensee [registrant] shall be subject to disciplinary action by the department if the licensee [registrant] is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office under the Texas Code of Criminal Procedure, §56.31.

(r) A licensee [registrant] shall notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a licensee [registrant];

(2) on a sign prominently displayed in the primary place of business of each licensee [registrant];

(3) on a bill for service provided by a licensee [registrant] to a client or third party; or

(4) (No change.)

(s) A licensee [registrant] shall keep his or her licensure [registration] file updated by notifying the department, in writing, of changes of names, address, telephone number and employment.

(t) A licensee shall be subject to disciplinary action for failure to truthfully respond in a manner that fully discloses all information in an honest, materially responsive, and timely manner to a complaint filed with or by the department.

§141.6. Sexual Misconduct.

(a) A licensee [registrant] shall not engage in sexual contact during a session with a client. For the purposes of this section, sexual contact includes:

(1) - (7) (No change.)

(b) A licensee [registrant] shall not allow any individual, including a client, student, licensee [registrant], employee, or one's self to engage in sexual contact on the premises of any massage school, massage establishment, or the licensee's [registrant's] own place of business.

(c) A licensee [registrant] shall not allow any individual, including a student, licensee [registrant], employee, or one's self to practice massage therapy or provide other massage therapy services in the nude, while partially nude, or in clothing designed to arouse or gratify the sexual desire of any individual.

(d) A licensee [registrant] shall not perform massage therapy, whether or not for compensation, at or for a sexually oriented business.

(e) A licensee [registrant] shall immediately discontinue the activity or the professional relationship when a client initiates any verbal or physical contact with the licensee [registrant] that is intended to arouse or gratify the sexual desire of either person.

§141.7. Advertising.

(a) A person, including a massage therapy instructor, a massage school, a massage therapist, or massage establishment that is not licensed [registered] under the Act shall not use the word "massage" on any sign, display, or other form of advertising unless the person is expressly exempt from the license [registration] requirements of the Act. Under no circumstances may a sexually oriented business use the word "massage" or "bath" on any sign or other form of advertising.

(b) A licensee [registrant] shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification. False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

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

(5) causes confusion or misunderstanding as to the credentials, education, or licensure [registration] of a health care professional;

(6) - (9) (No change.)

(c) When an assumed name is used in a person's practice as a massage therapist or massage establishment, the legal name or license [registration] number of the massage therapist must be listed in conjunction with the assumed name. An assumed name used by a massage therapist must not be false, misleading, or deceptive.

(d) (No change.)

(e) A massage therapy educational program shall not maintain, advertise, solicit for or conduct any course of instruction intended to

qualify a person for licensure [registration] as a massage therapist without first obtaining licensure [registration] from the department.

(f) (No change.)

(g) Advertisements seeking prospective students must include the full and correct name and license [registration] number of the massage therapy educational program.

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

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

Filed with the Office of the Secretary of State on March 24, 2006.

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Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 7, 2006

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



SUBCHAPTER C. MASSAGE THERAPISTS

25 TAC §§141.10, 141.11, 141.13 - 141.17

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.10. *Qualifications for Licensure [Registration] as a Massage Therapist.*

(a) Each applicant for licensure [registration] as a massage therapist must be at least 18 years old and present evidence satisfactory to the department that the person has:

(1) successfully completed a minimum of a 300-hour supervised course of instruction in massage studies provided by a licensed [registered] massage therapy instructor, licensed [registered] massage school, a state approved educational institution, or a combination of any of these. The 300-hour supervised course of instruction must include:

(A) - (G) (No change.)

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

(b) Applicants who began massage therapy studies prior to January 1, 1992, may be eligible for licensure [registration] by documenting completion of a 250-hour [250 hour] supervised course of instruction and are not required to have completed a 50-hour [50 hour] internship in accordance with subsection (a)(1) of this section.

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

§141.11. *Application Procedures and Documentation.*

(a) Unless otherwise indicated, an applicant for licensure [registration] as a massage therapist must submit all required information and documentation of credentials on official department forms. [Documents must be submitted on or before the examination deadline set by the department to be eligible for an examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.]

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

(d) Applicants must provide the following information on official department forms, unless otherwise requested by the department:

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

(3) a statement that the applicant, if issued a license [registration certificate], shall return the license [certificate] and identification cards to the department upon the expiration, revocation or suspension of the license [registration];

(4) a statement that the applicant understands that fees and materials submitted in the licensure [registration] process are nonrefundable and nonreturnable;

(5) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application and failure to be granted a license [any registration] or the revocation of any licenses [registration] issued; and

(6) (No change.)

(e) (No change.)

(f) Applicants applying under §141.10(a)(3) of this title (relating to Qualifications for Licensure [Registration] as a Massage Therapist) must submit two or more of the following to the department on official department forms, if required:

(1) - (5) (No change.)

§141.13. *Provisional License [Registration].*

(a) The department may issue a provisional license [registration] to an applicant for licensure [registration] as a massage therapist or massage therapy instructor who is at least 18 years old and is currently licensed or registered in another jurisdiction and who:

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

(3) is sponsored by a person licensed [registered] by the department [board] under the Act with whom the provisional licensee [registrant] will practice during the time the person holds a provisional license [certificate of registration].

(b) (No change.)

(c) A provisional license [certificate of registration] is valid until the date the department [board] approves or denies the provisional licensee's [registrant's] application for licensure [registration]. The department shall issue a license [certificate registration], without examination, to a person submitting the documentation set out in subsection (a) of this section.

(d) The department [board] must approve or deny a provisional licensee's [registrant's] application for licensure [registration] not later than the 180th day after the date the provisional license [registration] is issued. The department [board] may extend the 180-day period if the results of an examination have not been received by the department [board] before the end of that period.

§141.14. *Examination.*

(a) An [A holder of a temporary registration or an] applicant meeting the requirements of §141.10 of this title (relating to Qualifications for Licensure [Registration] as a Massage Therapist) is allowed to take the written and practical examinations [the examination] provided the person complies with the requirements of this section.

(b) Applicants must pass the written examination in order to be eligible to sit for the practical examination. Exceptions may be made for individuals who require an interpreter or can not take the examination in English.

(c) [~~(b)~~] The department or its designee shall send an examination approval notice to each [candidate form to an] applicant who is eligible to sit for the written or practical examination. [whose application has been approved. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.]

(d) [~~(e)~~] Approved examination candidates must complete the examination registration process and submit the examination fee by the established deadlines. [A completed examination candidate form and fee must be submitted on or before the deadline date set by the department.] Forms which are received incomplete or late may cause the applicant to miss the examination deadline.

(e) [~~(d)~~] The department shall void the application of any applicant who fails to schedule and take an examination within one year after the examination approval notice is mailed to the applicant. To be eligible for subsequent examination(s), the applicant will be required to file another application and meet requirements in effect at that time.

(f) [~~(e)~~] The examination will be conducted in the English language. Exceptions will be made when English is not the native or first language of the applicant. The written exam may be taken in a person's native language if the person notifies the department at least 60 days in advance, so that the written test can be available. The applicant will be responsible for any fee or consideration to be paid to an acceptable interpreter and/or translator whose services are necessary for the examination.

(g) [~~(f)~~] Applicants with disabilities must inform the department, in advance, of special accommodations requested for examination.

(h) [~~(g)~~] The examination shall consist of a written section and a practical section. Exam candidates must sign a statement agreeing to maintain the confidentiality of the exam.

(i) [~~(h)~~] Examinations will be held on dates and in locations to be announced by the department.

(j) [~~(i)~~] Examinations will be graded by the department or its designee. The department or its designee shall notify each examinee of the results of the examination within 30 calendar days of the date of the examination.

(k) [~~(j)~~] A person who fails the written examination or the practical examination may retest by registering for another examination and [twice on the failed portion of the examination after] paying another examination fee. The department will void the application of a person who fails to pass both the written and practical examination within one year of the initial approval for examination. The person must submit a new application and successfully pass both examinations, even if the written examination was previously passed, before being eligible for licensure. [All retests must be completed no later than two years after the initial date of examination eligibility or the person's application will be voided.]

(l) [~~(k)~~] No refunds will be made to examination candidates who fail to appear for an examination.

(m) [~~(l)~~] Each applicant taking the practical [portion of the] examination may serve as a model for another applicant taking the practical [portion of the] examination on the same day. Each applicant shall complete a model eligibility form provided by the department at the examination site.

(n) [~~(m)~~] Each applicant who fails the practical examination may request, in writing and within 21 days from the date of the notification of failure, an examination review. All requests for a review shall be accompanied by the fee set out in §141.2 of this title (relating to Fees).

(1) The [For the practical examination, the] applicant may review his or her videotape [video tape and examination grade sheets]. A skill examiner may be requested to review [or regrade] the skill demonstration videotape [video tape].

(2) All reviews are subject to department security requirements.

(3) Textbooks and other references may not be used and persons other than the applicant and department representatives may not be present during the review.

(4) The department will set a date and hour within a reasonable time when the examination will be available for review.

§141.15. Massage Therapy Licenses [Therapist Registration Certificates].

(a) The department will send each applicant whose application has been approved and who has passed the written and practical examination, a license [registration certificate] and identification card containing a license [registration] number. Licenses [Registration certificates] and identification cards remain the property of the department and must be surrendered to the department on demand.

(b) A license [certificate] must be displayed in an appropriate and public manner in the primary office or place of employment of the licensee [registrant]. In the absence of a primary office or place of employment, the licensee [registrant] shall carry a current identification card.

(c) Neither the licensee [registrant] nor anyone else shall display a photocopy of a license [certificate] or carry a photocopy of an identification card in lieu of the original document.

(d) Neither the licensee [registrant] nor anyone else shall make any alteration on a license [certificate] or identification card issued by the department.

(e) The department will replace a lost, damaged, or destroyed license [certificate, temporary registration certificate,] or identification card upon written request from a licensee [registrant] and payment of the appropriate replacement fee. The request shall include a statement detailing the loss or destruction of the original license [certificate] or identification card, or be accompanied by the damaged license [certificate] or card.

(f) Licenses [Certificates] and cards that may have not been received by a licensee [registrant] may be replaced at no charge if the licensee [registrant] notifies the department in writing and within 30 days of the date the license [certificate] or card was issued.

§141.16. Massage Therapist License [Registration] Renewal.

(a) When issued, an initial license [registration] is valid until the last day of the licensee's [registrant's] birth month in the current or following year, as determined by the department, and must be renewed on or before the expiration date. Renewal licenses [registrations] will be issued for a one or two-year period, as determined by the department,

and expire on the last day of the licensee's [registrants] birth month. The expiration date is noted on each license [registration certificate].

(b) Each licensee [registrant] is responsible for renewing the license [registration] before the expiration date and shall not be excused from paying late renewal fees. Failure to receive notification from the department prior to the expiration date of the license [registration] will not excuse failure to file for renewal or late renewal.

(c) At least 30 days prior to the expiration date, the department will send a notice to each licensee [registrant] at the licensee's [registrant's] last known address according to the records of the department. The notice shall include the expiration date of the license [registration] and the amount of the renewal fee.

(d) The department may request specific information for renewal including the licensee's [registrant's] preferred mailing address, primary employment address and telephone number, category of employment, all names or titles under which the licensee [registrant] engages in the practice of massage therapy, and a statement of all misdemeanor and felony convictions or offenses for which deferred adjudication was received or for which a plea of nolo contendere or guilty was entered.

(e) For renewals occurring after January 1, 2002, licensees [registrants] shall report continuing education required for renewal in accordance with Subchapter D of this chapter, (relating to Continuing Education and Documentation).

(f) A licensee [registrant] may renew by mailing the renewal fee and required documentation to the department or by telephonic or electronic methods on or before the expiration date. The postmark date or the date of electronic renewal shall be considered in determining whether any late fees apply.

(g) The department shall not renew a license [registration] until it receives the fee and required documentation for renewal or notice of telephonic or electronic renewal.

(h) A person whose license [registration] has expired for 90 days or less may renew by paying a fee that is equal to one and one-half times the normally required renewal fee.

(i) A person whose license [registration] has expired for more than 90 days but less than one year may renew by paying a fee that is equal to two times the normally required renewal fee.

(j) A person whose license [registration] has expired for more than one year may not renew. The person may obtain a new license [registration] by complying with the then current requirements and procedures for obtaining a license [registration], including the examination.

(k) A person who was licensed [registered] in this state, moved to another state, and is currently registered or licensed as a massage therapist and has been in the practice of massage therapy in the other state for the two years preceding the date of application may obtain a license [register] without reexamination. The person must pay to the department a fee that is equal to two times the normally required renewal fee for licensure [registration].

(l) A person whose license [registration] has expired may not engage in the activities of a massage therapist and may not hold himself or herself out as a massage therapist, imply that he or she has the title of "licensed [registered] massage therapist" or "massage therapist", or use "RMT", "LMT", or "MT" or any facsimile of those titles in any manner.

(m) The department shall deny renewal of the license [registration] of a licensee [registrant] if renewal is prohibited by the Education Code, §57.491 (relating to Default of Student Loans).

(n) The department shall not renew a license [registration] if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (relating to Suspension of License for Failure to Pay Child Support).

§141.17. Active Military Duty.

(a) If a licensee [registrant] fails to timely renew his or her license [registration] on or after August 1, 1990, because the licensee [registrant] is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee [registrant] may renew the license [registration] pursuant to this section.

(1) Renewal of the license [registration] may be requested by the licensee [registrant], the licensee's [registrant's] spouse, or an individual having power of attorney from the licensee [registrant]. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(2) Renewal may be requested before or after expiration of the license [registration].

(3) A copy of the official orders or other official military documentation showing that the licensee [registrant] is or was on active duty serving outside the state of Texas shall be filed with the department along with the renewal form.

(4) A copy of the power of attorney from the licensee [registrant] shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this subsection.

(b) A licensee [registrant] renewing under this section shall pay the applicable renewal fee, but not a late renewal fee.

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 Campbell

General Counsel

Department of State Health Services

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25 TAC §141.12

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

STATUTORY AUTHORITY

The proposed repeal is authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeal affects the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.12. Temporary Registration.

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. CONTINUING EDUCATION REQUIREMENTS AND DOCUMENTATION

25 TAC §§141.20, 141.21, 141.24, 141.25

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.20. Hour Requirements for Continuing Education.

(a) Licensees [Registrants] must successfully complete at least 6 hours of acceptable continuing education to renew a one-year license [registration]. Licensees [Registrants] must successfully complete at least 12 hours of acceptable continuing education to renew a two-year license [registration].

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

§141.21. Acceptable Continuing Education.

(a) Acceptable continuing education includes attendance at and completion of department approved or recognized programs (other than the 300 hour course of instruction required for licensure [registration]), institutes, seminars, workshops, state or national conferences, advanced course work, or college and university academic courses that are:

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

(b) Continuing education approved or recognized by the department must be developed and presented by qualified persons.

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

(3) Out-of-state instructors or presenters offering continuing education in Texas on massage therapy techniques or involving the manipulation of soft tissue must be in compliance with any licensure, registration or certification requirements for massage therapists and massage therapy instructors in the instructor or presenter's home

state or be licensed to practice medicine, occupational therapy, chiropractic, athletic training, physical therapy, or nursing. If the instructor or presenter's home state does not have licensure, registration or certification requirements for massage therapists and massage therapy instructors, the instructor or presenter must provide documentation of education or practical experience specific to the continuing education being offered.

§141.24. Pre-approved Continuing Education Providers.

(a) Continuing education providers may apply for provider pre-approval on department forms. Approval of provider applications will be determined by review of the application and determination of applicants' ability to comply with department rules. [Approved applications filed on or before December 31, 2004, are effective for twelve months from the date of approval.] Approved applications [filed on or after January 1, 2005,] are effective for two years from the date of approval.

(b) - (d) (No change.)

(e) Continuing education providers must renew the approval [registration] prior to the expiration date. Renewed approvals [Renewal registrations] will be issued for a one or two-year period, as determined by the department.

§141.25. Reporting Continuing Education.

(a) The department will monitor a licensee's [registrant's] compliance with continuing education requirements by the use of a random audit system. Licensees [Registrants] selected for audit will receive notification along with the renewal notice. Supporting documentation of participation in continuing education activities are not to be submitted unless a written audit notice is received informing the licensee [registrant] that he or she has been randomly selected for a document audit.

(b) (No change.)

(c) Licensees [Registrants] who receive an audit form with the renewal notice shall submit all appropriate documentation to substantiate compliance with the department's continuing education requirements.

(d) Licensees [Registrants] are responsible for maintaining continuing education records for a period of three years.

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 E. MASSAGE SCHOOLS AND MASSAGE THERAPY INSTRUCTORS

25 TAC §§141.26, 141.27, 141.29 - 141.34, 141.36, 141.37, 141.40

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055,

and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.26. General Provisions and Inspections.

(a) A person or entity who provides at a minimum the course of instruction required for licensure [~~registration~~] to one or more students constitutes a massage therapy educational program and must obtain licensure [~~registration~~] as a massage school or as a massage therapy instructor providing the training solely through an independent training program.

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

§141.27. Application Procedures and Documentation.

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

(e) The license [~~registration certificate~~] must be displayed in an appropriate and public manner at the location of the educational program.

(f) The effective date of the license [~~registration~~] shall be the date the license [~~certificate of registration~~] is issued.

§141.29. Massage Therapy Instructors.

(a) A massage therapy instructor shall instruct the 125 hours of Swedish massage therapy and the internship portion of the required course of instruction. To qualify for licensure [~~registration~~] as a massage therapy instructor, a person shall:

(1) be a licensed [~~registered~~] massage therapist (not a temporary license [~~registration~~]);

(2) (No change.)

(3) submit a statement of assurance that the licensee [~~registrant~~] has been engaged in the practice of massage therapy for at least one-year and has conducted 250 hours of hands-on experience (does not include internship hours). Hours accumulated while holding a provisional license [~~registration~~] can be applied to the requirements of this paragraph; and

(4) complete a 30-hour course on teaching adult learners or demonstrate competency in teaching adult learners. Courses attended may include an instructional certification program, a college level course in teaching adult learners, a continuing education course in teaching adult learners, or an advanced program approved by the department in teaching the course of instruction. Demonstrated competency means teaching adult learners varied subjects in a formal educational setting, including the development of lesson plans and assessment methods, which may be verified by a letter of reference. Effective January 1, 2002, applicants for licensure [~~registration~~] as a massage therapy instructor must complete the 30-hour course on teaching adult learners.

(b) (No change.)

(c) Each massage therapy instructor and instructor employed by a licensed [~~registered~~] massage school shall be evaluated by the school annually. A report of the evaluation shall be available for review by the department.

(d) Licensed [~~Registered~~] massage schools shall ensure continuity of instruction through the reasonable retention of qualified instructors.

§141.30. Financial Stability.

(a) Applicants for initial licensure [~~registration~~] of a massage therapy educational program shall furnish the department with complete and correct financial statements or documents, sufficient to demonstrate the program is financially stable and capable of fulfilling its commitments for training.

(1) (No change.)

(2) Additional documents required for initial licensure [~~registration~~] include:

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

(b) - (d) (No change.)

(e) Financial statements for the most recent fiscal year are required at the time of renewal in accordance with §141.32 of this title (relating to License [~~Registration~~] Renewal).

§141.31. Change of Ownership.

(a) The license [~~registration~~] of a massage therapy educational program may not be sold or transferred to another person or owner.

(b) (No change.)

(c) The department may require submission of a complete application for licensure [~~registration~~] if:

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

(d) The department may require a partial application for licensure [~~registration~~] if the department reasonably believes the change in ownership will not significantly affect the educational program's continued ability to meet the criteria for approval.

(e) Prior to a change in ownership of a massage therapy educational program, the purchaser shall furnish the department a balance sheet meeting the requirements for initial licensure [~~registration~~] outlined in §141.30(a) of this title (relating to Financial Stability), excluding the sufficient cash requirement for initial expenses. The purchaser shall furnish any other evidence deemed appropriate by the department to establish financial stability.

(f) (No change.)

(g) The department may issue a new license [~~registration~~], resulting from a change of ownership, without conducting an inspection if an inspection of the facility has been conducted within the previous year and if the new owner verifies that no changes will be made to existing facilities.

§141.32. License [~~Registration~~] Renewal.

(a) When issued, the license [~~registration~~] of a massage therapy educational program is valid for a one or two-year period, as determined by the department, beginning on the date of issuance of the initial license [~~registration~~]. A licensee [~~registrant~~] must renew the license [~~registration~~] prior to the expiration of the license [~~registration~~].

(b) The expiration date of a license [~~registration~~] shall be the last day of the month in which the license [~~registration~~] was originally issued.

(c) A complete application for renewal of a license [~~registration~~] shall consist of:

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

(d) At least 30 days prior to the license [~~registration~~] expiration date, the department shall send a notice of the expiration date and

the amount of the renewal fee due. The notice will be mailed to the address in the department's records. Each massage therapy educational program must complete and return the license ~~[registration]~~ renewal form to the department with the required renewal fee.

(e) The ~~[registration]~~ renewal forms for massage therapy educational programs shall require the address, the names of the owner/operator of the educational program, a statement of all misdemeanor and felony offenses for which the licensee ~~[registrant]~~ or owner or operator have been convicted, entered a plea of nolo contendere or guilty, or received deferred adjudication.

(f) A massage therapy educational program has renewed the license ~~[registration]~~ when it has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license ~~[registration]~~. The postmark date shall be considered the date of mailing. Massage therapy educational programs should allow three to four weeks for the department to receive the license ~~[registration]~~ renewal fees and documentation, and print the certificate.

(g) The department shall issue a ~~[registration]~~ renewal license ~~[certificate]~~ to a massage therapy educational program once all requirements for renewal are met.

(h) A massage therapy educational program whose license has been expired for 90 days or less may renew by submitting all required documentation and paying a fee that is equal to one and one-half times the normally required renewal fee.

(i) A massage therapy educational program whose license has been expired for more than 90 days but less than one year may renew by submitting all required documentation and paying a fee that is equal to two times the normally required renewal fee.

(j) ~~[(h)] [A massage therapy educational program whose registration has expired for not more than one year may renew the registration by submitting to the department the renewal form and the fee.]~~ A massage therapy educational program that operates ~~[continues to operate]~~ with an expired license ~~[registration]~~ may be subject to disciplinary action. Course hours taught during the time the license ~~[registration]~~ is expired will not apply toward the 300-hour ~~[300 hour]~~ course of instruction. The postmark date shall be considered the date of mailing.

(k) ~~[(i)]~~ A massage therapy educational program may not renew a license that has been expired for more than one year. ~~[whose registration has expired for more than one year from the expiration date may not renew the registration.]~~

§141.33. Locations.

(a) A license ~~[certificate of registration]~~ shall be issued for each approved instructional location(s). Instruction shall not be provided at an additional location until the department has issued a license ~~[certificate of registration]~~ for the additional location.

(b) (No change.)

(c) A request for licensure ~~[registration]~~ of an additional location shall include the appropriate fee and the following documents:

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

(d) - (f) (No change.)

§141.34. Curriculum and Internship for the Basic Course of Instruction.

(a) - (i) (No change.)

(j) The department does not approve more than 50 internship hours. Individuals who have completed the required 300-hour supervised course of instruction, including the 50-hour internship are eligible

for examination and licensure and are no longer considered to be students. For the purposes of Texas Occupations Code, §455.053(7), 50 hours is the maximum number of hours a student can accumulate in an internship before the student is required to be licensed.

§141.36. Admission Requirements.

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

(c) Each massage therapy educational program must maintain a written record of the previous education and training of a student which meets any portion of the course of instruction required for licensure ~~[registration]~~. Official transcripts and documentation of course work obtained at colleges, universities or out of state institutions must be placed in the student's file along with a copy of the department's written evaluation.

(d) A massage therapy educational program may not require a student to take subjects the student has already completed and which meet the requirements for licensure ~~[registration]~~.

§141.37. Enrollment Procedures.

(a) Prior to enrollment, each massage therapy educational program shall provide each prospective student copies of the following:

(1) - (12) (No change.)

(13) a notice that clearly states the number of course hours which must be successfully completed before a student can be licensed ~~[register]~~ as a massage therapist under this chapter;

(14) - (15) (No change.)

(16) a statement that the Act sets out that a person is ineligible for licensure ~~[registration]~~:

(A) if the person has been convicted of, entered a plea of nolo contendere or guilty to, or received deferred adjudication to crimes or offenses involving prostitution or another sexual offense; ~~[or]~~

(B) until the fifth anniversary of the date of a conviction for a misdemeanor involving moral turpitude or a felony; or

(C) ~~[(B)]~~ until the fifth anniversary of the date of a conviction of a violation of the Act.

(b) (No change.)

(c) Each massage therapy educational program shall use an acknowledgment form approved by the department to verify the prospective student's receipt of the information required in subsection (a) of this section. A signed copy of the form shall be given to the prospective student. The form shall include the following or similar statements.

(1) (No change.)

(2) "I further realize that complaints may be made to the massage therapy educational program and the Department of State Health Services, Massage Therapy Licensing Program ~~[Texas Department of Health, Massage Therapy Registration Program]~~, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6616."

(3) (No change.)

(d) - (e) (No change.)

§141.40. Cancellation and Refund Policy.

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

(f) The department may take disciplinary action against the license ~~[registration]~~ of a massage therapy educational program for a violation of this section; however, the department has no authority to recover a refund on behalf of a student.

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. MESSAGE ESTABLISHMENTS

25 TAC §§141.50, 141.51, 141.53 - 141.55

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.50. Massage Establishment Application Procedures and Licensure [Registration].

(a) Unless otherwise exempt under the Act or §141.54 of this title (relating to Exemptions), a place of business that advertises massage therapy or offers massage therapy or other massage services [as a service] must be licensed by register with the department as provided by this section.

(b) A sexually oriented business may not obtain a license from register with the department or operate as a massage establishment.

(c) An applicant must file an application and license [a registration] fee with the department. The application shall contain:

(1) - (10) (No change.)

§141.51. General Requirements for Massage Establishments.

(a) A massage establishment shall employ only licensed [registered] massage therapists to perform massage therapy or other massage services.

(b) No massage establishment shall be operated until the department has approved and licensed [registered] the establishment.

(c) (No change.)

(d) A massage establishment must display the license [registration certificate] along with a current year validation card in a prominent location in the establishment where it is available for inspection by the public.

(e) A license [registration certificate] issued by the department is the property of the department and must be surrendered on demand by the department.

(f) - (h) (No change.)

(i) A massage establishment may not:

(1) employ an individual who is not a United States citizen or a legal permanent resident with a valid work permit;

(2) employ a minor unless the minor's parent or legal guardian authorizes in writing the minor's employment by the establishment;

(3) allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(4) allow any individual, including a client, student, license holder, or employee, to engage in sexual contact in the massage establishment; or

(5) allow any individual, including a student, license holder, or employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual.

(j) A massage establishment shall:

(1) properly maintain and secure for each client the initial consultation documents, all session notes, and related billing records; and

(2) make available to the department on request the information kept as provided by paragraph (1) of this subsection.

(k) For purposes of this section:

(1) "Nude" means a person who is:

(A) entirely unclothed; or

(B) clothed in a manner that leaves uncovered or visible through less than fully opaque clothing any portion of the breasts below the top of the areola of the breasts or any portion of the genitals or buttocks.

(2) "Sexual contact" includes:

(A) any touching of any part of the genitalia or anus;

(B) any touching of the breasts of a female without the written consent of the female;

(C) any offer or agreement to engage in any activity described in sub-paragraph (A) or (B) of this paragraph;

(D) kissing without the consent of both persons;

(E) deviate sexual intercourse, sexual contact, sexual intercourse, indecent exposure, sexual assault, prostitution, and promotions of prostitution as described in Penal Code, Chapters 21, 22, and 43, or any offer or agreement to engage in such activities;

(F) any behavior, gesture, or expression that may reasonably be interpreted as inappropriately seductive or sexual; or

(G) inappropriate sexual comments about or to a client, including sexual comments about a person's body.

§141.53. Massage Establishment Renewal.

(a) When issued, a massage establishment license [registration] is valid for a one or two-year period, as determined by the department, beginning on the date of issuance of the initial license [registration] and must be renewed prior to the expiration date.

(b) The renewal date of a license [registration] shall be the last day of the month in which the license [registration] was originally issued.

(c) At least 30 days prior to the expiration date of the massage establishment's license [registration], the department shall send notice

to the massage establishment, including a renewal form, of the expiration date of the license [~~registration~~] and the amount of the renewal fee due.

(d) The license [~~registration~~] renewal form shall contain information concerning changes in address or ownership or operators and information regarding conviction, pleas of nolo contendere, or guilty, or receipt of deferred adjudication for crimes or offenses by owners or operators.

(e) A massage establishment has renewed the license [~~registration~~] when the licensee [~~registrant~~] has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license [~~registration~~]. The postmark date shall be considered the date of mailing.

(f) The department shall issue a renewal license [~~certificate~~] to a massage establishment that has met all requirements for renewal.

§141.54. Exemptions.

(a) The following establishments are specifically exempt from the provisions of the Texas Occupations Code, Chapter 455 (the Act), regulating massage establishments:

(1) an establishment that holds a license, permit, certificate, or other credential issued by the state under another law, and that offers or performs massage therapy, or other massage services, under the scope of that credential;

(2) a licensed [~~registered~~] massage therapist who practices as a solo practitioner in that therapist's legal name or uses an assumed name if the person's legal name or massage therapy license [~~registration~~] number is used in any advertisement or presentation of the assumed name;

(3) - (6) (No change.)

(7) the office of a physician, chiropractor, occupational therapist, physical therapist, or member of another similarly licensed or regulated profession as determined by the department if the professional is practicing within the scope of his or her license. This exemption applies to a professional who uses a licensed [~~registered~~] massage therapist to practice massage therapy or other massage services in the professional's office or where the professional has authority to delegate tasks under the statutory authority for that professional;

(8) (No change.)

(9) an establishment which is operational for a period of time of no more than 24 hours in a calendar year and in which the provision of massage therapy or other massage services is incidental to the primary athletic, fund raising, or other purpose of the event sponsored by the establishment:

(10) - (12) (No change.)

(b) An establishment may request an exemption from the license [~~registration~~] requirements of this section where it can show that the advertising or provision of massage therapy or other massage services is incidental to the person's primary enterprise.

(c) (No change.)

§141.55. Change of Ownership and Control or Location.

(a) No massage establishment license [~~registration~~] shall be transferred or sold to another person or owner. The new owner of a massage establishment must apply for a license [~~registration~~] as a new applicant. A massage establishment may not operate under a new owner until a massage establishment license [~~registration~~] is issued by the department to the new owner. A license [~~registration~~] issued under this section is not transferable.

(b) - (d) (No change.)

(e) No massage establishment license shall be transferred to another location. If the location of an establishment changes, a new application for licensure must be submitted and approved before the establishment may provide massage therapy or other massage therapy services.

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. COMPLAINTS, VIOLATIONS AND SUBSEQUENT DISCIPLINARY ACTIONS

25 TAC §§141.60 - 141.62, 141.64 - 141.66

STATUTORY AUTHORITY

The proposed amendments are authorized by Texas Occupations Code, Chapter 455; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 455, Health and Safety Code, Chapter 1001; and Government Code, Chapter 531.

§141.60. Filing Complaints.

(a) (No change.)

(b) A person wishing to file a complaint against a massage therapist, massage school, massage therapy instructor, massage establishment, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the office of the massage therapy licensing [~~registration~~] program.

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

§141.61. Investigation of Complaints.

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

(e) If the department determines that there are insufficient grounds to support the complaint, the department shall dismiss the complaint and give written notice of the dismissal to the licensee [~~registrant~~] or person against whom the complaint has been filed and the complainant.

(f) (No change.)

(g) If the department determines that there are sufficient grounds to support the complaint, the department may propose to

deny, suspend, revoke, or refuse to renew a license [registration], reprimand a licensee [registrant] or impose an administrative penalty.

§141.62. Grounds for [Registration] Denial of License or Disciplinary Action.

(a) The department may refuse to issue a license [certificate of registration] to a person, suspend or revoke the license [certificate of registration] of a person, or place a person licensed [registered] under the Act on probation if the person:

(1) obtains a license [certificate of registration] by fraud, misrepresentation, or concealment of material facts;

(2) sells, barter, or offers to sell or barter a license [certificate of registration];

(3) violates a rule adopted by the executive commissioner [board];

(4) engages in unprofessional conduct as defined by executive commissioner [board] rule that endangers or is likely to endanger the health, welfare, or safety of the public;

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

(b) The department shall revoke the license [certificate of registration] of a person if:

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

(c) The department shall revoke the license [certificate of registration] of a person licensed [registered] as a massage school or massage establishment if the department determines that:

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

(d) If the department finds a person has violated the Act or rules adopted under the Act or any other law or rule relating to the practice of massage therapy in Texas, the following sanctions and penalties apply:

(1) denial of the persons' application for licensure [registration];

(2) (No change.)

(3) limitation or restriction of the licensee's [registrant's] practice for a specified time;

(4) suspension of the license [registrant's registration];

(5) revocation of the license [registrant's registration];

(6) required participation by the licensee [registrant] in one or more education programs;

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

(9) acceptance of the voluntary surrender of a massage therapist's license [registration]; or

(10) (No change.)

§141.64. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court order or attorney general's order suspending a license [registration] due to failure to pay child support, the department shall immediately determine if a license [registration] has been issued to the obligator named on the order, and, if a license [registration] has been issued:

(1) record the suspension of the license [registration] in the department's records;

(2) (No change.)

(3) demand surrender of the suspended license [registration].

(b) The department [board] shall implement the terms of the final court or attorney general's order suspending a license [registration] without additional review or hearing. The department will provide notice as appropriate to the licensee [registrant] or to others concerned with the license [registration].

(c) The department [board] may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license [registration] issued under the Family Code, Chapter 232, as added by Acts 1995, 74th Legislature, Chapter 751, §85 and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license [registration] is not entitled to a refund for any fee paid to the department [board].

(e) If a suspension overlaps a license [registration] renewal period, an individual with a license [registration] suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license [registration] will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title(s) massage therapist, massage therapy instructor, massage school, or massage establishment or to engage in any activity for which a license [registration] is required after the issuance of a court or attorney general's order suspending the license [registration] is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license [registration] or while a license [registration] is suspended as any other license [registration] holder of the department [board].

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license [registration], the department shall promptly issue the affected license [registration] to the individual if the individual is otherwise qualified for a license [the registration].

(h) The individual must pay a reinstatement fee set out at §141.2 of this title (relating to Fees) prior to issuance of the license [registration] under subsection (g) of this section.

§141.65. Informal Disposition.

(a) Informal disposition of any complaint or contested case involving a licensee [registrant] or an applicant for licensure [registration] may be made through an informal settlement conference held to determine whether an agreed settlement order may be secured.

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

(d) The licensee [registrant], the licensee's [registrant's] attorney, and department staff may question witnesses, make relevant statements, present statements of persons not in attendance, and present such other evidence as may be appropriate.

(e) - (f) (No change.)

§141.66. Licensing [Registration] of Persons with Criminal Background.

(a) Notwithstanding actions set out in §141.62(b) and (c) of this title (relating to Grounds for [Registration] Denial of License or Disciplinary Action [Actions]), the department may suspend or revoke a license [registration], disqualify a person from receiving a license [registration] or deny to a person the opportunity to be examined for a license because of the person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a massage therapist, massage therapy instructor, massage school, or massage establishment.

(b) In considering whether a criminal conviction directly relates to the occupation of a massage therapist, the department shall consider:

(1) (No change.)

(2) the relationship of the crime to the purposes for requiring a license [~~registration~~]. The following felonies and misdemeanors relate to the license [~~registration~~] of a massage therapist, massage therapy instructor, massage school or massage establishment because these criminal offenses indicate an unwillingness or an inability to be able to perform as a massage therapist:

(A) the misdemeanor of knowingly or intentionally acting as a massage therapist without a license [~~registration~~] issued under the Act;

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

(3) the extent to which a license [~~registration~~] might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) (No change.)

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

Filed with the Office of the Secretary of State on March 24, 2006.

TRD-200601799

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: May 7, 2006

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



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER C. STANDARDS FOR STATE FIRE MARSHAL INSPECTIONS

28 TAC §34.303

The Texas Department of Insurance proposes an amendment to §34.303 concerning standards for state fire marshal inspections. The proposed amendment is necessary to update the currently adopted Life Safety Code, which is used by the state fire marshal as standards for inspection of buildings and premises pursuant to Government Code §417.008. Section 34.303, which adopts by reference certain standards and recommendations of the National Fire Protection Association (NFPA), is amended to update the currently adopted 2003 Life Safety Code to the 2006 version. The adoption of the most recent Life Safety Code is necessary because, as the technology for fire protection and prevention develops, the minimum standards of inspection also change. The NFPA is a nationally recognized standards-making association that classifies the most recent Life Safety Code as the minimum standards for fire protection and prevention, and as such, these standards also constitute the minimum standards for inspection for potential fire dangers. This results in better

protection of the public from fire by the application of the most recent standards and recommendations for inspection. Additionally, other units of government in Texas are adopting these standards, and uniformity of standards enables both the fire protection industry and the public to know what standards are applicable in all jurisdictions. The NFPA adopted changes to the 2003 standards to clarify existing requirements, eliminate redundant language, and restructure the document for ease in use. A new Chapter 43 has been added to promote the rehabilitation of existing buildings without sacrificing needed life safety. Previous editions of the Life Safety Code required compliance with provisions for new construction. New Chapter 43 in the 2006 Life Safety Code introduces specific requirements for repairs, renovations, additions, reconstruction, historic buildings and changes of use or occupancy classification. Other refinements affect alcohol-based hand-rub solution dispensers in corridors of health care occupancies to fight infection. Additional requirements for nightclubs and crowd managers in assembly occupancies have been added. The Government Code §417.008(e) provides that the standards adopted by the Commissioner by rule do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area.

Paul Maldonado, State Fire Marshal, has determined that for each year of the first five years that the proposal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendment. Mr. Maldonado has also determined that there will be no adverse effect on local employment or the local economy.

Mr. Maldonado also has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit from enforcing and administering the amendment is the employment of the most current nationally recognized standards for inspection of buildings and premises in the state in order to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures. This means that inspections conducted by the State Fire Marshal in accordance with these most recent nationally recognized standards for detection of potential fire dangers will result in individual citizens, fire fighters, and other buildings and structures being better protected. Any costs that result from compliance with the updated standards is the result of the legislative enactment of Government Code §417.008 which imposes responsibility upon the State Fire Marshal to enter and inspect buildings and premises in the state in order to examine whether conditions exist that are dangerous or are liable to cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures. In order to properly protect life and property, it is necessary that the latest current nationally recognized standards for inspection of buildings and premises be utilized. This is consistent with §417.008(e) which authorizes the adoption of "any appropriate standard developed by a nationally recognized standards-making association. . . ." but also provides that the adopted standards do not apply in a geographic area under the jurisdiction of a local government that has adopted fire protection ordinances that apply in the geographic area. Total costs for compliance with the updated standards will vary depending on many factors, including the size of the building, its intended use or occupancy, and, whether it is repair, remodel, or new building of structure. There will also be nominal costs to persons and entities required to purchase the updated standards. The estimated cost to purchase the

proposed updated Life Safety Code is approximately \$60 and will be the same cost for all persons and entities. The cost to a person or entity qualifying as a small or micro-business under Government Code §2006.001 will be the same as the cost to the largest business because the cost is the same for all purchasers of the updated standards, regardless of the size of the business. Even if the proposed amendment would have an adverse effect on a person or entity qualifying as a small or micro-business, the Department has considered the purpose of the applicable statute, which is to protect the public from dangerous conditions that may cause or promote fire or create danger for fire fighters, occupants, or other buildings or structures, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendment for such persons or entities.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 8, 2006, to Gene C. Jarmon, General Counsel & Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to Paul Maldonado, State Fire Marshal, Mail Code 108-FM, Texas Department of Insurance, P.O. Box 149221, Austin, Texas 78714-9221. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Government Code §417.008 and Insurance Code §36.001. Government Code §417.008 authorizes the commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce §417.008 which regulates right of entry and examination and correction of dangerous conditions. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance and other laws of this state.

The following statute is affected by the proposed section: Government Code §417.008.

§34.303. *Adopted Standards.*

The Commissioner adopts by reference the following copyrighted standards and recommendations, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts: NFPA 101-2006 [~~2003~~], Life Safety Code and cited references.

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 March 27, 2006.

TRD-200601827

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 463-6327



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 16. COASTAL COORDINATION COUNCIL

CHAPTER 501. COASTAL MANAGEMENT PROGRAM

The Coastal Coordination Council (Council) proposes amendments to 31 TAC, Part 16, Chapter 501, relating to Coastal Management Program, §501.3, relating to Definitions and Abbreviations; §501.10, relating to Compliance with Goals and Policies; §501.13, relating to Administrative Policies; §501.16, relating to Policies for Construction of Electric Generating and Transmission Facilities; §501.21, relating to Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters; §501.23, relating to Policies for Development in Critical Areas; §501.25, relating to Policies for Dredging and Dredged Material Disposal and Placement; §501.28, relating to Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; §501.31, relating to Policies for Transportation Projects; and §501.33, relating to Policies for Appropriations of Water. The proposed amendments update citations and make minor editorial corrections. These rule amendments have been undertaken as a result of the comprehensive review of the Council's rules mandated by Texas Government Code §2001.039, and will ensure that the rules are clear, necessary, and updated.

The proposed amendment to §501.3(b)(2)(A) corrects the citation to 36 Code of Federal Regulations, Part 63, Chapter 1, which should read: 36 Code of Federal Regulations, Chapter I, Part 63.

The proposed amendment to §501.3(b)(5) corrects the citation to the definition of "Wetlands," which is incorrectly cited as Texas Water Code §11.052. The definition is found in Texas Water Code §11.502.

The proposed amendment to §501.3(b)(7) updates the definition of "Critical erosion area" to make it consistent with the definition in Texas Natural Resources Code §33.203, which was amended by the 76th Texas Legislature, Senate Bill 1690, effective September 1, 1999.

The proposed amendment to §501.3(b)(16) updates the name of the Texas Natural Resource Conservation Commission to the Texas Commission on Environmental Quality.

The proposed amendment to §501.10(a) corrects the reference to the "goals and policies in §§501.12 - 501.15 of this title (relating to Goals, Administrative Policies, and Policies for Specific Activities and Coastal Natural Resource Areas)." Section 501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas, was repealed and readopted as §§501.16 - 501.34, effective October 6, 2004 (29 TexReg 9408, October 1, 2004). Section 501.10(a), as amended, will reference "the goals and policies in this subchapter."

The proposed amendment to §501.13(a)(4) updates the reference to the "Texas CMP Document, Chapter XX." When §501.13(a)(4) was adopted in 1995, the "CMP Document" had not yet been finalized, so this reference was written into §501.13(a)(4) as a placeholder. The correct name and chapter number of the "CMP Document" is the "Texas Coastal Management Program Final Environmental Impact Statement, August 1996, Part II, Chapter 7."

The proposed amendment to §501.16(a)(4) inserts the phrase "as those maps may be modified, revised, or corrected" to con-

form with the language of the Coastal Barrier Resources Act, 16 USC §3503(a). Although 16 USC §3503(a) allowed for the revision of the Coastal Barrier Resources System maps by the Secretary of the Interior, similar language was not included in §501.16(a)(4) when the policies in §501.16 were first adopted. The Coastal Barrier Resources Act, 16 USC §3503(a), was amended in 2000 to clarify the authority under which those maps may be modified, revised, or corrected (Pub. L. 106-514, Sec. 3(d), Nov. 13, 2000, 114 Stat. 2394, 2395). The proposed amendment will make §501.16(a)(4) consistent with 16 USC §3503(a), as amended.

The proposed amendment to §501.16(b) updates the citation to Texas Civil Statutes, Article 1446c, the Public Utility Regulatory Act, which was codified in Texas Utilities Code §11.001, et seq., in 1997 (Acts 1997, 75th Legislature, Chapter 166, §1, effective September 1, 1997).

The proposed amendment to §501.21(a)(2) updates this rule to conform with Texas Water Code §26.0135, regarding the requirement that Texas Commission on Environmental Quality (TCEQ) rules provide for the assessment of water quality on a coastal watershed basis once every two years. The proposed amendment removes the words "once every two years" to reflect a statutory change to Texas Water Code §26.0135(d). When the policies in §501.21(a)(2) were first adopted, Texas Water Code §26.0135(d) required each river authority to report on water quality assessments on or before October 1 of each even-numbered year. However, §26.0135(d) was amended in 1997 to require river authorities to submit a water quality report in the appropriate year of the cycle provided by TCEQ rules (Acts 1997, 75th Legislature, Chapter 101, §1, effective September 1, 1997). The proposed amendment to §501.21(a)(2) will make the rule consistent with the statutory change to Texas Water Code §26.0135(d).

The proposed amendment to §501.23(b), updates the citation to "Texas Civil Statutes, Article 5421u," which was codified in Chapter 221 of the Texas Natural Resources Code in 1997 (Acts 1997, 75th Legislature, Chapter 165, §24.01(a), effective September 1, 1997).

The proposed amendment to §501.25(i) updates the citation to "Texas Civil Statutes, Article 5415e-2," which was codified in Chapter 51 of the Texas Transportation Code in 1995 (Acts 1995, 74th Legislature, Chapter 165, §1, effective September 1, 1995).

The proposed amendment to §501.28(a) inserts the phrase "as those maps may be modified, revised, or corrected" to conform with the language of 16 USC §3503(a) (the Coastal Barrier Resources Act). Although 16 USC §3503(a) allowed for the revision of the Coastal Barrier Resources System maps by the Secretary of the Interior, similar language was not included in §501.28(a) when the policies in §501.28(a) were first adopted. The Coastal Barrier Resources Act was amended in 2000 to clarify the authority under which those maps may be modified, revised, or corrected (Pub. L. 106-514, §3(d), November 13, 2000, 114 Stat. 2394, 2395). The proposed amendment will make §501.28(a) consistent with 16 USC §3503(a), as amended.

The proposed amendment to §501.28(b) updates the statutory references applicable to the TCEQ's issuance of rules regarding the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts. Section 501.28(b) currently references Texas Water Code, Chapter 50, which was largely repealed in 1995 and replaced by Sections in Chapters 49

and 59 of the Texas Water Code, which contain statutes that authorize the TCEQ to approve the creation of special utility districts and the issuance of bonds (Acts 1995, 74th Legislature, Chapter 715, §2, effective September 1, 1995; Acts 1995, 74th Legislature, Chapter 715, §3, effective September 1, 1995). However, Chapter 50 still contains §50.107, which provides the TCEQ authority over the issuance of bonds. Accordingly, the proposed amendment adds references to Chapters 49 and 59, but does not delete the reference to Chapter 50. The proposed amendment to §501.28(b) also updates the reference to Texas Civil Statutes, Article 6663 et seq, to indicate that Article 6663, et seq. was repealed and codified in multiple Chapters in the Transportation Code, starting with Title 6, Chapter 201 (Acts 1995, 74th Legislature, Chapter 165, §1, effective September 1, 1995). Accordingly, the citation to Texas Civil Statutes, Article 6663 et seq is replaced with a citation to Transportation Code Chapter 201, et seq.

The proposed amendment to §501.31(b) updates the citations to Texas Civil Statutes, Article 6663b and 6663c, and Article 6674a et seq, governing transportation projects within the coastal zone. Texas Civil Statutes, Articles 6663b and 6663c were repealed in 1995 and codified in Texas Transportation Code §§455.001 - 455.004; 456.001 - 456.008; 456.021 - 456.026; and 456.042, while Texas Civil Statutes, Articles 6674a et seq. were repealed in 1995 and codified in Texas Transportation Code §221.001, et seq. (Acts 1995, 74th Legislature, Chapter 165, §1, effective September 1, 1995).

The proposed amendment to §501.33(a)(8) clarifies the reference to the "commission" by changing it to "TCEQ," which is defined as the Texas Commission on Environmental Quality in §501.3(c)(7).

The proposed amendment to §501.33(a)(12) updates the title of 30 TAC §295.9, as referenced in §501.33(a)(12). The TCEQ amended 30 TAC §295.9 effective February 21, 1999, changing the title of the rule to "Water Conservation and Drought Contingency Plans" and changing the term "conservation plans" to "water conservation plans" within the rule (24 TexReg 969, February 12, 1999).

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines and determined that a detailed takings impact assessment is not required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule

amendments. The proposed rulemaking will not result in a taking of private property and there are no adverse impacts on private real property interests.

Larry Laine, Chief Clerk of the General Land Office, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications and updates to the rules.

Mr. Laine, has also determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Comments must be received no later than 30 days from the date of publication of this proposal.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §501.3

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new information or changed conditions may warrant; and §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§501.3. *Definitions and Abbreviations.*

(a) (No change.)

(b) The following words, terms, and phrases, when used in this chapter shall have the following meanings, with respect to CNRAs.

(1) (No change.)

(2) Coastal historic area--A site that is specially identified in rules adopted by the Texas Historical Commission as being coastal in character and that is:

(A) a site on the National Register of Historic Places, designated under 16 United States Code, §470a and 36 Code of Federal Regulations, Chapter I, Part 63[; ~~Chapter I~~]; or

(B) (No change.)

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

(5) Coastal wetlands--Wetlands, as the term is defined by Texas Water Code, §11.502 [~~§11.052~~], located:

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

(6) (No change.)

(7) Critical erosion area--~~Has the meaning assigned to the term "critical coastal erosion area" by Texas Natural Resources Code, §33.601(4). [An area designated by the land commissioner under Texas Natural Resources Code, §33.601(b).]~~

(8) - (15) (No change.)

(16) Water under tidal influence--Water in this state, as defined by Texas Water Code, §26.001(5), that is subject to tidal influence according to the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission's~~] stream segment map. The term includes coastal wetlands.

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

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

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601854

Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 305-8598



SUBCHAPTER B. GOALS AND POLICIES

31 TAC §§501.10, 501.13, 501.16, 501.21, 501.23, 501.25, 501.28, 501.31, 501.33

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new information or changed conditions may warrant; and §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§501.10. *Compliance with Goals and Policies.*

(a) State agencies, municipalities, and counties identified in this subchapter shall comply with the goals and policies in this subchapter [§§501.12-501.15 of this title (relating to Goals, Administrative Policies, and Policies for Specific Activities and Coastal Natural Resource Areas)] when taking an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program).

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

§501.13. *Administrative Policies.*

(a) Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall:

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

(4) take into account the national interest as defined in the Texas Coastal Management Program Final Environmental Impact Statement, August 1996, Part II, Chapter 7. [~~CMP Document, Chapter XX.~~]

(b) (No change.)

§501.16. Policies for Construction of Electric Generating and Transmission Facilities.

(a) Construction of electric generating facilities and electric transmission lines in the coastal zone shall comply with the policies in this section.

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

(4) Electric transmission lines to or on Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, as those maps may be modified, revised, or corrected, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503, on coastal barriers shall:

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

(b) The PUC shall comply with the policies in this section when issuing certificates of convenience and necessity and adopting rules under the [~~Texas Civil Statutes,~~] Public Utility Regulatory Act, Texas Utilities Code §11.001, et seq., [~~Article 1446e,~~] governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal zone.

§501.21. Policies for Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(a) TCEQ rules shall:

(1) (No change.)

(2) provide for the assessment of water quality on a coastal watershed basis [~~once every two years,~~] as required by the Texas Water Code, §26.0135(d);

(3) - (5) (No change.)

(b) - (d) (No change.)

§501.23. Policies for Development in Critical Areas.

(a) (No change.)

(b) The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this section when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51 - 53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Natural Resources Code, Chapter 221, [~~Civil Statutes, Article 5421u,~~] for mitigation banks operated by subdivisions of the state.

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

§501.25. Policies for Dredging and Dredged Material Disposal and Placement.

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

(i) The GLO and the SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33, and 51 - 53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this subchapter when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Transportation Code, Chapter 51. [~~Civil Statutes, Article 5415e-2,~~] The TCEQ and the RRC shall comply with the policies in this section when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material. The TPWD shall comply with the policies in this section when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in subsection (h) of this section when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

§501.28. Policies for Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

(a) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, as those maps may be modified, revised, or corrected, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this section.

(1) - (5) (No change.)

(b) TCEQ rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapters 49, 50, and 59 [~~Chapter 50~~]; water control and improvement districts under Texas Water Code, Chapter 50; municipal utility districts under Texas Water Code, Chapter 54; regional plan implementation agencies under Texas Water Code, Chapter 54; special utility districts under Texas Water Code, Chapter 65; stormwater control districts under Texas Water Code, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the TCEQ, shall comply with the policies in this section. TxDOT rules and approvals under Texas Transportation Code Chapter 201, et seq., [~~Texas Civil Statutes, Article 6663 et seq.,~~] governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this section.

§501.31. Policies for Transportation Projects.

(a) (No change.)

(b) TxDOT rules and project approvals under Texas Transportation Code §§455.001-455.004; 456.001-456.008; 456.021-456.026; and 456.042 and Texas Transportation Code §221.001, et seq. [~~Civil Statutes, Article 6663b and 6663e, and Texas Civil Statutes, Article 6674a et seq.,~~] governing transportation projects within the coastal zone, shall comply with the policies in this section.

§501.33. Policies for Appropriations of Water.

(a) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this section.

(1) - (7) (No change.)

(8) In its consideration of an application for a permit under this section, the TCEQ shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the TCEQ [commission] shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TCEQ may consider any net benefit to habitat produced by the project. The TCEQ shall offset against any mitigation required by the United States Fish and Wildlife Service pursuant to Code of Federal Regulations, Title 33, §§320 - 330, any mitigation authorized by this subchapter.

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

(12) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295.9 (relating to Water Conservation and Drought Contingency Plans [Plan]). The TCEQ shall consider the information contained in the water conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the TCEQ may deny or grant, in whole or in part, the requested appropriation.

(b) (No change.)

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

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601849

Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 305-8598



CHAPTER 505. COUNCIL PROCEDURES FOR STATE CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

The Coastal Coordination Council (Council) proposes amendments to 31 TAC, Part 16, Chapter 505, relating to Council Procedures for State Consistency With Coastal Management Program Goals and Policies, §505.11, relating to Actions and Rules Subject to the Coastal Management Program; §505.21, relating to Effect of Council Certification of Agency Rules and Rule Amendments; §505.22, relating to Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program; §505.23, relating to Council Certification of Rules and Rule Amendments; §505.24, relating to Pre-Cer-

tification Review of Draft Rules or Draft Rule Amendments; §505.32, relating to Requirements for Referral of a Proposed Agency Action; §505.36, relating to Standard of Council Review of a Proposed Agency Action; §505.37, relating to Activities Pending Council Review of a Proposed Agency Action; and §505.50, relating to General Plans. The proposed amendments update citations and make minor editorial corrections. These rule amendments have been undertaken as a result of the comprehensive review of the Council's rules mandated by Texas Government Code §2001.039, and will ensure that the rules are clear, necessary, and updated.

The proposed amendment to §505.11(c), (d), (e)(4) and (5) corrects the titles of Subchapters B and C, and corrects the reference to the location of Subchapters B and C, which should be referenced as residing in the "chapter" rather than the "title."

The proposed amendment to §505.21 corrects the titles of §505.23 and §505.26, as referenced in §505.21.

The proposed amendment to §505.22(d) corrects the title of §505.24, as referenced in §505.22(d).

The proposed amendment to §505.23(a) corrects the title of §505.11, as referenced in §505.23(a).

The proposed amendment to §505.23(e) corrects the reference to Section "505.11" by adding a section symbol (§).

The proposed amendment to §505.24(a) corrects the title of §505.11, as referenced in §505.24(a).

The proposed amendment to §505.32(b) corrects the title of §505.26, as referenced in §505.32(b).

The proposed amendment to §505.36(b)(3) corrects the title of §505.26, as referenced in §505.36(b)(3).

The proposed amendment to §505.37 clarifies that the reference to §2001.054 of the Texas Administrative Procedure Act is in the Government Code.

The proposed amendment to §505.50(2) deletes the reference to the State Coastal Discharge Contingency Plan (Plan) because the General Land Office no longer has statutory authority to develop the Plan. The 78th Texas Legislature, Regular Session 2003, amended Texas Natural Resources Code §40.053 to delete all references to the Plan because the Legislature determined that it is not necessary to develop the Plan. Instead, as noted in the House Committee Report for Senate Bill 619, the General Land Office has participated with the U.S. Coast Guard in the development of Area Contingency Plans, which cover the entire Texas coast and serve the same purpose. The remaining paragraphs in §505.50 are renumbered accordingly.

The proposed amendment to §505.50(3) adds a reference to Subchapter G in Chapter 26 of the Texas Water Code, to more specifically identify the statutory authority for the State Oil and Hazardous Substance Spill Contingency Plan.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the proposed rulemaking as a "major environmental rule." The proposed rulemaking will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed rulemaking does not exceed a standard set by federal law, does not exceed an express requirement of state law, does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal

government to implement a state or federal program, and is not adopted solely under the general powers of the Council.

The Council has evaluated the proposed rulemaking in accordance with Texas Government Code, §2007.043(b), and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines and determined that a detailed takings impact assessment is not required. The proposed rulemaking does not affect private real property in a manner that requires real property owners to be compensated as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Article I, Sections 17 and 19, of the Texas Constitution. Furthermore, the proposed rulemaking would not affect any private real property in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the rule amendments. The proposed rulemaking will not result in a taking of private property and there are no adverse impacts on private real property interests.

Larry Laine, Chief Clerk of the General Land Office, has determined that for each year of the first five years the amended sections as proposed are in effect there will be no fiscal implications for the state or units of local government as a result of enforcing or administering the amended sections as the amendments constitute minor clarifications and updates to the rules.

Mr. Laine, has also determined that there will be no economic cost to persons required to comply with these regulations, as these amendments add no additional restrictions or requirements that did not already exist. The public will benefit from the proposed rule amendments because the amended rules will provide more clarity. There will be no effect on small businesses, and a local employment impact statement on these proposed regulations is not required, because the proposed regulations will not adversely affect any local economy in a material manner for the first five years they will be in effect.

To comment on the proposed rulemaking, please send a written comment to Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311 or e-mail to walter.talley@glo.state.tx.us. Comments must be received no later than 30 days from the date of publication of this proposal.

SUBCHAPTER A. PURPOSE AND POLICY AND STATE AGENCY ACTIONS SUBJECT TO THE COASTAL MANAGEMENT PROGRAM

31 TAC §505.11

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new information or changed conditions may warrant; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the Council, by rule, to establish a process by which an agency may submit rules and rule amendments to the Council for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§505.11. Actions and Rules Subject to the Coastal Management Program.

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

(c) An agency's promulgation of rules governing or authorizing actions listed in subsection (a) or (b) of this section constitutes an action subject to the CMP as provided in Subchapter B of this chapter (relating to Council Review and Certification of [State] Agency Rules [and Approval of Thresholds for Referral]).

(d) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other action is not an action under this section if the action is taken pursuant to rules that the council has certified as consistent under Subchapter B of this chapter (relating to Council Review and Certification of [State] Agency Rules [and Approval of Thresholds for Referral]) and:

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

(e) Whenever more than one state agency is involved in issuing a consistency determination for a single project, consideration should be given to the preparation of one consistency determination for all state agencies involved.

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

(4) The council may not protest a proposed action by an agency or subdivision pertaining to an application filed with that agency or subdivision prior to the effective date of Subchapter C of this chapter (relating to Consistency and Council Review of Proposed State Agency Actions).

(5) The council shall not review actions listed in this subsection if such actions are taken pursuant to an enforcement order issued prior to the effective date of Subchapter C of this chapter (relating to Consistency and Council Review of Proposed State Agency 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.

Filed with the Office of the Secretary of State on March 28, 2006.

TRD-200601855

Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 305-8598



SUBCHAPTER B. COUNCIL REVIEW AND CERTIFICATION OF AGENCY RULES

31 TAC §§505.21 - 505.24

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new

information or changed conditions may warrant; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the Council, by rule, to establish a process by which an agency may submit rules and rule amendments to the Council for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§505.21. Effect of Council Certification of Agency Rules and Rule Amendments.

Upon the council's certification of an agency's rules pursuant to §505.20 of this title (relating to Council Review and Certification of Existing Agency Rules) or §505.23 of this title (relating to Certification of ~~Proposed New~~ Rules and Rule Amendments), the agency's rules are incorporated into the CMP goals and policies, and any threshold for referral approved pursuant to §505.26 of this title (relating to ~~Council Review and~~ Approval of Thresholds for Referral) relating to actions under those rules shall become operative and limit the council's authority to review individual actions of the agency, as provided in §505.32 of this title (relating to Requirements for Referral of a Proposed Agency Action). After an agency's rules are certified and an agency's thresholds are approved, the agency's consistency determination for an action is final and is not subject to referral and review, except as provided by §505.32 of this title (relating to Requirements for Referral of a Proposed Agency Action).

§505.22. Consistency Required for New Rules and Rule Amendments Subject to the Coastal Management Program.

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

(d) In addition to pre-certification review pursuant to §505.24 of this title (relating to Pre-Certification Review of Draft Rules ~~Rule~~ or Draft Rule Amendments), an agency may seek clarification or resolution of consistency issues regarding the proposed rule or rule amendment by placing the matter on the agenda of the council or executive committee.

(e) (No change.)

§505.23. Council Certification of Rules and Rule Amendments.

(a) Upon adoption of a rule or rule amendment listed in §505.11(b) of this title (relating to Actions and Rules Subject to the Coastal Management Program), the agency may seek certification from the council that the rule or rule amendment is consistent with the CMP goals and policies by filing a written Request for Certification with the council secretary. Along with the request, the agency shall provide a copy of the rule or rule amendment as adopted, copies of all public comments relating to consistency of the proposed rule or rule amendment, and any other information the agency wishes to provide. The council secretary shall distribute copies of the Request for Certification, including all supporting materials, to all council members.

(b) - (d) (No change.)

(e) Where council certification of a rule or rule amendment takes place after the effective date of a rule or rule amendment, the provisions of §505.32 of this title (relating to Requirements for Referral of a Proposed Agency Action) will be considered to be in effect to limit council review of an agency action listed in §505.11(a) of this title provided:

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

§505.24. Pre-Certification Review of Draft Rules or Draft Rule Amendments.

(a) Prior to the publication in the *Texas Register* of a proposed rule or rule amendment listed in §505.11(b) of this title (relating to Actions and Rules Subject to the Coastal Management Program), an agency may seek pre-certification review by filing a Request for Pre-certification Review with the council secretary and attaching a copy of the draft rule or draft rule amendment and any information the agency wishes the council to consider. This request shall allow council members a minimum of 30 days to review and comment on the draft rule or rule amendment.

(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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TRD-200601850

Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

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For further information, please call: (512) 305-8598

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SUBCHAPTER C. CONSISTENCY AND
COUNCIL REVIEW OF PROPOSED STATE
AGENCY ACTIONS

31 TAC §§505.32, 505.36, 505.37

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new information or changed conditions may warrant; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the Council, by rule, to establish a process by which an agency may submit rules and rule amendments to the Council for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§505.32. Requirements for Referral of a Proposed Agency Action.

(a) (No change.)

(b) If consistency review thresholds are in effect under §505.26 of this title (relating to ~~Council Review and~~ Approval of Thresholds for Referral), the council may not review a proposed action for consistency with the CMP goals and policies unless the requirements of subsection (a) of this section are satisfied and:

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

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

§505.36. Standard of Council Review of a Proposed Agency Action.

(a) (No change.)

(b) Following certification of an agency's rules as consistent with the CMP goals and policies pursuant to Subchapter B of this chapter:

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

(3) any thresholds for referral approved pursuant to §505.26 of this title (relating to ~~Council Review and~~ Approval of Thresholds for Referral) shall become operative and limit the council's authority to review individual proposed actions of an agency as provided in §505.32 of this title (relating to Requirements for Referral of a Proposed Agency Action).

§505.37. Activities Pending Council Review of a Proposed Agency Action.

Pending council review of an individual agency proposed action, no person may conduct activities authorized by the agency action that would irreparably alter or damage the CNRA identified in the applicable policy, except as otherwise provided by the Texas Administrative Procedure Act, Government Code §2001.054.

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 March 28, 2006.

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Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

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For further information, please call: (512) 305-8598



SUBCHAPTER D. COUNCIL ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §505.50

The amendments are proposed under Texas Natural Resources Code, Chapter 33, including §33.051, which authorizes the Council and the Texas General Land Office to perform the duties provided in Chapter 33, Subchapter C; §33.052, which authorizes the commissioner to develop a continuing comprehensive CMP; §33.053, which sets out the elements of the CMP, including a description of the organizational structure for implementing and administering the CMP; §33.054, which allows the commissioner to review and amend the CMP as new information or changed conditions may warrant; §33.204, which authorizes the Council to adopt goals and policies of the CMP by rule; and §33.2052, which authorizes the Council, by rule, to establish a process by which an agency may submit rules and rule amendments to the Council for review and certification for consistency with the goals and policies of the CMP.

The proposed amendments are necessary to implement Texas Natural Resources Code, Chapter 33, Subchapters C and F.

§505.50. General Plans.

General plans include any comprehensive statement in words, maps, illustrations, or other media issued by a state agency or political subdivision that recommends, proposes, evaluates, or formulates policies or future courses of action involving activities affecting coastal natural resource areas. For purposes of this section, general plans include, but are not limited to, the following:

(1) (No change.)

~~{(2) State Coastal Discharge Contingency Plan (Texas Natural Resources Code, §40.053);}~~

(2) ~~[(3)]~~ State Oil and Hazardous Substance Spill Contingency Plan (Texas Water Code, Chapter 26, Subchapter G);

(3) ~~[(4)]~~ State-Owned Coastal Wetlands Conservation Plan (Texas Parks and Wildlife Code, §14.002(a));

(4) ~~[(5)]~~ State Water Quality Management Plan (Texas Water Code, §26.012);

(5) ~~[(6)]~~ Artificial Reef Plan (Texas Parks and Wildlife Code, §89.021);

(6) ~~[(7)]~~ State Water Plan (Texas Water Code, §16.051);

(7) ~~[(8)]~~ Long-Range Dredging and Disposal Plan (Texas Parks and Wildlife Code, §14.002(b)(8)); and

(8) ~~[(9)]~~ Regional Solid Waste Management Plans (Texas Health and Safety Code, §363.062).

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 March 28, 2006.

TRD-200601852

Larry L. Laine

Chief Clerk, General Land Office

Coastal Coordination Council

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 305-8598



TITLE 34. PUBLIC FINANCE

PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

CHAPTER 41. HEALTH CARE AND INSURANCE PROGRAMS

SUBCHAPTER A. RETIREE HEALTH CARE BENEFITS (TRS-CARE)

34 TAC §41.10

The Board of Trustees ("Board") of the Teacher Retirement System of Texas ("TRS") proposes amendments to §41.10, relating to eligibility to enroll in the health benefits program (TRS-Care) under the Texas Public School Retired Employees Group Benefits Act. The amendments are proposed to correct a clerical error in the omission of paragraphs (1) through (6) under subsection (b) of §41.10 from the *Texas Administrative Code*. The omitted paragraphs specify the types of service credit that service retirees who retired before September 1, 2004 can use to qualify for enrollment eligibility in TRS-Care.

The proposed amendments restoring the omitted paragraphs are not substantive. In December 2005, the Board adopted substantive amendments to §41.10 that became effective February 9, 2006. These adopted amendments did not involve subsection (b) of §41.10 or any of the paragraphs under that subsection. As published in the *Texas Administrative Code*, however,

paragraphs (1) through (6) of subsection (b) of §41.10 were inadvertently omitted.

Tony C. Galaviz, TRS Chief Financial Officer, estimates that, for each year of the first five years that proposed amendments to §41.10 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 amended rule.

For each year of the first five years that the proposed amendments will be in effect, Mr. Galaviz has determined that the public benefit will be to correct the official text of §41.10 as it appears in the *Texas Administrative Code*. There will be no economic costs to persons required to comply with the amended rule as proposed. There will be no effect on a local economy because of the proposal, and therefore no local employment impact statement is required under §2001.022, Government Code. Further, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed amended rule.

Comments may be submitted in writing to Ronnie Jung, Executive Director, 1000 Red River Street, Austin, Texas 78701-2698. To be considered, written comments must be received by TRS no later than April 28, 2006.

Cross-reference to Statute: Chapter 1575, Insurance Code, which provides for the establishment and administration of the retirees' health benefits program (TRS-Care) and §38 of SB 1691, which amends §1575.004, Insurance Code, relating to the definition of a retiree.

Statutory Authority: §1575.052, Insurance Code, which authorizes the Board to adopt rules it considers necessary to implement and administer the TRS-Care program.

§41.10. Eligibility to Enroll in the Health Benefits Program Under the Texas Public School Retired Employees Group Benefits Act.

(a) If they meet the applicable requirements set out in this section, the following persons are eligible to enroll in the health benefits program under the Texas Public School Retired Employees Group Benefits Act (TRS-Care):

(1) service retirees of the Teacher Retirement System of Texas (TRS) who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551), or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(2) disability retirees of TRS who are not eligible to enroll as an employee or retiree in a plan provided under the Texas Employees Group Benefits Act (Insurance Code, Chapter 1551) or under the State University Employees Uniform Insurance Benefits Act (Insurance Code, Chapter 1601);

(3) surviving spouses of deceased service or disability retirees of TRS or of certain deceased active TRS members; and

(4) surviving dependent children of deceased service or disability retirees of TRS or of certain deceased active TRS members.

(b) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires before September 1, 2004 must have 10 years of service credit for actual service in the public schools of Texas, which can include only the following types of service credit:

(1) service credit for actual service in Texas public schools;

(2) service credit transferred to TRS from the Employees Retirement System of Texas (ERS);

(3) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(4) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(5) service credit for substitute service that the member has purchased and that has been credited to the member's account; and

(6) up to five years of out-of-state service credit that the member has purchased and that has been credited to the member's account.

(c) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2005 must meet the following requirements:

(1) at the time of retirement, a member has at least 10 years of service credit in the system, which can include only the following types of service credit:

(A) service credit for actual service in Texas public schools;

(B) service credit transferred to TRS from ERS;

(C) withdrawn service credit that the member has purchased and that has been credited to the member's account;

(D) service credit for unreported service that the member has purchased and that has been credited to the member's account;

(E) service credit for substitute service that the member has purchased and that has been credited to the member's account;

(F) up to five years of military service credit or re-employed veteran's (USERRA) service credit that the member has purchased and that has been credited to the member's account; and

(2) at the time of retirement, a member either:

(A) meets the Rule of 80, which is determined by having the sum of the individual's age and the amount of service credit in the retirement system, including all service credit purchased for equivalent or special service credit, equal or exceed 80, regardless of whether the member had a reduction in the retirement annuity for early age retirement; or

(B) has 30 or more years of service credit in the retirement system, including all service credit purchased for equivalent or special service credit.

(d) To be eligible to enroll in TRS-Care under this section, a service retiree of TRS who retires after September 1, 2004, but on or before August 31, 2005, must meet, on September 1, 2005, either of the following requirements:

(1) the 10-year service credit requirement of subsection (b) of this section; or

(2) the 10-year service credit requirement of subsection (c)(1) of this section and one of the requirements of subsection (c)(2) of this section.

(e) Any service retiree of TRS who is enrolled in TRS-Care on August 31, 2005, maintains eligibility for TRS-Care on or after September 1, 2005, unless and until an applicable rule or law prohibits continued enrollment in TRS-Care.

(f) For purposes of this section, "public school" is an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(g) A disability retiree with less than 10 years of service credit will not be eligible for coverage under TRS-Care when disability retirement benefits terminate.

(h) A surviving spouse of a deceased TRS service or disability retiree is eligible to enroll in TRS-Care if the deceased TRS service or disability retiree was enrolled, eligible to enroll, or would have been eligible to enroll in TRS-Care at the time of the retiree's death.

(i) A surviving spouse of a deceased active TRS member is eligible to enroll in TRS-Care if the deceased active member:

- (1) died on or after September 1, 1986;
- (2) had 10 or more years of actual service credit in TRS;

and

(3) made contributions to TRS-Care at the member's last place of employment in public education in Texas.

(j) A surviving dependent child of a deceased TRS retiree or deceased active TRS member is eligible to enroll in TRS-Care if the deceased retiree met the conditions of subsection (h) of this section or the deceased active member met the conditions of subsection (i) of this section. A surviving dependent child must also meet the following conditions:

(1) the child must be a natural or adopted child of the deceased retiree or member or must be a foster child, stepchild, or other

child who lived in a parent-child relationship with the retiree or member; and

(2) the child must be unmarried and under age 25 or must be age 25 or older but still unmarried and fully disabled to such an extent as to have been dependent upon the deceased retiree or active member for support at the time of the retiree's or active member's death, as determined by TRS as trustee and as described by Insurance Code, §1575.003.

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 March 23, 2006.

TRD-200601788

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Earliest possible date of adoption: May 7, 2006

For further information, please call: (512) 542-6438



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

TRD-200601807



PART 17. STATE PENSION REVIEW BOARD

40 TAC §605.3

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the State Pension Review board has been automatically withdrawn. The amended section as proposed appeared in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6037).

CHAPTER 605. STANDARDIZED FORM

40 TAC §605.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed amended section, submitted by the State Pension Review Board has been automatically withdrawn. The amended section as proposed appeared in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6036).

Filed with the Office of the Secretary of State on March 24, 2006.

TRD-200601808



Filed with the Office of the Secretary of State on March 24, 2006.

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER C. VOTING SYSTEMS

The Office of the Secretary of State, Elections Division, adopts the repeal of §§81.44, 81.54, and 81.56, concerning Voting Systems. Amendments to §81.55, concerning accessible voting systems, are adopted without change to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 949).

No comments were received concerning the amendment or the repeal of these rules.

Section 81.44 concerns punch-card ballot voting systems. Pursuant to the passage of House Bill 1549 of the 78th Legislative session, the use of a punch-card ballot or similar form of tabulating card is now prohibited.

Section 81.54 concerns electronic lever-type machines, and now is incompatible with current precinct counters.

Some provisions of §81.55 no longer apply after the repeal of §122.0011 of the Texas Election Code, January 1, 2006. Accessibility in voting systems has been established by federal law in the Help America Vote Act of 2002 (H.R. 3295), which would preempt state law regarding voter accessibility.

Section 81.56 concerns authorized alternative methods of providing a secret ballot to persons with physical disabilities. The repeal of §122.0011 of the Texas Election Code on January 1, 2006, renders §81.56 obsolete. Accessibility in voting systems has been established by federal law in the Help America Vote Act of 2002 (H.R. 3295), which would preempt state law regarding voter accessibility.

1 TAC §§81.44, 81.54, 81.56

The repeals are 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.

The repeals implement the Texas Election Code §31.003.

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 March 20, 2006.

TRD-200601717

Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: April 9, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 463-5650



1 TAC §81.55

The amendments are 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.

The amendments implement the Texas Election Code §31.003.

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 March 20, 2006.

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Ann McGeehan

Director of Elections

Office of the Secretary of State

Effective date: April 9, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 463-5650



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 50. 2006 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §50.9

The Texas Department of Housing and Community Affairs adopts an amendment to §50.9(i)(6), regarding the Level of Community Support from State Elected Officials as part of the 2006 Housing Tax Credit Program Qualified Allocation Plan and Rules, without changes to the proposed text as published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 787).

The amendment is necessary to provide a correction of a date that will ensure state elected officials a full ability to participate in the scoring process of Housing Tax Credit applications.

No comments were received regarding the proposal.

The amendment is adopted under the Texas Government Code, Chapter 2306; and the Internal Revenue Code of 1986, §42, as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

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

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 March 27, 2006.

TRD-200601815

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 16, 2006

Proposal publication date: February 10, 2006

For further information, please call: (512) 475-4595



CHAPTER 53. HOME INVESTMENT PARTNERSHIP PROGRAM

10 TAC §§53.53, 53.54, 53.57, 53.59, 53.61 - 53.63

The Texas Department of Housing and Community Affairs (the Department) adopts the amendments to §§53.53, 53.54, 53.57, 53.59, and new §§53.61-53.63, regarding the HOME Investment Partnerships Program. Sections 53.53, 53.57, 53.59 and 53.61-53.63 are adopted with changes. Section 53.54 is adopted without changes and will not be republished. The amendments and new sections were adopted by The Texas Department of Housing and Community Affairs' Board of Directors at the February 15, 2006 Board Meeting. The amendments and new sections were published in the *Texas Register* (30 TexReg 8768) on December 30, 2005. These sections are adopted in order to provide clarification on the threshold, scoring, and selection criteria for single Family HOME Program Activities.

Round table discussions were held in Austin and Longview to receive input and public comment on the proposed amendments and new sections to the rule. In addition to publishing the document in the Texas Register, a copy of the proposed amendments and new sections to the rules were published on the Department's web site and made available upon request to the general public.

The scope of public comment concerning the amendments and new sections of the HOME Rules pertains to the following sections:

§53.53 (l) Applicant requirements

No comment received

Department response: Staff recommends no change to the proposed section.

Board Response: Accepted Department's recommendation.

§53.54. Application Limitations (2, 3, 4, 6, 7, 10, 12, 13, 16, 18, 23,32, 33, 34, 35, 38, 41, 42, 46, 48, 49, 51, 53, 54, 55, 56, 57, 59, 60, 61, 62, 63,64, 65, 66, 67, 68, 69, 70)

Comments expressed opposition to reducing the award amount. Comments stated that the reduction would significantly decrease the number of families served under the HOME Program, and is not reasonable. Currently, \$500,000 may assist 9 households, and \$275,000 may assist 5 households. One comment opposing this proposal stated that the amount of funding is too low for the experienced administrator to maintain their normal level of production.

Department Response: Staff recommends no changes to proposed section. With regards to comments that fewer households would be assisted, staff agrees that the number of households assisted under a \$275,000 contract may be up to 5 households. However, under this change, more communities will be funded and the total number of households assisted within a region will potentially remain the same.

Board Response: Accepted Department's recommendation.

§53.54. Application Limitations (44)

Comment addressed the Homebuyer Assistance activity, and states that HBA is not over subscribed, and that the proposed change would drastically reduce the number of homebuyers assisted, especially if an organization's service area covers several counties. Reducing the contract award amount will hinder the HBA program.

Department Response: Staff recommends no change to the proposed section.

Board Response: Accepted Department's recommendation with the exception of the maximum contract award amount for a Homebuyer Assistance applicant. The Board included that if a Homebuyer Assistance Applicant service area includes more than one county within a Uniform State Service Region, the maximum award amount cannot exceed \$500,000.

§53.54. Application Limitations. (2, 4, 5, 6, 7, 12, 14, 16, 18, 32, 33, 34, 35, 36, 41, 42, 47, 50, 51, 52, 53 54, 56, 57, 58, 59, 62, 63, 65, 68, 69)

Comments stated that reducing the contract terms is not a viable option and stated that currently Administrators are forced to request a 6-month extension to complete projects, due to the paperwork involved.

Department Response: Staff recommends no change to the proposed section, considering the recommended decrease in maximum contract award, 18 month contracts is a reasonable contract term to complete a minimum of five units.

Board Response: Accepted Department's recommendation.

§53.57. Distribution of Funds (2, 3, 4, 6, 7, 9, 10, 24, 28, 29, 32, 33, 34, 35, 39, 41, 42, 43, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70)

Comments received in support of a biennial funding cycle or a double funding cycle noted that it would expedite the funding process, allow more communities to receive funding, and prevent some cities from being funded two years in a row.

Department Response: Staff recommends applications submitted for Single Family non-development activities under a competitive application cycle may be accepted, reviewed, and recommended for an award, on an annual or biennial funding cycle.

Board Response: Accepted Department's recommendation.

§53.59. Process for Award (1, 2, 3, 4, 5, 6, 7, 10, 11, 13, 14, 15, 28, 29, 32, 33, 35, 36, 37, 38, 42, 46, 47, 48, 49, 51, 52, 53, 54, 55, 56, 57, 58, 59, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71)

Several comments received requested a "weighted lottery" method stating that a weighted lottery method would be the best and most reasonable method if it is decided by the Board that funds will be allocated utilizing a lottery method. Comments received stated that a weighted lottery method will encourage a larger applicant pool, provide a broader chance for distributing funds based on multiple criteria. Several comments received opposed the lottery method of fund distribution stated that grant consultants will submit a larger number of applications to increase the probability of their cities getting funded, cities with high AHN scores will not have to submit match to reach the 66 point threshold. The competitive method of awarding funds would be fair if the State would correct the methodology it uses for calculating the AHN score and if the rules for match were stricter so that cities could not creatively inflate their match to increase their scores. One comment stated that the Department has not conducted adequate research on the impact of a lottery system, since "chance" is a large element of any lottery, it does not ensure critical affordable housing funds will go to the areas of greatest need. One comment stated that a competitive cycle with a realistic affordable housing need (AHN) score would be preferable to a lottery system.

Department Response: Staff appreciates the positive feedback regarding a lottery method for awarding HOME funds. Although a weighted lottery system was not proposed in the rules, many comments received refer to a weighted lottery. Staff has conducted preliminary research of a lottery method as it relates to awarding HOME funds. If a lottery method of awarding HOME funds is adopted by the Board, staff has proposed weighting factors such as the AHN score, whether an applicant has ever been previously funded and the population size of the community served. Staff will implement the method of awarding HOME funds that is approved by the Board.

Board Response: Board voted for the competitive method of awarding HOME funds.

§53.61. Threshold and Selection Criteria for Single Family non-Development Activities. (39,23, 8, 9, 34, 24, 41, 60)

Comments received requested the Department re-evaluate the calculation of the AHN scores. Comments stated that AHN scores in several cities do not accurately reflect the actual need of the community. One comment requested the Department consider poverty, per capita income, local unemployment, and/or other community distress factors in the scoring system. One comment stated that all geographic areas of the State have need, and the available funding will not allow them to address all of their needs. Suggestion made to not triple the AHN score. One comment requested that the Department eliminate the Urban/Ex-Urban and the AHN score.

Department Response: Staff appreciates the concerns regarding the AHN score. The AHN score serves as a measure of the general level of affordable housing need in an area. The AHN component utilized for scoring applications of the HOME Program was approved by the Board on November 10, 2005. If the Board adopts a competitive methodology, staff recommends not multiplying the AHN score by a factor of three. Points will be assigned in a range from 1-7 depending upon the number a com-

munity received for their 2006 HOME Affordable Housing Needs Score (AHNS).

Board Response: Accepted Department's recommendation.

General: Previous Award and Past Performance (12, 18) Comment suggesting that the Department implement a system whereby negative past performance can be forgiven after a certain period of time has elapsed. A time period of seven years was suggested.

Department Response: Staff appreciates the concerns, and concurs that a cut-off date be established so that an applicant will not continue to be penalized for unsatisfactory past performance which may have occurred years earlier. Staff recommends that Unsatisfactory past performance on any contract will be forgiven if 2 years from the application deadline date has elapsed. In cases where entities have been funded for multiple years, the most recent award will be reviewed for performance.

Board Response: Accepted Department's Recommendation

General: Match (9, 16, 39, 24, 26, 50)

Comments received suggested requiring each applicant to provide a minimum of 12.5% match. A suggestion was made to remove match as a scoring criteria so that smaller communities do not have a disadvantage in the system. One comment supported the additional match points for population and views it as a better opportunity for smaller communities. One comment suggested the match burden should also be on Multi-Family because the biggest match burden is on the smallest communities.

Department Response: Match is a federal requirement under the HOME final Rule at 24 CFR 92.218. HUD match requirement is twenty-five percent. However, Texas met HUD requirements for a fiscal distressed State; therefore, the HUD match requirement has been reduced to 12.5%. The match scoring criteria has been modified to allow small communities the opportunity to provide match and still be competitive; by awarding additional points based on population size. Staff recommends match remain in the scoring criteria.

Board Response: Accepted Department's recommendation.

General: Serving Persons with Disabilities (20, 45)

Comment from United Cerebral Palsy of Texas (UCP) states that TDHCA has encouraged the development of some housing that meets the needs of people with disabilities; however, additional efforts are needed. The 2006 Consolidated Plan states that a minimum of 5% of the annual HOME Program funds will be allocated to serve persons with disabilities. In order to target services in all regions and activities to serve the housing needs of people with disabilities, a recommendation was made that all Owner Occupied Housing Assistance, Homebuyer Assistance, and Tenant Based Rental Assistance awards target at least 15% of the total number of units to Persons who meet the definition of Persons with Disabilities.

Department Response: Staff appreciates the compliments related to the Department's efforts to serve persons with disabilities. In order to be in compliance with §2306.111(c) of the Texas Government Code and the Consolidated Plan, Staff recommends that applicants must target 5% of the total units contractually obligated to persons who meet the definition of persons with disabilities and document how the beneficiaries will be identified and how the applicant will work with the disability community. Staff also proposes this rule change be specific to the Owner Occupied Housing Assistance (OCC) and Ten-

ant Based Rental Assistance (TBRA) Programs. OCC applications are generally funded in every uniform state service region, thereby assuring the availability of the program statewide. Historically the TBRA Program has served a population of persons with disabilities. A direct HOME award of \$500,000 is made by the Department to the Home of Your Own Program on an annual basis for Homebuyer Assistance and/or Homebuyer Assistance with Rehabilitation.

Board Response: Board Accepted Department's recommendation.

§53.62. Program Administration

Comment was received requesting that the environmental clearance requirement be clarified. (17)

Department Response: Staff has made an administrative change to clarify the environmental clearance requirement as stated in §53.62(g)

Board Response: Accepted Department's recommendation.

List of Commenters

Number 1: Presidio County Judge

Number 2: Mayor, City of Gregory

Number 3: Mayor, City of Eustace

Number 4: Mayor, City of Hallsville

Number 5: City Manager, City of Trinity

Number 6: City Secretary, City of Miles

Number 7: City Secretary, City of Elkhart

Number 8: City Manager, City of Sulphur Springs

Number 9: Lucas Consulting

Number 10: City Secretary, City of Merkel

Number 11: Austin County Judge

Number 12: Texas Association of Community Development Corporations

Number 13: Jeff Davis County Judge

Number 14: Kleberg County Judge

Number 15: City Secretary, City of Odem

Number 16: Vice President, GrantWorks Consultants

Number 17: President, GrantWorks Consultants

Number 18: City of Huntsville

Number 19: Kebrow & Associates-round table verbal comments

Number 20: United Cerebral Palsy of Texas

Number 21: Gary Traylor & Associates round table verbal comments

Number 22: City of DeLeon round table verbal comments

Number 23: Hunter & Hunter

Number 24: Amazing Grants, Inc.

Number 25: City Clerk, City of Linden round table verbal comments

Number 26: City Administrator, City of West Tawakoni round table verbal comments

Number 27: Housing Services, Inc. Consultant round table verbal comments

Number 28: Raymond K. Van & Assoc. Consultant round table verbal comments

Number 29: Raymond K. Van & Assoc. Consultant round table verbal comments

Number 30: GrantWorks, Inc. Dallas Office, Consultants round table verbal comments

Number 31: GrantWorks, Inc., Rusk Office, Consultants round table verbal comments

Number 32: Haskell County Judge

Number 33: Mayor, City of Barry

Number 34: Langford Community Management Services

Number 35: City Manager, City of Rusk

Number 36: CityManager, City of Trinity

Number 37: Mayor, City of Josephine

Number 38: Mayor, City of Farmersville

Number 39: Kerbow and Associates consulting, Inc.

Number 40: City of Midland

Number 41: City Manager, City of Flatonia

Number 42: Mayor, City of Orange Grove

Number 43: Resource Management & Consulting Co.

Number 44: Southeast Texas Housing Finance Corporation

Number 45: Chair, Disability Policy Consortium

Number 46: City Manager, City of Gainsville

Number 47: Mayor, City of Celeste

Number 48: Mills County Judge

Number 49: Mayor, City of Amherst

Number 50: Association of Rural Communities in Texas (ARCIT)

Number 51: Mayor, City of Bay City

Number 52: City Manager, City of Belton

Number 53: Brewster County Judge

Number 54: Grants Administrator, Brooks County

Number 55: Mayor, City of Carrizo Springs

Number 56: Mayor, City of el Cenizo

Number 57: Executive Director, Corrigan Housing Authority

Number 58: Interim City Manager, City of Devine

Number 59: Director of City Planning, City of Emory

Number 60: Mayor, City of Florence

Number 61: City Secretary, City of Goldsmith

Number 62: City Manager, City of Littlefield

Number 63: Mayor, City of Lone Oak

Number 64: Mayor, City of Mart

Number 65: City Manager, City of Monahans

Number 66: City of New Deal

- Number 67: City of San Saba
- Number 68: Mayor, City of Seadrift
- Number 69: Mayor, City of Tuscola
- Number 70: Wharton County Judge
- Number 71: City of Whiteface
- Number 72: State Senator, District 3

The amendments and new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

§53.53. Applicant Requirements.

(a) Eligible Applicant. The following organizations or entities are eligible to apply for HOME eligible activities:

- (1) nonprofit organizations;
- (2) CHDOs;
- (3) units of general local government;
- (4) for-profit entities and sole proprietors; and
- (5) public housing agencies.

(b) Ineligible Applicant: The following violations will cause an Applicant, and any applications they have submitted, to be ineligible:

- (1) previously funded Recipient(s) whose HOME funds have been partially or fully deobligated due to failure to meet contractual obligations during the 12 months prior to the current funding cycle;
- (2) applicants who have not satisfied all eligibility requirements described in subsection (g) of this section and the NOFA, and application guidelines to which they are responding, and for which Administrative Deficiencies were unresolved (relating to Applicant Requirements);
- (3) Applicants that have failed to make payment on any loans or fee commitments made with the Department;
- (4) applicants that have been otherwise barred by HUD and/or the Department;
- (5) applicant or developer, or their staff, that violate the state's revolving door policy; or
- (6) applicants that may be ineligible in accordance with those requirements at §50.5 of this title, excluding those requirements at §§50.5(a)(5) - (8), (10) and (11) of this Title.

(c) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. §50.5(b)(7) of this title applies to all communication with Board members. Communications with Department

employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(1) the communication must be restricted to technical or administrative matters directly affecting the Application;

(2) the communication must occur or be received on the premises of the Department during established business hours; and

(3) a record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication (§2306.1113).

(d) Noncompliance. Each application will be reviewed for its compliance history by the Department, consistent with Chapter 60 of this title. Applications found to be in Material Noncompliance, or otherwise violating the compliance rules of the Department, will be terminated.

(e) Rental Housing Development Site and Development Restrictions. Restrictions include all those items referred to in 24 CFR Part 92 of the HUD HOME program rules, and any additional items included in the NOFA for rental housing developments.

(f) Limitations on the Size of Developments. Developments involving new construction will be limited to 252 Units. These maximum Unit limitations also apply to those Developments which involve a combination of rehabilitation and new construction. Developments that consist solely of acquisition/rehabilitation or rehabilitation only may exceed the maximum Unit restrictions. The minimum number of units shall be 4 units.

(g) Eligibility requirements. An Applicant must satisfy each of the following requirements in order to be eligible to apply for HOME funding and as more fully described in the NOFA and application guidelines, when applicable:

(1) provide evidence of its ability to carry out the Program in the areas of financing, acquiring, rehabilitating, developing or managing affordable housing developments;

(2) demonstrate fiscal, programmatic, and contractual compliance on previously awarded Department contracts or loan agreements;

(3) submit any past due audit to the department in a satisfactory format on or before the application deadline, in accordance with §1.3(b) of this Title;

(4) demonstrate reasonable HOME Program expenditure and project performance on contract(s), as determined through program monitoring; and

(5) demonstrate satisfactory performance otherwise required by the Department and set out in the application guidelines.

(h) If indicated by the Department, Recipients must comply with all requirements to utilize the Department's website to provide necessary data to the Department.

(i) For funds being used for Rental Housing Developments, the Recipient must establish a reserve account consistent with §2306.186, Texas Government Code, and as further described in §1.37 of this title.

(j) Public Notification. Applicants for Rental Development activities will be required to provide written notification to each of the following persons or entities 14 days prior to the submission of any

application package. Failure to provide written notifications 14 days prior to the submission of an application package at a minimum will cause an application to lose its "received by date" under open application cycles, or be terminated under competitive application cycles. Applicants must provide notifications to:

- (1) the executive officer and elected members of the governing board of the community where the development will be located. This includes municipal governing boards, city councils, and County governing boards;
 - (2) all neighborhood organizations whose defined boundaries include the location of the Development;
 - (3) executive officer and Board President of the school district that covers the location of the Development;
 - (4) residents of occupied housing units that may be rehabilitated, reconstructed or demolished; and
 - (5) the State Representative and State Senator whose district covers the location of the Development.
- (6) The notification letter must include, but not be limited to, the address of the development site, the number of units to be built or rehabilitated, the proposed rent and income levels to be served, and all other details required of the NOFA and Application Manual.

(k) An applicant shall provide certification that no person or entity that would benefit from the award of HOME funds has provided a source of match or has satisfied the applicant's cash reserve obligation or made promises in connection therewith.

(l) All contractors, consulting firms, and Administrators must sign an affidavit to attest that each request for payment of HOME funds is for the actual cost of providing a service and that the service does not violate any conflict of interest provisions.

§53.57. *Distribution of Funds.*

In accordance with 24 CFR §92.201(b)(1), the Department makes every effort to distribute HOME funds throughout the state according to the Department's assessment of the geographic distribution of housing needs, as identified in the Consolidated Plan. Funds shall also be allocated in accordance with §2306.111(d) and (g), Texas Government Code. The Department receives HOME funds for areas of the state which have not received Participating Jurisdiction (PJ) status from HUD. Section 2306.111(c) of the Texas Government Code requires the Department to award at least 95% of HOME Program funds to entities in nonparticipating jurisdictions. All funds not set aside under this section shall be used for the benefit of persons with disabilities who live in areas other than nonparticipating areas.

(1) CHDO Set-Aside. In accordance with 24 CFR §92.300, not less than 15% of the HOME allocation will be set aside by the Department for CHDO eligible activities. CHDO set-aside projects are owned, developed, or sponsored by the CHDO, and result in the development of rental units or homeownership. Development includes projects that have a construction component, either in the form of new construction or the rehabilitation of existing units. If an insufficient number of qualified applications are received by the deadline, the Department reserves the right to hold additional competitions in order to meet federal set-aside requirements.

(2) Special Needs: In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), with a documented history of working with special needs populations and with relevant housing related experience. Applicants may submit applications for eligible activities, as outlined in the Consolidated Plan. If an insufficient number of qualified applications are received,

the Department reserves the right to transfer funds remaining in accordance with paragraph (6) of this subsection regarding Redistribution.

(3) Other Set-Asides. In accordance with the Consolidated Plan, funds will be available to eligible Applicants, as defined in §53.52(a) of this title (relating to Applicant Requirements), for those eligible activities outlined under Set-Asides.

(4) Administrative Funds. In accordance with 24 CFR §92.207 up to 10% of the Department's HOME allocation plus 10% of any program income received may be used for eligible and reasonable planning and administrative costs. Administrative and planning costs may be incurred by the Department, State Recipient, Subrecipient, nonprofit entity, or CHDO.

(5) CHDO Operating Expenses. In accordance with 24 CFR §92.208 up to 5% of the Department's HOME allocation may be used for the operating expenses of CHDOs. The Department may award CHDO Operating Expenses in conjunction with the award of CHDO Funds, or through a separate application cycle not tied to a specific Activity.

(6) Redistribution. In an effort to commit HOME funds in a timely manner, the Department may reallocate funds set-aside in accordance with the Consolidated Plan, at its own discretion, to other regions or activities if:

- (A) the Department fails to receive a sufficient number of applications from a particular region or Activity;
- (B) no applications are submitted for a region; or
- (C) applications for a region or Activity do not meet eligibility requirements or minimum threshold scores (when applicable), or are financially infeasible as applicable.

(7) Marginal Applications. When the remainder of the allocation within a region is insufficient to completely fund the next ranked application in the region or Activity, it is within the discretion of the Department to:

- (A) fund the next ranked application for the partial amount, reducing the scope of the application proportionally;
- (B) make necessary adjustments to fully fund the application; or
- (C) transfer the remaining funds to other regions or activities.

(8) HOME Demonstration Fund. The Department, with Board approval, may reserve HOME funds to combine and coordinate with other programs administered by the Department as outlined in the Consolidated Plan, or for housing activities the Department is permitted to fund under applicable law.

(9) Single Family Non-Development Applications. Applications submitted for Single Family non-development Activities under a Competitive Application Cycle may be accepted, reviewed, and recommended for an award, on an annual or biennial funding cycle.

§53.59. *Process for Awards*

(a) The Department will publish a NOFA in the Texas Register and on the Department's website. The NOFA may be published as either an Open or Competitive Application Cycle. The NOFA will establish and define the terms and conditions for the submission of applications, and may set a deadline for receiving applications under a Competitive Application Cycle. The NOFA will also indicate the approximate amount of available funds.

(b) Selection Procedures for non-development Activities such as, Owner Occupied Housing Assistance, Homebuyer Assistance, Tenant-Based Rental Assistance, and Contract for Deed:

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92 and in these rules. Applications that do not comply with such requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Applications for funds not subject to the Regional Allocation Formula may be awarded on a first-come, first-serve basis. Applicants may also receive a partial recommendation for funding.

(3) Applications subject to the Regional Allocation Formula must meet or exceed a minimum score determined by Department's staff for the respective activities to be considered for funding.

(4) Applicants will be notified of their score in writing no later than seven calendar days after all applications received have been scored. Should an Activity not have enough qualified Applicants, the funds will be redirected to the next Activity and geography type in the region that had a higher number of qualified applicants. If sufficient applications are not received in a region, any remaining funds will be redirected to the region with the highest number of qualified applicants. Applicants may also receive a partial recommendation for funding. A minimum award amount may be established to ensure feasibility.

(5) Subsequently, recommendations for funding will be made available on the Department's website at least seven calendar days prior to the Board meeting at which the awards may be approved.

(6) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for each Activity.

(7) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

(c) Selection Procedures for Development activities, such as, Single Family Housing Development and Rental Housing Development.

(1) Applications must comply with all applicable HOME requirements or regulations established in 24 CFR Part 92, and in these rules. Applications that do not comply with HOME requirements are disqualified. Disqualified Applicants are notified in writing.

(2) Housing Developments activities will undergo a review in accordance with §53.58 of this title governing open and competitive application cycles, as appropriate, and as prescribed in the NOFA, and application guidelines.

(3) A site visit will be conducted as part of the HOME Program Development feasibility review. Applicants must receive recommendation for approval from the Department to be considered for HOME funding by the Board.

(4) In event of a tie between two or more Applicants, the Department reserves the right to determine which application will receive a recommendation for funding. This decision will be based on housing need factors and feasibility of the proposed project identified in the application. Tied Applicants may also receive a partial recommendation for funding.

(5) Each Development application will be notified of its score in writing no later than seven calendar days after all applications received have been scored. Subsequently, the recommendation regarding their application will be made available on the Department's web site at least seven calendar days prior to the Board meeting at which the awards may be approved.

(6) Applications receiving a favorable staff recommendation are then presented to the Board for approval, pending the availability of HOME funds for such Activity.

(7) Even after Board approval for the award of HOME Development Activity funds may be conditional upon a completed loan closing and any other conditions deemed necessary by the Department.

(8) Applicants may appeal staff's decision regarding their applications in accordance with §1.7 of this title.

§53.61. *Threshold and Selection Criteria for Single Family Non-development Activities.*

(a) Applications must meet the minimum threshold score in order to be considered eligible to receive a funding recommendation:

- (1) Owner Occupied Housing Assistance, 65 Points.
- (2) Homebuyer Assistance, 55 points.
- (3) Tenant Based Rental Assistance, 56 points
- (4) Contract for Deed, 50 points.

(b) The following selection criteria point breakdown will be utilized when scoring applications:

(1) Affordable Housing Needs Score. Points range from 1 to 7, as published by the Department.

(2) Income Targeting: Points will be awarded based on the percentage of total units targeted to specific income levels. Counties whose median income is at or below the statewide median income will receive the same number of points for income targeting when serving households at or below 50% AMFI as those counties exceeding the statewide median income targeting households at or below 30% AMFI.

(A) For Owner Occupied Housing Assistance and Tenant Based Rental Assistance:

- (i) 0% to 19.99% of units at 60% AMFI, 0 points
- (ii) 20% to 39.99% of units at 60% AMFI, 2 points
- (iii) 40% to 59.99% of units at 60% AMFI, 4 points
- (iv) 60% to 79.99% of units at 60% AMFI, 6 points
- (v) 80% to 99.99% of units at 60% AMFI, 8 points
- (vi) 100% of units at 60% AMFI, 10 points
- (vii) 0% to 19.99% of units at 30% AMFI, an additional 0 points
- (viii) 20% to 39.99% of units at 30% AMFI, an additional 2 points
- (ix) 40% to 59.99% of units at 30% AMFI, an additional 4 points
- (x) 60% to 79.99% of units at 30% AMFI, an additional 6 points;
- (xi) 80% to 99.99% of units at 30% AMFI, an additional 8 points;
- (xii) 100% of units at 30% AMFI, and additional 10 points.

(B) For Homebuyer Assistance and Contract for Deed:

- (i) 0% to 19.99% of units at 80% AMFI, 5 points;
- (ii) 20% to 39.99% of units at 80% AMFI, 4 points;
- (iii) 40% to 59.99% of units at 80% AMFI, 3 points;

- (iv) 60% to 79.99% of units at 80% AMFI, 2 points;
- (v) 80% to 100% of units at 80% AMFI, 1 point;
- (vi) 0% to 9.99% of units at 60% AMFI, an additional 2 points;
- (vii) 10% to 19.99% of units at 60% AMFI, an additional 4 points;
- (viii) 20% to 29.99% of units at 60% AMFI, an additional 6 points;
- (ix) 30% to 39.99% of units at 60% AMFI, an additional 8 points;
- (x) 40% to 49.99% of units at 60% AMFI, an additional 10 points;
- (xi) 50% to 59.99% of units at 60% AMFI, an additional 11 points;
- (xii) 60% to 69.99% of units at 60% AMFI, an additional 12 points;
- (xiii) 70% to 79.99% of units at 60% AMFI, an additional 13 points;
- (xiv) 80% to 89.99% of units at 60% AMFI, an additional 14 points;
- (xv) 90% to 100% of units at 60% AMFI, an additional 15 points.

(3) Previous Award and Past Performance: Applicants will receive points for having received an award and performed in accordance with their contracts and Department rules. If unsatisfactory performance exists on any prior award regardless of set aside or activity, a score of zero points will result. In cases where entities have been funded for multiple years, the most recent award will be reviewed for performance. Unsatisfactory past performance on any contract will be forgiven if 2 years from the application deadline date has elapsed.

(A) Applicants applying for Owner Occupied Housing Assistance:

- (i) Applicant has never received a HOME Owner Occupied Housing Assistance award, 20 points; or
- (ii) Applicant has received a HOME award prior to 2002 and funds are 100% committed, drawn and programmatically closed based on the number of units contractually obligated, by application deadline date, 17 points; or
- (iii) Applicant received a HOME award in 2002-2003 and funds are 100% committed and drawn based on the number of units contractually obligated, by application deadline date, 14 points; or
- (iv) Applicant received a HOME award in 2004, and funds are 100% committed and 50% drawn by application deadline date, 11 points; or
- (v) Applicant received a HOME award during 2005 and a Contract Environmental Clearance completed by application deadline date, 8 points.

(B) Applicants applying for all other Single Family non-development Activities:

- (i) Applicant has never received a HOME award, 20 points; or
- (ii) Applicant has received a HOME award prior to 2002 and is 100% committed, drawn and programmatically closed

based on the number of units contractually obligated, by application deadline date, 17 points; or

(iii) Applicant received a HOME award in 2002-2003 and funds are 100% committed and drawn based on number of units contractually obligated, by application deadline date, 14 points; or

(iv) Applicant received a HOME award in 2004 and funds are 75% committed and 50% drawn by application deadline date, 11 points; or

(v) Applicant received a HOME award during 2005 and a Contract Environmental Clearance completed by application deadline date, 8 points

(4) Match. Points will be awarded based on the dollar amount of eligible match as a percentage up to 25% of the requested project funds and the population size to be assisted.

(A) Percentage of Match per Project Request.

- (i) 0% to 12.49% of project request, 0 points;
- (ii) 12.5% to 15.5% of project request, 6 points;
- (iii) 15.51 to 18.5% of project request, 7 points;
- (iv) 18.51% to 21.5% of project request, 8 points;
- (v) 21.51% to 24.99% of project request, 9 points;
- (vi) 25% or greater of project request, 10 points.

(B) Applicants will only receive additional points for population size if providing 12.5% or greater in match.

- (i) Population size of 20,001 and above, 0 points;
- (ii) Population size of 10,001 to 20,000, 2 points;
- (iii) Population size of 5,001 to 10,000, 4 points;
- (iv) Population size of 3,001 to 5,000, 6 points;
- (v) Population size of 1,501 to 3,000, 8 points;
- (vi) Population size of 1 to 1,500, 10 points.

(5) Specific to Activity.

(A) Owner Occupied Housing Assistance and Contract for Deed. Local Contractor Letters of Interest. Points will be awarded based on a review of the letters (up to five letters) submitted from potential local contractors who indicate a willingness or availability to participate in an invitation for bid under the applicant's proposed application. To be considered for scoring, the letters must be on the contractor's letterhead, including: the contractor's full name; address, city, state, and zip code; signed and dated within three months of the application deadline. Maximum of 10 points.

(i) The contractor must be headquartered within the Uniform State Service Region proposed in the application, 2 points per letter for a maximum of 10 points.

(ii) If the contractors that submit letters are not headquartered within the Uniform State Service Region proposed in the application, the applicant must submit a notarized certification for each potential contractor outside of the Uniform State Service Region, 1 point per letter for a maximum of 5 points.

(B) Homebuyer Assistance. Description of Lender Products. Points will be awarded based on a review of the commitment letters (up to three letters) submitted from lenders interested in participating in the Applicant's proposed application. To be considered for scoring, the letters must be on the lender's letterhead, including: name

of lender; address, city, state, and zip code; and state the willingness and ability to make affordable loan products available for first-time homebuyers. Letters must be signed and dated within three months of application deadline. 2 points per letter for a maximum of 6 points.

(C) Level of Homebuyer Counseling for Homebuyer Assistance and Contract for Deed. Points will be awarded based on a review of the documentation submitted describing the level of homebuyer counseling proposed for potential homebuyers. Maximum of 4 points.

(i) Copy of curriculum, 2 points;

(ii) Copy of written agreement with service provider, 1 point;

(iii) Post purchase counseling to be provided, 1 point.

(D) Tenant Based Rental Assistance. Self Sufficiency Plan. Points will be awarded based on a review of the documentation submitted describing the Self Sufficiency Plan proposed for potential tenants. Maximum of 10 points.

(i) Description of the services to be provided, 4 points;

(ii) Training schedule, 4 points;

(iii) Copy of written agreement with service provider, 2 point.

(6) Citizen Forms. Points will be awarded based on the number of completed citizen forms as a percentage of the total units proposed. Maximum of 5 points.

(A) 0% to 9.99% of forms complete, 0 points;

(B) 10% to 29.99% of forms complete, 1 point;

(C) 30% to 49.99% of forms complete, 2 points;

(D) 50% to 69.99% of forms complete, 3 points;

(E) 70% to 89.99% of forms complete, 4 points;

(F) 90% to 100% of forms complete, 5 points.

(7) Financial Oversight. Submission of 2004 or 2005 "Independent Auditor's Report", 2 points.

(8) Serving Persons with Disabilities. Applicants applying for OCC and TBRA must propose targeting at least 5% of the number of units proposed, to persons who meet the definition of Persons with Disabilities. Applicant will include in the Applicant's Program Design, how the beneficiaries will be identified and how the applicant will work with the disability community. If Applicant is unable to document a person with a disability that meets the HOME eligible guidelines, the Applicant may request a waiver of this requirement from the Department.

§53.62. Program Administration.

(a) Agreement. Upon approval by the Board, Applicants receiving HOME funds shall enter into, execute, and deliver to the Department all written agreements between the Department and Recipient, including land use restriction agreements and compliance agreements as required by the Department.

(b) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to any HOME written agreement provided that:

(1) in the case of a modification or amendment to the dollar amount of the award, such modification or amendment does not increase the dollar amount by more than 25% of the original award or \$50,000, whichever is greater; and

(2) in the case of all other modifications or amendments, such modification or amendment does not, in the estimation of the Executive Director, significantly decrease the benefits to be received by the Department as a result of the award.

(3) Modifications and/or amendments that increase the dollar amount by more than 25% of the original award or \$50,000, whichever is greater; or significantly decrease the benefits to be received by the Department, in the estimation of the Executive Director, will be presented to the Board for approval.

(c) Deobligation.

(1) The Department reserves the right to deobligate funds in the following situations:

(A) Recipient has any unresolved compliance issues on existing or prior contracts with the Department;

(B) Recipient fails to set-up programs/projects or expend funds in a timely manner;

(C) Recipient defaults on any agreement by and between Recipient and the Department;

(D) Recipient misrepresents any facts to the Department during the HOME application process, award of contracts, or administration of any HOME contract;

(E) Recipient's inability to provide adequate financial support to administer the HOME contract or withdrawal of significant financial support;

(F) Recipient is not in compliance with 24 CFR Part 92, or these rules;

(G) Recipient declines funds; or

(H) Recipient fails to expend all funds awarded.

(2) The Department, with approval of the Board, may elect to reassign funds following the Deobligation Policy, adopted by the Board on January 17, 2002, in the order prioritized as follows:

(A) Successful appeals (as allowable under program rules and regulations);

(B) Disaster Relief (disaster declarations or documented extenuating circumstances such as imminent threat to health and safety);

(C) Special Needs;

(D) Colonias; or

(E) Other projects/uses as determined by the Executive Director and/or Board including the next year's funding cycle for each respective program.

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

(e) Additional Funds. In the event the Department receives additional funds from HUD, the Department, with Board approval, may elect to distribute funds to other Recipients.

(f) Accounting Requirements. Within 60 days following the conclusion of a contract issued by the Department the recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide full accounting of funds expended under the terms of a contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

(g) Department may terminate a contract in whole or in part. If Applicant has not achieved substantial progress in performance of a contract within six (6) months of the effective date of this contract, the contract will terminate. The Department will track substantial progress during the initial six (6) month period and throughout the contract term. Substantial progress in contract performance must be satisfactorily completed during the term of the contract as follows:

(1) Owner-Occupied Housing Assistance:

(A) 6 months, Contract Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 100% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(2) Homebuyer Assistance Activities:

(A) 6 months, Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 75% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(3) Tenant-Based Rental Assistance:

(A) 6 months, Contract Environmental Clearance must be complete;

(B) 12 months, 50% of funds must be committed, 25% of funds drawn, and 25% of match supplied;

(C) 18 months, 75% of funds must be committed, 50% of funds drawn, and 50% of matched supplied;

(D) 24 months, 100% of funds must be committed, 75% of funds drawn, and 75% of matched supplied;

(E) 30 months, 100% of funds must be committed, 100% of funds drawn, and 100% of matched supplied;

(4) Lower percentages, due to extenuating circumstances, may be allowed as approved by the Executive Director.

(5) Definitions and Terms. The following words and terms, when used in the subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Extenuating Circumstances--An event or set of incidents beyond the control of the Applicant.

(B) Committed--Funds budgeted to a household in the Department's central database and approved by the Department.

(C) Drawn--Funds approved by the Department for reimbursement.

§53.63. *Community Housing Development Organization (CHDO) Certification.*

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

(1) Applicant--A private nonprofit organization that has submitted a request for certification as a Community Housing Development Organization (CHDO) to the Department. An Applicant for the CHDO set aside must be a CHDO certified by the Department or as otherwise certified or designated as described in subsection (d) of this section.

(2) Articles of Incorporation--A document that sets forth the basic terms of a corporation's existence and is the official recognition of the corporation's existence. The documents must evidence that they have been filed with the Secretary of State.

(3) Bylaws--A rule or administrative provision adopted by a corporation for its internal governance. Bylaws are enacted apart from the articles of incorporation. Bylaws and amendments to bylaws must be formally adopted in the manner prescribed by the organization's articles or current bylaws by either the organization's board of directors or the organization's members, whoever has the authority to adopt and amend bylaws.

(4) Community--For urban areas, the term "community" is defined as one or several neighborhoods, a city, county, or metropolitan area. For rural areas, "community" is defined as one or several neighborhoods, a town, village, county, or multi-county area, but not the whole state.

(5) Low income--An annual income that does not exceed eighty percent (80%) of the median income for the area, with adjustments for family size, as defined by the U.S. Department of Housing and Urban Development (HUD).

(6) Memorandum of Understanding (MOU)--A written statement detailing the understanding between parties.

(7) Resolutions--Formal action by a corporate board of directors or other corporate body authorizing a particular act, transaction, or appointment. Resolutions must be in writing and state the specific action that was approved and adopted, the date the action was approved and adopted, and the signature of person or persons authorized to sign resolutions. Resolutions must be approved and adopted in accordance with the corporate bylaws.

(b) Application Procedures for Certification of CHDO. An Applicant requesting certification as a CHDO must submit an application for CHDO certification in a form prescribed by the Department. The CHDO application must be submitted with an application for HOME funding under the CHDO set-aside, and be recertified on an annual basis. The application must include documentation evidencing the requirements of this subsection.

(1) Applicant must have the following required legal status at the time of application to apply for certification as a CHDO:

(A) Organized as a private nonprofit organization under the Texas Nonprofit Corporation Act or other state not-for-profit/non-profit statute as evidenced by:

(i) Charter; or

(ii) Articles of Incorporation.

(B) The Applicant must be registered with the Secretary of State to do business in the State of Texas.

(C) No part of the private nonprofit organization's net earnings inure to the benefit of any member, founder, contributor, or individual, as evidenced by:

- (i) Charter; or
- (ii) Articles of Incorporation.

(D) The Applicant must have the following tax status:

(i) A current tax exemption ruling from the Internal Revenue Service (IRS) under Section 501(c)(3), a charitable, nonprofit corporation, or Section 501(c)(4), a community or civic organization, of the Internal Revenue Code of 1986, as evidenced by a certificate from the IRS that is dated 1986 or later. The exemption ruling must be effective on the date of the application and must continue to be effective while certified as a CHDO; or

(ii) Classification as a subordinate of a central organization non-profit under the Internal Revenue Code, as evidenced by a current group exemption letter, that is dated 1986 or later, from the IRS that includes the Applicant. The group exemption letter must specifically list the Applicant; and

(iii) A private nonprofit organization's pending application for 501(c)(3) or (c)(4) status cannot be used to comply with the tax status requirement under this subparagraph.

(E) The Applicant must have among its purposes the provision of decent housing that is affordable to low and moderate income people as evidenced by a statement in the organization's:

- (i) Articles of Incorporation,
- (ii) Charter;
- (iii) Resolutions; or
- (iv) Bylaws.

(F) The Applicant must have a clearly defined service area. The Applicant may include as its service area an entire community as defined in subsection (a)(4) of this section, but not the whole state. Private nonprofit organizations serving special populations must also define the geographic boundaries of its service areas. This subparagraph does not require a private nonprofit organization to represent only a single neighborhood.

(2) An Applicant must have the following capacity and experience:

(A) Conforms to the financial accountability standards of 24 CFR 84.21, "Standards of Financial Management Systems" as evidenced by:

(i) notarized statement by the Executive Director or chief financial officer of the organization in a form prescribed by the Department;

(ii) certification from a Certified Public Accountant;

or

(iii) HUD approved audit summary.

(B) Has a demonstrated capacity for carrying out activities assisted with HOME funds, as evidenced by:

(i) resumes and/or statements that describe the experience of key staff members who have successfully completed projects similar to those to be assisted with HOME funds; or

(ii) contract(s) with consultant firms or individuals who have housing experience similar to projects to be assisted with HOME funds, to train appropriate key staff of the organization.

(C) Has a history of serving the community within which housing to be assisted with HOME funds is to be located as evidenced by:

(i) statement that documents at least one year of experience in serving the community; or

(ii) for newly created organizations formed by local churches, service or community organizations, a statement that documents that its parent organization has at least one year of experience in serving the community; and

(iii) The CHDO or its parent organization must be able to show one year of serving the community prior to the date the participating jurisdiction provides HOME funds to the organization. In the statement, the organization must describe its history (or its parent organization's history) of serving the community by describing activities which it provided (or its parent organization provided), such as, developing new housing, rehabilitating existing stock and managing housing stock, or delivering non-housing services that have had lasting benefits for the community, such as counseling, food relief, or child-care facilities. The statement must be signed by the president or other official of the organization.

(3) An Applicant must have the following organizational structure:

(A) The Applicant must maintain at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representatives of low-income neighborhood organizations in the Applicant's service area. Low-income neighborhoods are defined as neighborhoods where 51 percent or more of the residents are low-income. Residents of low-income neighborhoods do not have to be low income individuals themselves. If a low-income individual does not live in a low-income neighborhood as herein defined, the low-income individual must certify that he qualifies as a low-income individual. This certification is in addition to the affidavit required in clause (ii) of this subparagraph. For the purpose of this subparagraph, elected representatives of low-income neighborhood organizations include block groups, town watch organizations, civic associations, neighborhood church groups, Neighbor Works organizations and any organization composed primarily of residents of a low-income neighborhood as herein defined whose primary purpose is to serve the interest of the neighborhood residents. Compliance with this subparagraph shall be evidenced by:

(i) written provision or statement in the organization's By-laws, Charter or Articles of Incorporation;

(ii) affidavit in a form prescribed by the Department signed by the organization's Executive Director and notarized; and

(iii) current roster of all Board of Directors, including names and mailing addresses. The required one-third low-income residents or elected representatives must be marked on list as such.

(B) The Applicant must provide a formal process for low-income, program beneficiaries to advise the organization in all of its decisions regarding the design, siting, development, and management of affordable housing projects. The formal process should include a system for community involvement in parts of the private nonprofit organization's service areas where housing will be developed, but which are not represented on its boards. Input from the low-income community is not met solely by having low-income representa-

tion on the board. The formal process must be in writing and approved or adopted by the private nonprofit organization, as evidenced by:

- (i) organization's By-laws;
- (ii) Resolution; or
- (iii) written statement of operating procedures approved by the governing body. Statement must be original letterhead, signed by the Executive Director and evidence date of board approval.

(C) A local or state government and/or public agency cannot qualify as a CHDO, but may sponsor the creation of a CHDO. A private nonprofit organization may be chartered by a State or local government, but the following restrictions apply:

- (i) The state or local government may not appoint more than one-third of the membership of the organization's governing body;
- (ii) The board members appointed by the state or local government may not, in turn, appoint the remaining two-thirds of the board members;
- (iii) No more than one-third of the governing board members may be public officials. Public officials include elected officials, appointed public officials, employees of the participating jurisdiction, or employees of the sponsoring state or local government, and individuals appointed by a public official. Elected officials include, but are not limited to, state legislators or any other statewide elected officials. Appointed public officials include, but are not limited to, members of any regulatory and/or advisory boards or commissions that are appointed by a State official;
- (iv) Public officials who themselves are low-income residents or representatives do not count toward the one-third minimum requirement of community representatives in subparagraph (A) of this paragraph; and
- (v) Compliance with clauses (i)-(iv) of this subparagraph shall be evidenced by:

- (I) organization's By-laws;
- (II) Charter; or
- (III) Articles of Incorporation.

(D) If the Applicant is sponsored or created by a for-profit entity, the for-profit entity may not appoint more than one-third of the membership of the Applicant's governing body, and the board members appointed by the for-profit entity may not, in turn, appoint the remaining two-thirds of the board members, as evidenced by the Applicant's:

- (i) By-laws;
- (ii) Charter; or
- (iii) Articles of Incorporation.

(E) An Applicant may be sponsored or created by a for-profit entity provided the for-profit entity's primary purpose does not include the development or management of housing, as evidenced in the for-profit organization's By-laws. If an Applicant is associated or has a relationship with a for-profit entity or entities, the Applicant must prove it is not controlled, nor receives directions from individuals, or entities seeking profit as evidenced by:

- (i) organization's By-laws; or
- (ii) Memorandum of Understanding (MOU).

(4) Religious or Faith-based Organizations may sponsor a CHDO if the CHDO meets all the requirements of this section. While the governing board of a CHDO sponsored by a religious or a faith-based organization remains subject to all other requirements in this section, the faith-based organization may retain control over appointments to the board. If a CHDO is sponsored by a religious organization, the following restrictions also apply:

(A) Housing developed must be made available exclusively for the residential use of program beneficiaries and must be made available to all persons regardless of religious affiliations or beliefs;

(B) A religious organization that participates in the HOME program may not use HOME funds to support any inherently religious activities: such as worship, religious instruction, or proselytizing;

(C) HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Sanctuaries, chapels, or other rooms which a faith-based CHDO uses as its principal place of worship are always ineligible for HOME-funded improvements;

(D) Compliance with clauses (A)-(C) of this subparagraph may be evidenced by:

- (i) The Organizations By-laws;
- (ii) Charter; or
- (iii) Articles of Incorporation.

(c) An application for Community Housing Development Organization (CHDO) Certification will only be accepted if submitted with an application to the Department for HOME funds. If all requirements under this section are met, the Applicant will be certified as a CHDO upon the award of HOME funds by the Department. A new application for CHDO certification must be submitted to the Department with each new application for HOME funds under the CHDO set aside.

(d) If an Applicant submits an application for CHDO certification for a service area that is located in a local Participating Jurisdiction, the Applicant must submit evidence of the local taxing jurisdiction or local Participating Jurisdiction certification or designation of the Applicant as a CHDO.

(e) In the case of an Applicant applying for HOME funds (See 5% Disability requirement at §53.52(a)(2) of this Title) from the Department to be used in a Participating Jurisdiction, where neither the Participating Jurisdiction nor the local taxing entity certifies CHDOs outside of the local HOME application process, the Certification process described in this section applies.

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 March 27, 2006.

TRD-200601820

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 16, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 475-4595



10 TAC §53.61, §53.62

The Texas Department of Housing and Community Affairs (the Department) adopts without changes the repeal of §53.61 and §53.62, concerning the HOME Investment Partnerships Program (HOME), as published in the December 30, 2005, issue of the *Texas Register* (30 TexReg 8776). The sections are adopted in order to enact new sections to address and provide clarification on the threshold, scoring, and selection criteria for Single Family HOME eligible Activities.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by this section.

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

Filed with the Office of the Secretary of State on March 27, 2006.

TRD-200601819

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: April 16, 2006

Proposal publication date: December 30, 2005

For further information, please call: (512) 475-4595



TITLE 22. EXAMINING BOARDS

PART 11. BOARD OF NURSE EXAMINERS

CHAPTER 217. LICENSURE, PEER ASSISTANCE AND PRACTICE

22 TAC §§217.2, 217.4, 217.5

The Board of Nurse Examiners adopts amendments to 22 TAC §§217.2(a)(5), 217.4(a)(5), and 217.5(a)(4) and (7) pertaining to Licensure, Peer Assistance and Practice. Sections 217.2(a)(5), 217.4(a)(5) and 217.5(a)(7) address criminal background checks for Licensed Vocational Nurses and §217.5(a)(4) addresses credential evaluation services (CES) of foreign-educated nurses. The amendments are adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 964).

Licensed Vocational Nurses' Criminal Background Checks

Texas Government Code §411.125(a) was amended by the 2003 Legislative Session (HB 2208) to read as follows:

(a) The Board of Nurse Examiners is entitled to obtain from the department (Department of Public Safety) criminal history record information maintained by the department that relates to a person who:

(1) is an applicant for or the holder of a license issued by the board;

(2) has requested a determination of eligibility for a license from the board; or

(3) is subject to investigation by the board in connection with a complaint or formal charge against the person.

Though this provision granted the board the authority to require criminal background checks, the funding for criminal backgrounds for LVN applicants and licensees was not provided until the 79th Regular Legislative Session (2005). The Board began performing criminal background checks on LVNs and LVN applicants in November 2005. These rule amendments are adopted to implement the statute and update the licensure requirements for LVN applicants and licensees. (Registered nurse applicants began submitting fingerprint cards for FBI criminal background checks following the 2003 Legislative Session. All present RN and LVN licensees are being audited over a ten year period upon renewing their licenses.)

Credentialing Services of Foreign-Educated Nurses

The Staff requests that the board broaden the acceptable verification organizations and availability of organizations that can provide credential evaluation services (CES) of foreign-educated nurses to provide consistency with the existing rule pertaining to graduates of nursing programs outside of the United States' jurisdiction which is contained in §217.4. The board originally approved the addition of these additional credentialing services for foreign-educated nurses in the January 2005 board meeting. To provide consistency within the rules, the requirements in §217.5 need to be updated to reflect the requirements of §217.4.

No comments were received in response to the proposal.

The amendments are adopted pursuant to the authority of Texas Occupations Code, §301.151, which authorizes the Board of Nurse Examiners to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act.

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

Filed with the Office of the Secretary of State on March 27, 2006.

TRD-200601835

Katherine Thomas

Executive Director

Board of Nurse Examiners

Effective date: April 16, 2006

Proposal publication date: February 17, 2006

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



PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 521. FEE SCHEDULE

22 TAC §521.14

The Texas State Board of Public Accountancy adopts an amendment to §521.14 concerning Eligibility Fee without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 643). The text of the rule will not be republished.

The amendment to §521.14 will add a new subsection (c) that reads "The eligibility fee may be paid electronically through the State of Texas online e-pay system and applicable processing

fees for the use of this service will be added to the total fee paid." and changes the old subsection (c) into subsection (e). The new subsection (c) will give potential applicants for the computer based CPA exam the option of paying their eligibility fee electronically. It also adds a new subsection (d) that grants applicants 180 days to complete the application before the application fee is forfeited.

The amendment will function by giving potential applicants the option of conveniently paying the CPA examination eligibility fee electronically and granting 180 days to complete the application before the application fee is forfeited.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on March 23, 2006.

TRD-200601786

Rande Herrell

General Counsel

Texas State Board of Public Accountancy

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Proposal publication date: February 3, 2006

For further information, please call: (512) 305-7848



CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER B. CONTINUING PROFESSIONAL EDUCATION RULES FOR INDIVIDUALS

22 TAC §523.112

The Texas State Board of Public Accountancy adopts an amendment to §523.112, concerning Mandatory CPE Attendance, without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 644). The text of the rule will not be republished.

The amendment to §523.112 will make it clear that only 40 hours of CPE is required to re-activate a license on retired or disabled status.

The amendment will function by providing greater clarity regarding the requirements for re-activating a license on retired or disabled status.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

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

Filed with the Office of the Secretary of State on March 23, 2006.

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Rande Herrell

General Counsel

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For further information, please call: (512) 305-7848



PART 25. TEXAS STRUCTURAL PEST CONTROL BOARD

CHAPTER 591. GENERAL PROVISIONS

22 TAC §591.21

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §591.21, concerning Definitions of Terms, without changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8590).

Justification for the amendment is that the rule follows the suggestion of the Office of the Attorney General letter ruling for the Board to define "infest" and "infestation." The Board with this rule change defines both "infest" and "obnoxious and unwanted animals or plants."

The adopted amendment will function by defining "infest" and "infestation." The rule change will also list all definitions in alphabetical order.

No comments were received regarding the amendment.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Texas Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 March 22, 2006.

TRD-200601762

Murray Walton

Executive Director

Texas Structural Pest Control Board

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Proposal publication date: December 23, 2005

For further information, please call: (512) 305-8270



CHAPTER 593. LICENSES

22 TAC §593.7

The Texas Structural Pest Control Board adopts an amendment to 22 TAC §593.7, concerning Fees, without changes to the pro-

posed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8591).

Justification for the amendment is that the rule change corrects a typographical error currently in the Texas Administrative Code.

The adopted amendment will function by correctly indicating the fee amounts licensees will have to pay for certain fee types.

No comments were received regarding the amendment.

The amendment is adopted under the Structural Pest Control Act, Chapter 1951 of the Texas Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

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 March 22, 2006.

TRD-200601763

Murray Walton

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



22 TAC §593.25

The Texas Structural Pest Control Board adopts new 22 TAC §593.25, concerning Provisional License for Louisiana and Mississippi Certified Structural Pest Control Applicators Affected by Hurricane Katrina, with changes to the proposed text as published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8592).

Justification for the rule is that the adoption will finalize the emergency rule enacted by the Board on September 15, 2005.

The rule will function by detailing the requirements for licensing individuals from Louisiana and Mississippi displaced by Hurricane Katrina.

No comments were received regarding the new section.

The new section is adopted under the Structural Pest Control Act, Chapter 1951 of the Texas Occupations Code, which provides the Texas Structural Pest Control Board with the authority to license and regulate the structural pest control industry.

§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 Texas Government 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 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 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 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 §593.9 of this title (relating to Licensing of Persons with Criminal Backgrounds).

(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 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.

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 March 22, 2006.

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Murray Walton

Executive Director

Texas Structural Pest Control Board

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For further information, please call: (512) 305-8270



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 73. LABORATORIES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§73.11, 73.21, 73.31, 73.41, and 73.51 - 73.55, concerning fees for laboratory services, and the repeal of §73.25, concerning the certification and accreditation of environmental laboratories. The amendments to §§73.11, 73.21, 73.31, 73.41, 73.51, 73.54, and 73.55 are adopted with changes to the proposed text as published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6557). Sections 73.52 and 73.53 and the repeal of §73.25 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeal of §73.25 is necessary because the Texas Commission on Environmental Quality now administers environmental laboratory certification and accreditation. The amendments comply with Health and Safety Code, §§12.031, 12.032, and 12.0122 that allow the department to charge fees to a person who receives public health services from the department, and which is necessary for the department to recover costs for performing laboratory services. Since the last rules revision, the laboratory has experienced increased costs due to changes in technology for laboratory testing, new requirements for shipment of laboratory specimens, and price increases on supplies and test kits. The increase in fees offsets a portion of the cost of performing laboratory testing.

Government Code, §2001.039, requires that each state agency review and consider for reoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 73.11, 73.21, 73.31, 73.41 and 73.51 - 73.55 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Section 73.25 was reviewed and the department has determined that reasons for adopting the section no longer exist because the responsibility for this section has been transferred to the Texas Commission for Environmental Quality.

SECTION-BY-SECTION SUMMARY

The proposed changes include editorial changes to existing rules, the deletion of laboratory tests, increases to the maximum cap on existing fees and new fees for clinical and environmental testing. Section 73.25 is repealed because the Texas Commission on Environmental Quality now administers the two-tiered program for the certification and accreditation of environmental laboratories. Amendments to §§73.11, 73.21, 73.31, 73.41 and 73.51 contain editorial changes to correct the name of the department and the laboratory and to correct spelling errors. Section 73.52 contains maximum limits for fees for certification of milk and shellfish laboratories to replace the existing fees set at an exact amount. Section 73.53 establishes the fee schedule for training of laboratorians. Sections 73.54 and 73.55 contain the fee schedules for clinical testing, newborn screening, environmental testing, and other laboratory services. These sections include new fees, increased caps on some existing fees, and the deletion of some tests.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes.

Change: Concerning §§73.11, 73.21, 73.31, 73.41, 73.51, 73.52, 73.53, 73.54 and 73.55, all references to the Laboratory Services Section have been removed in accordance with department reorganization.

Change: Concerning §§73.54 and 73.55, editorial changes have been made to correct formatting and spelling errors.

LEGAL CERTIFICATION

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

25 TAC §§73.11, 73.21, 73.31, 73.41, 73.51 - 73.55

STATUTORY AUTHORITY

The amendments are authorized under Health and Safety Code, §§12.031 and 12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires the department to establish collection procedures, §12.035, which requires the department to deposit all money collected for fees and charges under §§12.032 and 12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§73.11. Certification of Milk and Shellfish Laboratories.

(a) Purpose. This section establishes the procedures for milk and shellfish laboratories to become certified laboratories under federal or state law.

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

(1) Assessment--A fact-finding process performed by the Department of State Health Services (department) in which information and observations are collected and evaluated for the purpose of judging the laboratory's conformance with established certification standards. Assessment includes an onsite inspection.

(2) Certification--An official and legal approval granted by the department to a laboratory, permitting analysis of milk or shellfish samples in accordance with applicable federal and state laws and rules based on the process outlined in this section. Certification means that a certified laboratory has been judged capable of correctly performing the analyses for which it is certified. Certification does not imply or mean that the department certifies the results produced by the certified laboratory.

(c) Certification application.

(1) A laboratory must submit an application for certification directly to the department on a form specified by the department.

(2) Payment of the appropriate fee for certification under §73.52 of this title (relating to Fees for the Certification of Milk and Shellfish Laboratories) must accompany the application.

(3) Payment may be by check or money order made payable to the Department of State Health Services.

(4) A laboratory may apply for certification in a single category or any combination of categories from among the following: antibiotic milk laboratory, milk industry laboratory, full service milk laboratory or, shellfish laboratory.

(5) The department shall perform an assessment for each milk and shellfish laboratory applying for certification.

(6) Each certified laboratory must pay the appropriate certification fee. After initial certification, the laboratory will be assessed the certification fee on an annual basis.

(d) Standards.

(1) The minimum standards for certification are as specified by the United States Food and Drug Administration (FDA). These specifications are available for review during normal business hours at the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.

(2) Each applicant laboratory will be evaluated, at a minimum on the following factors: credentials and experience of staff, quality assurance plan, manuals of procedures, performance on evaluation unknowns, equipment, calibrations and standards, methodology, facilities, sample acceptance policies, sample tracking, record keeping, reporting, and results interpretation.

(e) Inspections. The department may conduct inspections of laboratories to ascertain adherence to minimum standards and the effectiveness of the certification system. For laboratories for which the department serves as both the assessing and certification authority, inspections will be conducted on at least a biennial basis.

(f) Withdrawal of certification.

(1) A laboratory must meet all minimum standards, pass all performance evaluation sets, and pass onsite inspection no less than every two years to be certified.

(2) A laboratory that fails to meet requirements by scoring outside the acceptable limits on a set of performance evaluation unknowns, has serious deficiencies at the time of an onsite inspection, fails to notify the department within 30 days of major changes which might impair analytical capability (personnel, equipment, or location),

or fails to notify the state or public of certain problems as required by notification regulations may be placed on provisionally certified status.

(3) Failure on two consecutive performance evaluation sets or failure to correct major deficiencies following onsite inspection may result in the withdrawal of certification. The corrective action must take place within the time frames set by the appropriate federal regulatory authority, which are 90 days or less.

(4) Certification may be suspended or revoked immediately if the standards of the FDA require suspension or revocation, or if continued operation of the laboratory will jeopardize public health. Due process will be afforded to the laboratory whose certification is revoked or suspended.

(5) Certification shall be revoked for a laboratory that submits as its own work the results for analysis of any performance evaluation sample that was analyzed by a different laboratory. The laboratory may not reapply for certification for a period of not less than three years.

§73.21. *Newborn Screening.*

(a) Purpose. This section establishes procedures for the purchase and submission of newborn screening test kits provided by the Department of State Health Services (department).

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

(1) Charity care newborn--A patient who is not insured and is not covered or eligible to be covered for newborn screening services by Medicaid or any other government program.

(2) Medicaid-eligible newborn--A patient whose mother is a Medicaid recipient or who is otherwise eligible for Medicaid coverage for the newborn-related services.

(3) Newborn Screening (NBS)--Newborn screening is a requirement of the Health and Safety Code, Chapter 33. Each newborn must have two screening panels performed. Additional screening panels may be necessary under certain circumstances.

(4) Provider--The hospital, birthing center, physician, midwife, or clinic that collects and submits the NBS specimen.

(5) Test kit--The department-designed collection device, demographic information form and envelope used to submit a newborn's blood specimens for screening by the department.

(c) Test kits.

(1) The department will provide newborn screening test kits upon written request from a provider of newborn screening. A separate test kit is required for each screening panel.

(A) The department will provide test kits for Medicaid-eligible or charity care newborns at no cost to the provider.

(B) The department will provide test kits for all other newborns at a fee described in §73.54(1)(H) of this title (relating to Fee Schedule for Clinical Testing and Newborn Screening).

(2) When a provider requests test kits, the provider must identify the number estimated to be needed for Medicaid-eligible newborns, charity care newborns and other newborns. The provider's estimate shall be based on the provider's newborn screening services provided in the most recent fiscal or calendar year if the provider has previously provided these services. A provider shall provide further information upon request of the department to verify the appropriateness of the number of test kits provided at no cost. A provider may use the no-cost test kit only for a Medicaid-eligible or charity care newborn.

(3) The department will bill the requesting provider for test kits when the test kits are sent to the provider. Payment is due within 120 days from the provider's receipt of the test kits.

(4) The department shall accept only its test kits for submission of specimens.

(5) The provider shall ensure that the identifying and demographic information provided with the test kit is complete and accurate when submitted to the department.

§73.31. Specimen Submission.

(a) Specimens submitted to the Department of State Health Services (department) shall be in compliance with the Manual of Reference Services (manual) and other written instructions established by the department.

(b) Failure to submit a specimen as required may result in the department's refusal to perform the requested services.

(c) The manual and other written instructions may be obtained upon request from the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7318 or online at <http://www.dshs.state.tx.us/lab>.

§73.41. Sale of Laboratory Services.

(a) Purpose. This section implements the provisions of the Health and Safety Code, §12.0122 concerning the sale of specific laboratory services by the Department of State Health Services (department).

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

(1) Laboratory services--Include the evaluation and/or testing of samples submitted to the laboratory, certification of laboratories, training of laboratorians and special projects. Laboratory Services including special projects for which the department's bureau contracts under this section shall not include tissue and cytology specimens, except for pap smears for recipients under federally funded programs.

(2) Special projects--Include but are not limited to evaluating adequacy of new test procedures, analyzing samples by methods not routinely used or for analytes not routinely tested, special surveys and preparation of data packages.

(c) Charges. For each contract governed by Health and Safety Code, §12.0122 the charges for laboratory services shall be the reasonable charges negotiated by the department and the contracting party(s). The charges in a contract shall be sufficient to ensure the proper provision of the services to be performed and the reasonable recovery by the department of its costs relating to the contract.

(d) Other contracts. This section does not affect department contracts that are not governed by Health and Safety Code, §12.0122.

(e) Fees. This section does not affect the authority of the department to establish and collect fees for laboratory services under the Health and Safety Code, Chapter 12, Subchapter D, §§12.031-12.034.

§73.51. Fees.

(a) Purpose. This section establishes fees pursuant to the Health and Safety Code, §§12.0122, 12.032 and 12.034 for laboratory services provided by the Department of State Health Services (department) and provides for their payment.

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

(1) All metals drinking water group--Aluminum, antimony, arsenic, barium, beryllium, total hardness (calculated), cadmium, calcium, chromium, copper, iron, lead, magnesium, manganese, mercury, nickel, selenium, silver, sodium, thallium, and zinc.

(2) Chlorinated pesticides and polychlorinated biphenyls (PCBs) in drinking water--Alachlor, aldrin, aroclor, atrazine, butachlor, chlordane, dieldrin, endrin, ethyl parathion, heptachlor, heptachlor epoxide, hexachlorobenzene, lindane, methoxychlor, methyl parathion, metolachlor, metribuzin, propachlor, simazine, toxaphene, and trifluralin.

(3) Fish tissue metals group--Arsenic, cadmium, copper, lead, mercury, selenium, and zinc.

(4) Gamma emitting isotopes--Be-7, Na-22, Na-24, Cl-38, K-40, Ar-41, K-42, Sc-44, Sc-46, V-48, Cr-51, Mn-54, Co-56, Mn-56, Co-57, Co-58, Fe-59, Co-60, Ni-63, Zn-65, Cu-67, Zn-69m, Se-75, As-76, Br-82, Rb-83, B-84, Kr-85, Kr-85m, Sr-85, Kr-87, Kr-88, Rb-88, Y-88, Kr-89, Rb-89, Zr-89, Mo-89, Sr-91, Y-91m, Sr-92, Y-92, Sr-93, Y-93, Nb-94, Y-94, Nb-95, Nb-95m, Tc-95, Zr-95, Nb-96, Tc-96, Nb-97, Zr-97, Mo-99, Tc-99m, Ru-103, Rh-105, Ru-106, Ag-108m, Cd-109, Ag-110m, Sn-113, Sb-122, I-124, Sb-124, I-125, Sb-125, Xe-125, I-126, Sb-126, I-129, I-130, I-131, Xe-131m, I-132, Te-132, Ba-133, I-133, Xe-133, Xe-133m, Cs-134, I-134, I-135, Xe-135, Xe-135m, Cs-136, Cs-137, Cs-138, Xe-138, Ba-139, Ce-139, Ba-140, La-140, Ce-141, Ce-143, Ce-144, Nd-147, Eu-152, Gd-153, Eu-154, Eu-155, Eu-156, Yb-169, Ta-178, Hf-181, Ta-182, W-187, Ir-192, Au-198, Hg-203, Tl-208, Pb-210, Bi-211, Pb-211, Bi-212, Pb-212, Bi-214, Pb-214, Rn-219, Ra-226, Th-227, Ac-228, Pa-231, Th-231, Th-232, Pa-234, Pa-234m, Th-234, U-235, U-238, Am-241, and Cm-243.

(5) ICP/ICP-MS drinking water metals group--Aluminum, arsenic, barium, beryllium, calcium, total hardness (calculated), chromium, copper, iron, lead, magnesium manganese, nickel, silver, sodium, and zinc.

(6) Reagent water metal suitability group--cadmium, chromium, copper, iron, lead, manganese, nickel and zinc.

(7) Routine water mineral group--Alkalinity, chloride, conductance, fluoride, nitrate, pH, sulfate, and total dissolved solids.

(8) Semi-volatile organic compounds in fish--1,2,4,5-Tetrachlorobenzene, 1,2,3-trichlorobenzene, 1,2-dichlorobenzene, 1,3-dichlorobenzene, 1,4-dichlorobenzene, 2,4,5-trichlorophenol, 2,4,6-trichlorophenol, 2,4-dichlorophenol, 2,4-dimethylphenol, 2,4-dinitrophenol, 2,4-dinitrotoluene, 2,6-dinitrotoluene, 2-chloronaphthalene, 2-chlorophenol, 2-methylnaphthalene, 2-methylphenol, 2-nitroaniline, 2-nitrophenol, 3,4-methylphenol, 3,3'-dichlorobenzidine, 3-nitroaniline, 4,5-dinitro-2-methylphenol, 4-bromophenyl-phenylether, 4-chloro-3-methylphenol, 4-chloroaniline, 4-chlorophenyl-phenylether, 4-nitroaniline, 4-nitrophenol, acenaphthene, acenaphthylene, aldrin, alpha-bhc, alpha-endosulfan, aniline, anthracene, benzidine, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, benzoic acid, benzyl alcohol, beta-bhc, beta-endosulfan, bis(2-chloroethoxy)methane, bis(2-chloroethyl)ether, bis(2-chloroisopropyl)ether, bis(2-ethylhexyl)adipate, bis(2-ethylhexyl)phthalate, butylbenzylphthalate, chrysene, delta-bhc, dibenz(a,h)anthracene, dibenzofuran, dieldrin, diethylphthalate, dimethylphthalate, di-n-butylphthalate, di-n-octylphthalate, diphenylhydrazine, endosulfan sulfate, endrin, endrin aldehyde, endrin ketone, fluoranthene, fluorene, heptachlor, heptachlor epoxide, hexachlorobenzene, hexachlorobutadiene, hexachlorocyclopentadiene, hexachloroethane, hexachlorophene, indeno-(1,2,3-cd)pyrene, isophorone, lindane,

naphthalene, nitrobenzene, n-nitrosodiethylamine, n-nitrosodimethylamine, n-nitroso-di-n-butylamine, n-nitroso-di-n-propylamine, n-nitrosodiphenylamine, p,p'-ddd, p,p'-dde, p,p'-ddt, pentachlorophenol, phenanthrene, phenol, pyrene, pyridine.

(9) Volatile organic compounds (VOC).

(A) In air--1,1,1-Trichloroethane, 1,2,4-trimethylbenzene, 1,4-dichlorobenzene, 2-ethoxyethylacetate, 2-heptanone, 2-propanol, acetone, alpha-pinene, benzene, butoxyethanol, butyl acetate, chloroform, cumene (isopropyl benzene), cyclohexane, cyclohexanone, ethanol, ethyl acetate, ethyl methacrylate, ethyl benzene, heptane, hexachloroethane, isoamyl acetate, iso-butanol, limonene, m/p-xylene, methyl ethyl ketone (MEK), methyl methacrylate, naphthalene, n-propyl acetate, o-xylene, phenol, sec-butanol, styrene, tetrachloroethylene, tetrahydrofuran, toluene, trichloroethylene.

(B) In drinking water--

(i) Regulated compounds--1,1,1-Trichloroethane, 1,1,2-trichloroethane, 1,1-dichloroethene, 1,2,4-trichlorobenzene, 1,2-dichlorobenzene, 1,2-dichloroethane, 1,2-dichloropropane, 1,4-dichlorobenzene, benzene, carbon tetrachloride, chlorobenzene, cis-1,2-dichloroethene, ethyl benzene, m- and p-xylene, methylene chloride, o-xylene, styrene, tetrachloroethene, toluene, trans-1,2-dichloroethene, trichloroethene, vinyl chloride.

(ii) Monitor compounds--1,1,2-Tetrachloroethane, 1,1,1,2-tetrachloroethane, 1,1-dichloroethane, 1,1-dichloropropene, 1,2,3-trichlorobenzene, 1,2,4-trichlorobenzene, 1,2-dibromo-3-chloropropane, 1,2-dibromoethane, 1,3,5-trimethylbenzene, 1,3-dichlorobenzene, 1,3-dichloropropane, 2,2-dichloropropane, 2-chlorotoluene, 4-chlorotoluene, 4-isopropyltoluene, bromobenzene, bromochloromethane, Bromoform, bromomethane, chloromethane, chloroform, chloromethane, cis-1,3-dichloropropene, dibromochloromethane, dibromomethane, dichlorodifluoromethane, dichlorodifluoromethane, hexachlorobutadiene, isopropylbenzene, naphthalene, n-butylbenzene, n-propylbenzene, s-butylbenzene, t-butylbenzene, trans-1,3-dichloropropene, trichlorofluoromethane.

(iii) In fish--1,1,1,2-Tetrachloroethane, 1,1,1-trichloroethane, 1,1,2,2-tetrachloroethane, 1,1,2-trichloroethane, 1,1-dichloroethane, 1,1-dichloroethene, 1,1-dichloropropene, 1,2,3-trichlorobenzene, 1,2,3-trichloropropane, 1,2,4-trichlorobenzene, 1,2,4-trimethylbenzene, 1,2-dibromo-3-chloropropane, 1,2-dibromoethane, 1,2-dichlorobenzene, 1,2-dichloroethane, 1,2-dichloropropane, 1,3,5-trimethylbenzene, 1,3-dichlorobenzene, 1,3-dichloropropane, 1,4-dichlorobenzene, 2,2-dichloropropane, 2-butanone, 2-chlorotoulene, 2-hexanone, 4-chlorotoluene, 4-isopropyl toluene, 4-methyl-2-pentanone, acetone, acrylonitrile, benzene, bromobenzene, bromochloromethane, bromodichloromethane, bromoform, bromoethane, carbon disulfide, carbon tetrachloride, chlorobenzene, chloroethane, chloroform, chloromethane, cis-1,2-dichloroethene, cis-1,3-dichloropropene, dibromochloromethane, dibromomethane, dichlorodifluoromethane, ethyl methacrylate, ethylbenzene, hexachlorobutadiene, iodomethane, isopropylbenzene, m- and p-xylene, methyl methacrylate, methyl tert-butyl ether, methylene chloride, naphthalene, n-butylbenzene, n-propylbenzene, o-xylene, sec-butylbenzene, styrene, tert-butylbenzene, tetrachloroethane, tetrahydrofuran, toluene, trans-1,2-dichloroethene, trans-1,3-dichloropropene, trichloroethene, trichlorofluoromethane, vinyl chloride.

(iv) Other compounds--2-Butanone (MEK), 2-hexanone, 4-methyl-2-pentanone (MIBK), acetone, acrylonitrile, carbon disulfide, ethyl methacrylate, iodomethane, methyl methacrylate, methyl-t-butyl ether (MTBE), tetrahydrofuran, vinyl acetate.

(c) Determination of Fees.

(1) The fees assessed for a public health service may not exceed the cost to the department of providing the service.

(2) The fees related to the certification of milk and shellfish laboratories, training of laboratorians, testing of clinical and environmental samples and other laboratory services shall be calculated by department staff in accordance with paragraph (1) of this subsection.

(3) The board may establish a fee schedule. In establishing the schedule, the board shall consider a persons ability to pay the entire amount of a fee. A sliding scale for fee imposition may be used on the recipient of the service, and no one will be denied service because of an inability to pay.

(d) A schedule of all fees is available upon request from the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7318. It is also available online in the manual of reference services at <http://www.dshs.state.tx.us/lab>.

(e) Payment of fees.

(1) The department will determine whether a fee must be paid with submission of the specimen or whether the department will bill later for the fee unless stated otherwise in this section.

(2) A fee paid is nonrefundable.

(f) Failure to pay a fee in a timely manner may result in the department's refusal to accept specimens or samples until the fee is paid.

(g) The department shall make reasonable effort to collect the fees, but the department may waive the collection if the administrative cost of collection will exceed the fee.

(h) Pursuant to Health and Safety Code, §12.035, the department is required to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the Department of State Health Services Public Health Service Fee Fund.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

Fees for clinical testing and newborn screening shall not exceed the following amounts.

(1) Human specimens.

(A) Bacteriology.

(i) Aerobic isolation, comprehensive--\$119.

(ii) Aerobic isolation, definitive I.D.--\$35.

(iii) Anaerobic isolation, comprehensive--\$94.

(iv) Anaerobic isolation, definitive I.D.--\$35.

(v) Bioterrorism:

(I) culture--\$119; and

(II) smear--\$19.

(vi) *Bordetella pertussis*:

(I) culture--\$138; and

(II) molecular testing--\$125.

(vii) *C. botulinum* isolation--\$94.

(viii) Diphtheria culture--\$113.

(ix) Drug susceptibility testing:

(I) VRE (vancomycin resistant enterococcus)--\$63;

- (II) VRSA (vancomycin resistant *Staphylococcus aureus*)--\$63;
- (III) MRSA (methicillin resistant *Staphylococcus aureus*)--\$63;
- (IV) *Neisseria gonorrhoeae*--\$63; and
- (V) One drug susceptibility testing--\$63.
- (x) Enteric pathogens--\$88.
- (xi) Magnetic bead enrichment for *E. coli*, *Enterohemorrhagic E. coli* (EHEC)--\$50.
- (xii) Fecal fat screen--\$9.
- (xiii) Fecal occult blood--\$7.
- (xiv) Fecal WBC smear--\$10.
- (xv) Genetic probe:
 - (I) gonorrhea/chlamydia (GC/CT)--\$31;
 - (II) amplified probe for gonorrhea--\$31;
 - (III) amplified probe for chlamydia--\$31;
 - (IV) amplified probe for gonorrhea/chlamydia--\$63; and
 - (V) amplified probe for human papillomavirus (HPV)--\$52.
- (xvi) Gram stain smear with fecal WBC--\$12.
- (xvii) Identification and typing:
 - (I) Immuno method, *Salmonella* and *Shigella*--\$13;
 - (II) *Haemophilus influenzae*--\$119;
 - (III) *Neisseria meningitides*--\$119;
 - (IV) noncomplex typing (*Vibrio*, *Brucella*, etc.)--\$63;
 - (V) other complex typing--\$130;
 - (VI) *Salmonella*--\$119;
 - (VII) *Shigella*--\$73;
 - (VIII) *Streptococcus*, Group A (GAS)--\$88;
 - (IX) *Streptococcus*, typing Groups B, C, D, G--\$88; and
 - (X) *Legionella*--\$88.
- (xviii) KOH exam except for skin, hair and nails--\$10.
- (xix) KOH for skin, hair and nails--\$10.
- (xx) Molecular studies:
 - (I) pulsed-field gel electrophoresis (PFGE)--\$125; and
 - (II) polymerase chain reaction (PCR)--\$56.
- (xxi) Mycolic acid studies--\$31.
- (xxii) *Neisseria gonorrhoeae* culture--\$56.
- (xxiii) Pure culture identification:
 - (I) aerobes--\$56;
 - (II) anaerobes--\$100;
 - (III) *Campylobacter*--\$69; and
 - (IV) *Neisseria gonorrhoeae*--\$69.
- (xxiv) Routine cultures:
 - (I) any source except urine--\$22;
 - (II) blood--\$22;
 - (III) stool, *Campylobacter* and *E. Coli* 0157--\$34;
 - (IV) stool, *Salmonella* and *Shigella*--\$34; and
 - (V) urine--\$20.
- (xxv) *Streptococcus* screen--\$25.
- (xxvi) Toxin studies:
 - (I) *Botulinum* toxin--\$163; and
 - (II) *Clostridium difficile* toxin--\$21;
 - (III) Shiga toxin--\$94;
 - (IV) Toxic Shock Syndrome Toxin-1 (TSST)--\$160; and
 - (V) *Vibrio cholera* toxin--\$88.
- (xxvii) *Vibrio* culture--\$88.
- (xxviii) Wet mount, vaginal--\$10.
- (B) Clinical chemistry.
 - (i) 5' nucleotidase--\$61.
 - (ii) Acetone--\$8.
 - (iii) Albumin, serum, urine or other source--\$9.
 - (iv) Aldose--\$52.
 - (v) Alkaline phosphatase isoenzymes--\$37.
 - (vi) Alkaline phosphatase--\$9.
 - (vii) ALT (Alanine aminotransferase)--\$9.
 - (viii) AST (Aspartate aminotransferase)--\$9.
 - (ix) Amylase, serum--\$11.
 - (x) Ammonia--\$35.
 - (xi) B-12--\$12.
 - (xii) B-12 and folic acid--\$59.
 - (xiii) Bilirubin direct--\$9.
 - (xiv) Bilirubin, Total--\$9.
 - (xv) Blood typing:
 - (I) ABO typing--\$9;
 - (II) antibody screen (blood type)--\$25;
 - (III) antigen typing (blood type)--\$13;
 - (IV) antigen titering--\$13;
 - (V) direct COOMBS--\$54; and
 - (VI) Rh typing--\$13.
 - (xvi) Blood Urea Nitrogen (BUN)--\$7.
 - (xvii) Calcium--\$9.

- (xviii) Calcium-125--\$42.
- (xix) Calcium, ionized--\$80.
- (xx) Carbon dioxide (CO2)--\$9.
- (xxi) CEA (carcinoembryonic antigen)--\$34.
- (xxii) Chloride, serum--\$9.
- (xxiii) Chloride, urine--\$10.
- (xxiv) Cholesterol:
 - (I) cholesterol and high density lipoprotein (HDL)--\$9; and
 - (II) cholesterol only--\$8.
- (xxv) Cholinesterase, RBC--\$14.
- (xxvi) Creatine Kinase (CK) assay--\$11.
- (xxvii) Creatine Kinase (CK) isoenzymes--\$29.
- (xxviii) Creatine Kinase (CK) MB fraction--\$13.
- (xxix) Creatinine assay--\$9.
- (xxx) Creatinine clearance test--\$16.
- (xxxi) Creatinine, urine--\$9.
- (xxxii) Cortisol--\$29.
- (xxxiii) Electrolyte Panel--\$14.
- (xxxiv) Estradiol, serum--\$49.
- (xxxv) Estradiol, free--\$49.
- (xxxvi) Estrogens, total--\$100.
- (xxxvii) Ferritin--\$24.
- (xxxviii) Folate--\$12.
- (xxxix) Folic acid, serum--\$26.
- (xl) Fructosamine--\$26.
- (xli) FSH (follicle stimulating hormone)--\$32.
- (xlii) G-6-PD--\$24.
- (xliii) Gastrin--\$24.
- (xliv) GGT (gamma-glutamyl transferase--\$12.
- (xlv) Glucose:
 - (I) glucose, postprandial, 0 and 2 hours--\$14;
 - (II) glucose, random, fasting--\$7;
 - (III) glucose tolerance test, 1 hour--\$14;
 - (IV) glucose tolerance test, 2 hour--\$21; and
 - (V) glucose tolerance test, 3 hour--\$28.
- (xlvi) Heavy metal screen, urine--\$46.
- (xlvii) Hantoglobin--\$25.
- (xlviii) Hemoglobin, total--\$6.
- (xlix) Hemoglobin A1C--\$23.
- (l) Hemoglobinopathy--\$15.
- (li) Hematology:
 - (I) CBC with differential--\$14;
- (II) CBC complete, automated with differential--\$13;
- (III) CBC complete, automated without differential--\$11;
- (IV) Differential, manual--\$7;
- (V) Erythropoietin--\$46;
- (VI) Platelet count--\$9;
- (VII) Prothrombin time--\$9;
- (VIII) PTT (partial thromboplastin time)--\$11;
- (IX) Reticulocyte count--\$10; and
- (X) Sedimentation rate--\$6.
- (lii) Iron binding capacity--\$16.
- (liii) Iron panel--\$87.
- (liv) Iron, total--\$11.
- (lv) Lactic acid--\$74.
- (lvi) LDH (lactic acid dehydrogenase) isoenzymes--\$41.
- (lvii) LDH total--\$10.
- (lviii) lead, blood--\$31.
- (lix) Lead screen--\$11.
- (lx) Lipid profile, includes cholesterol; triglycerides; HDL; and low-density lipoprotein (LDL)--\$28.
- (lxi) LH (leutenizing hormone)--\$32.
- (lxii) Lipase--\$14.
- (lxiii) Liver (hepatic) function panel--\$14.
- (lxiv) Magnesium--\$12.
- (lxv) Osmolality, blood--\$63.
- (lxvi) Osmolality, urine--\$87.
- (lxvii) Parathyroid antibody, c-terminal, mid-mole--\$92.
- (lxviii) Phenylalanine--\$38.
- (lxix) Phosphorus--\$9.
- (lxx) Phosphorus, urine--\$9.
- (lxxi) Potassium, urine--\$9.
- (lxxii) Pregnancy test, serum--\$13.
- (lxxiii) Pregnancy test, urine (HCG-qualitative)--\$13.
- (lxxiv) Prolactin--\$34.
- (lxxv) Protein, total--\$7.
- (lxxvi) Protein, total, 24 hour--\$10.
- (lxxvii) PSA (Prostatic specific antigen)--\$26.
- (lxxviii) Rheumatoid factor--\$10.
- (lxxix) Serum, protein electrophoresis--\$24.
- (lxxx) Sodium--\$9.
- (lxxxi) T3 (Tri-iodothyronine) uptake--\$11.50.

- (lxxxii) T3, reverse--\$45.
 - (lxxxiii) T3, total--\$45.
 - (lxxxiv) Testosterone, total--\$51.
 - (lxxxv) Thyroid peroxidase AB--\$37.
 - (lxxxvi) Thyroxin, T4, total--\$12.
 - (lxxxvii) Transferrin--\$42.
 - (lxxxviii) Triglycerides--\$10.
 - (lxxxix) Uric acid--\$8.
 - (xc) Urinalysis with microscopic--\$9.
 - (xci) Urinalysis without microscopic--\$7.
 - (xcii) Urinalysis, auto, without microscopic--\$9.
 - (xciii) Valproic acid--\$31.
 - (xciv) VMA, (vanillylmandelic acid)--\$39.
- (C) Cytology:
- (i) Fine needle aspiration, evaluation--\$100;
 - (ii) Liquid based pap smear--\$33;
 - (iii) Non-Gyn, smear, routine--\$56;
 - (iv) Pap smear--\$12;
 - (v) Pap smear with hormone evaluation--\$112;
 - (vi) Pap smear, pathologist--\$12; and
 - (vii) Pneumocystis, over 5 slides--\$112.
- (D) DNA (Deoxyribonucleic acid) analysis:
- (i) Beta-Globin 6 mutation panel (HbS, HbC, Hb E, HbD, Beta-Thalassemias-29 and -88)--\$150; \$16;
 - (ii) Beta-Globin 5 mutation panel (HbS, HbC, Hb E, Beta-Thalassemias-29 and -88)--\$138;
 - (iii) Hemoglobin S and C mutation Test--\$88; \$63.
 - (iv) Hemoglobin E mutation test--\$88;
 - (v) Beta-Thalassemia-29 and--88 mutation test--\$100;
 - (vi) Beta-Thalassemia-29 mutation test--\$63;
 - (vii) Beta-Thalassemia-88 mutation test--\$63;
 - (viii) Hemoglobin D mutation test--\$63;
 - (ix) Beta-Globin sequencing (from 105 of cap site to IVS-1-60)--\$188;
 - (x) Beta-Globin sequencing (from 105 of cap site to IVS-1-60) added to another test--\$100;
 - (xi) Galactosemia--\$506;
 - (xii) Galactosemia, DNA carrier analysis of family member--\$206;
 - (xiii) Phenylketonuria--\$600; and
 - (xiv) Phenylketonuria, DNA carrier analysis of family member--\$206.
- (E) Drugs: \$100;
- (i) Amikacin level--\$155;
 - (ii) Blood alcohol--\$19;
 - (iii) DHEAs--\$82;
 - (iv) Dioxin drug level--\$23;
 - (v) Dilantin (phenytoin) drug level--\$23;
 - (vi) Drugs of abuse screens, urine:
 - (I) 1 drug--\$19;
 - (II) 3 drugs--\$58; and
 - (III) 7 drugs--\$135.
 - (vii) Gentamicin level--\$29;
 - (viii) Insulin level--\$20;
 - (ix) Isoniazid (INH), urine test, qualitative--\$62;
 - (x) Lithium level--\$13;
 - (xi) Phenobarbital level--\$20;
 - (xii) Procainamide, NAPA drug level--\$66;
 - (xiii) Quinidine level--\$25;
 - (xiv) Salicylate level--\$18;
 - (xv) Tegretol (Carbamazepine) level--\$17;
 - (xvi) Theophylline (aminophylline) level--\$25;
 - (xvii) Tobramycin level--\$29; and
 - (xviii) Vancomycin level--\$31.
- (F) Genetics:
- (i) alpha fetoprotein (AFP)--\$31;
 - (ii) β -human chorionic gonadotropin (β -HCG)--
 - (iii) unconjugated estriol-3 (UE3)--\$22; and
 - (iv) triple screen, includes β -HCG, UE3, and AFP--
- (G) Mycobacteriology/mycology.
- (i) Acid fast bacillus (AFB):
 - (I) amplification only--\$69;
 - (II) concentration, any source--\$12;
 - (III) culture, any source--\$26;
 - (IV) culture probe only--\$44;
 - (V) drug susceptibility studies:
 - (-a-) direct susceptibility, each drug--\$10;
 - (-b-) disk method--\$23;
 - (-c-) indirect susceptibility, each drug--\$10;
 - (-d-) level 1 drugs:
 - (-1-) Ciprofloxacin--\$100;
 - (-2-) Ethionamide--\$100;
 - (-3-) Isoniazid--\$100;
 - (-4-) Ofloxacin--\$100;
 - (-5-) PAS (p-aminosalicylic acid)--
 - (-6-) Pyrazinamide--\$100; and

- (-7-) Rifampin--\$100.
- (-e-) level 2 drugs:
 - (-1-) Azithromycin--\$100;
 - (-2-) Clofazamine--\$100;
 - (-3-) Cycloserine--\$100;
 - (-4-) Ethambutol--\$100;
 - (-5-) Kanamycin--\$100; and
 - (-6-) Streptomycin--\$100.
- (-f-) level 3 drug, Capreomycin--\$100;
- (-g-) MIC (minimum inhibitory concentration)--\$35;
- (-h-) primary panel--\$75; and
- (-i-) secondary panel--\$163.
- (VI) identification, referred isolates--\$31;
- (VII) smear and culture--\$56; and
- (VIII) smear only--\$19.
- (ii) Direct High Performance Liquid Chromatography (HPLC)--\$31.
- (iii) Fungus:
 - (I) reference:
 - (-a-) culture--\$75;
 - (-b-) identification--\$69;
 - (-c-) identification, gen probe--\$51; and
 - (-d-) probe only--\$44.
 - (II) clinical:
 - (-a-) culture, fungi, blood (isolation and presumptive I.D.)--\$21;
 - (-b-) culture, fungi, definitive I.D., mold--\$25;
 - (-c-) culture, fungi, definitive I.D., yeast--\$25;
 - (-d-) culture, fungi, other source except blood, isolation and presumptive I.D.--\$20;
 - (-e-) culture, fungi, skin, hair, nails, isolation and presumptive I.D.--\$19;
 - (-f-) India ink smear--\$15; and
 - (-g-) PAS, fungal smear--\$17.
- (iv) *M. kansasii* susceptibility, Rifampin--\$13.
- (H) Newborn screening test kit, including screening panel--\$40. (Fees are based on the newborn screening test kits described in §73.21 of this title (relating to Newborn Screening), which includes the costs of the screening panel.)
- (I) Parasitology.
 - (i) Blood/tissue parasites--\$156.
 - (ii) *Cryptosporidium* preparation acid fast smear--\$12.
 - (iii) *Cryptosporidium* screen, stool--\$13.
 - (iv) Intestinal parasites--\$119.
 - (v) Parasite culture--\$169.
 - (vi) Pinworm swab--\$31.
 - (vii) Worm identification--\$44.
- (J) Serology.
 - (i) Amoebic antibody--\$31.
 - (ii) Anti-DNA, double stranded--\$34.
 - (iii) ANA (antinuclear antibody)--\$28.
 - (iv) Arbovirus:
 - (I) immunoglobulin G (IgG)--\$63;
 - (II) immunoglobulin M (IgM)--\$88; and
 - (III) panel--\$150.
 - (v) *Aspergillus*--\$31.
 - (vi) ASO (antistreptolysin O)--\$21.
 - (vii) ASO (antistreptolysin O) titer--\$21.
 - (viii) *Brucella*--\$16.
 - (ix) C4 Complement, quantitative--\$29.
 - (x) Cat scratch fever (*Bartonella*)--\$50.
 - (xi) CH 50 Complement, total qualitative--\$29.
 - (xii) C-reactive protein, quantitative--\$11.
 - (xiii) Culture typing, immunofluorescent method--\$12.
 - (xiv) Cytomegalovirus (CMV):
 - (I) IgG--\$38;
 - (II) IgM--\$44; and
 - (III) panel--\$44.
 - (xv) Epstein-Barr panel--\$156.
 - (xvi) Epstein-Barr virus antibody--\$63.
 - (xvii) *Ehrlichia*--\$50.
 - (xviii) FTA (fluorescent triponemal antibody) only--\$38.
 - (xix) Fungus:
 - (I) identification--\$69; and
 - (II) panel--\$88.
 - (xx) Hantavirus, IgG/IgM--\$94.
 - (xxi) *Helicobacter pylori*--\$48.
 - (xxii) Hepatitis A:
 - (I) IgM--\$56; and
 - (II) total--\$13.
 - (xxiii) Hepatitis B:
 - (I) core total antibody--\$38;
 - (II) core IgM antibody--\$56;
 - (III) surface antibody (Ab)--\$19; and
 - (IV) surface antigen (Ag)--\$20.
 - (xxiv) Hepatitis B e Ab--\$25.
 - (xxv) Hepatitis B e Ag--\$19.
 - (xxvi) Hepatitis C (HCV)--\$15.
 - (xxvii) Hepatitis C (RIBA)--\$175.

- \$63.
- (xxviii) Acute (comprehensive) hepatitis panel--\$128.
- (xxix) Herpes test, rapid method--\$31.
- AB--\$128.
- (xxx) HSV (Herpes Simplex Virus) I, IgG
- (xxxi) HSV I and II, IgG AB--\$128.
- (xxxii) HSV IgM AB with reflex titer--\$128.
- (xxxiii) HSV II IgG AB--\$128.
- (xxxiv) Human immunodeficiency virus (HIV):
- (I) confirmation--\$44;
- (II) oral HIV, Orasure--\$62;
- (III) screen--\$13; and
- (IV) viral load--\$175.
- (xxxv) HIV/HCV panel--\$28.
- (xxxvi) Immunoglobulins, quantitative, IgG, IgA, IgM--\$54.
- (xxxvii) *Legionella*--\$69.
- (xxxviii) Lyme (*Borrelia*) IgG/IgM panel--\$60.
- (xxxix) Malaria antibody--\$31.
- (xl) Miscellaneous serological tests--\$38.
- (xli) Mononucleosis screen--\$18.
- (xlii) Mumps:
- (I) IgG--\$38; and
- (II) IgM--\$38.
- (xliii) Mycoplasma antibody panel--\$26.
- (xliv) Parvovirus B-19, IgG/IgM--\$75.
- (xlv) Plague (*Yersinia*)--\$19.
- (xlvi) Q-fever--\$63.
- (xlvii) Rheumatoid factor--\$11.
- (xlviii) *Rickettsia* Panel--\$69.
- (xlix) *Rickettsia/Ehrlichia* Panel--\$119.
- (l) RPR (rapid plasma reagent test)--\$6.00.
- (li) RPR/syphilis confirmation--\$16.
- (lii) Rubella:
- (I) IgG--\$19;
- (II) IgM--\$38; and
- (III) screen--\$9.00.
- (liii) Rubeola:
- (I) IgG--\$38; and
- (II) IgM--\$44.
- (liv) Toxoplasmosis:
- (I) IgG--\$50; and
- (II) IgM--\$50.
- (lv) Tularemia (*Francisella*)--\$56.
- (lvi) *Varicella zoster*--\$56.
- (lvii) VDRL (venereal disease research laboratory) test--\$28.
- (K) Surgical pathology:
- (i) Level I, Global--\$24;
- (ii) Level II, Global--\$60;
- (iii) Level III, Global--\$74;
- (iv) Level IV, Global--\$112;
- (v) Level V, Global--\$156; and
- (vi) Level VI, Global--\$227.
- (L) Virology.
- (i) *Chlamydia* culture--\$100.
- (ii) *Dengue* isolation--\$100.
- (iii) Electron microscope studies only--\$356.
- (iv) Herpes simplex isolation--\$106.
- (v) Influenza:
- (I) surveillance--\$156; and
- (II) subtyping--\$131.
- (vi) Virus:
- (I) viral detection by PCR--\$125;
- (II) virus identification on submitted isolate (reference specimen)--\$313; and
- (III) virus isolation, comprehensive--\$263.
- (2) Non-human specimens.
- (A) Bacteriology.
- (i) Environmental:
- (I) Swabs--\$31;
- (II) *Legionella*--\$88;
- (III) bioterrorism--\$250;
- (IV) bioterrorism smear--\$19;
- (V) thermometer calibration--\$38; and
- (VI) weight calibration--\$38.
- (ii) Food.
- (I) Bioterrorism--\$250.
- (II) Botulism (*C. botulinum*)--\$150.
- (III) Pathogen panel:
- (-a-) basic--\$144; and
- (-b-) complex--\$350;
- (IV) Single organism--\$56.
- (V) Standard plate count--\$31.
- (VI) Toxin--\$56.
- (iii) Milk and dairy products.
- (I) Dairy, cultured--\$44.
- (II) Ice cream--\$88.

- (III) Milk:
 - (-a-) pasteurized milk panel--\$119;
 - (-b-) raw milk panel--\$150; and
 - (-c-) single test--\$88.
- (iv) Seafood:
 - (I) brevitoxin--\$250;
 - (II) fecal coliform--\$50;
 - (III) standard plate count--\$44; and
 - (IV) *Vibrios*--\$75.
- (v) Water.
 - (I) Bay waters--\$38.
 - (II) Coliform:
 - (-a-) fecal--\$38; and
 - (-b-) coliform, total--\$50.
 - (III) Potable water--\$31.
 - (IV) Reagent water suitability--\$113.
- (B) Entomology.
 - (i) Insect examination, Chaga's disease--\$31.
 - (ii) Insect identification--\$25.
 - (iii) Mosquito identification:
 - (I) adult, per carton--\$63; and
 - (II) larvae, per vial--\$56.
- (C) Parasitology. Water filter examination--\$219.
- (D) Serology.
 - (i) Arbovirus, equine, includes western equine encephalitis (WEE); eastern equine encephalitis (EEE); and west Nile virus (WNV)--\$63.
 - (ii) Hantavirus, animal--\$94.
 - (iii) Plague (*Yersinia*), animal--\$19.
- (E) Virology.
 - (i) Arbovirus isolation:
 - (I) avian--\$44; and
 - (II) mosquito--\$75; and
 - (III) equine--\$44.
 - (ii) Arbovirus PCR:
 - (I) avian--\$313; and
 - (II) mosquito--\$313.
 - (iii) Rabies testing--\$81.
 - (iv) Rabies virus typing:
 - (I) molecular--\$156; and
 - (II) monoclonal--\$44.
- (3) Handling fees.
 - (A) Clinical specimens and environmental samples--\$38; and
 - (B) Pathogenic agents--\$75.
- (4) Service charges.

(A) A service charge of \$15 will be added for work performed after hours (Monday-Friday 5:30 p.m. to 6:00 a.m. and Saturday and Sundays 12:00 p.m. to 7:00 a.m.).

(B) An additional charge of \$15 will be added for after hours STAT analysis.

(C) A fee not to exceed \$5 will be charged for venipuncture.

§73.55. Fee Schedule for Chemical Analyses.

Fees for chemical analyses and physical testing shall not exceed the following amounts.

(1) The following fees apply to the analysis of organic compounds in air:

(A) formaldehyde, National Institute Of Occupational Safety and Health (NIOSH) methods--\$163;

(B) pesticides, NIOSH method--\$200; and

(C) VOCs, NIOSH method--\$186.

(2) The following fees apply to the analysis of drinking water (including bottled water) samples.

(A) Inorganic parameters.

(i) Individual tests:

(I) alkalinity, total and phenolphthalein, Standard Methods (SM), 18th edition, 2320B--\$29;

(II) ammonia, SM, 20th edition, 4500-NH3G--\$35;

(III) bicarbonate-carbonate, with alkalinity, SM, 18th edition, 2320B--\$19;

(IV) bicarbonate-carbonate, without alkalinity, SM, 18th edition, 2320B--\$29;

(V) bromate, Environmental Protection Agency (EPA) method 300.1--\$69;

(VI) bromide, EPA method 300.0--\$31;

(VII) carbon, total organic, SM, 18th edition, 5310C--\$54;

(VIII) chlorate, EPA method 300.0--\$69;

(IX) chloride, EPA method 300.0--\$24;

(X) chlorine, SM, 19th edition, 4500-Cl F--\$25;

(XI) chlorine dioxide, SM, 19th edition, 4500-CIO2 B--\$100;

(XII) chlorite, EPA method 300.0--\$69;

(XIII) chloramines, SM, 19th edition, 4500-CIO2 D--\$25;

(XIV) color, SM, 18th edition, 2120B--\$30;

(XV) conductivity, SM, 18th edition, 2510B--\$24;

(XVI) cyanide, total, SM, 18th edition, 4500-CN-B+C+E--\$69;

(XVII) fluoride, EPA method 300.0--\$24;

(XVIII) nitrate and nitrite as nitrogen, EPA method 353.2--\$28;

\$28;

(XIX) nitrate as nitrogen, EPA method 353.2--\$28;

(XX) nitrite as nitrogen, EPA method 353.2--\$28;

(XXI) odor, EPA method 140.1, 2150B--\$63;

(XXII) perchlorate, EPA method 314.0--\$69;

(XXIII) perchlorate, Unregulated Contamination Monitoring Regulation (UCMR), EPA method 314.0--\$76;

(XXIV) pH, EPA method 150.1--\$24;

(XXV) phenolics, total recoverable, EPA method 420.1--\$60;

(XXVI) silica, dissolved, SM, 18th edition, 4500Si F--\$30;

(XXVII) solids, suspended, volatile or fixed, SM, 18th edition, 2540G--\$39;

(XXVIII) solids, total dissolved, determined, SM, 18th edition, 2540C--\$39;

(XXIX) solids, total suspended, SM, 18th edition, 2540D--\$39;

(XXX) sulfate, EPA method 300.0--\$24; and

(XXXI) turbidity, EPA method 180.1--\$25.

(ii) Routine water mineral group, EPA methods 150.1, 300.0, and 353.2, and SM, 18th edition, 2320B, 2510B, and 2540C--\$214.

(B) Metals analysis. A preparation fee applies to all drinking water samples analyzed by inductively coupled plasma (ICP) or by inductively coupled plasma-mass spectrometry (ICP-MS) with turbidity greater than or equal to 1 Nephelometric Turbidity Unit (NTU) or that contains visible particles. The total analysis cost includes the per-element or per-group fee and any required sample preparation fee.

(i) Sample preparation fee, total recoverable metals digestion, EPA method 200.2--\$36.

(ii) Per-element analysis fees:

(I) mercury, EPA method 245.1--\$31;

(II) single ICP, EPA method 200.7--\$24; and

(III) single ICP-MS, EPA method 200.8--\$31.

(iii) Group fees:

(I) all metals drinking water group, EPA methods, 200.7, 200.8, and 245.1 and SM 19th edition 2340B--\$330;

(II) ICP/ICP-MS metals drinking water group, EPA methods 200.7 and 200.8 and SM 19th edition 2340B--\$238;

(III) lead/copper, EPA method 200.8--\$30;

(IV) hardness, SM, 19th edition 2340B--\$38; and

(V) reagent water metal suitability group, EPA methods 200.7 and 200.8--\$145.

(C) Organic compounds:

(i) chlorinated pesticides and PCBs in drinking water, EPA method 508--\$258;

(ii) chlorophenoxy herbicides, EPA method 515.4--\$275;

(iii) diquat and paraquat EPA method 549--\$303;

(iv) ethylene dibromide (EDB) and dibromochloropropane (DBCP), EPA method 504.1--\$195;

(v) endothall, EPA method 548.1--\$446;

(vi) glyphosate, EPA method 547--\$211;

(vii) haloacetic acids and dalapon, EPA method 552.2--\$275;

(viii) chlorinated disinfection-by-products (haloacetonitriles) EPA method 551.1--\$235;

(ix) methylcarbamoyloximes and n-methylcarbamates (carbamate) pesticides, EPA method 531.1--\$250;

(x) organochlorine pesticides, EPA method 508--\$230;

(xi) PCB screening by perchlorination, EPA method 508A--\$366;

(xii) semi-volatile organic compounds, EPA method 525.2--\$360;

(xiii) trihalomethanes, EPA method 502.2--\$84;

(xiv) trihalomethanes, EPA method 524.2--\$84; and

(xv) VOCs, EPA method 524.2--\$183.

(D) Radiochemicals:

(i) gross alpha and beta, EPA method 900.0--\$113;

(ii) gross alpha or beta, EPA method 900.0--\$100;

(iii) gamma emitting isotopes, EPA method 901.1--\$94;

(iv) radium-226, EPA method 903.1--\$83;

(v) radium-228, EPA method 904.0--\$118;

(vi) strontium-89 or 90, EPA method 905.0--\$126;

(vii) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$90;

(viii) tritium, EPA method 906.0--\$64;

(ix) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$95; and

(x) composite/storage fee--\$19.

(3) The following fees apply to the analysis of food and food products.

(A) Inorganic analyses:

(i) added water, AOAC calculation--\$16;

(ii) deterioration, canned products, AOAC chart--\$30;

(iii) fat, paly screen, AOAC method 46.616--\$44;

(iv) fat, soxhlet extraction, USDA method Fat-1--\$101;

(v) filth, AOAC method 941.16--\$44;

(vi) insect identification, Food and Drug Administration (FDA) Technical Bulletin #2--\$44;

- (vii) meat protein, AOAC calculation--\$19;
- (viii) moisture (total water), USDA M01 method--\$21;
- (ix) pH of food products, AOAC method 981.12--\$25;
- (x) protein, total, USDA protein block digestion--\$73;
- (xi) salt, USDA method SLT--\$131;
- (xii) soy protein concentrate, USDA SOY1 method--\$80; and
- (xiii) water activity, AOAC method 978.18--\$44.

(B) Metals analyses. A sample preparation fee applies to all food samples analyzed by FLAA, GFAA, GHAA, ICP or ICP-MS techniques. The total analysis fee includes the sample preparation fee and the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

- (i) Sample preparation fee--total recoverable metals digestion, EPA methods 200.2, 200.3, or SW-846 method 3050B--\$46.
- (ii) Per-element fees:
 - (I) mercury, EPA methods 245.1, 245.5, and 245.6, and SW-846 methods 7470A and 7471A--\$40;
 - (II) single metal, FLAA or ICP, EPA 200 series methods and EPA SW-846 methods 6010 or 7000 series--\$24;
 - (III) single metal, GFAA or GHAA, EPA 200 series methods and EPA SW-846 methods 7000 series, and SM, 18th edition, 3114--\$38; and
 - (IV) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020--\$31.

(4) The following fees apply to the analysis of soil and solids:

(A) Metals analysis. A sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. The total cost of the analysis will be the sample preparation fee plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

- (i) Sample preparation fee--acid digestion of sediments, sludges, and soils, EPA SW-846 Method 3050B--\$44.
- (ii) Per-element fee:
 - (I) lead in paint by FLAA--\$44;
 - (II) lead in pottery leachate by FLAA--\$33;
 - (III) lead and cadmium in pottery leachate by FLAA--\$59;
 - (IV) lead in soil by FLAA--\$46;
 - (V) lead in solids by FLAA--\$44;
 - (VI) mercury, sediment, EPA method 245.5 and EPA SW-846 method 7471A--\$40;
 - (VII) non-routine single metal, EPA 200 series methods and EPA SW-846 methods: 6010B, 6020, and 7000's--\$60;
 - (VIII) silver, EPA method 200.7, and EPA SW-846 methods 6010B, 7760A, and 7761--\$60;

(IX) single metal, FLAA or ICP, EPA 200 series methods, 200.7, and EPA SW-846 6010B and 7000 series methods--\$26;

(X) single metal, graphite furnace atomic absorption spectrometry (GFAA) or gas hydride atomic absorption spectrometry (GHAA), EPA 200 series methods and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--\$38; and

(XI) single metal, ICP-MS, EPA method 200.8 and EPA SW-846 method 6020--\$31.

(B) Radiochemistry:

- (i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--\$154;
- (ii) gross alpha and beta, EPA method 900.0--\$101;
- (iii) gross alpha or beta, EPA method 900.0--\$81;
- (iv) gamma emitting isotopes, EPA method 901.1--\$140;
- (v) plutonium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$90;
- (vi) radium-226, DOE-RESL A-20/EPA method 903.1--\$133;
- (vii) radium-228, DOE-RESL A-20/EPA method 904.0--\$110;
- (viii) strontium-89 or 90, EPA method 905.0--\$147;
- (ix) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$88;
- (x) tritium, EPA method-Azeotropic Distillation--\$99; and
- (xi) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$86.

(5) The following fees apply to the analysis of tissue and vegetation samples. A tissue preparation (homogenization) fee applies to all seafood tissue samples analyzed for organic compounds and/or metals. The total analysis cost includes the tissue preparation fee, any analyte specific sample preparation fee, and the per-element or per-group test fee.

(A) Tissue preparation fees:

- (i) fillets, EPA method 200.3--\$46; and
- (ii) whole fish and crabs, EPA method 200.3--\$80.

(B) Metals analyses. A sample preparation fee applies to all tissue samples analyzed by ICP or ICP-MS. The total analysis cost includes the per-element or per-group fee plus any required sample preparation fee:

- (i) sample preparation fee--total recoverable metals digestion, EPA method 200.3--\$46.
- (ii) per-element fees:
 - (I) mercury, EPA method 245.6--\$40;
 - (II) single metal, FLAA or ICP, EPA 200 series methods, 200.7, or EPA SW-846 methods 6010B, or 7000's--\$24;
 - (III) single metal, GFAA or GHAA, EPA 200 series, methods and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--\$38;

(IV) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020--\$31; and

(iii) fish tissue (includes per group fee and total recoverable metals digestion fee)--\$283.

(C) Organic analyses. The organic analysis fee includes any required sample cleanup procedures:

(i) organochlorine pesticides and PCB's, fish fillets, PAM 304 E1 and EPA SW-846 methods 8081A--\$1015;

(ii) organochlorine pesticides and PCB's, whole fish, PAM 304 E1 and EPA SW-846 methods 8081A--\$1206;

(iii) semi-volatile organic compounds by gas chromatography/mass spectrometry (GC/MS), fish, JAOAC method and EPA SW-846 methods 3540C and 8270C--\$648;

(iv) VOCs, GC/MS, fish, JAOAC method 64;653:ff and EPA SW-846 method 8260B--\$311; and

(v) organochlorine pesticides in vegetables by Gas Chromatography (GC)--\$755.

(D) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--\$154;

(ii) gamma emitting isotopes, EPA method 901.1--\$138;

(iii) gross alpha and beta, EPA method 900.0--\$111;

(iv) gross alpha or beta, EPA method 900.0--\$81;

(v) plutonium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$90;

(vi) radium-226, DOE-RESL A-20/EPA method 903.1--\$136;

(vii) strontium-89 or 90, EPA method 905.0--\$149;

(viii) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$88;

(ix) tritium, EPA Method 906.0 Azeotropic Distillation--\$99; and

(x) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$85.

(6) The following fees apply to the analysis of water and wastewater.

(A) Inorganic parameters:

(i) odor, EPA method 140.1--\$65; and

(ii) phenolics, total recoverable, EPA method 420.1--\$60.

(B) Metals analysis. The following sample preparation fees apply to the analysis of water and/or wastewater samples. The total cost of the analysis will be the required sample preparation fee plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fees:

(I) total recoverable metals digestion, EPA method 200.2 and EPA SW-846 methods 3005A, 3010A, and 3020A--\$38; and

(II) filtration (dissolved metals), EPA SW-846 method 3005A--\$26.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 method 7470A--\$40;

(II) silver (includes separate digestion), EPA method 200.7 and EPA SW-846 methods 6010B, 7760A, and 7761--\$54;

(III) single metal, FLAA or ICP, EPA method 200.8, 200.7 and EPA SW-846 methods 6010B, and 7000 series--\$24;

(IV) single metal, GFAA or GHAA, EPA method 200 series and EPA SW-846 methods 7000 series, 7062, and 7742, and SM, 18th edition, 3114--\$38; and

(V) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020--\$31.

(C) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--\$165;

(ii) gross alpha and beta, EPA method 900.0--\$113;

(iii) gross alpha or beta, EPA method 900.0--\$100;

(iv) gamma emitting isotopes, EPA method 901.1--\$94;

(v) plutonium, isotopes, DOE-RESL A-20 Alpha Spectrometry--\$90;

(vi) radium-226, EPA method 903.1--\$101;

(vii) radium-228, EPA method 904.0--\$85;

(viii) strontium-89 or 90, EPA method 905.0--\$126;

(ix) thorium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$88;

(x) tritium, EPA method 906.0--\$64; and

(xi) uranium isotopes, DOE-RESL A-20 Alpha Spectrometry--\$90.

(7) The following fees apply to the analysis of wipes/filters/cartridges.

(A) Lead analysis, FLAA--\$40.

(B) Radiochemistry:

(i) alpha spectrometry preparation, DOE-RESL A-20 Pyrosulfate Fusion--\$154;

(ii) carbon-14, Liquid Scintillation--\$145;

(iii) gross alpha and beta, EPA method 900.0--\$65;

(iv) gross alpha or beta, EPA method 900.0--\$50;

(v) gamma emitting isotopes, EPA method 901.1--\$80;

(vi) plutonium isotopes, DOE-RESL A-20 Alpha Spectroscopy--\$90;

(vii) radium-226, DOE-RESL A-20/EPA method 903.1--\$136;

(viii) strontium-89 or 90 EPA method 905.0--\$148;

(ix) thorium isotopes, DOE-RESL A-20 Alpha Spectroscopy--\$88;

(x) tritium, Azeotropic Distillation--\$64; and

(xi) uranium isotopes, DOE-RESL A-20 Alpha Spectroscopy--\$85.

(8) Identification of feces and urine stains:

(A) identification of feces stains, AOAC method 981.22--\$159; and

(B) identification of urine stains, AOAC methods 963.28, and 959.14--\$44.

(9) Additional charges.

(A) Analysis of trip and field blank samples will be billed at the same rate as the requested sample analysis.

(B) If the submitter requires specific samples within their batch to be analyzed and reported as laboratory fortified matrix (FM) or matrix spike (MS), and laboratory fortified matrix duplicate (LFMD) or matrix spike duplicate (MSD), a fee for two additional samples will be charged.

(C) A fee of \$8 per sample will be charged for samples submitted but not analyzed at the submitters request, including samples on hold, and then voided.

(D) The preparation fee (or 20% of the analysis fee if there is no separate preparation fee) will be charged for any sample prepared but not analyzed at the clients request.

(E) A fee equal to 3% of the analysis fee will be charged for a summary of the quality control data routinely generated during the analysis. This summary may include data for method blanks, duplicate, matrix spike recovery, laboratory control samples, and surrogate recovery.

(F) Additional copies of reports and raw data packages will be provided at a cost of \$0.10 per page for each request in excess of 50 pages. An additional fee of \$15 will be charged for each hour in excess of one hour to prepare the request.

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 March 27, 2006.

TRD-200601824

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 16, 2006

Proposal publication date: October 14, 2005

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



25 TAC §73.25

STATUTORY AUTHORITY

The repeal is authorized under Health and Safety Code, §§12.031 and 12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires the department to establish collection procedures, §12.035, which requires the department to deposit all money collected for fees and charges

under §§12.032 and 12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 March 27, 2006.

TRD-200601825

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 16, 2006

Proposal publication date: October 14, 2005

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



CHAPTER 169. ZOONOSIS CONTROL SUBCHAPTER E. DOG AND CAT STERILIZATION

25 TAC §169.102

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §169.102, concerning the Department of State Health Services Animal Friendly Grants with a change to the proposed text as published in the September 23, 2005, issue of the *Texas Register* (30 TexReg 6029).

BACKGROUND AND PURPOSE

The amendment is necessary to comply with Government Code, Chapter 828, Subchapter E, "Dog and Cat Sterilization," which requires the department to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public.

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). Section 169.102 has been reviewed and the department has determined that reasons for adopting the section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

An amendment to §169.102 is necessary to comply with the mandated four-year rule review, update the legacy agency name, change the program name to the "Zoonosis Control Branch" instead of "Zoonosis Control Group", and to replace the word "surgery" with "sterilization".

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rule during the comment period.

DEPARTMENT COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes that will delete outdated references.

Change: Concerning §169.102(g)(2), the program name has been changed from "Zoonosis Control Group" to "Zoonosis Control Branch".

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendment is adopted under the Health and Safety Code, §828.014, which provides the department with the authority to make grants to eligible organizations for the purpose of providing low-cost dog and cat sterilization to the general public; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner to adopt rules and policies necessary for the operation and provision of health and human services by the department, and for the administration of Health and Safety Code, Chapter 1001.

§169.102. *Department of State Health Services Animal Friendly Grants.*

(a) Purpose.

(1) As authorized by the Texas Health and Safety Code, §828.014, relating to the Animal Friendly Fund, the department shall institute and administer grants under this subchapter.

(2) The grants shall be known as a part of the "Department of State Health Services Animal Friendly Grants."

(3) This subchapter governs the administration of the grants, the submission and review of grant applications, and the award of the grants.

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

(1) Closing date--Date specified in the request for proposals as the date on which applications must be received or postmarked.

(2) Department--Department of State Health Services.

(3) Local non-profit veterinary medical association--An organization set up by and comprised of several volunteer veterinarians in their immediate region for the purpose of presenting continuing education, planning group activities, or discussing issues common to their professional field.

(4) Nonprofit organization--A private, nonprofit, tax-exempt corporation, association or organization under Internal Revenue Code of 1986, §501(c)(3) (26 United States Code §501(c)(3)).

(5) Owner--A person which feeds, shelters, harbors, has possession or control, or has the responsibility to control an animal.

(c) Philosophy.

(1) The intent of the grants is to increase the sterilization of dogs and cats owned by the general public at minimal or no cost.

(2) Grant funds will not be used to:

(A) augment a releasing agency's adoption sterilization program; or

(B) fund programs that do not operate within the State of Texas.

(3) One grant per grant period will be awarded per agency for the sterilization of dogs and/or cats.

(4) Efforts will be made to distribute funds to all areas of the state.

(d) Sources and Allocation of Funds.

(1) Funds for the grants shall be provided in accordance with the Health & Safety Code, §828.014, relating to the Animal Friendly account.

(2) All grants shall be awarded competitively according to the provisions of this subchapter.

(3) Grants shall be made only to the extent that funds are available in the Animal Friendly fund.

(4) The department shall have the authority and discretion to:

(A) determine the purpose(s) of the grants pursuant to law and this subchapter;

(B) approve or deny grant applications;

(C) determine the number, size and duration of grants; and

(D) modify or terminate grants.

(5) The department shall not be liable, nor shall grant funds be used, for any costs incurred by applicants in the development, preparation, submission, or review of applications.

(e) Eligibility for Grants. Eligible applicants include:

(1) a releasing agency;

(2) an organization that is qualified as a charitable organization under the Internal Revenue Code, §501(c)(3), that has animal welfare or sterilizing animals owned by the general public at minimal or no cost as its primary purpose; or

(3) a local nonprofit veterinary medical association that has an established program for sterilizing animals owned by the general public at minimal or no cost.

(f) Requirements for Grants.

(1) The department shall specify reasonable requirements for grant applications.

(2) Applicants for grants shall submit as a part of their application a plan of how they intend to provide sterilization services and their target population.

(3) Grant recipients shall make semi-annual reports to the department in a form and at a time determined by the department.

(g) Procedures for Grant Announcements.

(1) Before applications are requested, the department shall publish one or more notices of grant availability in the *Texas Register*. These notices shall also be distributed throughout the state through mail and electronic means. The notices will include details about the grants, instructions for obtaining a request for proposals, and the names of persons to contact in the department for further information.

(2) The department shall maintain a list of persons to be notified of requests for proposals. Any person wanting to be placed on the list should contact: Animal Friendly Grants, Zoonosis Control Branch, 1100 West 49th Street, Austin, Texas 78756.

(3) The department shall develop and publish one or more requests for proposals, which shall contain details concerning, but not limited to, the following:

- (A) the nature and purpose(s) of the grants;
- (B) the total amount of funds available for the grants under each part;
- (C) the maximum and minimum dollar amounts that will be awarded for individual grants and for individual grantees;
- (D) the information and format required for grant applications;
- (E) information about the criteria used to judge grant applications; and
- (F) the closing date.

(h) Procedures for Grant Applications.

(1) The department may specify any reasonable requirements for grant applications, including, but not limited to, length, format, authentication, and supporting documentation.

(2) Applications that are incomplete or substantially inconsistent with the requirements of this subchapter may be rejected without further consideration at the discretion of the department.

(3) Applications received after the closing date will not be considered, unless the closing date is extended by the department.

(4) Applicants will be given a minimum of 60 calendar days to file applications after a request for proposals is published. Applications must be received by the department on or before the closing date specified in the request for proposal.

(i) Competitive Review Process.

(1) Each application shall be reviewed by the department for completeness, relevance to the published request for proposals, adherence to department policies, general quality, technical merit, and budget appropriateness.

(2) The department's review process shall be completed within 45 days after the closing date.

(j) Selection Criteria.

(1) No grant shall be approved unless, in the opinion of the department:

(A) the application contains an explanation as to why provision of low-cost sterilization for pets will help minimize pet-overpopulation in their community;

(B) the application includes a workable plan to provide sterilization of dogs and cats for the general public at low or no cost;

(C) the application includes a method to report the number, species, and sex of animals sterilized;

(D) the applicant specifies how the general public will be made aware of the availability of low-cost sterilization.

(E) the applicant has a written non-discrimination policy in place to ensure that no person is discriminated against on the grounds of race, color, religion, sex, national origin, age, or disability.

(2) A grant application will be given funding preference, in a manner determined by the department and announced in the request for proposal, to the extent that it:

(A) targets low-income pets owners, describing how the applicant defines, ascertains, and verifies that the person is financially challenged;

(B) documents the intent and ability of the applicant to communicate and collaborate with the local health departments, animal control agencies, animal welfare agencies, veterinary organizations and human services organizations;

(C) demonstrates a low cost for sterilization on a per animal basis, thereby maximizing the number of animals which can be sterilized.

(D) is a new, qualified program that does not duplicate existing low-cost sterilization efforts in a given community; and

(E) contains such other information or criteria that the department may specify and include in the request for proposals.

(k) Project Approval. Grant recipients shall execute a contract with the department. The contract shall detail items such as budget, reporting requirements, general provisions for department grant contracts, and any other specifics that might apply to the award.

(l) Continuation Funding.

(1) Grant recipients may be eligible for continuation funding. The department will consider the grant recipient's accomplishments, progress toward stated goals and objectives, award of past grants, and development of alternative funding. Applications shall be submitted in accordance with this subchapter.

(2) The department will award continuation grants after a review of applications in accordance with the provisions of this subchapter.

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 March 22, 2006.

TRD-200601760

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 11, 2006

Proposal publication date: September 23, 2005

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



CHAPTER 265. GENERAL SANITATION SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts the repeal of §§265.11 and 265.13 - 265.27, and new §§265.11 and 265.13 - 265.29, concerning the health and safety of Texas youth camps. New §§265.11, 265.13, 265.15, 265.23, and 265.24 are adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 652). The repeal of §§265.11 and 265.13 - 265.27 and new §§265.14, 265.16 - 265.22, and

265.25 - 265.29 are adopted without changes and will not be re-published.

BACKGROUND AND PURPOSE

The repeal and new sections are necessary to accommodate needed revisions as outlined. Health and Safety Code (HSC), §§141.002(2), 141.002(5), and 141.005(a), redefined "day camp" and "youth camp", and changed the renewal date for licenses.

HSC, §141.0021, exempted a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education; HSC, §§141.0035, 141.004(a), and 141.005(b), eliminated statutory license fees and required the Texas Board of Health (board) to establish the amount of the fee for obtaining or renewing a license, and required the board to solicit comments and information from the operators of affected youth camps; HSC, §§141.007(d), (e), (f), and (g); 141.008(a); 141.010; and 141.016(c), changed inspection procedures for infractions found during inspections which are easily corrected, reestablished the Youth Camp Advisory Committee, and changed the administrative penalty.

HSC, §141.0096, established the Youth Camp Training Advisory Committee.

Government Code, Chapter 2054, Subchapter K, requires the department to participate in an electronic system for licensing transactions (Texas Online) and to establish fees for licensees.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 265.11 and 265.13 - 265.27 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on these subjects are needed.

SECTION-BY-SECTION SUMMARY

New §265.11 updates the definitions used in the chapter, including more clearly defining the types of camps and the general characteristics of a youth camp. Sections 265.13 and 265.14 more clearly define the physical facilities required of a youth camp, updated to reflect current state statutes and accepted national standards. The requirement to report to the department incidents of camper neglect or abuse, or the death, serious injury or serious illness of a camper has been strengthened and clarified in §265.15. Sections 265.15 and 265.16 update requirements for waterfront activities and potentially hazardous camp activities, adding sections dealing with horseback riding programs and adventure/challenge courses. Sections 265.17 - 265.21 deal with Fire Prevention, Motor Vehicles, Farm and Domestic Animals, and Insect and Rodent Control respectively. Sections 265.23 and 265.24 provide the procedures for obtaining a youth camp license. Section 265.25 outlines procedures for inspections, including changing inspection procedures for infractions found during inspections which are easily corrected. Civil penalties and injunctions are outlined in §265.26. Section 265.27 deals with revocation of a license, administrative penalties, and hearing procedures. This section also includes an enforcement matrix establishing a severity level for deficiencies identified by the department. The assignment of a severity level, ranked as Severity Level I, II, or III, is based upon determination of risk of injury to the camper. Section 265.28 deals with licensing fees. Membership requirements and responsibilities of the

Youth Camp Advisory Committee and the Youth Camp Training Advisory Committee are explained in §265.29.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period. However, the department staff on behalf of the commission provided comments and the commission has reviewed and agrees to the following changes that will add clarification to a definition or update information.

Change: Concerning the definition of "Youth camp, general characteristics of:" in §265.11(21)(B), the staff commenter suggested that the word "only" be included in the definition, so that this definition reads, "a youth camp operates only during school vacation periods, and not more than 120 days per calendar year; and..." A change was made to the rule as a result of this comment.

Change: Concerning §265.15(d), §265.15(e), and §265.23(a) the web address was amended from "www.tdh.state.tx.us/beh/gc/youth.htm" to "www.dshs.state.tx.us/beh/gc/youth.htm".

Change: Concerning §265.23(a) and §265.24(c), the unit name was amended from "Professional Licensing and Certification Unit" to "Environmental and Sanitation Licensing Group".

Change: Concerning §265.23(a), the telephone number was amended from "512-834-6770" to "512-834-6600".

Change: Concerning §265.13(n) and §265.15(d), the telephone number was amended from "512-834-6770" to "512-834-6773".

LEGAL CERTIFICATION

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

25 TAC §§265.11, 265.13 - 265.27

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §141.008, which authorizes the department to adopt rules; Government Code, Chapter 2054, that requires the department to participate in an electronic system for licensing transactions (Texas Online) and to establish fees for licensees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 March 27, 2006.

TRD-200601828

Cathy Campbell

General Counsel

Department of State Health Services

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Proposal publication date: February 3, 2006

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

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25 TAC §§265.11, 265.13 - 265.29

STATUTORY AUTHORITY

The new sections are authorized by Health and Safety Code, §141.008, which authorizes the department to adopt rules; Government Code, Chapter 2054, that requires the department to participate in an electronic system for licensing transactions (Texas Online) and to establish fees for licensees; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§265.11. Definitions.

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

- (1) Act--Texas Youth Camp Safety and Health Act, Health and Safety Code, Chapter 141.
- (2) Adult--A person 18 years of age or older.
- (3) Camper--A minor child, under 18, who is attending a youth camp on either a day or boarding basis.
- (4) Commissioner--The Commissioner of the Department of State Health Services.
- (5) Day camp--A camp that operates during the day or any portion of the day between 7:00 a.m. and 10:00 p.m. for four or more consecutive days and that offers no more than two overnight stays during each camp session. To be eligible to be licensed as a youth camp, the camp's schedule must be structured so that each camper attends for more than four hours per day for four consecutive days. The term does not include a facility that is required to be licensed with the Department of Family and Protective Services (formerly the Department of Protective and Regulatory Services).
- (6) Department--Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3199.
- (7) Executive Commissioner--Executive Commissioner of the Health and Human Services Commission.
- (8) Firearm--Any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or a burning substance, or any device readily convertible to that use.
- (9) Hazardous activity--A camp activity such as waterfront activities, archery, horseback riding, challenge courses, or riflery that requires special technical skills, equipment, or safety regulations.
- (10) Pellet gun--Any device designed, made, or adapted to expel a projectile through a barrel by using compressed air or carbon dioxide. This definition includes, but is not limited to, air guns, air rifles, BB guns, and paintball guns.
- (11) Permanent structure--Man-made buildings such as dining halls, dormitories, cabins, or other buildings that are constructed to remain stationary.
- (12) Person--An individual, partnership, corporation, association, or organization. In these rules, a person does not include a government or governmental subdivision.
- (13) Primitive camp--A youth camp that does not provide either permanent structures or utilities for camper use.

(14) Resident camp--A camp that for a period of four or more consecutive days continuously provides residential services to each camper, including overnight accommodations for at least three consecutive nights.

(15) Supervisor/counselor--Camp personnel or youth group leader, 18 years of age or older, who is responsible for the immediate supervision of campers.

(16) Travel camp--A day or resident camp, lasting for four or more consecutive days, that begins and ends at a fixed location, but may move from location to location on a daily basis.

(17) TCEQ--Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, telephone 512-239-1000.

(18) Waterfront--A natural, or artificial body of water that includes, but is not limited to, a lake, ocean, bay, pond, river, swimming pool, or spa, which is the site of any water activity.

(19) Waterfront activity--A recreational or instructional activity, occurring in, on, or near a waterfront. Waterfront activity includes, but is not limited to, swimming, boating, water skiing, scuba diving, rafting, tubing, synchronized swimming or sailing.

(20) Youth camp--A facility or property, other than a facility required to be licensed by the Department of Family and Protective Services that:

(A) has the general characteristics of a day camp, resident camp, or travel camp;

(B) is used for recreational, athletic, religious, or educational activities;

(C) accommodates at least five minors who attend or temporarily reside at the camp for all or part of at least four consecutive days; and

(D) is not a facility or program operated by or on the campus of an institution of higher education or a private or independent institution of higher education as those terms are defined by the Education Code, §61.003, that is regularly inspected by one or more local governmental entities for compliance with health and safety standards.

(21) Youth camp, general characteristics of:

(A) a youth camp provides supervision, instruction, and recreation, utilizing a variety of activities primarily in an outdoor, natural environment, for children who are apart from their parents or legal guardians;

(B) a youth camp operates only during school vacation periods, and not more than 120 days per calendar year; and

(C) a youth camp accepts a camper for a minimum of four consecutive days for more than four hours per day.

(22) Youth camp operator--Any person who owns, operates, controls, or supervises a youth camp, whether or not for profit.

§265.13. Site and Physical Facilities.

(a) Safety of the location. The location of a camp shall not present a fire, health, or safety hazard.

(b) Accumulation of refuse and debris. The premises of each camp shall be kept free of accumulations of refuse and debris.

(c) Compliance with building, plumbing, electrical and life safety codes. All camp buildings shall comply with applicable building, plumbing, electrical, life safety, and similar codes.

(d) Permanent living or sleeping structures. All permanent structures used for living or sleeping purposes in the camp shall be provided with walls, floors, and ceilings that shall be kept clean and in good repair.

(e) Separate beds, bunks or cots. A separate bed, bunk, or cot shall be required for each person. Beds shall be spaced in a manner that is free of obstruction for entering and exiting.

(f) Bunk bed guardrails. In all rooms housing campers, all bunk beds shall have at least two guardrails, one on each side of the bed for each bed having the underside of its foundation more than 30 inches from the floor in accordance with the Code of Federal Regulations (CFR), 16 CFR, Part 1513.3. Bunk beds securely attached to a wall may utilize the wall as one guardrail.

(g) Location of sleeping quarters. Sleeping shall not be permitted in kitchens or in rooms used for food preparation, storage, or service.

(h) Bedding provided by the camp. All articles of bedding provided by the camp, including mattresses and mattress covers, shall be kept clean and in good repair. Any bedroll provided by the camp and used by campers must be properly cleaned between use by different individuals.

(i) Toilets and urinals. The camp shall provide at least one toilet for every 15 females and one toilet for every 15 males. In each male toilet facility, up to 70% of the toilets required may be urinals. In facilities with more than one toilet, some means of privacy must be provided for each toilet.

(j) Lavatories. The camp shall provide at least one lavatory adjacent to toilet facilities. In facilities with more than five toilets or urinals in a room, there must be a minimum of two lavatories.

(k) Hand cleanser required. Each lavatory must be equipped with one of the following methods to sanitize hands:

(1) lavatories with hot and cold running water must have soap or hand cleanser available at all times;

(2) lavatories with only cold running water must have hand sanitizer or anti-bacterial soap available at all times; or

(3) privies and portable toilet facilities not equipped with lavatories providing water must have waterless hand sanitizer available at all times.

(l) Shower facilities. Resident youth camps must provide at least one shower for every 15 females and one shower for every 15 males. Each shower shall be equipped with water to meet the needs of the campers. There shall be soap or body cleanser available at all times.

(m) Cleanliness and sanitation of toilets, lavatories and bathing facilities. All toilets, lavatories, and bathing facilities shall be maintained in good repair and kept clean at all times. Every shower room floor shall be washed daily with a suitable detergent or sanitizing agent.

(n) Construction of privies. Privies, if provided, shall be constructed according to standards set forth in the Texas Community Sanitation Handbook, which may be obtained from the department by calling the Environmental Health Group, Policy, Standards and Quality Assurance Unit at 512-834-6773. Privies shall be maintained in a manner to prevent access by flies and animals, to prevent fly breeding, and to prevent contamination of any water supply.

(o) Availability of toilet tissue. Toilet tissue shall be available at all times for each toilet or privy seat.

(p) Lighting and ventilation in toilet and bathing facilities. All permanent toilets and bathing structures shall be adequately ventilated and properly lighted.

(q) Potable water supply required. Camps shall ensure that all water used for ingestion comes from a TCEQ approved potable water source that meets all applicable standards of 30 Texas Administrative Code (TAC), Chapter 290, Public Drinking Water, Subchapter D, Rules and Regulations for Public Water Systems, as amended.

(r) Private water wells at youth camps. Camps utilizing a private well system for water must have written confirmation from the TCEQ that the water quality meets 30 TAC, Chapter 290, Public Drinking Water, Subchapter F, Drinking Water Standards Governing Drinking Water Quality And Reporting Requirements For Public Water Systems, as amended. The written confirmation must be given to a department representative upon request.

(s) Disposal of youth camp wastewater. All camp wastewater must be disposed of into a community sanitary sewage system or an approved On-site Sewage Facility in accordance with 30 TAC, Chapter 285, On-Site Sewage Facilities. In remote areas, the use of chemical toilets or pit privies is allowed, if the facilities are built and maintained in accordance with manufacturer designs or the Texas Community Sanitation Handbook.

(t) Disposal of solid waste. Solid wastes shall be disposed of at a TCEQ approved sanitary landfill or other disposal facility approved by TCEQ under 30 TAC, Chapter 330, Municipal Solid Waste.

(u) Permanent food preparation, storage and service areas. Permanent food preparation, storage and service areas must be maintained in compliance with 25 TAC, Chapter 229, Subchapter K, §229.161 et seq., Texas Food Establishments, as amended. Items inspected may include, but are not limited to:

- (1) proper cooling for cooked/prepared food;
- (2) proper cooking temperatures;
- (3) proper/adequate hand washing and good hygienic practices;
- (4) approved source/labeling;
- (5) proper handling of ready-to-eat foods;
- (6) cross-contamination of raw/cooked foods/other;
- (7) approved systems (Hazard Analysis and Critical Control Points (HACCP) plans/time as public health control);
- (8) hot and cold water under pressure;
- (9) hand wash facilities adequate, accessible, and with soap and towels;
- (10) evidence of insect contamination;
- (11) toxic items properly labeled/stored/used;
- (12) manual or mechanical ware washing and sanitizing;
- (13) food contact surfaces of equipment and utensils cleaned/sanitized/good repair; and
- (14) consumer advisories posted (Heimlich, raw shellfish warning, buffet plate).

§265.15. *Medical and Nursing Care.*

(a) Record of an on-call physician required. Documentation shall be kept on file of a physician licensed to practice in Texas who is available to be on call at all times to advise health service personnel on all first aid and nursing services provided by the camp.

(b) Emergency transportation. Transportation must be available at all times to transport any sick or injured camper in an emergency.

(c) Medical staffing requirements. A physician, registered nurse, licensed vocational nurse, or a person with an American Red Cross Emergency Response certificate, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer. For camps having documented evidence, such as a letter from the local emergency medical services (EMS), that the camp is located within a 20 minute community EMS response time, a person certified in American Red Cross Community First Aid and Safety, or its equivalent, shall be in the camp and on call at all times, and will be considered the Camp Health Officer.

(d) Requirement to report incidents of abuse or neglect of a minor. If a person, including any member of camp staff, a camp counselor, or camp director has cause to believe that a minor has been or may have been abused or neglected as those terms are defined in the Texas Family Code, Chapter 261, then that person shall immediately make a report, in accordance with Family Code, §261.101(a) to the department's Policy, Standards and Quality Assurance Unit, as required by §261.103(a)(3). The report can be made by telephone (512-834-6773), by fax (512-834-6707), or by email (the current email address may be found at www.dshs.state.tx.us/youthcamp/default.shtm). A report must be made to the department and may be made to a local or state law enforcement agency or other agency listed in Family Code, §261.103.

(e) Requirement to report camper death or communicable diseases. Camper death or confirmed cases of waterborne or foodborne diseases, such as cholera, dysentery, typhoid, salmonellosis, shigellosis, or infectious hepatitis, shall be reported to the department's Policy, Standards, and Quality Assurance Unit, within 24 hours of occurrence (or confirmation in the case of disease) by fax (512-834-6707), or by email at the address found at www.dshs.state.tx.us/youthcamp/default.shtm.

(f) Designation of a first aid area. A first aid area, used exclusively to handle health and emergency cases, shall be designated and suitably equipped.

(g) Isolation of a child with a communicable disease. A child ill with a confirmed or suspected case of a communicable disease shall be isolated to provide safety to other children and quiet to the patient. Any child that is isolated shall be supervised as determined by the Camp Health Officer.

(h) Bound medical log required. A bound medical log, or other unalterable record keeping system, listing date, name of the patient, ailment, name of the Camp Health Officer, and the treatment prescribed shall be kept in the first aid area for the duration of the camp year for which the license is issued.

(i) Camper health records shall be kept on file. The first aid area shall keep a health record on each child with the child's name, allergies, immunizations, parent's name, address, and telephone number, and parent or guardian authorization for emergency medical care.

(j) Availability of an emergency telephone. The camp shall have a telephone readily available, preferably in the first aid area, for emergency use.

(k) Emergency plans required. A written plan of procedures to be implemented in case of a disaster, serious accident, epidemic, or fatality shall be formulated and posted in the camp's administrative on-site office or location. All camp staff and volunteers must be made aware of this plan during the staff-training program or volunteer briefing. Documentation of this training must be kept at the camp's administrative on-site office or location.

(l) Storing and dispensing prescription medication to campers. If a child is taking a prescription medication when he or she reports to camp, the medication must be in the original container with the prescription label, and the medical staff shall place that medication in a lockable cabinet or other secure location that is not accessible to campers. The medication shall be administered by the Camp Health Officer or camp counselor, if authorized in writing by the Camp Health Officer. At no time will the child be allowed to self-administer the medication without adult supervision.

(m) Camp trip first aid kits. First aid kits shall be taken on all out-of-camp trips.

§265.23. *Application for a New License.*

(a) License required. A person must possess a valid youth camp license prior to operating a youth camp. An application is made by submitting a completed youth camp application and paying the license fee. A blank application may be obtained by calling the Environmental and Sanitation Licensing Group at 512-834-6600, or may be downloaded from the website at www.dshs.state.tx.us/youthcamp/default.shtm. All applications may be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(b) Processing applications. All applications will be processed promptly after the completed application form and fees are received. Those who submit incomplete applications will be notified either by telephone or in writing as soon as possible.

(c) Qualifying for a youth camp license. The department shall determine if the facility meets the definition of a Youth Camp as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title. If the facility does not qualify for a license, the application will be denied and the license fee, less a handling fee of \$50, refunded. If an application is denied because the facility does not meet the definition of a youth camp, the applicant should determine if a license from another agency is required.

§265.24. *Application for a Renewal License.*

(a) Renewal of a youth camp license. A person holding a license under the Act must renew the license annually from the date of issuance.

(b) Renewal notice. At least 30 days before a license expires, the department, as a service to the licensee, shall send a renewal notice to the licensee or registrant, by first-class mail to the last known address of the licensee. It remains the responsibility of the licensee to keep the department informed of their current address and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

- (1) the type of license requiring renewal;
- (2) the time period allowed for renewal; and
- (3) the amount of the renewal fee.

(c) Renewal requirements. All renewal applications and fees shall be submitted to the department prior to the license's annual expiration date and shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. The department will renew the license if the applicant meets the standards in these sections, meets the definition of a "Youth camp" as described in §265.11(20) of this title (relating to Definitions) and the definition of "Youth camp, general characteristics of:" in §265.11(21) of this title, submits a complete renewal application on the prescribed form along with all required documentation, pays the

required fee, and has complied with all final orders resulting from any violations of these sections.

(d) Non-renewal. The department may decide not to renew a license unless the applicant has complied with all final orders resulting from any violations of these sections.

(e) Opportunity for a hearing. When the department proposes to deny an initial or renewal application, it will give notice of the proposed action in writing and will provide information on how to request an administrative hearing. The applicant must make a written request for a hearing within 30 days from the date on the notice letter sent by the department.

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 March 27, 2006.

TRD-200601829

Cathy Campbell

General Counsel

Department of State Health Services

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



SUBCHAPTER B. TEXAS YOUTH CAMPS SAFETY AND HEALTH

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts the repeal of §265.12, and new §265.12, concerning the sexual abuse training and criminal background checks at Texas youth camps. New §265.12 is adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 661). The repeal of §265.12 is adopted without changes and will not be republished.

BACKGROUND AND PURPOSE

The repeal was necessitated by numerous changes made to this section. The repeal and new section comply with changes necessitated by Health and Safety Code (HSC), §141.0095, which established the criteria and guidelines for training and examination programs on sexual abuse and child molestation, and changes necessitated by HSC, §141.009(15), which authorized establishing standards relating to records of criminal convictions of camp personnel.

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). Section 265.12 has been reviewed and the department has determined that reasons for adopting this section continue to exist because a rule on this subject is needed.

SECTION-BY-SECTION SUMMARY

New §265.12 updates the requirements for directors, supervisors, and staff, including documentation of criminal convictions, sex offender registration record requirements, clarification of experience needed to supervise hazardous camp activities, and attendance at a sexual abuse and child molestation training and

examination program for all staff and volunteers in positions involving contact with campers at a youth camp to be effective by June 1, 2006. The license holder is responsible for compliance with §265.12, including (f) and (g), for all entities using its facilities that, (1) meet the definition of a youth camp, and (2) operates under the license holder's license. No change was made to the rule as a result of this comment.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the seven comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals and department staff. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Other commenters were in favor of rules.

Comment: Concerning the minimum amount of data collected on every staff person and volunteer with respect to criminal background and sex offender status checks in §265.12(f), one commenter asked to require the full name (first, middle, last name), date of birth, current address, drivers license number, and social security number of each individual. No change was made to the rule as a result of this comment.

Response: The commission disagrees because the amount of information collected on each individual should be at the discretion of the camp management unless required by statute. A sufficient amount of information should be collected by the licensee to fulfill the requirements of §265.12(f)(1) and (2). The license holder is responsible for compliance with §265.12, including subsection (f), for all entities using its facilities that, (1) meet the definition of a youth camp, and (2) operates under the license holders license. The license holder may either conduct the checks for all required personnel, or ensure that all required personnel have been checked. The license holder must have all of the required documentation on file in accordance with the rules. No change was made to the rule as a result of this comment.

Comment: Concerning the sexual abuse and child molestation training and examination program required in §265.12(g), one commenter did not agree with the need to conduct this training.

Response: The commission disagrees because the requirements for the training and examination program are necessitated by Health and Safety Code (HSC), §141.0095, which established the criteria and guidelines for training and examination programs on sexual abuse and child molestation. The license holder is responsible for compliance with §265.12, including subsection (g), for all entities using its facilities that, (1) meet the definition of a youth camp, and (2) operates under the license holders license. The license holder may either train all required personnel, or ensure that all required personnel have been trained. The license holder must have all of the required documentation on file in accordance with the rules. No change was made to the rule as a result of this comment.

Comment: Concerning the timing and clarification on acceptable programs dealing with the sexual abuse and child molestation program. This seems very tight for the coming summer season. Additionally, the commenter disagreed with the fee associated with the audit or review of these records, considering the recent increases in the Youth Camp license fee's, since are no additional fees associated with the review of other staffing, health, safety, certifications, and compliance issues.

Response: The commission disagrees because the timing requirement for the training and examination program is necessitated by SB 990, §2(b), which states, "Notwithstanding Health and Safety Code, §141.0095, as added by this Act, a youth camp or an individual employed by or volunteering at a youth camp is not required to comply with Health and Safety Code, §141.0095, before June 1, 2006." Senate Bill 990 was signed by the Governor on June 17, 2005, became effective September 1, 2005, and is codified in Health and Safety Code, §141.0095. Additionally, the \$125 administrative fee is necessary to cover the additional administrative cost to the department of approving the training programs, which is not associated with cost of the license fee nor with the review of other certifications or documentation. No change was made to the rule as a result of this comment.

The following changes were made as a result of comments from department staff on behalf of the commission that will clarify a title or update information.

Change: Concerning the title of §265.12(g) "Sexual abuse and child molestation training and examination program", the staff commenter suggested the word "awareness" be included in the title, so that this title reads, "Sexual abuse and child molestation awareness training and examination program".

Change: Concerning §265.12(g)(10), the web address was amended from www.tdh.state.tx.us/beh/g/youth.htm to www.dshs.state.tx.us/beh/g/youth.htm.

Change: Concerning §265.12(g)(10), the unit name was amended from Professional Licensing and Certification Unit to Environmental and Sanitation Licensing Group.

Change: Concerning §265.12(g)(10), the phone number was amended from 512-834-6770 to 512-834-6600.

LEGAL CERTIFICATION

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

25 TAC §265.12

STATUTORY AUTHORITY

The repeal is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees designed to recover all direct and indirect costs of licensing programs; Health and Safety Code, §141.009(15), which authorizes establishing standards relating to records of criminal convictions of camp personnel; Health and Safety Code, §141.0095, which establishes a training and examination program on sexual abuse and child molestation; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 March 27, 2006.

TRD-200601830

Cathy Campbell
General Counsel
Department of State Health Services
Effective date: April 16, 2006
Proposal publication date: February 3, 2006
For further information, please call: (512) 458-7111 x6972



25 TAC §265.12

STATUTORY AUTHORITY

The new section is authorized by Health and Safety Code, §12.0111, which requires the department to charge fees designed to recover all direct and indirect costs of licensing programs; Health and Safety Code, §141.009(15), which authorizes establishing standards relating to records of criminal convictions of camp personnel; Health and Safety Code, §141.0095, which establishes a training and examination program on sexual abuse and child molestation; and Government Code, §531.0055(e), and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

§265.12. Directors, Supervisors, and Staff.

(a) On-site director required. Each youth camp shall be under the on-site direction of a qualified adult with at least two years of experience working with children. The director shall be knowledgeable in camp administrative practices and shall have at least one year of leadership experience with an organized youth camp, school or other youth-serving organization, such as the Boy Scouts of America or Young Men's Christian Association (YMCA).

(b) Adult supervisors. Each youth camp shall have at least one adult supervisor who is responsible for the supervision of no more than ten children in the camp. For any hazardous activity the supervisor(s) must be in the immediate vicinity (within sight and/or hearing) of the campers. An "all camp" sedentary activity, not requiring physical activity, may require less supervision, and each camp shall establish its own guidelines, but not less than one adult supervisor to every 25 campers. The camp director shall not be included in the supervisor to camper ratio in camps serving over 50 campers at one time.

(c) Supervision of hazardous activity. Hazardous camp activities shall be conducted by and under the direct supervision of a qualified adult capable of implementing safety standards established by the department or the camp. The specialist shall also have documented training or at least two years documented experience in conducting the activity.

(d) Written personnel policies and practices. A camp shall have written personnel policies and practices for both campers and staff. Supervisors shall be informed of these policies and practices prior to assuming responsibility for campers.

(e) Staff member character and integrity records. The camp management shall ascertain and have on record information, such as a letter of reference, attesting to the character and integrity of each staff member, and information, such as training certificates, attesting to the ability of each staff member to perform the tasks required in his or her position.

(f) Criminal conviction and sex offender registration record requirements. The camp management shall have on file a record of any

criminal conviction for all adult staff members and all adult volunteers working at the camp. Camp management shall also have on file a written evaluation for an adult staff member or volunteer, showing that management has determined the person is suitable for a position at the youth camp despite a criminal conviction. If the records are located off-site, a letter from the national or regional headquarters of the organization stating the names of individuals at the camp site for whom these checks have been conducted, must be available at the camp site. All records of criminal convictions and written evaluations for a camp or camping organization must be located at a specific site within Texas, and must be made available to department personnel within two business days upon request. Youth camps are responsible for ensuring that criminal and sex offender background checks have been conducted for international staff obtained through the J-1 visa process, and that documentation of these checks are located with other staff background checks at the specific site within Texas. Records of criminal convictions and sex offender status may be obtained by:

(1) an annual criminal background check consisting of either:

(A) performing a criminal background check, such as the Texas Department of Public Safety Public Criminal Records check, which may be accessed at https://records.txdps.state.tx.us/dps_web/APP_PORTAL/index.aspx. A hard copy printout of the search results, whether or not the results are positive, must be maintained with the sex offender background documentation; or

(B) including a question on an employment or volunteer application asking for a history of criminal convictions, such as "Have you ever been convicted of a felony or a misdemeanor?" If this question is answered with "Yes," then the camp must obtain documentation of the criminal conviction; and

(2) performing an annual background check using a Sex Offender Registration database for each staff member's permanent residence and educational residence if applicable. In Texas, the Sex Offender Registration database may be found at <https://records.txdps.state.tx.us/soSearch/default.cfm>. A hard copy printout of the search results, whether or not the results are positive, must be maintained with the criminal background documentation.

(g) Sexual abuse and child molestation awareness training and examination program.

(1) Effective June 1, 2006, a youth camp licensee may not employ or accept the volunteer service of an individual for a position involving contact with campers at a youth camp unless:

(A) the individual submits to the licensee or the youth camp has on file documentation that verifies the individual within the preceding two years has successfully completed the training and examination program required by this subsection; or

(B) the individual successfully completes the youth camp's training and examination program approved by the department during the individual's first workweek, and prior to any contact with campers unless supervised during the first workweek by an adult who has successfully completed the program. The youth camp must have documentation on file and available for inspection within two business days of request by the department verifying that the individual successfully completed the youth camp's training and examination program.

(2) For purposes of this subsection, the term "contact with campers" does not include visitors such as a guest speaker, an entertainer, or a parent who visits for a limited purpose or a limited time

if the visitor has no direct and unsupervised interaction with campers. A visitor may have direct and unsupervised contact with a camper to whom the visitor is related. A camp may require training and an examination for visitors if it chooses.

(3) A youth camp licensee must retain in the person's personnel record a copy of the documentation required or issued under paragraph (1)(A) of this subsection for each employee or volunteer until the second anniversary of the examination date.

(4) Prior to their use, the department may approve training and examination programs offered by trainers under contract with youth camps, by online training organizations, or programs offered in another format, such as a videotape, authorized by the department.

(5) A training and examination program on sexual abuse and child molestation approved by the department must at a minimum include training and an examination on:

(A) the definitions and effects of sexual abuse and child molestation;

(B) the typical patterns of behavior and methods of operation of child molesters and sex offenders that put children at risk;

(C) the warning signs and symptoms associated with sexual abuse or child molestation, recognition of the signs and symptoms, and the recommended methods of reporting suspected abuse; and

(D) the recommended rules and procedures for youth camps to implement to address, reduce, prevent, and report suspected sexual abuse or child molestation. Training shall include the need to minimize one-on-one isolated encounters between an adult and a minor or between two minors.

(6) The training program must last for a minimum of one hour and discuss each of the topics described in paragraph (5) of this subsection.

(7) The examination must consist of a minimum of 25 questions which shall cover each of the topics described in paragraph (5) of this subsection.

(8) To successfully complete the training program, each employee or volunteer must achieve a score of 70% or more correct on an individual examination. If the examination is taken on-line, the employee or volunteer must retain a certificate of completion indicating they successfully completed the course.

(9) The department may assess a fee of \$125 to each applicant to cover the costs of the department's initial review and each follow-up review of a training and examination program.

(10) All applications and fees shall be mailed to the Environmental and Sanitation Licensing Group, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756. A blank application may be obtained by calling the Environmental and Sanitation Licensing Group, at (512) 834-6600 or may be downloaded from www.dshs.state.tx.us/beh/g/youth.htm.

(11) The department, at least every five years from the date of initial approval, shall review each training and examination program approved by the department to ensure the program continues to meet the criteria and guidelines established under this subsection.

(h) Records retention. All applications, background check reports, training documentation, and other required personnel documentation required by these rules shall be maintained in hard copy or electronic format for a minimum of two years following a person's last day of service.

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 March 27, 2006.

TRD-200601831

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 16, 2006

Proposal publication date: February 3, 2006

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



CHAPTER 337. WATER HYGIENE

SUBCHAPTER A. DRINKING WATER

STANDARDS GOVERNING DRINKING WATER

QUALITY AND REPORTING REQUIREMENTS

FOR PUBLIC WATER SUPPLY SYSTEMS

25 TAC §337.12, §337.18

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department) adopts the repeal of §337.12 and §337.18, concerning drinking water standards governing drinking water quality and reporting requirements for public water supply systems without changes to the proposed text published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6570), and will not be republished.

BACKGROUND AND PURPOSE

The repeals are necessary to comply with Texas Water Code §5.013 that grants the Texas Natural Resource Conservation Commission, now titled the Texas Commission on Environmental Quality, jurisdiction for the state's water quality program including issuance of permits, enforcement of water quality rules, standards, orders, and permits, and water quality planning. Repeal of these sections is necessary because the rulemaking authority for these sections was transferred to the Texas Commission on Environmental Quality in 1992. Fees for the laboratory analysis of drinking water for bacteriological quality and chemical content previously listed in §337.18 are now in 25 Texas Administrative Code, Chapter 73, §§73.54 and 73.55 respectively.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 337.12 and 337.18 have been reviewed and the department has determined that reasons for adopting the sections no longer exist because the rulemaking authority for Water Hygiene was transferred to the Texas Commission on Environmental Quality.

SECTION-BY-SECTION SUMMARY

The repeal of §337.12 and §337.18 is necessary because the Texas Commission on Environmental Quality now administers the Water Hygiene program, and the fees for the drinking water laboratory analysis are now located in 25 Texas Administrative Code, Chapter 73.

COMMENTS

The department, on behalf of the commission, did not receive any public comments concerning the proposal during the comment period.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The repeals are authorized under Health and Safety Code, §§12.031 and 12.032, which allow the department to charge fees to a person who receives public health services from the department, §12.034, which requires the department to establish collection procedures, §12.035, which requires the department to deposit all money collected for fees and charges under §§12.032 and 12.033 in the state treasury to the credit of the department's public health service fee fund, and §12.0122, which allows the department to enter into a contract for laboratory services; and Government Code, §531.0055, and Health and Safety Code §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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 March 27, 2006.

TRD-200601826

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: April 16, 2006

Proposal publication date: October 14, 2005

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 355. RESEARCH AND PLANNING FUND

The Texas Water Development Board (board) adopts amendments to 31 TAC §§355.70, 355.91, 355.93, 355.97 and 355.100, concerning the Research and Planning Fund, without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 689) and will not be republished. These amendments are adopted pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts amendments to §355.70(4) and (5) to correct the reference to the Texas Commission on Environmental Quality. The rule still refers to the Commission as the Texas Nat-

ural Resource Conservation Commission, instead of its correct name, the Texas Commission on Environmental Quality.

The board adopts amendments to §355.91(8) and (9) to correct the reference to the Texas Commission on Environmental Quality.

The board adopts an amendment to §355.93(b)(5) to correct a citation error. The provision refers to water management strategy analyses and cites §357.7(a)(6) of this title. However, that citation is incorrect and should be §357.7(a)(7). The board proposes to merely correct the citation.

The board also adopts an amendment to §355.93(d) to correct a second citation error. The provision refers to regional water planning group bylaws and cites §357.4(k) of this title. However, that citation is incorrect and should be §357.4(l). The board proposes to merely correct this citation, as well.

The board adopts an amendment to §355.97(b)(2) to correct the reference to the Texas Commission on Environmental Quality.

The board adopts an amendment to §355.100 to correct the name for the Texas Commission on Environmental Quality.

No comments were received on the proposed amendments.

SUBCHAPTER B. ECONOMICALLY DISTRESSED AREAS FACILITY ENGINEERING

31 TAC §355.70

These amendments are adopted under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the amendments is Texas Water Code §16.053.

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 March 22, 2006.

TRD-200601767

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Effective date: April 11, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 475-2052



SUBCHAPTER C. REGIONAL WATER PLANNING GRANTS

31 TAC §§355.91, 355.93, 355.97, 355.100

These amendments are adopted under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the amendments is Texas Water Code §16.053.

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 March 22, 2006.

TRD-200601768

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Effective date: April 11, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 475-2052



CHAPTER 357. REGIONAL WATER PLANNING GUIDELINES

31 TAC §§357.3 - 357.5, 357.7, 357.12, 357.15

The Texas Water Development Board (board) adopts amendments to 31 TAC §§357.3 - 357.5, 357.7, 357.12, and 357.15, concerning Regional Water Planning Guidelines, without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 691) and will not be republished. These amendments are adopted in order to conform to the statutory changes of House Bill 1763, 79th Legislature, Regular Session (2005) and House Bill 1378, 78th Legislature, Regular Session (2003), and pursuant to the four-year rule review requirement of Texas Government Code §2001.039.

The board adopts an amendment to §357.3(b) to correct the reference to the Texas Commission on Environmental Quality. The rule still refers to the Commission as the Texas Natural Resource Conservation Commission, instead of its correct name, the Texas Commission on Environmental Quality.

The board adopts an amendment §357.4(h) to correct the name for the Texas Commission on Environmental Quality.

The board adopts amendments to §357.5(d) and (e) to correct the name for the Texas Commission on Environmental Quality. The board also adopts an amendment to §357.5(k)(1)(D) to replace the word "certified" with "approved." The board adopts this because House Bill 1763 changed the groundwater management plan certification process to an "approval" process. The board merely corrects the term to conform to House Bill 1763.

The board adopts amendments to §357.7(a)(3) and (7) to correct the name for the Texas Commission on Environmental Quality.

The board adopts amendments to §357.12(a)(5)(C) - (E) to correct the name for the Texas Commission on Environmental Quality. The board also adopts an amendment to §357.12(a)(6) to change public comment period for initially prepared plans and regional water plan amendments from 30 days to 60 days. The board adopts this in order to resolve a conflict that exists with §357.11(b)(3), which currently requires public comments be accepted until 60 days after the public hearing. The amendment will make these two provisions consistent. The board also adds §357.12(e) to conform to House Bill 1378, 78th Legislature, Regular Session (2003). House Bill 1378 amended §16.053, Water Code, to require regional water planning groups to provide the Texas Water Advisory Council with a copy of the groups' regional water plans upon request. The board merely adds this requirement to §357.12.

The board adopts an amendment to §357.15(a) to substitute the word "certified" with "approved" to reflect the change House Bill 1763 made to the groundwater management plan certification process. The board also changes "regional water plan" to "state water plan" because House Bill 1763 amended §16.053(p), Water Code, to change the conflict analysis between groundwater management plans and regional water plans to be between groundwater management plans and the state water plan. The board adopts an amendment to §357.15(b) to delete the phrase "Within 30 days of receipt of the petition" and to add the phrase "provide technical assistance to" in order to make the rule consistent with House Bill 1763. The board also adds new language to §357.15(b) to describe the process the board will use to resolve a petition from a groundwater conservation district that a conflict exists between a groundwater management plan and the state water plan. This process tracks the language of House Bill 1763. The process includes mediation between the groundwater conservation district and the appropriate regional water planning group and requires the board to resolve the conflict within 60 days of the mediation, if mediation is not successful. The board also amends §357.15(c) to delete the first sentence and to conform the time period for the board to resolve the conflict with the time period identified in House Bill 1763. The board also changes the time period for issuing notice of the board's intent to resolve the conflict from 30 days notice to 15 days notice. The board adopts this based on the short time frame it has to resolve the conflict after mediation has concluded. The board amends §357.15(c) to change the word "certified" to "approved" to conform to House Bill 1763. The board also amends §357.15(e) to replace "certified" with "approved." The board also removes the phrase "suspend the certification of the plan" from §357.15(e) because that process was eliminated by House Bill 1763. The board amends the language concerning amending groundwater management plans to conform to House Bill 1763, as well. Based on House Bill 1763, if the board determines the conflict should be resolved by a revision to the groundwater management plan, the board must provide this information to the groundwater conservation district, which shall revise its plan based on this information. If the district disagrees with the decision of the board, it may appeal the decision in Travis County district court. The language the board amends to §357.15(e) follows this process and is consistent with House Bill 1763.

No comments were received on the proposed amendments.

These amendments are adopted under the Texas Water Code, §6.101 and §16.053, which authorizes the board to adopt administrative rules necessary to carry out the regional water planning process.

The statutory provision affected by the amendments is Texas Water Code §16.053.

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 March 22, 2006.

TRD-200601770

Wendall Corrigan Braniff
General Counsel

Texas Water Development Board

Effective date: April 11, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 475-2052

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER N. FUNDS ACCOUNTING-- ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts adopts an amendment to §5.160, concerning incorporation by reference: accounting policy statements 2006 - 2007, without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1011).

The accounting policy statements have been revised to reflect changes in accounting policies and procedures necessitated by statutory changes made by the 79th Legislature. The accounting policy statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System (USAS) and for preparation of the annual financial report. Each accounting policy statement contains legal references, a background section, comptroller requirements and state agency requirements, and division contact if more information is needed. Section 5.160 is also being amended to correct the applicable biennium years, the effective date, and the website at which the accounting policy statements can be accessed by the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §§403.011, 2101.012, 2101.035 and 2101.037 which provide the comptroller with the authority to prescribe rules and procedures relating to the operation of the Uniform Statewide Accounting System, the preparation of the annual financial report and supervising the state's fiscal concerns.

The amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

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 March 24, 2006.

TRD-200601801

Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts

Effective date: April 13, 2006

Proposal publication date: February 17, 2006

For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 106. BLIND SERVICES

SUBCHAPTER G. BUSINESS ENTERPRISES OF TEXAS

40 TAC §106.1217

The Texas Health and Human Services Commission adopts the amendment of Title 40, Part 2, §106.1217, the rules of the Department of Assistive and Rehabilitative Services, concerning set-aside fees. The amendment is being adopted without changes to the proposed text as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7843) and will not be republished.

The amendment is being adopted to bring the Department of Assistive and Rehabilitative Services in compliance with Federal statute (20 U.S.C. 107B(3)) that states that set-aside fees will be collected only to the extent necessary for operation of the Randolph-Sheppard program.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 March 24, 2006.

TRD-200601791

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: April 13, 2006

Proposal publication date: November 25, 2005

For further information, please call: (512) 424-4050



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5,
Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION COMMISSIONER'S ORDER NO. 06-0304 PURSUANT TO THE INSURANCE CODE, CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE TO CLARIFY FOR WORKERS' COMPENSATION PURPOSES "PARTNERS" INCLUDES GENERAL PARTNERS AND LIMITED PARTNERS

The Commissioner of Insurance adopts amendments proposed by the staff of the Workers' Compensation Classification, Premium Calculation and Research Division of the Property and Casualty Insurance program at the Texas Department of Insurance (Department) to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The adopted amendments clarify that general partners and limited partners are entitled to be covered under a workers' compensation policy and that general partners and limited partners can be excluded from coverage under a workers' compensation policy if the policy is endorsed accordingly. The adopted amendments also clarify the basis of premium for each general partner and/or limited partner covered under the workers' compensation policy.

The Commissioner adopts the amendments as proposed in the staff's petition filed on February 14, 2006. Notice of the proposal (Ref. No. W-0206-02-I) was published in the February 24, 2006 issue of the *Texas Register* (31 TexReg 1313). No hearing was requested on this matter. The Department received no comments concerning the proposed amendments.

The adoption amends the Manual as follows:

1. Amends Rule V F.3.b., relating to Miscellaneous Values-Payroll Limitation, to include clarifying language indicating that, for the pur-

poses of this rule, "partners" includes general partners and limited partners.

2. Amends Rule IX B., relating to Partners and Sole Proprietors, to include clarifying language indicating that, for the purposes of this rule and the endorsements used to implement this rule, "partners" includes general partners and limited partners.

The adopted amendments are more particularly set forth in the applicable portions of the Manual that are attached hereto and made a part hereof for all purposes.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Article 5.96.

The amendments, as adopted by the Commissioner, are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference No. W-0206-02-I and are incorporated by reference into Commissioner's Order No. 06-0304.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that amendments to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance as described herein and set forth in the exhibit attached to this Order, and incorporated into this Order by reference, be adopted 15 days after notice of adoption is published in the *Texas Register*.

TRD-200601888

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: March 29, 2006

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REVIEW OF AGENCY RULES

notices of *intention to review*, which invite 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 Reviews

Texas Department of Criminal Justice

Title 37, Part 6

The Texas Department of Criminal Justice (Agency) files this notice of intent to review Title 37, Part 6, Chapter 153, §153.20, Private Real Property Rights Affected by Governmental Action, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rule continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rule continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P. O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us.

TRD-200601761

Melinda Hoyle Bozarth
General Counsel

Texas Department of Criminal Justice
Filed: March 22, 2006



The Texas Department of Criminal Justice (Agency) files this notice of intent to review Title 37, Part 6, Chapter 195, §§195.71 - 195.78, of the Texas Administrative Code in accordance with the Texas Government Code, §2001.039. The Agency finds that the reason for adopting the rules continues to exist.

As required by §2001.039 of the Texas Government Code, the Agency will accept comments and make a final assessment regarding whether the reason for adopting the rules continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Melinda Hoyle Bozarth, General Counsel, Texas Department of Criminal Justice, P. O. Box 13084, Austin, Texas 78711, Melinda.Bozarth@tdcj.state.tx.us.

TRD-200601759

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.

Melinda Hoyle Bozarth
General Counsel
Texas Department of Criminal Justice
Filed: March 22, 2006



Adopted Rule Reviews

Texas State Soil and Water Conservation Board

Title 31, Part 17

Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 711), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 517, Subchapter A, §§517.1 - 517.12, Financial Assistance Program, in accordance with Texas Government Code, §2001.039.

No comments were received on the proposed rule review.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's program for financial assistance to soil and water conservation districts established by the Texas Agriculture Code, Chapter 201. This completes the State Board's review of 31 TAC Chapter 517, Subchapter A, Financial Assistance Program.

TRD-200601809

Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: March 24, 2006



Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 711) the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 519, Subchapter A, §§519.1 - 519.12, Technical Assistance Program, in accordance with Texas Government Code, §2001.039.

No comments were received on the proposed rule review.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's program for technical assistance through soil and water conservation districts estab-

lished by the Texas Agriculture Code, Chapter 201. This completes the State Board's review of 31 TAC Chapter 519, Subchapter A, Technical Assistance Program.

TRD-200601810

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: March 24, 2006



Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 712), the Texas State Soil and Water Conservation Board (State Board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 17, Chapter 521, Subchapter A, §§521.1 - 521.13, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures, in accordance with Texas Government Code, §2001.039.

No comments were received on the proposed rule review.

The State Board considered, among other things, whether the reasons for adoption of these rules continue to exist. As a result of the review, the State Board determined that the rules are still necessary and readopts the sections since they govern the State Board's program for technical assistance for soil and water conservation land improvement measures established by the Texas Agriculture Code, Chapter 201, Subchapter H, §§201.201 - 201.204. This completes the State Board's review of 31 TAC Chapter 521, Subchapter A, Technical Assistance Program for Soil and Water Conservation Land Improvement Measures.

TRD-200601811

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Filed: March 24, 2006



Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 712), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 10, Chapter 355, Research and Planning Fund, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they were implemented to carry out the powers and duties of the board and of various programs of the research and planning fund. As a result of the review, the board concurrently adopts amendments to §§355.70, 355.91, 355.93, 355.97, and 355.100. This completes the board's review of 31 TAC Chapter 355, Research and Planning Fund.

TRD-200601766

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: March 22, 2006



Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 712), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 10, Chapter 357, Regional Water Planning Guidelines, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they govern designation of regional water planning areas, designation of regional water planning groups, consideration of existing planning efforts by regional water planning groups, the format of information to be presented in regional water plans, development of regional water plans, adoption of regional water plans by regional water planning groups, and approval of regional water plans by the board. As a result of the review, the board concurrently adopts amendments to §§357.3 - 357.5, 357.7, 357.12, and 357.15. This completes the board's review of 31 TAC Chapter 357, Regional Water Planning Guidelines.

TRD-200601769

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: March 22, 2006



Pursuant to the notice of proposed rule review published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 712), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 TAC Part 10, Chapter 358, State Water Planning Guidelines, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because they govern the board's development of the state water plan. This completes the board's review of 31 TAC Chapter 358, State Water Planning Guidelines.

TRD-200601771

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: March 22, 2006



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 §83.120(a)

OPERATOR CURRICULA

PRIVATE AND PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS (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 PROGRAMS 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
PRACTICAL APPLICATIONS OF THE OPERATOR CURRICULA:		
Each student enrolled in an operator curriculum 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
<u>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.</u>		

Figure: 16 TAC §83.120(b)

SPECIALIST CURRICULA

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 (80 HOURS)		
(A)	Technical Skills-Hair Hair Weaving and Braiding:	40 hours
	<ul style="list-style-type: none"> (1) face and head shapes, facial features (2) tools and equipment: types of combs, brushes, hooks, yarn, loops, hook needles, thread, coils (3) types and patterns of braids: twists, knots, multiple strands, corn rows, hair locking, sectioning, partings (4) artificial hair and materials for extensions (5) methods of hair weaving: glued, bonded, woven, sewn-in (6) special effects: decorations, beads, ribbons (7) trimming of artificial hair, braid ends, and perimeter lines incidental to hair weaving and braiding services (8) braid removal and scalp care (9) client education: pre/post care, home care, follow-up services 	
(B)	Health and Safety:	16 hours
	<ul style="list-style-type: none"> (1) Texas health and safety law and rules (2) bacteriology: sanitation and disinfection (3) viruses, diseases, disorders: transmission, control, recognition 	
(C)	Hair Analysis and Scalp Care:	8 hours
	<ul style="list-style-type: none"> (1) hair and scalp disorders and diseases: dandruff, alopecia, fungal infections, infestations, infections (2) hair structure, composition, texture (3) hair growth patterns, styles, textures (4) effect of physical treatments on the hair 	
(D)	Shampooing and Conditioning:	8 hours
	<ul style="list-style-type: none"> (1) combing, brushing, detangling (2) shampoo products, composition and procedures (3) conditioning products, composition and procedures 	
(E)	Law and Rules:	4.8 hours
	<ul style="list-style-type: none"> (1) Texas license requirements-individuals and salons (2) Texas professional responsibility requirements – individuals and salons (3) Texas Occupations Code, Chapters 1602 and 1603 (laws) (4) 16 Texas Administrative Code, Chapter 83 (rules) 	
(F)	Professional Practices:	3.2 hours
	<ul style="list-style-type: none"> (1) public relations (2) retailing and salesmanship 	

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: 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	100 hours
(B)	scalp and neck, anatomy and physiology: major bones and functions; major muscles and functions, major nerves and functions, major blood vessels and functions, skin structure, functions, appendages, conditions and lesions	10 hours
(C)	chemistry of shampoo and conditioner elements, compounds, mixtures, acid and alkali (pH), chemistry of water, composition and uses of shampoo and conditioner	10 hours
(D)	sanitation and safety: definitions, rules, laws, and methods	10 hours
(E)	shampooing and conditioning skills: purposes and effects, preparation, equipment, implements and supplies	10 hours

(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)

INSTRUCTOR CURRICULA

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
INSTRUCTOR CURRICULUM WITH TWO YEARS EXPERIENCE (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: 22 TAC §523.144(c)

NO. OF COURSE TITLES OFFERED	TOTAL ANNUAL REGISTRATION FEE
1 - 4	\$600
5 - 10	\$1000
11 - 40	\$1500
41+	\$2500
Exemption 1	0
Exemption 2	0
Exemption 3	0
Exemption 4	0

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Department of Aging and Disability Services

Notice of Public Hearing

Strategic Plan for inclusion in the Texas Health and Human Services Enterprise (HHS) Strategic Plan for fiscal years (FYs) 2007 - 2011. The Department of Aging and Disability Services (DADS) will hold a public hearing to receive comments on the agency's Strategic Plan at the Winters Building Public Hearing Room, 701 W. 51st Street, Austin, Travis County, Texas 78751 at 4:00 p.m. on May 3, 2006. The public hearing will provide an opportunity for interested parties to comment on the content of the Plan. For the reader's convenience, the agency's Strategic Plan for FYs 2007 - 2011 may be downloaded at the following web site: <http://www.dads.state.tx.us/strategicplan/>.

The major sections of the DADS Strategic Plan address the agency's Challenges and Opportunities, Current Activities by Goal (Service Descriptions, Target Populations, and Trends and Initiatives), Internal Assessment, and Strategic Priorities.

Questions, requests for additional information, or a copy of the Plan may be directed to Nellie Nixon at the Department of Aging and Disability Services, P. O. Box 149030, M.C. W235, Austin, Texas 78714, (512) 438-5797; or nellie.nixon@dads.state.tx.us.

Persons who are unable to attend the hearing may submit their views in writing to DADS by 5:00 p.m. on May 3, 2006 to Nellie Nixon or via the below web site:

<http://www.dads.state.tx.us/strategicplan/>

Persons requiring an interpreter for the deaf or hearing impaired should contact Nellie Nixon, at least 72 hours prior to the hearing at (512) 438-5634 or TDD (512) 424-3250.

TRD-200601836

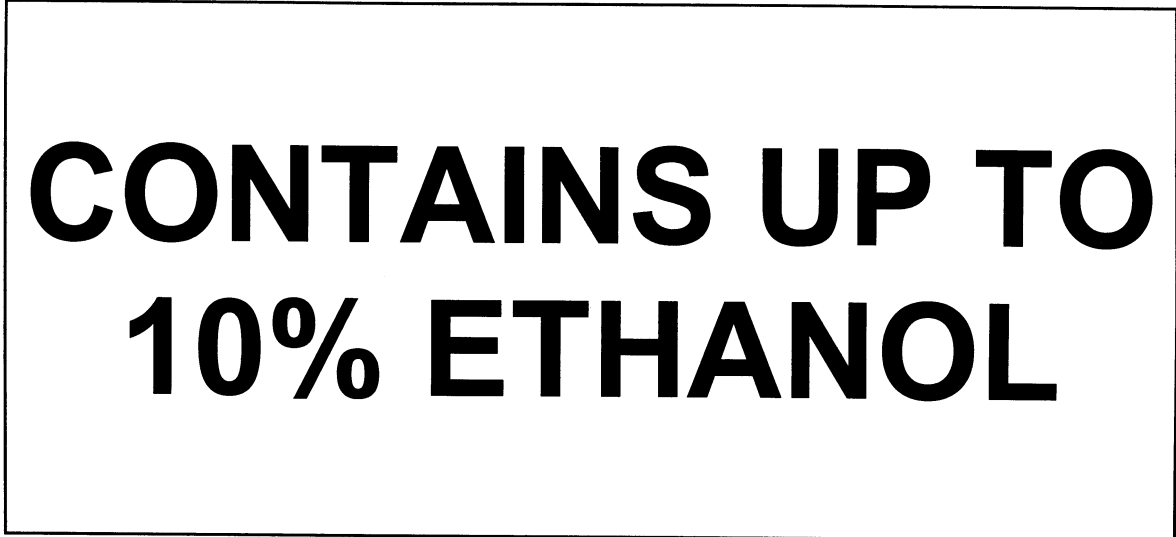
Phoebe Knauer
General Counsel
Department of Aging and Disability Services
Filed: March 27, 2006

Texas Department of Agriculture

Notice of Ethanol Content

The Texas Department of Agriculture (the department) is publishing the following guidelines for posting notice of sale of motor fuel mixtures that contain up to and including 10% ethanol by volume. It is the intent of the department to provide these guidelines to encourage a greater consistency in the design of signs used by the regulated public to display ethanol mixture information on retail motor fuel pumps where the fuel offered for sale contains up to 10% ethanol by volume. The department has determined that these guidelines will provide for a greater understanding by the general public of the ethanol contents of the fuel they purchase. Compliance with these guidelines is voluntary.

Consistent with the requirements of Vernon's Texas Civil Statutes, Art. 8614, Sec. 3 (b)(1), the department recommends that signs used to post notice of sale of motor fuel mixtures that contain up to and including 10% ethanol by volume should be prominently displayed on each face of the motor fuel pump on which the price of the motor fuel mixture sold from the pump is displayed and should resemble the graphic below. In addition, the department recommends that the signs should be constructed of a durable, weather resistant white material that measures three inches in height and six inches in width and includes the statement "CONTAINS UP TO 10% ETHANOL" in black upper case block letters one-half inch in height and one-fourth inch in width.



These guidelines are not mandatory and should only be considered as recommendations for the regulated public to follow to achieve greater consistency in signs used to post notice of sale of motor fuel mixtures that contain up to and including 10% ethanol by volume on retail motor fuel pumps. The regulated public may choose to post notice of sale of motor fuel mixtures that contain up to and including 10% ethanol by volume in a manner other than recommended by the department, provided the notice meets the requirements of Vernon's Texas Civil Statutes, Art. 8614.

For further information regarding this notice, contact Joe Benavides, Coordinator for Weights and Measures, at (512) 463-7401.

TRD-200601772

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: March 23, 2006

◆ ◆ ◆
Department of Assistive and Rehabilitative Services

Notice of Public Hearing for DARS Maximum Allowable Payment Schedule (MAPS), to be Effective May 1, 2006

The Department of Assistive and Rehabilitative Services (DARS) will hold a public hearing from 1:30 p.m. to 3:30 p.m. on Monday, April 24, 2006, in Conference Room 120 of the DARS Administration Building at 4800 North Lamar Boulevard in Austin, Texas, to receive public comments on the proposed FY 2006-2007 Maximum Allowable Payment Schedule (MAPS) rates used for the purchase of medical and medical-related services. The proposed implementation date for the new MAPS rates is May 1, 2006.

The schedule of proposed rates may be viewed or copies may be obtained by calling Stuart McPhail with DARS at (512) 424-4144 or visiting DARS at the Brown Heatly Building at 4900 North Lamar; Austin, Texas 78751.

Written comments on the proposed rates may be submitted to Stuart McPhail, Department of Assistive and Rehabilitative Services, 4900 North Lamar Boulevard, Austin, Texas 78751.

TRD-200601867

Sylvia F. Hardman
Deputy Commissioner for Legal Services
Department of Assistive and Rehabilitative Services
Filed: March 29, 2006

◆ ◆ ◆
Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Office of the Attorney General (OAG), announces the issuance of Request for Proposals (RFP) #303-6-11170. TBPC seeks a 10-year lease of approximately 104,562 square feet of office space in the Austin area, Travis County, Texas.

The deadline for questions is April 14, 2006; and the deadline for proposals is April 28, 2006 at 3:00 P.M. The award date is June 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 revised RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=63997.

TRD-200601776

Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 23, 2006

◆ ◆ ◆
Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), announces the issuance of Request for Proposals (RFP) #303-6-11139. TBPC seeks a 5-10 year lease of approximately 8,124 square feet of office space in Tyler, Smith County, Texas.

The deadline for questions is April 10, 2006 and the deadline for proposals is April 20, 2006 at 3:00 P.M. The award date is May 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 a 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=64003.

TRD-200601758

Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: March 22, 2006

◆ ◆ ◆
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 March 17, 2006, through March 23, 2006. 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 March 29, 2006. The public comment period for these projects will close at 5:00 p.m. on April 28, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: National Onshore LP; Location: The project is located in Galveston Bay, approximately 2 miles east of San Leon, in State Tract (ST) 329, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Texas City, Texas. Approximate

UTM Coordinates in NAD 27 (meters): Zone 15: Pipeline Segment Begins at Easting: 317638.840; Northing: 3261115.932. Pipeline Segment Ends at Easting: 315747.281; Northing: 3260790.730. Project Description: National Onshore LP requests to amend Department of the Army Permit 23974 to lay and maintain a pipeline up to 6 inches in diameter from Station 28+02 to Station 93+44. The total distance of the proposed pipeline is approximately 6,542 linear feet. Approximately 3,900 cubic yards of material would be moved during pipeline construction. The pipeline would be buried a minimum of 3 feet by jetting/trenching. CCC Project No.: 06-0212-F1; Type of Application: U.S.A.C.E. permit application #23974(01) 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 Railroad Commission under §401 of the Clean Water Act.

Applicant: Davis Petroleum Corporation; Location: The project is located approximately 3 miles southeast of San Leon, in Galveston Bay, State Tract (ST) 311, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Bolivar, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 318658; Northing: 3262166. Project Description: The applicant proposes to drill a well in search for oil and gas, install and maintain a production platform, well platform, well pad and lay a flow line from the well to the production platform in ST 311, Galveston Bay, Galveston County, Texas. CCC Project No.: 06-0219-F1; Type of Application: U.S.A.C.E. permit application #24110 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 Railroad Commission under §401 of the Clean Water Act.

Applicant: Texas Department of Transportation; Location: The project is located at the crossing on State Highway (SH) 361 over a section of Redfish Bay, approximately 4.28 miles east of the San Patricio County line and approximately 2 miles west of Port Aransas, in Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 688950; Northing: 3083250. Project Description: The Texas Department of Transportation (TxDOT) proposes to replace a crossing over Redfish Bay (Redfish Bay Relief Bridge) on SH 361 with a 46-foot-wide crossing with two 12-foot travel lanes and two 10-foot shoulders that would cover an area of 1.58 acres. The new crossing would be constructed to the southwest of the existing structure at a maximum offset of 120 feet from the west side of the existing bridge to the proposed east side of the new structure. Crossing approaches from SH 361 would be realigned, and approximately 0.03 acres of jurisdictional wetlands would be impacted by the proposed south side approach for the new crossing. Vehicle traffic would continue to use the existing crossing while construction of the new crossing is underway. A temporary platform would be installed for construction access to minimize the placement of temporary fill into the water during construction. This temporary platform would cover an area of approximately 1.70 acres and would be in place for up to 18 months. The platform includes modular sections supported by 24-inch round steel columns at each corner which would be installed by diesel impact hammers or vibratory hammers. Following construction of the new crossing, the temporary platform and all the steel support columns would be removed. Removal of the existing crossing structure would occur on a span by span basis working from the existing structure within 24 months of the completion of the new structure. Beams and slabs of the existing structure would be disassembled into manageable pieces and transported off-site for disposal or recycling. The footings of the existing structure would be removed to 2 feet below the mud line. Best management practices (BMP's) would be utilized throughout the

project to minimize turbidity and protect water quality. BMP's may include sediment control fencing, rock filter dams, temporary vegetation and vegetation filter strips. Permanent impacts to the 0.03 acres of wetlands would be mitigated at the existing crossing abutment on the north side. The existing abutment and upland areas above the mean high water line would be excavated to an appropriate elevation to encourage natural revegetation of jurisdictional wetlands. The mitigation site would measure 50 by 90 feet and would create an area of 0.10 acre of wetlands. A survey of the mitigation site would be performed the first full growing season following the completion of the crossing construction. This survey would include photo documentation and identification and percent cover of wetland vegetation. If 70 percent cover of wetland plant species is not achieved, the applicant will coordinate with the U.S. Army Corps of Engineers (Corps) and perform the appropriate corrective action. The proposed work would temporarily impact 0.31 acre of wetlands (includes both salt marshes and mangroves), 0.67 acre of oysters, and 1.77 acre of seagrasses. Temporary impacts could result from shading, increased turbidity, decreased water quality, and disturbances to the benthic substrate. A pre-construction survey to establish baseline environmental conditions would be conducted prior to the state of construction. Post-construction monitoring surveys would be conducted to evaluate the recovery of affected resources from the construction of the new crossing, and would consist of one survey per year for two consecutive years after the crossing replacement. The first survey would occur after the first full growing season. Each year's survey would be conducted between June 1 and July 31 utilizing the same protocol as the pre-construction surveys. If any jurisdictional habitat area has not recovered from construction impacts, the applicant would consider these resources to be permanently impacted and would coordinate with the Corps and perform the appropriate corrective action. CCC Project No.: 06-0222-F1; Type of Application: U.S.A.C.E. permit application #24093 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-200601817

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office

Coastal Coordination Council

Filed: March 27, 2006



Notice of Action on Concurrence with Federal Consistency Determination 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.

The Texas General Land Office received the federal consistency determination issued by the National Oceanic and Atmospheric Administration (NOAA) on February 1, 2006, for designation of Mission-Aransas estuary as a National Estuarine Research Reserve (NERR). NOAA's Federal consistency determination was made pursuant to the Coastal Zone Management Act 16 U.S.C. §1456(c)(1)(A) and 15 CFR §921.4(b) which provide that designation of a NERR is deemed to be a Federal activity, which, if directly affecting the state's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved state coastal management program.

NOAA's federal consistency determination was referred to the Coastal Coordination Council (Council) which administers the CMP pursuant to the Coastal Coordination Act (Tex. Nat. Res. Code §§33.201 - 33.212). The federal consistency determination states that research, education, and stewardship programs of the proposed NERR support the goals and policies within the CMP by addressing the need to understand, conserve, and manage the state's Coastal Natural Resource Areas (CNRAs), by increasing understanding of the physical nature of CNRAs for the purpose of increasing awareness and stewardship of coastal resources and minimizing future impacts of human activities to these areas.

As required by federal law, the public was given an opportunity to comment on NOAA's federal consistency determination. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for this consistency determination extended 30 days from the date published on the Council's web site. The notice was published on the web site on February 8, 2006. The public comment period for this consistency determination closed on March 10, 2006.

The Council reviewed the federal consistency determination by NOAA at its meeting on March 16, 2006, and voted unanimously to concur with NOAA's determination that designation of the proposed Mission-Aransas NERR will have beneficial coastal effects and will be carried out in a manner that is, to the maximum extent practicable, consistent with the enforceable policies of the approved CMP and the affected CNRAs designated therein.

TRD-200601818
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: March 27, 2006

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Sections 403.011, 2155.001, and 2156.121, Texas Government Code, and Chapter 54, Subchapter F, Sections 54.602, 54.611-618, and 54.636, Texas Education Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces the issuance of its Request for Proposals (RFP #1750) for International Value Equity Investment Management Services ("Services") for the Board. The selected respondent will assist the Comptroller and the Board by providing the Services consistent with the Board's Investment Policy and Guidelines related to the Texas Tomorrow Constitutional Trust Fund ("Fund"), as described in this RFP and the contract, if any resulting from it ("Contract"). This RFP relates to the Board's portfolio of investment assets for its prepaid tuition plan, which is designed to comply with Section 529 of the Internal Revenue Code. The prepaid tuition plan currently has approximately \$1.6 billion dollars in invested assets. The Comptroller, as Chair and Executive Director of the Board, is issuing this RFP in order that the Board may move forward with retaining the necessary

Services. The Comptroller and the Board reserve the right to award more than one contract under the RFP. If approved by the Board, the successful respondent(s) will be expected to begin performance of the contract on or about June 1, 2006.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas 78774, (512) 305-8673, to obtain a complete copy of the RFP. The Comptroller will mail copies of the RFP only to those parties specifically requesting a copy. The RFP will be available for pick-up at the above referenced address on Friday, April 7, 2006, after 10 a.m. Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the entire RFP available electronically on the Electronic State Business Daily after 10:00 a.m. CZT on Friday, April 7, 2006. The website address is <http://esbd.tbpc.state.tx.us/1380/sagency.cfm>.

Questions and Non-Mandatory Letters of Intent: All written inquiries, questions, and non-mandatory Letters of Intent to propose must be received at the above-referenced address not later than 2:00 p.m. (CZT) on Friday, April 21, 2006. Prospective respondents are encouraged to fax non-mandatory Letters of Intent and Questions to (512) 475-0973 to ensure timely receipt. The Letter of Intent must be addressed to William Clay Harris, Assistant General Counsel, Contracts, and must contain the information as stated in the corresponding Section of the RFP and be signed by an official of that entity. Non-mandatory Letters of Intent and Questions received after this time and date will not be considered. On or before Tuesday, April 25, 2006, the Comptroller expects to post responses to questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be delivered to the Office of the Assistant General Counsel, Contracts, at the location specified above (ROOM G24), no later than 2:00 p.m. (CZT), on Tuesday, May 2, 2006. Proposals received in ROOM G24 after this time and date will not be considered regardless of the reason for the late delivery and receipt. Respondents are encouraged to and solely responsible for verifying timely receipt of proposals in that office (ROOM G24).

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. The Board shall make the final decision on any contract award or awards resulting from this RFP. The Comptroller and the Board each reserve the right, in their sole discretion, to accept or reject any or all proposals submitted. The Comptroller and the Board are not obligated to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this notice or the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - April 7, 2006, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent to propose and Questions Due - April 21, 2006, 2:00 p.m. CZT; Official Responses to Questions posted - April 25, 2006; Proposals Due - May 2, 2006, 2:00 p.m. CZT; Contract Execution - June 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - June 1, 2006, or as soon thereafter as practical.

TRD-200601876
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: March 29, 2006

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Request for Proposals

Pursuant to Chapters 403 and 404, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of its Request for Proposals (RFP) from qualified financial institutions to provide the Comptroller with Automated Clearing House (ACH) Services as described in the RFP. The successful respondent(s) will be expected to begin performance of the contract on or about September 1, 2006.

Contact: Parties interested in submitting a proposal should contact Thomas H. Hill, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, April 7, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Electronic State Business Daily after 10:00 a.m. (CZT), on Friday, April 7, 2006.

Questions: All questions concerning the RFP must be in writing and submitted no later than Wednesday, April 19, 2006, 2:00 p.m. (CZT). Questions must be faxed to (512) 475-0973 or e-mailed to contracts@cpa.state.tx.us, Attn.: Thomas H. Hill, Assistant General Counsel, Contracts. On or before Thursday, April 27, 2006, the Comptroller expects to post answers to these written questions as a revision to the Electronic State Business Daily notice on the issuance of this RFP. The address of the Electronic State Business Daily is <http://esbd.tbpc.state.tx.us/1380/sagency.cfm>. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in Deputy General Counsel for Contracts' Office at the location specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Friday, May 12, 2006. Proposals received in ROOM G-24 after this time and date will not be considered. Respondents shall be solely responsible for verifying timely receipt of proposals and all required copies in the Issuing Office by the deadline.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller of Public Accounts is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay for no costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - April 7, 2006, 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - April 19, 2006, 2:00 p.m. CZT; Proposals Due - May 12, 2006, 2:00 p.m. CZT; Contract Execution - June 23, 2006, or as soon thereafter as practical; Transition, if any, to begin on June 26, 2006, or as soon thereafter as practical for commencement of Project Activities - September 1, 2006.

TRD-200601859
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 28, 2006

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Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of intent to amend and increase a major consulting services contract in connection with the Request for Proposals (RFP #174a) for pooled consulting services to assist the Comptroller with Appraisal Standards Reviews of Selected County Appraisal Districts.

Comptroller announces that the consulting contract with AMF Appraisal Group, Inc., 402 Simonton, Suite 100, Conroe, Texas 77301, with a total amount of not-to-exceed \$40,000.00 is amended to a new total not-to-exceed \$80,000.00. The term of the contract is November 16, 2005 through August 31, 2006. This amendment does not extend or modify the term of the contract.

The notice of request for proposals (RFP #174a) was published in the September 9, 2005, issue of the *Texas Register* (30 TexReg 5847). The notice of award was published in the December 24, 2005, issue of the *Texas Register*. All final reports are due on or before August 31, 2006.

TRD-200601887
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: March 29, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/03/06 - 04/09/06 is 18% for Consumer ¹Agricultural/Commercial ² credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/03/06 - 04/09/06 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 04/01/06 - 04/30/06 is 18% for Consumer/Agricultural/Commercial credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 04/01/06 - 04/30/06 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment, or other similar purpose.

³For variable rate commercial transactions only.

TRD-200601840
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: March 28, 2006

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Texas Commission on Environmental Quality

Correction of Error

The Texas Commission on Environmental Quality adopted 30 TAC §91.30, concerning definitions. The adoption notice appeared in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2485).

On page 2490, paragraph (4), the dash was omitted between the term "FutureGen Project" and the definition text.

TRD-200601886



Correction of Errors

The Texas Commission on Environmental Quality adopted new, amendments, and the repeal of rules, concerning Chapter 330, Municipal Solid Waste. The adoption notice was published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2502). Please note the following corrections to the adopted rule package. The Texas Administrative Code will reflect these corrections.

On page 2601, a submission error was made in §330.5(a)(2), in the third sentence. The cross-reference to "Subchapter N of this chapter (relating to Landfill Mining);" should be deleted.

On page 2601, a submission error was made in §330.5(a)(7), in the second sentence. The cross-reference to "§330.9(h)" should be "330.9(k)".

On page 2602, a submission error was made in §330.5(d) in the last sentence. The cross-reference to "Subchapter L" should be "Subchapter K".

On page 2605, a submission error was made in §330.9(b)(4). The cross-reference to "§330.5(c)" should be "§330.5(a)".

On page 2606, a submission error was made in §330.9(h) in the third sentence. The cross-reference to "330.63(a), (d)(7), (h), and (j)" should be "330.63(a), (d)(6), (h), and (j)".

On pages 2606 and 2607, submission errors were made in §330.9(1)(2) and (3). In both paragraphs the cross-reference to "§330.1211(m)" should be "§330.1211(l)".

On page 2607, a submission error was made in §330.9(1)(5). The cross-reference to "§330.1211(n)" should be "§330.1211(m)".

On page 2607, a submission error was made in §330.9(m)(2). The cross-reference to "§330.1221(k)" should be "§330.1221(l)".

On page 2607, a submission error was made in §330.9(m)(5). The cross-reference to "§330.1221(l)" should be "§330.1221(m)".

On page 2625, a submission error was made in §330.63(f)(7) in the first sentence. The cross-reference to "§330.419" should be "§330.409".

On page 2626, a submission error was made in §330.71(b). The cross-reference to "subsections (e) and (f)" should be "subsection (f)".

On page 2635, a submission error was made in §330.171(c)(3)(I). The cross-reference to "§330.137(g) - (i) of this title (relating to Site Sign)" should be "§330.173(g) - (i) of this title (relating to Disposal of Industrial Wastes)".

On page 2636, a submission error was made in §330.173(c) in the last sentence. The cross-reference to "subsections (g) - (i)" should be "subsections (g) and (h)".

On page 2651, a submission error was made in §330.407(b)(1). The cross-reference to "paragraph (2) of this subsection" should be "paragraphs (2) and (3) of this subsection".

On page 2654, a submission error was made in §330.415(f)(2) in the first sentence. The cross-reference to "§330.405(f)" should be "§330.405(e) and (f)".

TRD-200601885



Enforcement Orders

An order was entered regarding J.M. Craven dba Craven Truck Center, Docket No. 2004-0539-PST-E on 03/24/2006.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

An default order was entered regarding Mark Stewart dba Stewart Water, Docket No. 2005-0073-PWS-E on 03/23/2006 assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087.

TRD-200601871

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 29, 2006



Notice of 2006 Update to the State Superfund Registry

The Texas Commission on Environmental Quality, formerly known as the Texas Natural Resource Conservation Commission (commission or TCEQ) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987, issue of the *Texas Register* (12 TexReg 205). In accordance with the Act, §361.181, the commission must update the state Superfund registry annually to add new facilities in accordance with the Act, §361.184(a) and §361.188(a)(1) (see also 30 TAC §335.343) or to delete facilities in accordance with the Act, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

Pursuant to the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

Col-Tex Refinery. Located on both sides of Business Interstate 20 (U. S. 80) in Colorado City, Mitchell County: tank farm and refinery.

J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.

Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.

Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.

Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.

Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.

Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.

International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.

McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.

Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U. S. 83 and Farm Road 604, Taylor County: Class I industrial waste management.

Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fence post treating facility and municipal waste.

Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.

JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.

Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead acid battery recycling.

Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 (IH-35) in San Marcos, Hays County: contaminated groundwater plume.

Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

Hall Street. Located north of the intersection of 20th Street East and California Street, north of the Dickinson city limits, Galveston County: waste disposal and landfill/open field dumping.

Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

Pursuant to the Act, §361.181, those facilities that may pose an imminent and substantial endangerment, and which have been proposed to the state Superfund registry, are set out in descending order of hazard ranking system (HRS) scores as follows.

Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431, in the community of Kingsland, Llano County: two groundwater plumes.

First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.

Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting, processing.

ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.

Hicks Field Sewer Corporation. Located approximately 2.5 miles northwest of Saginaw, southwest of Big Fossil Creek, and approximately 1.8 miles west of the intersection of U. S. Highway 81-287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.

Industrial Road/Industrial Metals. Located at 3000 Agnes Street, Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.

Tenaha Wood Treating. Located at 275 County Road 4382, about 1-1/2 miles south of the city limits and near the intersection of U. S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.

Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market Road 2064 and County Road 4216, Cherokee County: lead acid battery recycling.

Sherman Foundry. Located at 532 East King Street in south central Sherman, Grayson County: cast iron foundry.

James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.

Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.

Voda Petroleum, Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend county line, Brazoria County: oily wastewater disposal and oil recovery facility.

Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.

Avinger Development Company (ADCO). Located on the south side of Texas 155, approximately 1/4 mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.

Harvey Industries, Inc. Located at the southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television cabinets and circuit board manufacturing.

Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.

American Zinc. Located approximately 3.5 miles north of Dumas on U. S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.

El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.

Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73, approximately 5.8 miles north of Robstown in Nueces County: storage and disposal of hazardous substances.

Cass County Wood Treating. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.

Cox Road Dump Site. Located on the west side of County Road 491 (Cox Road) about one mile north of FM 1413 in Dayton, Liberty County: waste disposal landfill.

Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.

San Angelo Electric Service Company (SESCO). Located at 926 Pullett Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.

Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.

Rogers Delinted Cottonseed Co. - Farmersville. Located at the intersection of State Highway 380 and Farm-to-Market Road 547, approximately one mile east of Farmersville, Collin County: former cottonseed delinting processing facility.

Dorchester Refining Company. Located in the 1700 block of West First Street on the west border of the city of Mount Pleasant, Titus County: oil refinery.

Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.

City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158 in Midland County: groundwater contamination plume.

Mineral Wool Insulation Manufacturing Company. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.

Poly-Cycle Industries, Jacksonville. Located at 2505 South Jackson Street, Jacksonville, Cherokee County: lead acid battery chips recycler and lead recovery.

Since the last *Texas Register* publication on April 29, 2005 (30 TexReg 2583), the TCEQ has determined that ten facilities may pose an imminent and substantial endangerment to public health and safety or the environment and in accordance with the Act, §361.184(a), have been added to the list of sites proposed to the state Superfund registry.

Ballard Pits.

Cass County Wood Treating.

City View Road Groundwater Plume.

Cox Road Dump Site.

Dorchester Refining Company.

Mineral Wool Insulation Manufacturing Company.

Rogers Delinted Cottonseed - Colorado City.

San Angelo Electric Service Company (SESCO).

Sherman Foundry.

Tenaha Wood Treating.

Also, the TCEQ has determined that two sites, Texas American Oil and Phipps Plating, no longer pose an imminent and substantial endangerment to public health or the environment and have been deleted pursuant to 30 TAC §335.344(c).

McNabb Flying Services has been accepted into the Voluntary Cleanup Program and was deleted from the state Superfund registry as provided by the Act, §361.189(a) and 30 TAC §335.344(c).

One site, State Highway 123 PCE Plume, was moved from proposed to the listed category in accordance with the Act, §361.188.

To date, 38 sites have been deleted from the state Superfund registry in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344):

Aztec Ceramics, Bexar County;

Aztec Mercury, Brazoria County;

Barlow's Wills Point Plating, Van Zandt County;

Bestplate Inc., Dallas County;

Butler Ranch, Karnes County;

Crimm-Hammett, Rusk County;

Double R Plating Company, Cass County;

Gulf Metals Industries, Harris County;

Hageron Road Drum, Fort Bend County;

Harkey Road, Brazoria County;

Hart Creosoting, Jasper County;

Hi-Yield, Hunt County;

Higgins Wood Preserving, Angelina County;

Houston Lead, Harris County;

Houston Scrap, Harris County;

Kingsbury Metal Finishing, Guadalupe County;

LaPata Oil Company, Harris County;

Lyon Property, Kimble County;

McNabb Flying Service, Brazoria County;

Melton Kelly Property, Navarro County;

Munoz Borrow Pits, Hidalgo County;

Newton Wood Preserving, Newton County;

Old Lufkin Creosoting, Angelina County;

Permian Chemical, Ector County;

Phipps Plating, Bexar County;

PIP Minerals, Liberty County;

Poly-Cycle Industries, Ellis County;

Rio Grande Refinery I, Hardin County;

Rio Grande Refinery II, Hardin County;

Sampson Horrice, Dallas County;

Solvent Recovery Services, Fort Bend County;

South Texas Solvents, Nueces County;

State Marine, Jefferson County;

Stoller Chemical Company, Hale County;

Texas American Oil, Ellis County;

Thompson Hayward Chemical, Knox County;

Waste Oil Tank Services, Harris County;

Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. For persons with disabilities, parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files; however, use of copiers to reproduce file information is subject to payment of a fee.

TRD-200601856

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: March 28, 2006



Notice of Comment Period and Announcement of Public Meeting on Proposed Amendments to the Standard Permit for Electric Generating Units

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and will conduct a public meeting to receive testimony concerning proposed amendments to the standard permit for electric generating units (EGUs) proposed for issuance under the Texas Clean Air Act, Texas Health and Safety Code, §382.05195, Standard Permit, and 30 TAC Chapter 116, Subchapter F, Standard Permits.

PROPOSED AMENDED STANDARD PERMIT

The proposed amendments to the standard permit for EGUs would allow very small units (those with a capacity less than or equal to 100 kilowatts (kW)) in East Texas to comply with the pre-2005 nitrogen oxides (NO_x) limit of 0.47 pounds per megawatt-hour (lb/MWh). The existing standard permit requires units in East Texas constructed on or after January 1, 2005, and operating more than 300 hours per year, to comply with a NO_x emission limit of 0.14 lb/MWh. This amendment is being proposed because the technology needed for very small EGUs to comply with a standard of 0.14 lb/MWh has not developed as rapidly as the commission anticipated. The commission specifically invites comment on current and future technologies used to control or minimize emissions from small EGUs. The proposed amendments to the standard permit would also increase the NO_x emission limit for units combusting landfill gas, stranded oilfield gas, digester gas, and other gaseous renewable fuels from 1.77 lb/MWh to 1.90 lb/MWh. The proposed amendments would delete the hydrogen sulfide fuel concentration limit which applies to gaseous fuels; however, the total sulfur fuel concentration limit would remain in place. The proposed amendments would provide more flexibility for the use of renewable fuels under the standard permit. The proposed amendments also contain organizational and grammatical changes to improve readability and enforceability.

The New Source Review Program under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state to obtain a permit in accordance with 30 TAC §116.111, General Application, satisfy the de minimis criteria of 30 TAC §116.119, De Minimis Facilities or Sources, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction or modification of new or existing facilities which are similar in terms of operations, processes, and emissions.

An amendment to a standard permit is subject to the procedural requirements of 30 TAC §116.605, Standard Permit Amendment and Revocation, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be registered under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

PUBLIC MEETING

A public meeting on the proposed amendments to the standard permit for EGUs will be held in Austin, Texas. The meeting will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TCEQ staff will be available to discuss the stan-

standard permit for EGUs 30 minutes prior to the meeting and staff will also answer questions after the meeting. The public meeting will be held on May 10, 2006, at 1:30 p.m., at the Texas Commission on Environmental Quality, Building F, Room 2210, 12100 Park 35 Circle, Austin.

PUBLIC COMMENT AND INFORMATION

Copies of the proposed amendments to the standard permit for EGUs may be obtained from the TCEQ Web site at http://www.tceq.state.tx.us/permitting/air/newsourcereview/combustion/egu_sp.html or by contacting the Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, at (512) 239-1250. Comments may be mailed to Michael Wilhoit, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the standard permit for EGUs. Comments must be received by 5:00 p.m. on May 10, 2006. To inquire about the submittal of comments or for further information, contact Mr. Wilhoit at (512) 239-1222. Si desea información en Español, puede llamar al (800) 687-4040.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the public meeting should contact the TCEQ at (512) 239-1250. Requests should be made as far in advance as possible.

TRD-200601873

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 29, 2006



Notice of Comment Period and Hearing on Draft Municipal Solid Waste Landfill General Operating Permit

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft revisions to Municipal Solid Waste Landfill (MSWL) General Operating Permit (GOP) Number 517. The draft GOP contains revisions to codified applicable requirements and the codification of the newly adopted New Source Review standard permit for MSWL facilities.

The draft GOP is subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOP. A hearing will be held in Austin on May 8, 2006, at 11:00 a.m. in Room 131E of TCEQ, Building C, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOP 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOP may be obtained from the TCEQ Web site at http://www.tceq.state.tx.us/permitting/air/nav/air_genoppermits.html or by contacting the TCEQ Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1250. Written comments may be mailed to Bruce Buchanan, Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft MSWL GOP. Comments must be received by 5:00

p.m., May 12, 2006. For further information, contact Mr. Buchanan at (512) 239-0280.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200601874

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 29, 2006



Notice of District Petition

Notice Mailed March 28, 2006

TCEQ Internal Control No. 01202006-D04; Talley Ranch Management, LTD. (Petitioner) filed a petition for creation of Talley Ranch Water Control and Improvement District No. 1 of Denton 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 51 of the Texas Water Code; 30 TAC Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 3,545.8 acres located within Denton County, Texas; and (4) the proposed District is within the corporate limits or extraterritorial jurisdiction of Pilot Point, Texas. By Ordinance No. 427-05, effective July 25, 2005, the City of Pilot Point, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) design, construct, acquire, maintain, and operate a waterworks and sanitary sewer system for domestic and commercial purposes; (2) design, construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) design, construct, acquire, improve, maintain, and operate any additional facilities, systems, plants, and enterprises consistent with the purposes for which the District is created. According to the petition, the Petitioner has 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 \$154,700,000.

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 (512) 239-4691. Si desea informacion en Espanol, 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-200601869

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: March 29, 2006



Notice of Meeting on May 18, 2006 in Sherman, Grayson County, Texas Concerning the Sherman Foundry (Also Known as Old Foundry) Facility

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of using non-residential standards for setting cleanup levels at the site.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the April 29, 2005, issue of the *Texas Register* (30 TexReg 2583).

Pursuant to the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director has determined eligible for listing and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice pursuant to the Act, §361.1855, that it proposes a land use other than residential as appropriate for cleanup of the facility identified. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use cleanup levels may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing use of the property, as is prescribed in the Texas Risk Reduction Program rule at 30 TAC §350.53.

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on April 7, 2006, in the *Herald Democrat*.

The facility proposed for listing is the Sherman Foundry Site (also known as Old Foundry), located at 532 East King Street, Sherman (Grayson County) Texas. The geographic coordinates of the site are Latitude 33 degrees 37 minutes 59.5 seconds /Longitude 96 degrees 36 minutes 06.5 seconds. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The description may change as additional information is gathered on the sources and extent of contamination.

The facility known as the Sherman Foundry (also known as Old Foundry) covers approximately 5.1 acres and is located in a mixed residential/industrial area in south central Sherman bordered on the east and west by Southern Pacific Railroad lines, Cherry Street to the north, and East King Street to the south. Records indicate that the Sherman Foundry was active from as early as 1947 to October 2000.

The facility was a cast iron foundry. The facility contains industrial process wastes remaining in the former metals process area, three large on-site foundry waste stockpiles, two 55-gallon drum storage areas, two baghouse collection hoppers, and a former paint shop. The site has a closed/capped deed-recorded pre-Resource Conservation and Recovery Act solid waste landfill measuring 15 feet by 50 feet containing a reported 21 cubic yards of buried cupola baghouse dust located in the northeast corner of the property. In addition, three off-site landfill areas have been identified where foundry sand and slag wastes were used as fill material that may have included cupola furnace baghouse dust containing hazardous levels of lead and cadmium.

On June 1, 2000, a default order (Docket No. 1999-0096-Air-E) against the Sherman Foundry was issued for failure to respond to rule violations and for failure to comply with provisions of a TCEQ issued Agreed Order. In January 2003, the TCEQ performed a site screening investigation and determined that conditions at the site required a removal action due to the potential exposure of the public and the environment to hazardous substances found at the site. During August 2003, a contractor for the TCEQ performed removal activities of numerous containers with hazardous wastes.

As part of the August 2003 activities, the TCEQ repaired the existing fence and installed approximately 450 linear feet of new fencing to secure the property. In addition to the security fence, two vehicle entrance gates were installed to limit access to the property.

A public meeting will be held on May 18, 2006, at 7:00 p.m., at the Hope Waller Community Room, located at 421 North Travis, Sherman, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility that is the subject of this notice is located. The public meeting is not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., May 17, 2006, and should be sent in writing to Robert Musick, Project Manager, TCEQ, Remediation Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on May 18, 2006.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Sherman Public Library, 421 North Travis, Sherman, Texas 75090, (903) 892-7240, during regular business hours. Copies of the

complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363. 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.

Information is also available regarding the state Superfund program on the TCEQ Web site located at www.tceq.state.tx.us/remediation/superfund/index.html.

Persons who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Crystal Taylor, TCEQ Community Relations, at (800) 633-9363.

TRD-200601857

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 28, 2006



Notice of Water Quality Applications

The following notices were issued during the period of March 16, 2006 through March 28, 2006.

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.

ALAMO CEMENT COMPANY II, LTD. which operates a portland cement plant has applied for a renewal of Permit No. WQ0002281000, which authorizes the disposal of noncontact cooling water, vehicle wash water, storm water runoff, and well water on an intermittent basis via evaporation. This permit will not authorize a discharge of pollutants into water in the State. The facility and disposal site are located at 6055 West Green Mountain Road, in the City of San Antonio, Bexar County, Texas. The facility and disposal site are located in the drainage area of Upper Cibolo Creek, in Segment No. 1908 of the San Antonio River Basin.

CITY OF CADDO MILLS has applied for a renewal of TPDES Permit No. 10425-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day. The facility is located approximately 0.7 mile south of the intersection of State Highway 60 and Farm-to-Market Road 36 in Hunt County, Texas.

CITY OF CLARENDON has applied for a renewal of Permit No. 10007-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 280,000 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 4,000 feet northeast of the intersection of U. S. Highway 287 and Farm-to-Market Road 2162 in Donley County, Texas.

CITY OF EDINBURG has applied for a renewal of TPDES Permit No. WQ0010503002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 5,900,000 gallons per day. The facility is located northeast of the City of Edinburg immediately northeast of the intersection of North "M" Road and

the Southern Union Pacific Railroad track easement in Hidalgo County, Texas.

CITY OF FATE has applied for a renewal of TPDES Permit No. 11077-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 314,000 gallons per day in the interim phase and 474,000 in the final phase. The facility is located approximately 0.01 mile east of State Highway 66 or approximately 0.04 mile northeast of the intersection of State Highway 66 and State Highway 551 in Rockwall County, Texas.

CITY OF LINDALE has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10412-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,300,000 gallons per day. The facility is located approximately 2,000 feet east of U. S. Highway 69 and approximately 4,000 feet north of Farm-to-Market Road 16 in Smith County, Texas.

CITY OF LINDALE has applied for a renewal of TPDES Permit No. 10412-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 72,000 gallons per day. The facility is located adjacent to Interstate Highway 20 approximately 0.9 mile west of the intersection of Interstate Highway 20 and County Road 463 in Smith County, Texas. The Texas Commission on Environmental Quality (TCEQ) has initiated a minor modification of the Texas Pollutant Discharge Elimination System (TPDES) permit issued to CITY OF LONGVIEW to incorporate a substantial modification to the approved pretreatment program. The applicant has applied to the TCEQ for approval of a substantial modification to its approved pretreatment program under the TPDES program. The existing permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 21,000,000 gallons per day. The existing permit authorizes the disposal of sludge only at a TCEQ registered or permitted land application site, commercial land application site, or co-disposal landfill. The facility is located approximately 2,500 feet west of the crossing of Grace Creek by Farm-to-Market Road 1845, approximately 4,000 feet south of the intersection of Farm-to-Market Road 1845 and Farm-to-Market Road 2087 in Gregg County, Texas.

MARTIN LEON EDWARDS has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 12,000 gallons per day. The facility is located at 3035 West State Highway 154, approximately 1/8 mile west of Farm-to-Market Road 3138 in the City of Quitman in Wood County, Texas.

MARTINSVILLE INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 14027-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 8,000 gallons per day. The facility is located at the southwest corner of the intersection of State Highway 7 and Farm-to-Market Road 95, 12.7 miles west of the City of Nacogdoches in Nacogdoches County, Texas.

CITY OF SAN ANGELO has applied for a renewal of Permit No. WQ0010641003, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 16,300,000 gallons per day via evaporation and irrigation of 2,787 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal area are located approximately 3.5 miles east-northeast of the intersection of Farm-to-Market Road 380 and State Highway Loop 306 in Tom Green County, Texas.

SNIDER INDUSTRIES, L.L.P., P. O. Box 668, Marshall, Texas 75671-0668, which operates a lumber mill with cogeneration facilities, has applied for a renewal of TPDES Permit No. WQ0002770000, which authorizes the discharge of once through cooling water and storm water runoff from Sue Belle Lake on an intermittent and flow basis via Out-

fall 001; truck and equipment washwater and storm water runoff on an intermittent and flow variable basis via Outfall 002; overflow from the wet bulb humidity regulator, kiln condensate, and storm water runoff on an intermittent and flow variable basis via Outfall 003; and boiler blowdown, groundwater seepage, and storm water runoff on an intermittent and flow variable basis via Outfall 004. The facility is located on the northeast and northwest corners of the intersection of Loop 390 and Sue Belle Lake Road, approximately two miles north of the City of Marshall, Harrison County, Texas.

CITY OF SOUR LAKE has applied for a renewal of TPDES Permit No. 10703-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located approximately 0.5 mile southwest of the City of Sour Lake, approximately 3/4 mile west of State Highway 326 in Hardin County, Texas.

STEWART & STEVENSON TACTICAL VEHICLE SYSTEMS, L.P. which assembles military trucks, has applied for a major amendment to TPDES Permit No. WQ0002462000 to authorize the removal of internal Outfall 101; the removal of effluent limitations for total residual chlorine at internal Outfall 201; the addition of internal Outfall 401 for the discharge of additional process wastewater; an increase in the maximum effluent limitation for pH at Outfall 001; an increase in limitations for total chromium, total copper, and total lead at Outfall 001; the removal of the daily maximum flow limitation at Outfall 001; and an increase in the daily average flow limitation to a dry weather flow of 395,000 gallons per day at Outfall 001. The current permit authorizes the discharge of previously monitored effluent (PME) and storm water at a daily average flow not to exceed 395,000 gallons per day via Outfall 001; truck wash water and storm water at a daily average flow not to exceed 395,000 gallons per day via Outfall 101; treated electroplating/metal finishing process wastewater at a daily average flow not to exceed 43,000 gallons per day via Outfall 201; domestic sewage and truck wash water at a daily average flow not to exceed 61,870 gallons per day via Outfall 301. The facility is located at the northeast corner of the intersection of Interstate Highway 10 and Pyka Road, approximately three miles west of the City of Sealy, Austin County, Texas.

U.S. DEPARTMENT OF THE INTERIOR has applied for a renewal of TPDES Permit No. 12865-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 3,300 feet northwest of the Chisos Mountain Lodge in the Basin in Big Bend National Park in Brewster County, Texas.

U.S. DEPARTMENT OF THE INTERIOR has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 13344-002, 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 2,154 feet west of the intersection of Sewage Lagoon Road and Park Road 22 in Kleberg County, Texas.

CITY OF WHITE OAK has applied for a renewal of TPDES Permit No. WQ0010940001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,100,000 gallons per day. The facility is located approximately 1,500 feet east of State Highway 42 and 3,800 feet south of U. S. Highway 80 in Gregg County, Texas.

TRD-200601870

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: March 29, 2006

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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 **May 8, 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 May 8, 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: C & R Distributing, Inc. and C & R Distributing, Inc. dba Piggy Bank 1; DOCKET NUMBER: 2005-1974-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN102614203 and RN102598109; LOCATION: El Paso and Canutillo, El Paso County, Texas; TYPE OF FACILITY: gasoline products distributor and convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by allegedly offering for sale gasoline with an oxygen content lower than 2.7% by weight; PENALTY: \$1,520; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(2) COMPANY: Central Freight Lines, Inc.; DOCKET NUMBER: 2005-2060-MSW-E; IDENTIFIER: RN100712983; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.5(c), by failing to prevent the unauthorized disposal of municipal solid waste (MSW), including trees, construction debris, plywood, plastic, tires, iron T-posts, and rebar; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2005-1904-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §101.20(3) and §116.115(c), New Source Review (NSR) Air Permit Number 7467A and NSR Air Permit Number 5920A/PSD-TX-103M2, and THSC, §382.085(b), by failing to comply with permitted emissions limits; PENALTY: \$8,000; ENFORCEMENT COORDINATOR: Amy Burgess, (512) 239-2540;

REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: El Camino Bay Water Supply Corporation; DOCKET NUMBER: 2005-2020-PWS-E; IDENTIFIER: RN101199560; LOCATION: Hemphill, Sabine 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 for total trihalomethanes and haloacetic acids; PENALTY: \$645; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(5) COMPANY: Hirschfeld Steel Company, Inc.; DOCKET NUMBER: 2005-1864-AIR-E; IDENTIFIER: RN100680081; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: metal fabricating plant; RULE VIOLATED: 30 TAC §122.121 and THSC, §382.085(b), by failing to obtain a federal operating permit and continuing to operate without authorization; 30 TAC §101.10(a)(3) and THSC, §382.085(b), by failing to submit an emissions inventory; 30 TAC §101.27(a)(4), the Code, §5.702, and THSC, §382.085(b), by failing to pay emissions fees; and 30 TAC §116.115(c), Permit Number 21663, and THSC, §382.085(b), by failing to comply with special conditions contained in the permit document; PENALTY: \$17,080; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 658-5431.

(6) COMPANY: Hueco Quarry, Inc.; DOCKET NUMBER: 2006-0109-AIR-E; IDENTIFIER: RN102645272; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: rock crushing plant; RULE VIOLATED: 30 TAC §116.115(c), NSR Permit Number 52662, and THSC, §382.085(b), by failing to comply with the requirement that water spray systems be operated at the conveyor and the shaker, and on the plant roads to control the dust; PENALTY: \$816; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(7) COMPANY: Intercontinental Terminals Company; DOCKET NUMBER: 2005-2017-AIR-E; IDENTIFIER: RN100210806; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: bulk storage terminal; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 1078, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to include in the final record the number of the authorization governing the facility involved in the emissions event; PENALTY: \$4,139; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: KBC Services, Inc. dba Marina Bay Harbor Yacht Club; DOCKET NUMBER: 2005-2076-PST-E; IDENTIFIER: RN104777149; LOCATION: Clear Lake Shores, Galveston County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to provide acceptable financial assurance; PENALTY: \$840; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Mercedes Independent School District; DOCKET NUMBER: 2005-0588-PST-E; IDENTIFIER: RN101684942; LOCATION: Mercedes, Hidalgo County, Texas; TYPE OF FACILITY: school bus maintenance; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(1)(A), and (d)(1)(B)(iii)(II), and the Code, §26.3475(a), by failing to have a release detection method for any

portion of the underground storage tank (UST), by failing to perform an automatic test for substance loss, and by failing to have measuring equipment capable of measuring the level of stored substance over the full range of the tank's height to nearest 1/8 inch; 30 TAC §334.51(a)(6), by failing to assure that all installed spill and overfill prevention devices are maintained in good operating condition and in accordance with the manufacturer's specifications; 30 TAC §334.72(3)(A), by failing to report monitoring results that indicate a release may have occurred; and 30 TAC §334.74, by failing to immediately investigate and confirm all suspected releases of regulated substances; PENALTY: \$8,800; ENFORCEMENT COORDINATOR: Rebecca Clausewitz, (210) 490-3096; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: City of Morton; DOCKET NUMBER: 2005-2075-MWD-E; IDENTIFIER: RN102077385; LOCATION: Morton, Cochran County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Water Quality Permit Number 10226-001 and the Code, §26.121(a), by failing to meet the wastewater limitations for the treated domestic wastewater prior to disposal by land application and to prevent the contamination of groundwater from the disposal of wastewater effluent by land application; PENALTY: \$6,300; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(11) COMPANY: MPR Investments, L.L.C. dba Oakridge Square Mobile Home Park; DOCKET NUMBER: 2005-2004-PWS-E; IDENTIFIER: RN101256832; LOCATION: Fort Worth, Johnson County, Texas; TYPE OF FACILITY: mobile home park with public water supply; RULE VIOLATED: 30 TAC §290.46(i), (m)(1)(A) and (B), and (n)(2) and (3), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement, by failing to keep on file and make available for review annual inspections of the ground storage tank, by failing to keep on file and make available for review annual inspections of the pressure tank, by failing to keep on file and make available for review an accurate and up-to-date map of the distribution system, and by failing to keep on file and make available for commission review a copy of the well completion data; 30 TAC §290.42(l), by failing to keep on file and make available for review a thorough plant operations manual for operator review and reference; 30 TAC §290.121(a), by failing to keep on file and make available for review an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.45(b)(1)(F)(i) and (iii), by failing to provide a well capacity of 0.6 gallons per minute (gpm) per connection and by failing to provide two or more pumps having a total capacity of two gpm per connection at each pump station or pressure plane; and 30 TAC §290.41(c)(3)(K) and (N), by failing to provide the well with a casing vent with an opening that is covered with a 16-mesh or finer corrosion-resistant screen and by failing to provide a flow meter on the well pump discharge line; PENALTY: \$966; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Parmer-McNeil Holdings, Limited; DOCKET NUMBER: 2005-1661-EAQ-E; IDENTIFIER: RN104421573; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: real property; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a plan to protect the Edwards Aquifer prior to commencing construction of a retail center; PENALTY: \$21,600; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13) COMPANY: City of Robert Lee; DOCKET NUMBER: 2005-1988-MSW-E; IDENTIFIER: RN102143658; LOCATION: Robert Lee, Coke County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §330.113(b)(1), by failing to maintain location restriction demonstrations in the landfill operating record; 30 TAC §330.117(b) and (c), by failing to prevent the unloading of waste in unauthorized areas and by failing to prevent the disposal of prohibited wastes; 30 TAC §330.122, by failing to install and maintain buffer zone markers, boundary markers, and a benchmark; 30 TAC §330.133(a) and Municipal Solid Waste (MSW) Permit Number 614, by failing to provide six inches of well-compacted earthen material; and 30 TAC §330.134 and MSW Permit Number 614, by failing to prevent ponded water from accumulating in the disposal area of the landfill; PENALTY: \$3,960; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(14) COMPANY: City of Teague; DOCKET NUMBER: 2005-0673-MWD-E; IDENTIFIER: RN101607935; LOCATION: Teague, Freestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System Permit Number 10300002, and the Code, §26.121(a), by failing to comply with the five-day biochemical oxygen demand and flow effluent limitations and by failing to provide monitoring results at the intervals specified in the permit; PENALTY: \$8,064; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Texas Department of Criminal Justice; DOCKET NUMBER: 2005-1896-MWD-E; IDENTIFIER: RN102315553; LOCATION: Tennessee Colony, Anderson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Water Quality Permit Number 11915001, and the Code, §26.121(a), by failing to comply with permit effluent limits for total suspended solids, five-day biochemical oxygen demand, and ammonia-nitrogen; PENALTY: \$13,750; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2005-0922-PST-E; IDENTIFIER: RN101745032; LOCATION: Yoakum, DeWitt County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and the Code, §26.3475(a), by failing to monitor the piping of the UST system in a manner designed to detect releases and by failing to test the line leak detectors for performance and operational reliability; PENALTY: \$1,500; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

TRD-200601841

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: March 28, 2006

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Office of the Governor

Notice of Amended Request for Applications (RFA) for the
Juvenile Justice and Delinquency Prevention (JJDP) Act Fund
- Title V Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for local projects to implement comprehensive plans developed by communities under the fiscal year 2007 grant cycle.

Reason for Amendment: The RFA for the Title V Program, which was published in the February 3, 2006 edition of the *Texas Register* (31 TexReg 748), is being amended to accommodate a 95% reduction in funds available for Texas.

Purpose: The purpose of the Title V Program is to reduce delinquency and youth violence by supporting communities in providing their children, families, neighborhoods, and institutions with the knowledge, skills, and opportunities necessary to foster a healthy and nurturing environment which supports the growth and development of productive and responsible citizens.

Available Funding: Federal funding is authorized under the Juvenile Justice and Delinquency Act of 2002, Title V, Public Law 107-273, codified as amended at 42 U.S.C. 5781 et seq. All grants awarded from this fund must comply with the requirements contained therein. Approximately \$600,000 is available for award.

Funding Levels: Grantees are allowed a maximum of three years of funding (this includes any years previously funded for the same project). The minimum award amount is \$25,000 and the maximum award amount is \$100,000.

Required Match: Grantees must provide matching funds of at least thirty-four percent (34%) of total project expenditures. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the *Texas Administrative Code*, Title 1, Part 1, Chapter 3, and the statutes, requirements, and guidelines applicable to this funding. In addition grantees must comply with the federal regulations at 28 C.F.R. §31.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

- (1) proselytizing or sectarian worship;
- (2) lobbying;
- (3) legal services for adult offenders;
- (4) any portion of the salary of, or any other compensation for, an elected or appointed government official, except in the case of a juvenile court or drug court;
- (5) overtime pay;
- (6) transportation, lodging, per diem or any related costs for participants, when grant funds are used to develop and conduct training;
- (7) vehicles or equipment for government agencies that are for general agency use;
- (8) weapons, ammunition, explosives or military vehicles;
- (9) admission fees or tickets to any amusement park, recreational activity or sporting event;
- (10) promotional gifts;
- (11) food, meals, beverages, or other refreshments unless the expense is for a working event where full participation by participants mandates the provision of food and beverages and the event is not related to amusement and/or social activities in any way;
- (12) membership dues for individuals;
- (13) any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state or local funds (e.g., supplanting);
- (14) fundraising;
- (15) medical services; and

(16) construction.

Eligible Applicants:

- (1) Units of local government applying for second (2nd) or third (3rd) year funding.
- (2) Native American Tribal Governments performing law enforcement functions applying for second (2nd) or third (3rd) year funding.

Requirements:

(1) Each community applying for funds must have a local prevention policy board that will direct the project and develop a three-year delinquency prevention plan. The prevention plan must be based on an assessment of risk factors associated with the development of delinquent behavior in the community's children. This plan must address one or more of the following activities:

- (a) Alcohol and substance abuse prevention services;
- (b) Tutoring and remedial education;
- (c) Child and adolescent health and mental health services;
- (d) Recreation services;
- (e) Leadership and youth development activities;
- (f) Teaching accountability;
- (g) Assistance in the development of job training skills; and
- (h) Other Data-driven evidence based prevention programs.

(2) Applicants must address one or more of the following Title V purpose areas:

- (a) Delinquency Prevention;
- (b) Gangs;
- (c) Mental Health Services;
- (d) Mentoring;
- (e) School Programs;
- (f) Substance Abuse; or
- (g) Youth Courts.

(3) In addition, all juvenile justice projects must address one or more of the following priorities developed in coordination with the Governor's Juvenile Justice Advisory Board:

- (a) Family Stability. Programs or other initiatives designed to strengthen family support systems in an effort to positively impact the lives of youth and divert them from a path of serious, violent, or chronic delinquency.
- (b) Substance Abuse Early Intervention and Prevention. Programs or other initiatives designed to address the use and abuse of illegal and other prescription and nonprescription drugs and the use and abuse of alcohol. Programs or other initiatives include control, prevention, and treatment.
- (c) Education. Programs or other initiatives designed to prevent truancy, suspension, and expulsion. School safety programs may include support for school resource officers and law-related education.
- (d) Disproportionate Minority Contact (DMC). Programs or other initiatives designed to address the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system.

(e) Justice System Impact. Programs or other initiatives designed to impact offender accountability and/or improve the practices, policies, or procedures within the juvenile justice system.

(f) Gang Prevention. Programs or other initiatives designed to address issues related to juvenile gang activity, including prevention and intervention efforts directed at reducing gang-related activities.

(g) Rural Access. Programs or other initiatives designed to provide prevention, intervention, and treatment services located outside a metropolitan area.

(h) Training. Programs or other initiatives designed to offer specialized training for staff working directly with at-risk youth or juvenile offenders that can positively impact the quality of the services, staff turnover rates, and program stability.

Project Period: Grant-funded projects must begin on or after September 1, 2006, and will expire on or before August 31, 2007.

Application Process: Eligible applicants can download an application kit from the Office of the Governor's website located at <http://www.governor.state.tx.us/divisions/cjd/formsapps/view>.

Preferences: Preference will be given to continuation applicants that demonstrate cost effective programs and comprehensive approaches to service provision.

Closing Date for Receipt of Applications: All applications must be submitted electronically to the Office of the Governor, Criminal Justice Division, via email at: cjdapps@governor.state.tx.us on or before May 1, 2006.

Selection Process: Applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness, availability of funding, and cost effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at lmelcher@governor.state.tx.us or at (512) 463-1919.

TRD-200601882

David Zimmerman

Assistant General Counsel

Office of the Governor

Filed: March 29, 2006

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on the proposed Medicaid payment rate for large state-operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) facilities operated by the Texas Department of Aging and Disability Services (DADS). This payment rate is proposed to be effective April 1, 2006. This proposed rate is an adjustment to the state fiscal year 2006 interim rate for state-operated large facilities effective April 1, 2006 to August 31, 2006 to account for actual increases in costs to operate these facilities that were not anticipated in the initial interim rate. HHSC is proposing this rate so that adequate funds are available to serve clients in these facilities. The public hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates.

The public hearing will be held on April 24, 2006, at 1:30 p.m., in the Permian Basin Conference Room of the Braker Center Building H,

at 11209 Metric Boulevard, Austin, Texas 78758-4021. Written comments regarding the payment rate may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Joyce Felix, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Express mail can be sent, or written comments can be hand delivered, to Ms. Felix, HHSC Rate Analysis, MC H-400, Braker Center Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Felix at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Joyce Felix at (512) 491-1174 or at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Felix by April 18, 2006, so that appropriate arrangements can be made.

Proposal. As the single state agency for the state Medicaid program, the Health and Human Services Commission proposes the following rate for large state-operated ICF/MR facilities operated by the Department of Aging and Disability Services. The payment rate effective for April 1, 2006, is proposed as follows:

Large State-Operated ICF/MRs Facilities

Current Daily Rate - \$308.75

Proposed Daily Rate - \$331.89

Methodology and justification. The proposed rate was determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter D, relating to Reimbursement Rates, §355.456(f).

TRD-200601884

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: March 29, 2006

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Notice of Proposed Nursing Facility Payment Rate for the Pediatric Care Facility Special Reimbursement Class

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on a proposed facility-specific payment rate for the Truman W. Smith Children's Care Center, a nursing facility that is a member of the pediatric care facility special reimbursement class. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on April 24, 2006, at 9:00 a.m. in the Permian Basin Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Joyce Felix, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to joyce.felix@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Felix, HHSC Rate Analysis, MC H-400, Braker Center, Building H at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Felix at (512) 491-1998. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting

Ms. Felix at (512) 491-1174 or at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Felix, by April 18, 2006, so that appropriate arrangements can be made.

Proposal. HHSC proposes a per-day payment rate for the nursing facility pediatric care facility special rate class for Truman W. Smith Children's Care Center in the amount of \$174.48. This payment rate is proposed to be effective January 1, 2006.

Methodology and justification. The proposed rate was determined in accordance with the rate setting methodology for the nursing facility pediatric care facility special rate class at 1 TAC Chapter 355, Subchapter C, §355.307(c) (relating to Reimbursement Setting Methodology for Nursing Facilities).

TRD-200601800
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 24, 2006



Public Notice

The Texas Health and Human Services Commission announces its intent to submit Transmittal Number #06-016, Amendment Number 734, to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add language to cover assistive communication devices for Medicaid-eligible recipients residing in nursing facilities. The amendment describes the criteria for requesting the devices and the reimbursement methodology.

The proposed amendment is estimated to result in annual aggregate increased costs of approximately \$375,000 for federal fiscal years 2006 and 2007, of which approximately \$228,263 is federal funds and \$146,737 is state general revenue.

The proposed effective date for the amendment is April 1, 2006. For additional information and copies of the proposed amendment, interested parties may contact Jessica Allison, Policy Analyst with Medicaid/CHIP Division, at the Health and Human Services Commission, 1100 West 49th Street, MC-H630, Austin, Texas 78758-3160, or by e-mail at jessica.allison@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services (formerly the Texas Department of Human Services).

TRD-200601868
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: March 29, 2006



Texas Higher Education Coordinating Board

Request for Proposals for the Texas Fund for Geography Education

This packet contains instructions and forms for submitting a proposal to the Texas Fund for Geography Grant Program. To be eligible for an award, institutions must submit applications to the Texas Fund for Geography Education Advisory Committee as specified in these instructions. Proposals must be submitted in writing and electronically.

Electronic copies of these instructions and forms may be found on the Coordinating Board's website at <http://www.theccb.state.tx.us/AAR/GradAndProfEd/partnerships/teachprep.htm>.

Name: Texas Fund for Geography Education

Purpose: To provide funding to eligible institutions of higher education to support geography education within the state and to improve geography literacy in the K-12 environment.

Authority: Texas Education Code, §§61.944 - 61.945; Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter J, Rules §§13.180 - 13.187. See appendices.

Eligible Institutions: Public and independent institutions of higher education as defined in Texas Education Code, §61.003 shall be able to compete for grants.

Eligible Projects: New or existing initiatives designed to improve the quality of geography education in the Texas K-12 environment. Collaborative efforts between public/independent institutions of higher education in Texas and a K-12 partner. The latter may include, but not be limited to, school district(s), individual schools/teachers, regional education service center(s), public and private entities.

General Selection Criteria: Competitive. Designed to award grants that provide the best overall value to the state. Selection criteria shall be based primarily on project quality, cost, and impact the project will have on enhancing geography education in the K-12 environment.

Available Funds: \$90,000 for the 2006-2007 academic year.

Grant Award: Minimum: None. Maximum: \$45,000.

Grant Period: One-year grants from on or about October 1, 2006 to August 31, 2007.

Grant Disbursement: In a single payment, as soon as possible after the awards are made. Unencumbered funds may not carry over beyond the grant period unless specifically authorized by the Coordinating Board's Program Director for Educator Preparation, Graduate and Professional Education, Academic Affairs and Research Division.

Carryover Funds: Unencumbered funds may not carry over beyond the grant period unless specifically authorized by the Coordinating Board's Program Director for Educator Preparation, Graduate and Professional Education, Academic Affairs and Research Division.

Application Deadline: Applications must be postmarked (or otherwise dated for overnight delivery) by July 17, 2006, or hand-delivered to the Coordinating Board's office by 5:00 p.m., July 17, 2006. Applications must also be received electronically by 5:00 p.m., July 17, 2006. E-mail applications to: susan.hetzler@theccb.state.tx.us.

More Information: Contact Dr. Susan Hetzler, Program Director for Educator Preparation, Graduate and Professional Education, Academic Affairs and Research Division, at (512) 427-6220, or by e-mail at: susan.hetzler@theccb.state.tx.us.

Program Schedule:

July 17, 2006: Proposals are due.

July 24, 2006: Proposals are reviewed by the Geography Education Advisory Committee.

August 7, 2006: Geography Education Advisory Committee meets to consider proposals and funding recommendations to the National Geographic Society.

September 22: Proposals are awarded by the National Geographic Society.

On or about October 1, 2006: Award letters are sent.

On or about October 1, 2006: Grantee(s) sign award contracts.

TRD-200601775

Jan Greenberg

General Counsel

Texas Higher Education Coordinating Board

Filed: March 23, 2006

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Texas Department of Housing and Community Affairs

Announcement of Public Comment Period for the 2006 State of Texas Consolidated Plan Annual Performance Report - Reporting on Program Year 2005 - Draft for Public Comment

The Texas Department of Housing and Community Affairs (the "Department") announces the opening of a 15-day public comment period for the *State of Texas 2006 Consolidated Plan Annual Performance Report - Reporting on Program Year 2005 - Draft for Public Comment* (the Plan) as required by the US Department of Housing and Urban Development (HUD). The Plan is required as part of the overall requirements governing the State's consolidated planning process. The Plan is submitted in compliance with 24 CFR 91.520, Consolidated Plan Submissions for Community Planning and Development Programs. The 15-day public comment period begins April 7, 2006, and continues until 5:00 p.m. on April 21, 2006.

The Plan gives the public an opportunity to evaluate the performance of the past program year for four HUD programs: the Community Development Block Grant Program administered by the Office of Rural Community Affairs, the Emergency Shelter Grants and HOME Investment Partnerships programs administered by the Department, and the Housing Opportunities for Persons with AIDS Program administered by the Texas Department of State Health Services. The following information is provided for each of the four programs covered in the Plan: a summary of program resources and programmatic accomplishments; a series of narrative statements on program performance over the past year; a qualitative analysis of program actions and experiences; and a discussion of program successes in meeting program goals and objectives.

Beginning April 7, 2006, the Plan will be available on the Department's website at www.tdhca.state.tx.us. A hard copy can be requested by contacting the Division of Policy and Public Affairs at P.O. Box 13941, Austin, TX 78711-3941 or by calling (512) 475-3976.

Written comment is encouraged and should be sent by mail to the Texas Department of Housing and Community Affairs, Division of Policy and Public Affairs, P.O. Box 13941, Austin, TX 78711-3941, by email to info@tdhca.state.tx.us, or by fax to (512) 469-9606. For more information or to order copies of the Plan, please contact the Division of Policy and Public Affairs at (512) 475-3976 or info@tdhca.state.tx.us.

TRD-200601875

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Filed: March 29, 2006

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Notice of Public Hearing

SINGLE FAMILY MORTGAGE REVENUE AND REFUNDING BONDS

TAXABLE JUNIOR LIEN SINGLE FAMILY MORTGAGE REVENUE BONDS

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at 211 East 11th Street, Room 116, Austin, Texas, at 12:00 noon on May 3, 2006, with respect to an issue of tax-exempt single family mortgage revenue bonds to be issued in one or more series in an aggregate face amount of not more than \$100,000,000 (the "Tax-Exempt New Money Bonds") and an issue of tax-exempt single family mortgage revenue refunding bonds to be issued in one or more series in an aggregate face amount of not more than \$184,410,000 (the "Tax-Exempt Refunding Bonds" and together with the Tax-Exempt New Money Bonds, collectively, the "Tax-Exempt Bonds") and an issue of taxable junior lien single family mortgage revenue bonds to be issued in an aggregate face amount of not more than \$50,000,000 (the "Taxable Junior Lien Bonds" and together with the Tax-Exempt Bonds, collectively, the "Bonds").

A portion of the proceeds of the Tax-Exempt Bonds will be used directly to make single family residential mortgage loans in an aggregate estimated amount not to exceed \$235,450,000. All of such single family residential mortgage loans will be made to eligible very low, low, and moderate income homebuyers for the purchase of homes located within the State of Texas. A portion of the proceeds of the Tax-Exempt Refunding Bonds will be used to refund all or a portion of the Department's outstanding Single-Family Mortgage Revenue Refunding Tax-Exempt Commercial Paper Notes, Series A and the Department's outstanding Single-Family Mortgage Revenue Tax-Exempt Commercial Paper Notes, Series C, thereby making funds available to make additional single family residential mortgage loans. A portion of the proceeds of the Tax-Exempt Refunding Bonds will also be used to refund all or a portion of the Department's outstanding Single Family Mortgage Revenue Bonds, 1996 Series A, Single Family Mortgage Revenue Bonds, 1996 Series D, and Single Family Mortgage Revenue Refunding Bonds, 1996 Series E, the proceeds of which were used directly or indirectly to provide single family residential mortgage loans. The proceeds of the Taxable Junior Lien Bonds will be used to finance down payment and closing cost assistance made to eligible very low, low, and moderate income homebuyers for the purchase of homes located within the State of Texas or for any other loan programs of the Department.

For purposes of the Department's mortgage loan finance programs, eligible borrowers generally will include individuals and families whose family income does not exceed: (i) for families of three or more persons, 115% (140% in certain targeted areas) of the area median income and (ii) for individuals and families of two persons, 100% (120% in certain targeted areas) of the area median income. In addition, substantially all of the borrowers under the programs will be required to be persons who have not owned a principal residence during the preceding three years (except in the case of certain targeted area residences). Further, residences financed with loans under the programs will be subject to certain other limitations, including limits on the purchase prices of the residences being acquired. Pursuant to the Gulf Opportunity Zone Act of 2005, residences in certain areas affected by Hurricane Rita are treated as targeted area residences. All the limitations described in this paragraph are subject to revision and adjustment from time to time by the Department pursuant to applicable federal law and Department policy.

All interested parties are invited to attend such public hearing to express their views with respect to the Department's mortgage loan finance program and the issuance of the Bonds. Questions or requests for additional information may be directed to Matt Pogor at the Texas Department of Housing and Community Affairs, 221 East 11th Street, Austin, Texas 78701; (512) 475-3987.

Persons who intend to appear at the hearing and express their views are invited to contact Matt Pogor in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Matt Pogor prior to the date scheduled for the hearing.

TDHCA WEBSITE: www.tdhca.state.tx.us/hf.htm

Individuals who require auxiliary aids for the hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989 at least two days before the hearing so that appropriate arrangements can be made.

Non-English speaking individuals who require interpreters for the hearing should contact Matt Pogor at (512) 475-3987 at least three days before the hearing so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of State law and §147(f) of the Internal Revenue Code of 1986, as amended, regarding the public approval prerequisite to the exclusion from gross income for federal income tax purposes of interest on the Tax-Exempt Bonds.

TRD-200601879

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Filed: March 29, 2006

Texas Department of Insurance

Company Licensing

Application for incorporation to the State of Texas by PRIVATE EQUITY NATIONAL INDEMNITY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application to change the name of GREAT TEXAS COUNTY MUTUAL INSURANCE COMPANY to INFINITY COUNTY MUTUAL INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Dallas, Texas.

Application to change the name of INSURANCE CORPORATION OF HANNOVER to PRAETORIAN INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Itasca, Illinois.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the Texas Register publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200601872

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: March 29, 2006

Texas Lottery Commission

Instant Game Number 659 "World Poker Tour \$100,000 Texas Hold 'em"

1.0 Name and Style of Game.

A. The name of Instant Game No. 659 is "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM". The play style is "cards".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 659 shall be \$10.00 per ticket.

1.2 Definitions in Instant Game No. 659.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 2 SPADE SYMBOL, 3 SPADE SYMBOL, 4 SPADE SYMBOL, 5 SPADE SYMBOL, 6 SPADE SYMBOL, 7 SPADE SYMBOL, 8 SPADE SYMBOL, 9 SPADE SYMBOL, 10 SPADE SYMBOL, J SPADE SYMBOL, Q SPADE SYMBOL, K SPADE SYMBOL, A SPADE SYMBOL, 2 CLUB SYMBOL, 3 CLUB SYMBOL, 4 CLUB SYMBOL, 5 CLUB SYMBOL, 6 CLUB SYMBOL, 7 CLUB SYMBOL, 8 CLUB SYMBOL, 9 CLUB SYMBOL, 10 CLUB SYMBOL, J CLUB SYMBOL, Q CLUB SYMBOL, K CLUB SYMBOL, A CLUB SYMBOL, \$2.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$250, \$500, \$5,000, or \$100,000. The possible red play symbols are: 2 DIAMOND SYMBOL, 3 DIAMOND SYMBOL, 4 DIAMOND SYMBOL, 5 DIAMOND SYMBOL, 6 DIAMOND SYMBOL, 7 DIAMOND SYMBOL, 8 DIAMOND SYMBOL, 9 DIAMOND SYMBOL, 10 DIAMOND SYMBOL, J DIAMOND SYMBOL, Q DIAMOND SYMBOL, K DIAMOND SYMBOL, A DIAMOND SYMBOL, 2 HEART SYMBOL, 3 HEART SYMBOL, 4 HEART SYMBOL, 5 HEART SYMBOL, 6 HEART SYMBOL, 7 HEART SYMBOL, 8 HEART SYMBOL, 9 HEART SYMBOL, 10 HEART SYMBOL, J HEART SYMBOL, Q HEART SYMBOL, K HEART SYMBOL, A HEART SYMBOL, and WPT.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 659 - 1.2D

PLAY SYMBOL	CAPTION
2 SPADE SYMBOL (black)	TWS
3 SPADE SYMBOL (black)	THS
4 SPADE SYMBOL (black)	FRS
5 SPADE SYMBOL (black)	FVS
6 SPADE SYMBOL (black)	SXS
7 SPADE SYMBOL (black)	SNS
8 SPADE SYMBOL (black)	ETS
9 SPADE SYMBOL (black)	NIS
10 SPADE SYMBOL (black)	TNS
J SPADE SYMBOL (black)	JKS
Q SPADE SYMBOL (black)	QNS
K SPADE SYMBOL (black)	KGS
A SPADE SYMBOL (black)	ACS
2 CLUB SYMBOL (black)	TWC
3 CLUB SYMBOL (black)	THC
4 CLUB SYMBOL (black)	FRC
5 CLUB SYMBOL (black)	FVC
6 CLUB SYMBOL (black)	SXC
7 CLUB SYMBOL (black)	SNC
8 CLUB SYMBOL (black)	ETC
9 CLUB SYMBOL (black)	NIC
10 CLUB SYMBOL (black)	TNC
J CLUB SYMBOL (black)	JKC
Q CLUB SYMBOL (black)	QNC
K CLUB SYMBOL (black)	KGC
A CLUB SYMBOL (black)	ACC
2 DIAMOND SYMBOL (red)	TWD
3 DIAMOND SYMBOL (red)	THD
4 DIAMOND SYMBOL (red)	FRD
5 DIAMOND SYMBOL (red)	FVD
6 DIAMOND SYMBOL (red)	SXD
7 DIAMOND SYMBOL (red)	SND
8 DIAMOND SYMBOL (red)	ETD
9 DIAMOND SYMBOL (red)	NID
10 DIAMOND SYMBOL (red)	TND
J DIAMOND SYMBOL (red)	JKD
Q DIAMOND SYMBOL (red)	QND
K DIAMOND SYMBOL (red)	KGD
A DIAMOND SYMBOL (red)	ACD
2 HEART SYMBOL (red)	TWH
3 HEART SYMBOL (red)	THH
4 HEART SYMBOL (red)	FRH
5 HEART SYMBOL (red)	FVH
6 HEART SYMBOL (red)	SXH
7 HEART SYMBOL (red)	SNH
8 HEART SYMBOL (red)	ETH

9 HEART SYMBOL (red)	NIH
10 HEART SYMBOL (red)	TNH
J HEART SYMBOL (red)	JKH
Q HEART SYMBOL (red)	QNH
K HEART SYMBOL (red)	KGH
A HEART SYMBOL (red)	ACH
\$2.00 (black)	TWO\$
\$5.00 (black)	FIVE\$
\$10.00 (black)	TEN\$
\$15.00 (black)	FIFTN
\$20.00 (black)	TWENTY
\$25.00 (black)	TWY FIV
\$50.00 (black)	FIFTY
\$75.00 (black)	SVY FIV
\$100 (black)	ONE HUND
\$250 (black)	TWO FTY
\$500 (black)	FIV HUND
\$5,000 (black)	FIV THOU
\$100,000 (black)	100 THOU
WPT	PRIZE PACK

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 659 - 1.2E

CODE	PRIZE
TEN	\$10.00
FTN	\$15.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$75.00, \$100, \$250, or \$500.

I. High-Tier Prize - A prize of \$5,000 or \$100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (659), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 659-0000001-001.

L. Pack - A pack of "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game No. 659 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game is determined once the latex on the ticket is scratched off to expose 50 (fifty) Play Symbols. At each table, use YOUR 2 CARDS and the Community Cards to make your best 5-card poker hand. Do the same with THEIR 2 CARDS. If your best 5-card poker hand beats their best 5-card poker hand at the same table, win the prize for that table. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 50 (fifty) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut and have exactly 50 (fifty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 50 (fifty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 50 (fifty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical "spot for spot" play data.

B. No duplicate non-winning prize symbols on a ticket.

C. A ticket may only win once in each table for a total of five wins on a ticket.

D. No duplicate tables, in any order, on any ticket.

E. Each table on a ticket will use a deck of fifty-two (52) cards.

F. Listed below is a Glossary of Terms for use in the patterns to follow:

"Starting Hand" - The two (2) cards underneath the scratch-off coating marked "YOUR 2 CARDS," or underneath the Scratch-off coating marked "THEIR 2 CARDS".

"Table" - Any of the five (5) play areas on each ticket.

"Board" - The five (5) cards underneath the scratch-off coating marked "COMMUNITY CARDS".

"Suit" - The Spades, Hearts, Diamonds, and Clubs are the four (4) Suits.

"Suited" - Any amount of cards where each card is of the same Suit (for example, 4 of Hearts + 5 of Hearts).

"Non-suited" - Any amount of cards where at least one is of a different suit (for example, 4 of Hearts + 5 of Spades).

"Sequential" - Any amount of cards that are connected (for example, 10 of Hearts; Jack of Hearts; Queen of Diamonds; King of Clubs; Ace of Spades).

"Non-Sequential" - Any amount of cards that are not connected (for example, Ace of Hearts + Queen of Diamonds).

"Pair" - Two (2) cards of the exact same rank (for example, Ace of Diamonds + Ace of Spades or 7 of Hearts + 7 of Clubs).

"Three of a Kind" - Three (3) cards of the exact same rank.

"Straight" - Five (5) non-suited cards in sequential order (for example, 2 of Clubs; 3 of Hearts; 4 of Diamonds; 5 of Spades; 6 of Diamonds).

"Flush" - Five (5) non-sequential cards of the same suit (for example, 2 of Diamonds; 4 of Diamonds; 5 of Diamonds; Jack of Diamonds; King of Diamonds).

"Full House" - Three (3) of a kind with a pair (for example, 4 of Diamonds; 4 of Clubs; 4 of Spades; 9 of Hearts; 9 of Diamonds).

"Four of a Kind" - Four (4) cards of the exact same rank.

"Straight Flush" - Five (5) suited and sequential cards, EXCEPT the highest five (5) sequential cards.

"Royal Flush" - The highest five (5) suited and sequential cards (for example, 10 of Diamonds; Jack of Diamonds; Queen of Diamonds; King of Diamonds; Ace of Diamonds).

"Final Hand" - The highest ranking five-card hand that uses the two (2) cards in either STARTING HAND with the five (5) cards on the Board.

G. The Suit or Suits used in one of the Starting Hands will NEVER match any of the Suit or Suits in the other Starting Hand for that table.

H. In any table, the two (2) starting Hands will never be of the same rank (for example, Jack of Hearts + 10 of Hearts vs. Jack of Diamonds + 10 of Clubs or 4 of Clubs + 4 of Diamonds vs. 4 of Hearts + 4 of Spades).

I. Each and every Starting Hand (YOUR 2 CARDS or THEIR 2 CARDS) will come from one of the following groups:

(a) Any Pair.

(b) Any Suited and Sequential two (2) cards.

(c) Any Non-Suited and Sequential or any Non-Suited and Non-Sequential Cards where BOTH cards are either a 10, Jack, Queen, King or Ace.

J. No Board will ever contain a Straight, Flush, Full House, Four of a Kind, Straight Flush, or Royal Flush.

K. No Board will ever contain four (4) cards of the same suit.

L. Every Straight or Straight Flush will use the card ranks below. An Ace will never be used in a Straight or Straight Flush.

2, 3, 4, 5, 6

3, 4, 5, 6, 7

4, 5, 6, 7, 8

5, 6, 7, 8, 9

6, 7, 8, 9, 10

7, 8, 9, 10, Jack

8, 9, 10, Jack, Queen

9, 10, Jack, Queen, King

M. A Straight will never appear in the same table with a Straight Flush or a Royal Flush.

2.3 Procedure for Claiming Prizes.

A. To claim a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize of \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$75.00, \$100, \$250, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$75.00, \$100, \$250, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize of \$5,000 or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "WORLD POKER TOUR \$100,000 TEXAS HOLD 'EM" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not

claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 659. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 659 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$10	652,800	6.25
\$15	326,400	12.50
\$20	163,200	25.00
\$25	81,600	50.00
\$50	81,600	50.00
\$75	26,690	152.87
\$100	7,480	545.45
\$250	3,230	1,263.16
\$500	1,496	2,727.27
PACK	4,070	1,002.46
\$5,000	170	24,000.00
\$100,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.03. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 659 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 659, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601774
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 23, 2006



Instant Game Number 670 "Cool Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 670 is "COOL MILLIONS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 670 shall be \$20.00 per ticket.

1.2 Definitions in Instant Game No. 670.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, DIAMOND SYMBOL, MONEY BAG SYMBOL, COINS SYMBOL, STACK OF BILLS SYMBOL, MONEY SYMBOL, STAR SYMBOL, GOLD BAR SYMBOL, 10X SYMBOL, \$2.00, \$3.00, \$5.00, \$8.00, \$10.00, \$20.00, \$40.00, \$50.00, \$80.00, \$100, \$200, \$400, \$1,000, \$10,000, and \$ONE MILL SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 670 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
DIAMOND SYMBOL	DIAMD
MONEY BAG SYMBOL	MBAG
COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	BILLS
MONEY SYMBOL	MONEY
STAR SYMBOL	STAR
GOLD BAR SYMBOL	WIN\$50

10X SYMBOL	WINX10
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$40.00	FORTY
\$50.00	FIFTY
\$80.00	EIGHTY
\$100	ONE HUND
\$200	TWO HUND
\$400	FOR HUND
\$1,000	ONE THOU
\$10,000	10 THOU
\$ONE MILL	ONE MIL

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 670 - 1.2E

CODE	PRIZE
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200, or \$400.

I. High-Tier Prize - A prize of \$1,000, \$10,000, or \$1,000,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (670), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 670-0000001-001.

L. Pack - A pack of "COOL MILLIONS" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket back 050 will be exposed on one side of the pack and ticket front 001 on the other side.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "COOL MILLIONS" Instant Game No. 670 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "COOL MILLIONS" Instant Game is determined once the latex on the ticket is scratched off to expose 47 (forty-seven) Play Symbols. In game 1, if the players YOUR NUMBER beats THEIR NUMBER within the same game, the player wins the

PRIZE shown for that game. In game 2, if the player reveals a GOLD BAR SYMBOL, the player wins \$50 instantly. In game 3, if the player matches any of YOUR NUMBERS to any of the WINNING NUMBERS, the player wins the prize shown for that number. If the player reveals a 10X SYMBOL, the player wins 10 times the prize shown.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 47 (forty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut and have exactly 47 (forty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 47 (forty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 47 (forty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No duplicate games.

C. Game 1: No duplicate non-winning prize symbols.

D. Game 1: No ties between YOUR NUMBERS and THEIR NUMBERS.

E. Game 3: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and \$5).

F. Game 3: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.

G. Game 3: No duplicate non-winning YOUR NUMBERS.

H. Game 3: No duplicate WINNING NUMBERS.

I. Game 3: No more than two like non-winning prize symbols in this game.

J. Game 3: The 10X symbol will only appear on intended winning tickets and only as designated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "COOL MILLIONS" Instant Game prize of \$20.00, \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200, or \$400, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$40.00, \$50.00, \$80.00, \$100, \$200, or \$400 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "COOL MILLIONS" Instant Game prize of \$1,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the

appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "COOL MILLIONS" Instant Game prize of \$1,000,000, the claimant must sign the winning ticket and present it at the Texas Lottery Commission Claim Center. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. The Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. As an alternative method of claiming a "COOL MILLIONS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "COOL MILLIONS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "COOL MILLIONS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game No. 670. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 670 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$20	1,142,400	3.57
\$30	204,000	20.00
\$40	81,600	50.00
\$50	81,600	50.00
\$80	81,600	50.00
\$100	54,400	75.00
\$200	16,830	242.42
\$400	2,890	1,411.76
\$1,000	1,190	3,428.57
\$10,000	76	53,684.21
\$1,000,000	4	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.45. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 670 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 670, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601845
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 28, 2006



Instant Game Number 698 "Find the "9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 698 is "FIND THE 9'S". The play style is "match 3 of 6 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 698 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 698.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol- The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$30.00, \$50.00, \$300, and 9.

D. Play Symbol Caption- the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 698 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$30.00	THIRTY
\$50.00	FIFTY
\$300	THR HUND
9	NINE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 698 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
NIN	\$9.00
NNT	\$19.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, or \$19.00.

H. Mid-Tier Prize - A prize of \$30.00, \$50.00, \$90.00, or \$300.

I. High-Tier Prize- A prize of \$999.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (698), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 698-0000001-001.

L. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 and 005 will be on the top page; ticket 006 and 010 on the next page; etc.; and tickets 246 and 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 698 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols.

If a player reveals 3 matching amounts in the play area, the player wins that amount. If a player reveals any 9 play symbols in the play area, the player wins the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.
17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;
18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three matching prize amounts.

C. No ticket will contain 4 or more like prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three like prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once (and will win only the highest amount shown).

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$9.00, \$19.00, \$30.00, \$50.00, \$90.00, or \$300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$50.00, \$90.00, or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of \$999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly

complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Office of the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult

member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 698. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 698 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	2,257,920	8.93
\$2	967,680	20.83
\$3	403,200	50.00
\$5	241,920	83.33
\$9	161,280	125.00
\$19	80,640	250.00
\$30	20,160	1,000.00
\$50	12,600	1,600.00
\$90	10,584	1,904.76
\$300	420	48,000.00
\$999	168	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.85. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 698 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 698, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601844
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: March 28, 2006



Instant Game Number 725 "Spicy Cash Tripler"

1.0. Name and Style of Game.

A. The name of Instant Game Number 725 is "SPICY CASH TRIPLER." The play style is "key number match with tripler."

1.1. Price of Instant Ticket.

A. Tickets for Instant Game Number 725 shall be \$3.00 per ticket.

1.2. Definitions in Instant Game Number 725.

A. Display Printing--That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint--The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol--The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 01, 02, 04, 05, 06, 07, 08, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 3X, 9X, \$1.00, \$3.00, \$6.00, \$9.00, \$10.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00, \$300, \$3,300 and \$33,000.

D. Play Symbol Caption--The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 725 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
10	TEN
11	ELV
12	TLV
13	TRN
14	FON
15	FTN
16	SXT
17	SVT
18	EGN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	THTY
3X	WINX3
9X	WINX9
\$1.00	ONE\$
\$3.00	THREE\$
\$6.00	SIX\$
\$9.00	NINE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$18.00	EIGHTN
\$24.00	TWY FOR
\$30.00	THIRTY
\$60.00	SIXTY
\$90.00	NINTY
\$300	THR HUN
\$3,300	33 HUND
\$33,000	33 THOU

E. Retailer Validation Code--Three letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three small letters are for validation

purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 725 - 1.2E

CODE	PRIZE
THR	\$3.00
SIX	\$6.00
NIN	\$9.00
FTN	\$15.00
EHT	\$18.00
TFR	\$24.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number--A unique 13 digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four digit Security Number placed randomly within the Serial Number. The remaining nine digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize--A prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00 or \$24.00.

H. Mid-Tier Prize--A prize of \$30.00, \$60.00, \$90.00 or \$300.

I. High-Tier Prize--A prize of \$3,000, \$3,300 or \$33,000.

J. Bar Code--A 22 character interleaved two of five bar code which will include a three digit game ID, the seven digit pack number, the three digit ticket number and the nine digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number--A 13 digit number consisting of the three digit game number (725), a seven digit pack number, and a three digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 725-0000001-001.

L. Pack--A pack of "SPICY CASH TRIPLER" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one. Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket--A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket--A Texas Lottery "SPICY CASH TRIPLER" Instant Game Number 725 ticket.

2.0. Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule, §401.302, Instant Game Rules, these Game

Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "SPICY CASH TRIPLER" Instant Game is determined once the latex on the ticket is scratched off to expose 33 Play Symbols. If the player matches any of YOUR NUMBERS to any SPICY CASH NUMBER, the player wins the prize shown for that number. If the player reveals a 3X symbol, the player wins 3 times the prize shown for that number. If the player reveals a 9X symbol, the player wins 9 times the prize shown for that number. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as part of the Instant Game.

2.1. Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 33 Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 33 Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 33 Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 33 Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2. Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. No duplicate non-winning YOUR NUMBERS on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. Non-winning tickets will not contain more than two like prize amounts.

E. No duplicate SPICY CASH NUMBERS will appear on a ticket.

F. The "3X" and "9X" symbols will never appear as a "SPICY CASH NUMBER."

G. The "3X" symbol will win 3 times the prize amount shown and will win as per the prize structure.

H. The "9X" symbol will win 9 times the prize amount shown and will win as per the prize structure.

I. YOUR NUMBERS will never equal the corresponding Prize symbol.

2.3. Procedure for Claiming Prizes.

A. To claim a "SPICY CASH TRIPLER" Instant Game prize of \$3.00, \$6.00, \$9.00, \$15.00, \$18.00, \$24.00, \$30.00, \$60.00, \$90.00 or \$300 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, \$90.00 or \$300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "SPICY CASH TRIPLER" Instant Game prize of \$3,000, \$3,300 or \$33,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "SPICY CASH TRIPLER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4. Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5. Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "SPICY CASH TRIPLER" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6. If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "SPICY CASH TRIPLER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7. Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8. Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0. Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0. Number and Value of Instant Prizes. There will be approximately 4,080,000 tickets in the Instant Game Number 725. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 725 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3.00	391,680	10.42
\$6.00	261,120	15.63
\$9.00	73,440	55.56
\$15.00	24,480	166.67
\$18.00	40,800	100.00
\$24.00	32,640	125.00
\$30.00	32,640	125.00
\$60.00	13,600	300.00
\$90.00	4,420	923.08
\$300	952	4,285.71
\$3,000	7	582,857.14
\$3,300	7	582,857.14
\$33,000	8	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.66. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0. End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game Number 725

without advance notice, at which point no further tickets in that game may be sold.

6.0. Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant

Game Number 725, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-200601816
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: March 27, 2006

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North Central Texas Council of Governments

Request for Proposals for the Hurst-Eules-Bedford Transit Pilot Project

This request by the North Central Texas Council of Governments (NCTCOG) for contractor services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) received a Federal Transit Administration (FTA) Job Access/Reverse Commute (Section 3037) Grant in 2001. The purpose of the funding is to provide new or expanded transportation services to employment and employment related opportunities. The grant reimburses fifty percent (50%) of the total cost for eligible trips. NCTCOG is seeking written proposals from transportation providers to manage and operate a one-year pilot demand-responsive transportation service within the Cities of Hurst, Eules and Bedford that will serve employment related opportunities. The provider will be responsible for scheduling, dispatch, and general operation of the service. Additionally, the provider will work with NCTCOG staff to provide monthly ridership and cost-analysis data. Extension of service beyond one year will be evaluated at the end of the pilot program.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, April 28, 2006, to Michelle Bloomer, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Contractor Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200601883

R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: March 29, 2006

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Texas Parks and Wildlife Department

Notice of Correction

The Texas Parks and Wildlife Department (TPWD) submitted a Notice of Adoption for 31 TAC §57.921 for publication in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2862). Due to a clerical misunderstanding, TPWD inadvertently omitted from the preamble the following language:

"Although the department has determined that the requirements of Government Code, §2001.0225, do not apply to this rulemaking, a final regulatory impact analysis (RIA) is nonetheless provided. TPWD finds that, compared to the alternative proposals considered and rejected, the rule will result in the best combination of effectiveness in obtaining the desired results and of economic costs not materially greater than the costs of any alternative regulatory method considered. Having considered all relevant data and public comment, the department also finds that the draft RIA contained in the preamble of the proposed rule forms a sufficient basis for the prohibition of seagrass uprooting rather than the establishment of mandatory no-propeller zones or no regulatory action."

TRD-200601858
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Filed: March 28, 2006

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Texas Department of Public Safety

Hazard Mitigation Grant Program for the Texas Wildfires Disaster DR-1624

The President has declared a major disaster (DR-1624) as a result of the ongoing Winter Wildfire Threat. Because of this, the federal Hazard Mitigation Grant Program (HMGP) is available statewide. HMGP provides funding for mitigation projects, such as the acquisition of damaged properties in the floodways and floodplains, construction projects designed to reduce future losses to people and property, and the individual safe room rebate program.

The State has established the following deadline: Notices of Interest (NOIs) for HMGP project grants must be submitted/postmarked by Friday, April 14, 2006.

The standard *Notice of Interest and Hazard Mitigation Team Report* form is to be used. The NOI form, as well as instructions for completing the form (Mitigation Job Aid #1) are available to download from the hazard mitigation documents on the Division of Emergency Management (DEM) web site at <http://www.txdps.state.tx.us/dem/documents.htm#mitigation>. After processing NOI submissions, the Division of Emergency Management will provide application guidance, points of contact, and the postmark deadline for the return of completed project applications. The project officer will initially review all applications for eligibility, completeness, and satisfaction of all federal and State requirements. The State Hazard Mitigation Team evaluates and recommends their selection to the Governor's Authorized Representative, whose final selection will be submitted by the State, to FEMA for approval.

Please refer e-mail NOI forms and questions to:

Texas Wildfire HMGP Project Officer

Hildy Soper

Phone (512) 424-2454

E-mail: hildy.soper@txdps.state.tx.us

If mailing or faxing in NOIs, send to:

Governor's Division of Emergency Management

Texas Department of Public Safety

P. O. Box 4087

Austin, Texas 78773-0226

FAX: (512) 424-5647

ATTN: Hildy Soper, HMGP Project Officer

TRD-200601842

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Filed: March 28, 2006



Public Utility Commission of Texas

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on March 27, 2006, for an amendment to 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 Cable One, Inc. to Amend its State-Issued Certificate of Franchise Authority, Project Number 32556 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32556.

TRD-200601861

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 28, 2006



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on March 15, 2006, with the Public Utility Commission of Texas (commission), for an amendment to a certificated service area boundary.

Docket Style and Number: Application of AT&T Texas (AT&T Texas) to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of the Bellville and Sealy Exchanges. Docket Number 32508.

The Application: This minor boundary amendment is being requested to update the common serving area boundary between AT&T Texas's Bellville and Sealy exchanges to accurately illustrate the way this boundary is being administered within Austin County, Texas.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 14, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32508.

TRD-200601821

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 27, 2006



Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on March 27, 2006 with the Public Utility Commission of Texas (commission) for an amendment to a certificated service area boundary.

Docket Style and Number: Application of United Telephone Company of Texas d/b/a Sprint to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries of Plantersville Exchange (Sprint) and the Waller Exchange (AT&T). Docket Number 32551.

The Application: The minor boundary amendment is being filed to realign the boundary between Sprint's Plantersville exchange and AT&T Texas' Waller exchange to allow Sprint to provide local exchange telephone service to a new subdivision currently under construction. AT&T Texas has provided a letter of concurrence endorsing this proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by April 14, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32551.

TRD-200601866

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: March 28, 2006



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on March 22, 2006, for retail electric provider (REP) certification, pursuant to Public Utility Regulatory Act (PURA) §§39.101 - 39.109. A summary of the application follows.

Docket Title and Number: Application of Tristar Gas Marketing Company for Retail Electric Provider (REP) certification, Docket Number 32532 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire state of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than April 14, 2006. 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 32532.

TRD-200601838
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2006



Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On March 22, 2006, ClearPath Telecom, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60451. Applicant intends to relinquish its certificate.

The Application: Application of ClearPath Telecom, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 32531.

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 April 12, 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 32531.

TRD-200601837
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2006



Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of a joint application for sale, transfer, or merger filed with the Public Utility Commission of Texas (commission) on March 24, 2006, pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.101 and §37.154 (Vernon 1998 & Supp. 2005) (PURA).

Docket Style and Number: Joint Application of AEP Texas Central Company and LCRA Transmission Services Corporation to Transfer Certificate Rights and for Approval of Transfer of Facilities in Cameron, Dimmit, Hidalgo, Maverick, and Starr Counties, Docket Number 32539.

The Application: On March 24, 2006, AEP Texas Central Company (AEP Central) and the LCRA Transmission Services Corporation (LCRA TSC) (collectively, Applicants) filed a joint application for approval of their proposal to transfer from AEP Central to LCRA TSC nine transmission facilities and associated certificate of convenience and necessity (CCN) rights. AEP Central holds CCN No. 30028 and LCRA TSC holds CCN No. 30110. The nine transmission facilities proposed for transfer are: the rebuilt La Grulla to Goodwin, Asherton

to Conoco Tap, Conoco Tap to Escondido Cut-in, North Mercedes to Santa Rosa, Santa Rosa to Harlingen, Pharr to North Alamo, North Alamo to Weslaco Switch, and Weslaco Switch to North Weslaco transmission line segments and the newly built Escondido Cut-in to Escondido Station. AEP Central owns the nine transmission facilities in Cameron, Dimmit, Hidalgo, Maverick, and Starr Counties, which are being rebuilt or are newly built to increase transmission power capacity necessary to continue reliable transmission service in those areas. Approval of this application will enable LCRA TSC to include approximately \$53.6 million of assets in its transmission plant and subsequently request rate treatment for the nine facilities, most likely through an interim capital addition filing. All of the Project Agreements were adapted from the Model Project Agreement in the Joint Development Agreement (JDA). With the exception of the particulars concerning the individual transmission facilities, the Project Agreements are virtually identical to the Model Project Agreements.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All correspondence should refer to Docket Number 32539.

TRD-200601839
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 27, 2006



Public Notice of Workshop on Rulemaking Proceeding to Amend P.U.C. Substantive Rule §26.412 - Lifeline Service and Link Up Service Programs

The staff of the Public Utility Commission of Texas (commission) will hold a workshop regarding its rulemaking project to amend P.U.C. Substantive Rule §26.412 - Lifeline Service and Link Up Service Programs, on Tuesday, April 11, 2006, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. This rule-making project was established in order to incorporate changes made by Senate Bill 5 and by the Federal Communications Commission's Order, WC Docket No. 03-109. Project Number 32162, *Rulemaking Proceeding to Amend P.U.C. Substantive Rule §26.412- Lifeline Service and Link Up Service Programs*, has been established for this proceeding.

On or about Tuesday, April 4, 2006, the commission staff will make available on its website (<http://www.puc.state.tx.us/rules/rulemake/32162/32162.cfm>) and in Central Records under Project Number 32162 an agenda for the format of the workshop and a copy of a straw-man rule to be discussed.

The commission staff requests that persons planning to attend the workshop register by phone with Isabel Herrera, Communications Oversight Division, at (512) 936-7205.

Questions concerning the workshop or this notice should be referred to Liz Kayser, Commission Industry Oversight Division, (512) 936-7390. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200601805

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2006



Request for Comments

The staff of the Public Utility Commission of Texas (commission) requests interested persons to file replies to any prior comments filed in Project Number 31958 and to any comments made during the March 21, 2006, workshop. In particular, Commission Staff requests that interested persons address potential revisions to P.U.C. SUBST. R. §26.52 (relating to Emergency Operations) and §26.53 (relating to Inspections and Tests).

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 by Wednesday, April 26, 2006.

Questions concerning this notice should be referred to James Kelsaw, Senior Network Analyst, Infrastructure Reliability Division, (512) 936-7338. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200601804
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: March 24, 2006



Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Services

The City of Granbury, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: The City of Granbury, Granbury Municipal Airport. TxDOT CSJ No. 06EAGRBY. Scope: Provide an Environmental Assessment at the Granbury Municipal Airport.

The HUB goal is set at 0%. TxDOT Project Manager is Sandra Gaither.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn551.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.**

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a

previous download may not be the exact same format. Form AVN-551 is an MS Word Template.

Five completed, unfolded copies of Form AVN-551 must be post-marked by U. S. Mail by midnight April 27, 2006. Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. April 28, 2006. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas 78704. Hand delivery must be received by 4:00 p.m. April 28, 2006. Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. Below are the criteria for evaluating planning proposals. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Sandra Gaither, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200601881
Jack Ingram
Associate General Counsel
Texas Department of Transportation
Filed: March 29, 2006



Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: <http://www.dot.state.tx.us>. Click on Aviation, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68 PILOT.

TRD-200601843
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: March 28, 2006



Request for Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapters 223 and 227, (the "Enabling Legislation"), the Texas Department of Transportation ("TxDOT") may enter into comprehensive development agreements for the development, design, construction, financing, maintenance, or operation of a facility or a combination of facilities on the Trans-Texas Corridor. The Enabling Legislation authorizes private involvement in toll projects and other eligible projects, and provides a process for TxDOT to solicit proposals for such projects. Transportation Code, §223.203 prescribes requirements for a solicited proposal and requires TxDOT to publish a request for qualifications

in the *Texas Register* that includes the criteria that will be used to evaluate the qualifications submittals, the relative weight given to the criteria, and a deadline by which the qualifications submittals must be received. The Texas Transportation Commission (the "Commission") has promulgated rules located at Title 43, Texas Administrative Code, §§27.1-27.6 (the "Rules"), governing the submission and processing of solicited proposals and providing for publication of notice that TxDOT is requesting qualifications submittals for development of an eligible project with private involvement. The Commission has decided to issue a request for qualifications to acquire, develop, design, finance, construct, reconstruct, extend, expand, maintain and operate a combination of facilities (in whole or in part), which together constitute the I-69/Trans Texas Corridor ("I-69/TTC"), as well as other potential facilities to the extent necessary for connectivity and financing (the "Project"), through a Comprehensive Development Agreement ("CDA"). The I-69/TTC is a planned multimodal transportation facility extending from northeast Texas to the border with Mexico at Laredo and/or the Rio Grande Valley. I-69/TTC is essentially the joining of I-69 (a nationally-designated Interstate highway corridor) and the Trans-Texas Corridor, a high-capacity, high-speed multimodal transportation system in Texas. I-69/TTC will be developed under the Trans-Texas Corridor master plan. The initial study area for I-69/TTC was determined in the FHWA's Corridor 18 and Corridor 20 studies. I-69 will enter Texas at a yet-to-be determined point southwest of Shreveport, Louisiana, will serve the Houston area, and will continue south to the border. A branch corridor from the vicinity of Carthage, Texas will proceed north to I-30 near Texarkana, Texas. In south Texas, three corridors are to be studied. One is generally parallel to US 59 to Laredo, one parallels US 77 from Victoria to Brownsville (Rio Grande Valley), and the third parallels US 281 from the vicinity of George West to McAllen (Rio Grande Valley). The Project will be further defined through the environmental approval process.

On February 23, 2006, in Minute Order 110436, the Commission authorized TxDOT to commence the solicited proposal procurement process for the Project under the Enabling Legislation. This notice represents the next step in the process.

Through this notice, TxDOT is seeking qualifications submittals ("QS") in response to a request for qualifications ("RFQ"). TxDOT intends to evaluate any QS received and may request submission of a detailed proposal, potentially leading to negotiation, award, and execution of a comprehensive development agreement. TxDOT will accept for consideration any QS received in accordance with the Rules within 61 days of the publication of this notice. TxDOT anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals ("RFDP") to the shortlisted entities. After review and a best value evaluation of the responses to the RFDP, TxDOT may negotiate and enter into a comprehensive development agreement for the project.

RFQ Evaluation Criteria. QSs will be evaluated by TxDOT for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications and legal qualifications; relative strength, feasibility and desirability of the proposed conceptual project development plan; and relative strength, feasibility and desirability of the proposed conceptual business analysis and financing plan. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. TxDOT currently anticipates that the RFQ will be available on April 7, 2006. The RFQ will include a conceptual project concept. Copies of the RFQ will be available at TxDOT's Headquarters office located at 125 E. 11th Street, 5th Floor, Austin, Texas 78701, or on the following website: <http://www.dot.state.tx.us>. QSs will be due on June 7, 2006 at the address specified in the RFQ.

TRD-200601880

Jack Ingram

Associate General Counsel

Texas Department of Transportation

Filed: March 29, 2006

◆ ◆ ◆
The University of Texas System

Notice After Entering Into Major Consulting Services Contract

The University of Texas Health Science Center at Houston, in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (the "Contract") with Cascade Consultation ("Consultant") as more particularly described in the Invitation for Offer No. 744-6002, Consultation Services-School of Health Information Services published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8508).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with Strategic Planning, Executive Coach (Leadership/Executive Communication Cultural Integration/Development), and Leadership Development.

Name and Address of Consultant:

Cascade Consultation, 28150 S.E. Highway # 212, Boring, Oregon 97009

Total Value of the Contract:

The contract stipulates payment of \$35,000.00 annually for five years for a cumulative total of \$175,000 and includes a provision that either party can cancel the contract with a 30-day notice.

Contract Dates:

The contract was effective March 8, 2006 and the last day of the contract is August 31, 2011.

Due Dates for Contract Products:

The Contract terminates on August 31, 2011. No specific document, films records, or reports are required.

TRD-200601777

Francie A. Frederick

Counsel and Secretary to the Board

The University of Texas System

Filed: March 23, 2006
◆ ◆ ◆

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 Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).