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# TEXAS REGISTER

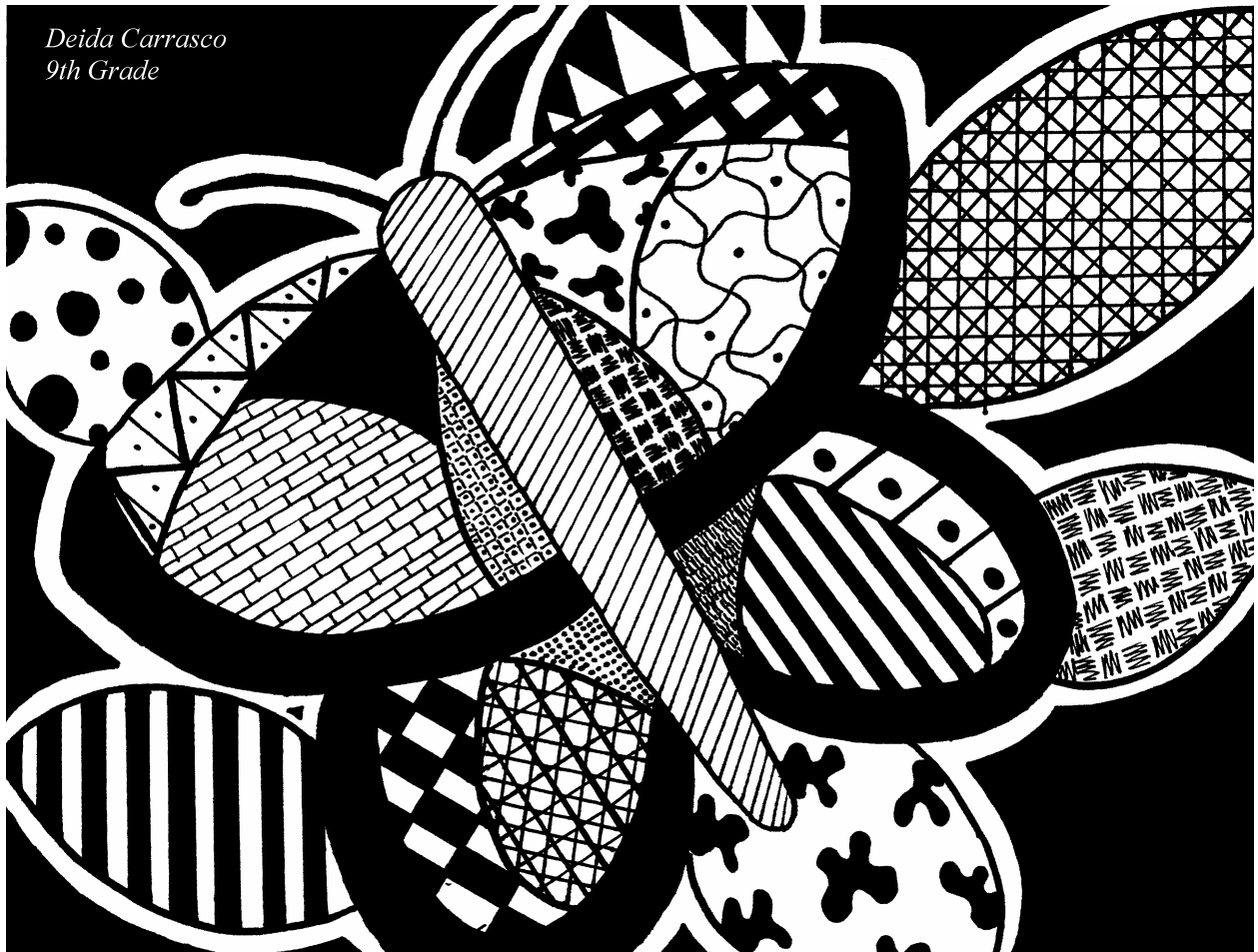
*Volume 31 Number 16*

*April 21, 2006*

*Pages 3323-3442*

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*Deida Carrasco  
9th Grade*



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# TEXAS REGISTER

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P.O. Box 13824  
Austin, TX 78711-3824  
(800) 226-7199  
(512) 463-5561  
FAX (512) 463-5569  
<http://www.sos.state.tx.us>  
[subadmin@sos.state.tx.us](mailto:subadmin@sos.state.tx.us)

**Secretary of State –**  
Roger Williams

**Director -** Dan Procter

**Staff**

Ada Aulet  
Leti Benavides  
Dana Blanton  
Belinda Bostick  
Kris Hogan  
Roberta Knight  
Jill S. Ledbetter  
Juanita Ledesma  
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# THE GOVERNOR

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

## Appointments

### Appointments for April 10, 2006

Appointed to the Screening, Brief Intervention, Referral and Treatment (SBIRT) Grant Steering Committee for a term at the pleasure of the Governor, Marianne T. Marcus, Ed.D. of Houston.

Appointed to the Screening, Brief Intervention, Referral and Treatment (SBIRT) Grant Steering Committee for a term at the pleasure of the Governor, Mary M. Velasquez, Ph.D. of Sugar Land.

Appointed to the Screening, Brief Intervention, Referral and Treatment (SBIRT) Grant Steering Committee for a term at the pleasure of the Governor, Thomas A. Hamlin, M.D. of Houston.

Appointed to the Screening, Brief Intervention, Referral and Treatment (SBIRT) Grant Steering Committee for a term at the pleasure of the Governor, F. David Schneider, M.D. of San Antonio.

Appointed to the Texas Board of Pardons and Paroles for a term to expire February 1, 2007, Conrith W. Davis of Sugar Land (replacing Elvis Hightower who resigned).

Appointed to the Crime Stoppers Advisory Council for a term to expire September 1, 2008, Melvin Ray Joyner, Jr. of Wichita Falls (replacing Janice Gillen whose term expired).

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2007, Meng-Sheng Linda Lin, M.D. of Plano (Dr. Lin is being reappointed).

Appointed to the Texas State Board of Acupuncture Examiners for a term to expire January 31, 2009, Pedro V. Garcia, Jr. of Frisco (Mr. Garcia is being reappointed).

Rick Perry, Governor

TRD-200602093



## Executive Order

### RP 58

*Relating to peer-to-peer file-sharing software.*

WHEREAS, government has a sacred trust to guard taxpayers' dollars and maintain the highest standard of integrity and conduct, and has a fiduciary responsibility to prevent, detect, and report fraud, piracy, and theft; and

WHEREAS, the State of Texas is entrusted by the taxpayers of the state to provide responsible stewardship through efficient and honest governance, and all state agencies have a responsibility to prevent and eliminate fraud, piracy, and theft, and every state employee has an affirmative responsibility to report incidents of fraud, piracy, and theft; and

WHEREAS, the State of Texas is entrusted with the proper and ethical operation and maintenance of its information management systems to prevent fraud, piracy and theft; and

WHEREAS, the use of certain peer-to-peer file-sharing software on state computers creates a potential security risk by allowing individuals outside of state government to access the state's information management systems; and

WHEREAS, without adequate protections and procedures in place, the use of peer-to-peer file-sharing software can result in the presence of viruses and malicious programs on state information management system computers and networks and consume network resources resulting in the creation of inefficiencies in the performance of those systems; and

WHEREAS, the use of peer-to-peer file-sharing software to illegally download and disseminate copyrighted material such as music, motion pictures, software, and video games results in significant losses of revenue to the entertainment industry inside and outside the State of Texas;

NOW THEREFORE, I, RICK PERRY, Governor of the State of Texas, by virtue of the power and authority vested in me by the Constitution and the laws of the State of Texas, do hereby issue the following order:

1. The Department of Information Resources shall develop a statewide policy for use by each state agency, department, board, and commission which prohibits unauthorized or illegal use of peer-to-peer software programs. While most software has inherent risks, it is the unauthorized or illegal use that poses the greatest risk to the security and integrity of the State's information management systems. The policy shall also define authorized use of legitimate file-sharing between, among, or within federal, state, or local government entities for official business, or law enforcement purposes, the use of which should not pose security risks to the government's computer systems.

2. The Department of Information Resources shall assess the availability and cost effectiveness of technologies that may be used to prevent fraud, piracy, and theft by prohibited peer-to-peer file-sharing activities on state government computers, networks, and other information management systems.

3. The statewide policy provided for in this executive order shall not apply to the legislative and judicial branches of government, nor shall it apply to the constitutional officers of the state. However, these branches of government and constitutional officers may adopt, and I invite them to implement, the statewide policy.

4. The chair or executive director of each state agency, department, board, or commission shall be responsible for ensuring compliance with the statewide policy. DIR shall use its best efforts to develop a policy that minimizes any negative fiscal impact on state agencies.

5. For purposes of this executive order, "peer-to-peer file-sharing software" means computer software, other than computer and network operating systems, that has as its primary function the capability of allowing the computer on which the software is used to designate files available for transmission to another computer using the software, to transmit files directly to another computer using the software, and to request transmission of files from another computer using the software.

This executive order supersedes all previous orders in conflict or inconsistent with its terms and shall remain in effect and in full force until it expires or it is modified, amended, rescinded, or superseded by me or by a succeeding governor.

Given under my hand this the 5th day of April, 2006.

Rick Perry, Governor

TRD-200602092



# 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

**Opinion No. GA-0420**

The Honorable Jeff Wentworth  
Chair, Committee on Jurisprudence

Texas State Senate  
Post Office Box 12068  
Austin, Texas 78711

Re: Whether private schools must accept for enrollment children who have received an exemption from the immunizations required by the Texas Health and Safety Code (RQ-0403-GA)

**S U M M A R Y**

A private school that does not accept state tax funds is not required to accept for enrollment a child who has received an exemption from the immunizations required by the Texas Health and Safety Code.

**Opinion No. GA-0421**

The Honorable Galen Ray Sumrow  
Rockwall County Criminal District Attorney

Rockwall County Government Center  
1101 Ridge Road, Suite 105  
Rockwall, Texas 75087

Re: Whether under article III, section 19 of the Texas Constitution a city council member whose current term of office is uncompensated is eligible for election to the legislature (RQ-0408-GA)

**S U M M A R Y**

A city council member whose current term of office, which began in May 2005, is uncompensated in accordance with ordinance is eligible for election to the Texas Legislature under article III, section 19 of the Texas Constitution.

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

TRD-200602118

Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 12, 2006



Opinions

**Opinion No. GA-0417**

The Honorable Bill Hill  
Dallas County District Attorney  
Frank Crowley Courts Building  
133 North Industrial Boulevard, LB 19

Dallas, Texas 75207-4399

Re: Construction of section 25.0951 of the Texas Education Code, under which a school district may or must file a complaint or referral with a court alleging that a student has failed to attend school as required by law (RQ-0400-GA)

**S U M M A R Y**

A school district must file a complaint or referral against a student for failure to attend school under section 25.0951(a) of the Education Code within seven school days of the student's tenth unexcused absence. *See* TEX. EDUC. CODE ANN. § 25.0951(a) (Vernon Supp. 2005). Failure to file within seven school days of the tenth unexcused absence leads to the mandatory dismissal of the complaint or referral by a court. A student who disputes that one or more of the absences were unexcused bears the burden of raising the issue as an affirmative defense under Education Code section 25.094(f) or (g).

A complaint or referral dismissed for the school district's failure to file within seven days of determining that a student has failed to attend school on ten unexcused occasions may not be filed again. A school district may, however, file a new complaint with an unexcused absence that occurred subsequent to the absences noted on the original complaint, but it must do so within seven days of the latest unexcused absence.

A school district may not file a complaint or referral under section 25.0951(b) if the student has accumulated ten unexcused absences by the time the school district is ready to file the case.

**Opinion No. GA-0418**

The Honorable Harold V. Dutton, Jr.  
Chair, Committee on Juvenile Justice and Family Issues  
Texas House of Representatives  
Post Office Box 2910  
Austin, Texas 78768-2910

Re: Retroactivity of Property Code section 5.077(c), which relates to liquidated damages in executory contracts for the sale of real property (RQ-0402-GA)

**S U M M A R Y**

The general savings clause in Government Code section 311.031 makes retroactive the portion of House Bill 1823 that amended Property Code section 5.077(c) in 2005. Thus, the portion of House Bill 1823 that amended Property Code section 5.077(c) in 2005 controls in any lawsuit the basis of which is a violation of former section 5.077's terms that occurred after September 1, 2001.

**Opinion No. GA-0419**

The Honorable Richard Slack  
Reeves County Attorney

Post Office Box 825  
Pecos, Texas 79772

Re: Whether the nepotism statute is applicable to the employment of a sheriff's relative by a private company that operates a county detention center (RQ-0404-GA)

**S U M M A R Y**

The nepotism statute does not apply to the employment of a sheriff's relative by a private company that operates a county detention center.

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

TRD-200602047  
Stacey Schiff  
Deputy Attorney General  
Office of the Attorney General  
Filed: April 7, 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

#### CHAPTER 354. MEDICAID HEALTH SERVICES

##### SUBCHAPTER A. PURCHASED HEALTH SERVICES

##### DIVISION 5. PHYSICIAN AND PHYSICIAN ASSISTANT SERVICES

###### 1 TAC §354.1066, §354.1067

The Texas Health and Human Services Commission (HHSC) proposes to add Physician Assistants to Division 5, Physician Services, and new §354.1066, Conditions of Participation, and §354.1067, Benefits and Limitations, which specify the requirements for a physician assistant to be a provider of Medicaid services.

###### Background and Justification

These new rules are proposed pursuant to Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Rider 72 requires, in part, that physician assistants be allowed to enroll as independent Medicaid providers and bill under their own provider numbers.

###### Section-by-Section Summary

Section 354.1066 sets out all requirements a physician assistant must satisfy in order to be a participating provider in the Texas Medicaid program. Section 354.1067 lists the requirements for a physician assistant to be reimbursed under the Texas Medicaid program.

###### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the rules are in effect there will be no fiscal impact to state government. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

###### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the rules as they will not be required to alter their business practices as a result of the rules. There are no anticipated economic costs to persons who are required to comply with the proposed rules. There is no anticipated negative impact on local employment.

###### Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed rules are in effect, the public will benefit from the adoption of the rules. The anticipated public benefit of enforcing the proposed rules will be improved access to and quality of health care services.

###### Regulatory Analysis

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

###### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

###### Public Comment

Written comments on the proposed rules may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

###### Public Hearing

A public hearing is scheduled for May 15, 2006 at 1:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

###### Statutory Authority

The new rules are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance program in Texas.

The new rules affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§354.1066. Conditions of Participation.

To be a provider of Medicaid covered services, a physician assistant must:

(1) be licensed as a physician assistant by the Texas Physician Assistant Board as described in the Occupations Code §204.101(2) and (3);

(2) comply with all applicable federal and state laws and regulations governing the service provided;

(3) be enrolled and approved for participation in the Texas Medical Assistance Program;

(4) sign a written provider agreement with the Health and Human Services Commission (HHSC) or its designee;

(5) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including federal and state regulations, rules, manuals, standards, and guidelines published by HHSC or its designee; and

(6) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by HHSC or its designee.

§354.1067. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by HHSC or its designee, services performed by a licensed physician assistant are considered for reimbursement if the services:

(1) are within the scope of practice for a physician assistant, as defined by the licensing board and state law;

(2) are consistent with rules and regulations promulgated by the Texas Medical Board; and

(3) would be covered by the Texas Medical Assistance Program if provided by a licensed physician (MD or DO).

(b) Services must be reasonable and medically necessary as determined by HHSC or its designee to be considered for reimbursement.

(c) Covered services provided by a physician assistant may be billed under the physician assistant's Texas Medical Assistance Program provider number. Licensed physician assistants who are employed or remunerated by a physician, hospital, facility, or other provider may bill the Texas Medical Assistance Program directly for their services, using the licensed physician assistant provider number. If the services are benefits reimbursed through Medicaid and the physician assistant bills under a licensed physician assistant provider number, payment will be made to the physician assistant.

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 April 10, 2006.

TRD-200602061

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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

◆ ◆ ◆  
DIVISION 16. NURSE-MIDWIFE SERVICES

1 TAC §354.1251

The Texas Health and Human Services Commission (HHSC) proposes to amend Division 16, Nurse-Midwife Services, §354.1251, Benefits and Limitations, which specifies the requirements for a nurse-midwife to be a provider of Medicaid services.

Background and Justification

Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005, requires, in part, that HHSC reimburse advanced practice nurses (APNs) for services billed under the APN's Medicaid provider number. APNs include certified nurse midwives (CNMs). Reimbursement rules are being amended pursuant to Rider 72, and the process of amending the reimbursement rules resulted in revisions to Nurse-Midwife Services, §354.1251, Benefits and Limitations.

Section-by-Section Summary

Section 354.1251 lists all requirements for a nurse-midwife to be a participating provider in the Texas Medicaid program. In the process of amending the CNM reimbursement rule, HHSC deleted some program language from the reimbursement rule. This amendment adds the deleted program language to §354.1251.

Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed amendments will be improved access to and quality of health care services.

Regulatory Analysis

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

## Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

## Public Comment

Written comments on the proposed amendments to the rule may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

## Public Hearing

A public hearing is scheduled for May 15, 2006, at 1:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

## Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

### §354.1251. *Benefits and Limitations.*

Subject to the specifications, conditions, requirements, and limitations established by the Texas Health and Human Services Commission (HHSC) [department] or its designee and according to state and federal laws, rules, and regulations, and in the case of services furnished in an institution, hospital or other facility to the extent permitted by the institution, hospital, or facility, nurse-midwife services are limited as follows.

(1) Nurse-midwife services must be provided by a certified nurse-midwife (CNM) who is enrolled and approved for participation in the Texas Medical Assistance (Medicaid) Program.

(2) Nurse-midwife services are covered if the services:

(A) are within the scope of practice for certified nurse midwives, as defined by state law;

(B) are consistent with rules and regulations promulgated by the Board of Nurse Examiners for the State of Texas or other appropriate state licensing authority; and

(C) would be covered by the Texas Medical Assistance Program if provided by a licensed physician (M.D. or D.O.).

(3) For purposes of coverage and reimbursement by the Medicaid Program, deliveries by a CNM that are performed in a general or acute care hospital or special hospital or facility must be done in a hospital or facility licensed and approved by the appropriate state licensing authority for the operation of maternity and newborn services and approved by the department for participation in the Texas Medical Assistance Program. Home deliveries performed by a CNM are reimbursable when HHSC [the department] or its designee has prior authorized the home delivery. The CNM must submit a written request for

prior authorization during the recipient's third trimester of pregnancy. The CNM must include a statement signed by a licensed physician who has examined the recipient during the third trimester and determined that at that time she is not at high risk and is suitable for a home delivery.

(4) To be directly reimbursed by the Texas Medical Assistance Program, a CNM who manages the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act must perform the services according to the written protocols required by the State Board of Nurse Examiners and the services must not be duplicative of other charges to the Medicaid Program. For services other than nurse-midwife services, other provisions of the state plan apply.

(5) The Medicaid Program does not reimburse the CNM for conducting childbirth education classes.

(6) HHSC or its designee reimburses only the CNM actually performing or directing the approved service, unless federal requirements related to reassignment of claims have been met.

(7) Certified nurse-midwives who manage the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act are reimbursed by the Medicaid Program for those services only if they are performed according to the written protocols required by the State Board of Nurse Examiners and are not duplicative of other charges to the Medicaid Program.

(8) Reimbursement for services that are other than nurse-midwife services are governed by the applicable provisions of the Medicaid Program, as specified by HHSC.

(9) A nurse-midwife is not reimbursed directly by the Medicaid Program for services provided if employed, salaried, or reimbursed by a hospital, nursing facility, other institution, or facility where the nurse-midwife's remuneration for services is included in the reimbursement formula or vendor payment to the hospital, facility, institution, or other provider.

(10) Certified nurse-midwives who are employed by or remunerated by a physician, health maintenance organization (HMO), hospital, or other facility may not bill the Medicaid Program directly for nurse-midwife services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the Medicaid Program, payment may be made to the physician, hospital, or other provider, if approved for participation in the Medicaid Program who employs or reimburses the nurse-midwife. The basis and amount of Medicaid reimbursement depends on the nurse-midwife services actually provided, who provided the services, and the reimbursement methodology utilized by the Medicaid Program as appropriate for the services and provider(s) involved.

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 April 10, 2006.

TRD-200602062

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## DIVISION 21. CERTIFIED REGISTERED NURSE ANESTHETISTS' SERVICES

### 1 TAC §354.1301

The Texas Health and Human Services Commission (HHSC) proposes to amend Division 21, Certified Registered Nurse Anesthetists' Services, §354.1301, Benefits and Limitations, which specifies the requirements for a certified registered nurse anesthetist to be a provider of Medicaid services.

#### Background and Justification

Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005, requires, in part, that HHSC reimburse advanced practice nurses (APNs) for services billed under the APN's Medicaid provider number. APNs include certified registered nurse anesthetists (CRNAs). Reimbursement rules are being amended pursuant to Rider 72, and the process of amending the reimbursement rules results in revisions to Certified Registered Nurse Anesthetists' Services, §354.1301, Benefits and Limitations.

#### Section-by-Section Summary

Section 354.1301 lists all the requirements for a certified registered nurse anesthetist to be a participating provider in the Texas Medicaid program. In the process of amending the CRNA reimbursement rule, HHSC deleted program language from the reimbursement rule. This amendment adds some of the deleted reimbursement language to §354.1301.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs has also determined that there will be no effect on small businesses or micro businesses to comply with the amendment as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Mr. David Balland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposed amendments are in effect, the public will benefit from the adoption of the rule. The anticipated public benefit of enforcing the proposed amendments will be improved access to and quality of health care services.

#### Regulatory Analysis

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

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

#### Public Comment

Written comments on the proposed amendments to the rule may be submitted to Gilbert Estrada, Policy Analyst in the Medicaid/CHIP Division, Texas Health and Human Services Commission, P.O. Box 85200, MC-H600, Austin, Texas 78708-5200, by fax to (512) 491-1953, or by e-mail to gilbert.estrada@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

#### Public Hearing

A public hearing is scheduled for May 15, 2006, at 1:00 p.m. in the HHSC Lone Star Conference Room at 11209 Metric Boulevard, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

#### §354.1301. *Benefits and Limitations.*

(a) Effective for services provided on or after September 1, 1991, and subject to the specifications, conditions, requirements, and limitations specified in this section and established by the Texas Health and Human Services Commission (HHSC) [department] or its designee, anesthesia services provided by a certified registered nurse anesthetist (CRNA) are covered by the Texas Medical Assistance Program.

(b) To be payable, the services must be:

(1) within the CRNA's scope of practice, as defined by state law;

(2) reasonable and medically necessary as determined by HHSC [the department] or its designee;

(3) prescribed and supervised by a physician (MD or DO), dentist, or podiatrist, to the extent allowed by state law, who must be licensed in the state in which he or she practices; and

(4) provided under one of the following conditions:

(A) no physician anesthesiologist is on the medical staff of the facility where the services are provided;

(B) as determined in accordance with the policies of the facility in which the services are provided, no physician anesthesiologist is available to provide the services;

(C) the physician, dentist, or podiatrist performing the procedure requiring the services specifically requests the services of a CRNA;

(D) the eligible recipient requiring the services specifically requests the services of a CRNA;

(E) the CRNA is scheduled or assigned to provide the services in accordance with policies of the facility in which the services are provided; or

(F) the services are provided by the CRNA in connection with a medical emergency.

(c) The Texas Medical Assistance Program will not reimburse the CRNA for equipment or supplies. Equipment and supplies are the responsibility of the facility in which the CRNA services are provided. If the equipment and supplies are covered and reimbursable by the Texas Medical Assistance Program, payment may be made to the facility if the facility is approved for participation in the Texas Medical Assistance Program. The basis and amount of reimbursement depends on the reimbursement methodology utilized by the Texas Medical Assistance Program for the services and providers involved.

(d) The scope of this section is limited to reimbursement policy for anesthesia services under the Texas Medical Assistance Program. Nothing contained in this section shall be construed to modify, supersede, or otherwise affect any other existing federal or state law or regulation or institutional practice regarding the administration of anesthesia.

(e) Reimbursement for covered CRNA services may be made to the CRNA actually performing the services or, provided that federal requirements related to reassignment of claims are met, to a hospital, physician, dentist, podiatrist, group practice, or ambulatory surgical center with which the CRNA has an employment or contractual relationship.

(f) Physician reimbursement for supervision of CRNAs is governed by the Health and Human Services Commission's policies regarding physician services.

(g) HHSC or its designee reimburses Texas Medical Assistance Program allowable CRNA services only when the services are submitted for payment under a CRNA provider number.

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 April 10, 2006.

TRD-200602063

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## DIVISION 33. TELEMEDICINE SERVICES

### 1 TAC §354.1430, §354.1432

The Texas Health and Human Services Commission (HHSC) proposes to amend §354.1430, Definitions, and §354.1432, Benefits and Limitations, which relate to Texas Medicaid telemedicine services.

#### Background and Justification

The proposed amendments to the telemedicine services rules are to satisfy the requirements of Senate Bill 1340, 79th Legislature, Regular Session, 2005, which requires HHSC to develop

by rule a pilot program under which Medicaid recipients in need of mental health services are provided those services through telemedicine. The Department of State Health Services (DSHS) is responsible for implementing the program. The pilot will be evaluated by the state to determine whether extension of the use of telemedicine improves the access of mental health services.

#### Section-by-Section Summary

Section 354.1430 defines Texas Medicaid telemedicine terms. HHSC proposes to add the following additional provider types contracted with or employed by a local mental health authority as allowable remote site providers: psychologists, licensed professional counselors (LPCs), licensed clinical social workers (LCSWs), licensed marriage and family therapists (LMFTs), and qualified mental health professionals. HHSC also proposes to add physician assistants (PAs) as allowable remote site providers.

Section 354.1432 outlines the benefits and limitations of Texas Medicaid telemedicine services. The amendment adds local mental health authority clinics and outreach sites as allowable places of service for telemedicine services.

#### Fiscal Note

Thomas Suehs, Deputy Commissioner for Financial Services, has determined that during the first 5-year period the amended rules are in effect there will be no fiscal impact to state government. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will not incur additional costs.

#### Small and Micro-business Impact Analysis

Mr. Suehs, has also determined that there will be no effect on small businesses or micro businesses to comply with the amendments as they will not be required to alter their business practices as a result of the rule. There are no anticipated economic costs to persons who are required to comply with the proposed rule. There is no anticipated negative impact on local employment.

#### Public Benefit

Mr. David J. Bolland, Associate Commissioner for Medicaid and CHIP, has determined that for each year of the first five years the proposal is in effect, the public will benefit from adoption of the amendments. The anticipated public benefit, as a result of enforcing the amendments, will be the accessibility of mental health services through telemedicine to the Medicaid population.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

## Public Comment

Written comments on the proposal may be submitted to Arnulfo Gomez, at 11209 Metric Blvd., Austin, Texas, 78758, by fax to (512) 491-1953, or by e-mail to [arnulfo.gomez@hhsc.state.tx.us](mailto:arnulfo.gomez@hhsc.state.tx.us) within 30 days of publication of this proposal in the *Texas Register*.

## Public Hearing

A public hearing is scheduled for April 16, 2006, from 1:30 p.m. to 3:00 p.m. (Central Time) in the public hearing room of the Health and Human Services Commission, 11209 Metric Blvd, Austin, Texas. Persons requiring further information, special assistance, or accommodations should contact Meisha Spencer at (512) 491-1453.

## Statutory Authority (Medicaid)

The amendments are proposed under the Texas Government Code, §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The amendments affect the Human Resources Code, Chapter 32, and the Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

### §354.1430. Definitions.

Definitions. The following words and terms, when used in this chapter, have the following meanings.

(1) Hub Site--A hub site is the location where the consulting physician is physically located.

(2) Hub Site Provider--A hub site provider must be a:

(A) Physician at a rural health facility or an accredited medical or osteopathic school located in Texas, or a physician at one of the following entities affiliated through a written contract or agreement with a government agency, accredited medical, or osteopathic school located in Texas:

- (B) Hospital;
- (C) Teaching hospital;
- (D) Tertiary center; or
- (E) Health clinic.

(3) Remote Site--A remote site is where the Medicaid client is physically located.

(4) Remote Site Provider--A remote site provider is located in rural or medically underserved areas and is limited to the following provider types:

- (A) Physician;
- (B) Advanced practice nurse (APN);
- (C) Certified nurse midwife (CNM);
- (D) Hospital;
- (E) Federally qualified health center (FQHC); [ø]
- (F) Rural health clinic (RHC); [-]

(G) Physician assistant (PA); or

(H) one of the following qualified professionals contracted with or employed by a local mental health authority:

(i) Licensed psychologist;

(ii) Licensed professional counselor (LPC);

(iii) Licensed clinical social worker (LCSW);

(iv) Licensed marriage and family therapist (LMFT); or

(v) Qualified mental health professional (QMHP) as defined in 25 TAC §412.303(31).

(5) Rural area--A rural area is defined as a county with a population of 50,000 or less or a county that was not designated as a metropolitan area by the United States Bureau of the Census according to the most current federal census and does not have within the boundaries of the county a hospital, licensed under chapter 241, Health and Safety Code, with more than 100 beds.

(6) Rural Health Facility--A rural health facility is located in a rural county and is affiliated with an accredited medical school, teaching hospital, or government agency through a written contract or agreement.

(7) Telemedicine--Telemedicine is a method of health care service delivery used to facilitate medical consultations by a physician to health care providers in rural or underserved areas for purposes of patient diagnosis or treatment that requires advanced telecommunications technologies.

(8) Telepathology--Telepathology is the practice of pathology (consultation, education and research) using telecommunications to transmit data and images between two or more sites remotely located from each other.

(9) Teleradiology--Teleradiology is a means of electronically transmitting radiographic patient images and consultative text from one location to another.

(10) Underserved--An underserved area that meets the definition of Medically Underserved Area (MUA) or Medically Underserved Population (MUP) by the U.S. Department of Health and Human Services.

### §354.1432. Benefits and Limitations.

(a) Telemedicine services are a health care benefit of the Texas Medicaid Program. Telemedicine services are described below.

(1) Telemedicine services are direct "face-to-face" interactive video communications with the client. Teleradiology and telepathology are exceptions to the direct face-to-face requirement.

(2) Telemedicine hub site providers may be reimbursed only for consultation or interpretation using interactive video as defined by Medicaid telemedicine medical policy and as currently reimbursed under the Texas Medicaid Program.

(3) Telemedicine remote sites may be reimbursed for services when any one of the following places of service are utilized and billed:

- (A) Practitioner's office;
- (B) Rural Health Clinic;
- (C) Federally Qualified Health Clinic;
- (D) Inpatient hospital;
- (E) Outpatient hospital;
- (F) Emergency room;
- (G) ICF-MR facility; or

(H) a local mental health authority clinic as defined in Health and Safety Code §533.035 or outreach site associated with a local mental health authority.

(4) Telephone conversations, chart reviews, electronic mail messages and facsimile transmissions do not constitute a telemedicine interactive video consultation, and will not be reimbursed as telemedicine service.

(5) Texas Health Steps (THSteps), also known as Early and Periodic Screening, Diagnosis and Treatment, preventive health visits are not reimbursed if performed via telemedicine. Health care or treatment provided for conditions identified during these preventive health visits may be reimbursed if the health care is provided via telemedicine.

(6) Nursing facilities, skilled nursing facilities, and client homes are not approved places of service as remote sites for telemedicine services.

(b) Reimbursement for Services Performed Using Telemedicine.

(1) Providers seeking reimbursement for telemedicine services must provide and bill for the service in the manner prescribed by the Texas Medicaid Program.

(2) Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology as defined in §355.7001, Telemedicine Services Reimbursement.

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 April 5, 2006.

TRD-200602010

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## CHAPTER 355. REIMBURSEMENT RATES SUBCHAPTER G. TELEMEDICINE SERVICES AND OTHER COMMUNITY-BASED SERVICES

### 1 TAC §355.7001

The Health and Human Services Commission (HHSC) proposes an amendment to §355.7001, concerning the reimbursement methodology for telemedicine services in Chapter 355, Reimbursement Rates.

#### Background and Purpose

The purpose of the amendment is to revise the reimbursement methodology for telemedicine services to add provider types delivering mental health services through telemedicine under the pilot program required by Senate Bill (S.B.) 1340 of the 79th Legislature, Regular Session, 2005. S.B. 1340 requires that the Health and Human Services Commission (HHSC) establish, by rule, a pilot program under which Medicaid recipients in need of mental health services are provided those services through telemedicine. The bill also directs the Department of State Health Services (DSHS) to implement the pilot program. The pilot is to enable the state to determine whether extension

of the use of telemedicine would improve the delivery of mental health services in a cost-effective manner. By December 1, 2006, HHSC is to submit a report to the Legislature regarding the results of the pilot program.

#### Section-by-Section Summary

No change is being proposed to the first paragraph. The addition of the reimbursement methodology rule reference for physician assistants is proposed to be added as new paragraph (2), with previous paragraphs (2) - (6) renumbered as paragraphs (3) - (7).

Renumbered paragraph (5) is amended to include by reference the reimbursement methodology for inpatient hospital services at 1 TAC §355.8063, relating to Reimbursement Methodology for Inpatient Hospital Services.

Paragraph (8) is added to include the telemedicine reimbursement methodology for the following provider types employed by or contracted with local mental health authorities: psychologists, licensed professional counselors, licensed clinical social workers, and licensed marriage and family therapists.

#### Fiscal Note

Tom Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to state government for the period of state fiscal year 2006 through state fiscal year 2010. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

#### Small Business and Micro-business Impact Analysis

HHSC has determined that there is no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendment, because the fees for healthcare professionals delivering services via telemedicine are the same as the fees for those same healthcare professionals delivering the services in person.

#### Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the amendment is in effect, the public benefit expected as a result of enforcing the amendment is that HHSC will be in compliance with the requirements of S.B. 1340 of the 79th Legislature, Regular Session, 2005. HHSC does not anticipate that there will be any economic cost to persons who are required to comply with this amendment. The amendment will not affect a local economy.

#### Regulatory Analysis

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. "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 environment exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environment exposure.

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Questions about the content of this proposal may be directed to Nancy Kimble (telephone: (512) 491-1363; FAX: (512) 491-1983) in HHSC Rate Analysis for Acute Care and Cost Reporting Services. Written comments on the proposal may be submitted to Ms. Kimble via facsimile, E-mail to nancy.kimble@hhsc.state.tx.us, or mail to HHSC Rate Analysis for Acute Care and Cost Reporting Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office, where it will be available for public review upon request.

#### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which authorizes the Executive Commissioner of HHSC with broad rulemaking authority; the Human Resources Code, §32.021 and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

#### §355.7001. *Telemedicine Services Reimbursement.*

Telemedicine services are reimbursed in accordance with the existing Medicaid reimbursement methodology for the applicable provider type as follows:

- (1) physicians, 1 TAC §355.8085;
- (2) physician assistants, 1 TAC §355.8091;
- (3) ~~[(2)] nurse practitioners (NPs) and clinical nurse specialists (CNSs)~~ [advanced practice nurses (APNs)], 1 TAC §355.8281;
- (4) ~~[(3)] certified nurse midwives (CNMs)~~, 1 TAC §355.8161;
- (5) ~~[(4)] hospitals~~, 1 TAC §355.8061 and 1 TAC §355.8063;
- (6) ~~[(5)] federally qualified health centers (FQHCs)~~, 1 TAC §355.8261; ~~and ]~~
- (7) ~~[(6)] rural health clinics (RHCs)~~, 1 TAC §355.8101; ~~[-]~~
- (8) the following qualified professionals contracted with or employed by a local mental health authority:
  - (A) psychologists, 1 TAC §355.8081 and 1 TAC §355.8085; and
  - (B) licensed professional counselors (LPCs), licensed clinical social workers (LCSWs), and licensed marriage and family therapists (LMFTs), 1 TAC §355.8091.

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 April 10, 2006.

TRD-200602056

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

### DIVISION 5. GENERAL ADMINISTRATION

#### 1 TAC §355.8093

The Texas Health and Human Services Commission (HHSC) proposes to amend Division 5, General Administration, by adding new §355.8093, Physician Assistants.

#### Background and Justification

This new rule is proposed pursuant to Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Rider 72 requires, in part, that physician assistants be allowed to enroll as independent Medicaid providers and bill under their own provider numbers. The rule sets out the methodology by which services provided and billed by a PA will be reimbursed.

#### Section-by-Section Summary

Section 355.8093 provides that covered professional services provided and billed by a PA are reimbursed on the basis of the lesser of the PA's billed charges or 92 percent of the reimbursement for the same service paid to a physician. It also provides that PAs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services and injections.

#### Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect there will be no fiscal impact to the state government for each year of the period SFY07 - SFY11. The proposed rule will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

#### Small and Micro-Business Impact Analysis

HHSC has determined that there would be no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendments. Physician practices that are currently reimbursed under the physician's Medicaid provider number for services provided by PAs at 100 percent of the allowable physician rate would continue to be reimbursed at the same rate. Physician assistants would now be able to enroll as Medicaid providers and receive direct reimbursement for their services.

#### Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that PAs would be able to enroll as Medicaid providers and be reimbursed for services, potentially resulting in increased access to services. The amendments will not affect a local economy.

#### Regulatory Analysis



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

#### Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

#### Public Comment

Questions about the content of this proposal may be directed to Nancy Kimble (telephone: (512) 491-1363; FAX: (512) 491-1983) in HHSC Rate Analysis for Acute Care and Cost Reporting Services. Written comments on the proposal may be submitted to Ms. Kimble via facsimile, E-mail to nancy.kimble@hhsc.state.tx.us, or mail to HHSC Rate Analysis for Acute Care and Cost Reporting Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office, where it will be available for public review upon request.

#### Statutory Authority

The new rule is proposed under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

#### §355.8093. Physician Assistants.

Covered professional services provided by a physician assistant (PA) and billed under the PA's own provider number are reimbursed the lesser of the PA's billed charges or 92% of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). Physician assistants are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services and injections.

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 April 10, 2006.

TRD-200602057

Steve Aragón  
Chief Counsel  
Texas Health and Human Services Commission  
Earliest possible date of adoption: May 21, 2006  
For further information, please call: (512) 424-6900



## SUBCHAPTER J. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) proposes amendments to the following reimbursement methodology rules: Division 9, Certified Nurse Midwives, §355.8161; Division 12, Certified Registered Nurse Anesthetists, §355.8221; and Division 15, Nurse Practitioners and Clinical Nurse Specialists, §355.8281.

#### Background and Justification

These rule amendments are proposed pursuant to Rider 72, S.B. 1, 79th Legislature, Regular Session, 2005. Rider 72 requires, in part, that HHSC reimburse advanced practice nurses (APNs) for services billed under the APN's Medicaid provider number. According to the Texas Board of Nurse Examiners, the correct titles for APNs are nurse practitioners (NPs), clinical nurse specialists (CNSs), certified registered nurse anesthetists (CRNAs), and certified nurse midwives (CNMs). The amendments revise the methodology by which these providers will be reimbursed.

#### Section-by-Section Summary

Proposed revisions to §355.8161, concerning certified nurse midwives (CNMs), increase the reimbursement percentage for covered professional services from 85 to 92 percent of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). Certified nurse midwives will be reimbursed for other billing codes at the same reimbursement level as physicians. The proposed amendments remove program policy language that is not appropriate for reimbursement methodology rules, change the title of Division 9 from "Nurse-Midwife Services" to "Certified Nurse Midwives," and change the title of the rule from "Reimbursement" to "Reimbursement Methodology."

Proposed revisions to §355.8221, concerning Certified Registered Nurse Anesthetists (CRNAs), increase the reimbursement percentage for covered anesthesia services from 85 to 92 percent of the reimbursement for the same anesthesia service paid to a physician (M.D. or D.O.). The proposed amendments remove program policy language that is not appropriate for reimbursement methodology rules, change the title of Division 12 from "Certified Registered Nurse Anesthetists' Services" to "Certified Registered Nurse Anesthetists," and change the title of the rule from "Reimbursement" to "Reimbursement Methodology."

Proposed revisions to §355.8281, concerning Nurse Practitioners and Clinical Nurse Specialists (NPs and CNSs) increase the reimbursement percentage for covered professional services from 85 to 92 percent of the reimbursement for the same professional services paid to a physician (M.D. or D.O.). Nurse practitioners and clinical nurse specialists will be reimbursed for other billing codes at the same reimbursement level as physicians. The proposed amendments change the title of Division 15 from "Certified Family Practitioner and Pediatric Nurse Practitioner" to "Nurse Practitioners and Clinical Nurse Specialists," as well as changing the title of the rule from "Reimbursement" to "Reimbursement Methodology."

## Fiscal Note

Thomas M. Suehs, Deputy Executive Commissioner for Financial Services, has determined that during the first five-year period the amended rule is in effect that there will be a fiscal impact to the state government of estimated increased costs of about \$877,109 for SFY07, and about \$876,885 for each year of the period SFY08 - SFY11. The proposed rules will not result in any fiscal implications for local health and human services agencies. Local governments will incur no additional costs.

## Small and Micro-Business Impact Analysis

HHSC has determined that there would be no adverse economic effect on small businesses or micro-businesses, or on businesses of any size, as a result of enforcing or administering the amendments. Physician practices that are currently reimbursed under the physician's Medicaid provider number for services provided by NPs, CNSs, CNMs, and CRNAs at 100 percent of the allowable physician rate would continue to be reimbursed at the same rate. NPs, CNSs, CNMs and CRNAs would continue to be able to enroll as Medicaid providers and receive direct reimbursement for their services.

## Public Benefit

Ed White, Director of Rate Analysis, has determined that, for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcing the amendments is that NPs, CNSs, CNMs, and CRNAs will receive higher reimbursement and the number of Medicaid providers could increase, resulting in increased access to services. The amendments will not affect a local economy.

## Regulatory Analysis

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

## Takings Impact Assessment

HHSC has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

## Public Comment

Questions about the content of this proposal may be directed to Nancy Kimble (telephone: (512) 491-1363; FAX: (512) 491-1983) in HHSC Rate Analysis for Acute Care and Cost Reporting Services. Written comments on the proposal may be submitted to Ms. Kimble via facsimile, E-mail to nancy.kimble@hhsc.state.tx.us, or mail to HHSC Rate Analysis for Acute Care and Cost Reporting Services, Mail Code H-400, P.O. Box 85200, Austin, TX 78708-5200, within 30 days of publication in the *Texas Register*.

To comply with federal regulations, a copy of the proposal is being sent to each Department of Aging and Disability Services office, where it will be available for public review upon request.

## DIVISION 9. CERTIFIED NURSE MIDWIVES

## 1 TAC §355.8161

### Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

### §355.8161. *Reimbursement Methodology.*

~~[(a)] Effective for services delivered on and after March 1, 2006, covered professional [Subject to specifications, conditions, and limitations established by the department, payment for covered nurse-midwife] services provided by a [participating] certified nurse[-] midwife (CNM) and billed under the CNM's own provider number are reimbursed the lesser [will be limited to the lower] of the CNM's billed charges or 92% of the reimbursement for the same professional service paid to a physician (M.D. or D.O.). CNMs are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services, and injections. [customary charge or the maximum allowable fee(s), rate(s), or reimbursement schedule, if any, as established by the department or its designee.]~~

~~[(b) The department or its designee reimburses only the CNM actually performing or directing the covered service, unless federal requirements related to reassignment of claims have been met.]~~

~~[(c) Certified nurse-midwives who manage the medical aspects of a case under a physician's control and supervision according to the rules of the State Board of Nurse Examiners and the Medical Practice Act are reimbursed by the Medicaid Program for those services only if they are performed according to the written protocols required by the State Board of Nurse Examiners and are not duplicative of other charges to the Medicaid Program.]~~

~~[(d) Reimbursement for services which are other than nurse-midwife services are governed by the applicable provisions of the Medicaid Program, as specified by the department.]~~

~~[(e) A nurse-midwife is not reimbursed by the Medicaid Program for services provided if employed, salaried, or reimbursed by a hospital, nursing facility, other institution, or facility where the nurse-midwife's remuneration for services is included in the reimbursement formula or vendor payment to the hospital, facility, institution, or other provider.]~~

~~[(f) Certified nurse-midwives who are employed by or remunerated by a physician, health maintenance organization (HMO), hospital, or other facility may not bill the Medicaid Program directly for nurse-midwife services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the Medicaid Program, payment may be made to the physician, hospital, or other provider, if approved for participation in the Medicaid Program who employs or reimburses the nurse-midwife. The basis and amount of Medicaid reimbursement depends on the nurse-midwife services actually provided, who provided the services, and the reimbursement methodology utilized by the Medicaid Program as appropriate for the services and provider(s) involved.]~~

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 April 10, 2006.

TRD-200602058

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## DIVISION 12. CERTIFIED REGISTERED NURSE ANESTHETISTS

### 1 TAC §355.8221

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§355.8221. *Reimbursement Methodology.*

~~[(a)] Effective for services delivered on and after March 1, 2006, covered [Subject to the specifications, conditions, limitations, and requirements established by the department or its designee, payment for covered] anesthesia services provided by a [participating] certified registered nurse anesthetist (CRNA) and billed under the CRNA's own provider number are reimbursed [will be limited to] the lesser of the CRNA's billed charges or 92% [actual charge or 85%] of the reimbursement for the same anesthesia service paid to a physician (M.D. or D.O.) [rate reimbursed to a physician] anesthesiologist [for the same service].~~

~~[(b) Reimbursement for covered CRNA services may be made to the CRNA actually performing the services or, provided that federal requirements related to assignment of claims are met, to a hospital, physician, dentist, podiatrist, group practice, or ambulatory surgical center with which the CRNA has an employment or contractual relationship.]~~

~~[(c) The department or its designee reimburses covered CRNA services only when the services are submitted for payment under a CRNA provider number.]~~

~~[(d) Physician reimbursement for supervision of CRNAs is governed by the department's policies regarding physician 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.

Filed with the Office of the Secretary of State on April 10, 2006.

TRD-200602059

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## DIVISION 15. NURSE PRACTITIONERS AND CLINICAL NURSE SPECIALISTS

### 1 TAC §355.8281

Statutory Authority

The amendment is proposed under the Texas Government Code, §531.033, which confers on the Executive Commissioner of HHSC broad rulemaking authority; the Human Resources Code, §32.021, and the Texas Government Code, §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and the Texas Government Code, §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

The proposed rule affects the Human Resources Code, Chapter 32, and the Texas Government Code, Chapters 531 and 533. No other statutes, articles, or codes are affected by this proposal.

§355.8281. *Reimbursement Methodology.*

~~Effective for services delivered on and after March 1, 2006, covered professional [Covered] services provided by a [advanced] nurse practitioner (NP) or a clinical nurse specialist (CNS) and billed under the NP's or CNS' own provider number [practitioners] are reimbursed [on the basis of] the lesser of the NP's or CNS' billed charges or 92% of the reimbursement for the same professional service [actual charge or maximum fee established by the Texas Department of Health or its designee. The maximum fee is 85% of the rate] paid to a physician (M.D. or D.O.). NPs and CNSs [for the same service. Advanced nurse practitioners] are reimbursed at the same reimbursement level as physicians for laboratory services, x-ray services, and injections.~~

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 April 10, 2006.

TRD-200602060

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Earliest possible date of adoption: May 21, 2006

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



## TITLE 7. BANKING AND SECURITIES

### PART 1. FINANCE COMMISSION OF TEXAS

#### CHAPTER 1. CONSUMER CREDIT REGULATION

## SUBCHAPTER S. MOTOR VEHICLE SALES FINANCE LICENSES

### 7 TAC §1.1402

The Finance Commission of Texas (the commission) proposes amendments to §1.1402, concerning the filing of new applications for motor vehicle sales finance licenses. The purpose of the amendments to §1.1402 is to clarify the requirements for disclosure of owners and principal parties under §1.1402(1)(B) for general partnerships and limited partnerships. The proposed amendments also seek to clarify the fingerprinting requirements under §1.1402(1)(F).

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of administering the rule as proposed.

Commissioner Pettijohn has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed amendments will be that the commission's rule will conform to current practice, will be more easily understood by licensees required to comply with the rule, and will be more easily enforced. There is no anticipated cost to persons who are required to comply with the amendments as proposed. There will be no adverse economic effect on small or micro businesses. There will be no effect on individuals required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted in writing to Laurie Hobbs, Assistant General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207, or by email to laurie.hobbs@occc.state.tx.us. To be considered, a written comment must be received on or before the 31st day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 31st day after the proposed amendments are published in the *Texas Register*, no further written comments will be considered or accepted by the commission.

The amendments are proposed under Texas Finance Code §11.304, which authorizes the commission to adopt rules to enforce Title 4 of the Texas Finance Code. Additionally, Texas Finance Code §348.513 authorize the commission to adopt rules for the enforcement of the motor vehicle installment sales chapter.

The statutory provisions (as currently in effect) affected by the proposed amendments are contained in Texas Finance Code, Chapter 348.

#### §1.1402. Filing of New Application.

An application for issuance of a new motor vehicle sales finance license must be submitted on forms prescribed by the commissioner at the date of filing and in accordance with the commissioner's instructions. The application must include the appropriate fees and the following:

(1) Required Forms.

(A) (No change.)

(B) Disclosure of Owners and Principal Parties. If an individual's interest in an entity is community property, then the spouse's community property interest must also be listed. If the business interest is owned by a married individual as separate property, documentation establishing or confirming separate property status should be provided.

(i) Proprietorship. An individual owning and operating the business must be named.

(ii) General partnership ~~[Partnership]~~. Each partner must be listed and the percentage of ownership stated. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be attached that includes the names and titles of all "managerial officials," as that term is defined in §1.002 of the Texas Business Organizations Code, and a description of the ownership of each legal entity must be provided. General partnerships that register as limited liability partnerships should provide the same information as that required for general partnerships.

(iii) Corporation. The officers and directors' sections on the form must be completed. Each shareholder holding at least 10% of the voting stock must be named if the corporation is privately-held. If a parent corporation is the sole or part owner of the proposed business, a narrative or diagram must be attached that describes each level of ownership greater than 10%.

(iv) Limited partnership. Each partner, general and limited, must be listed and the percentage of ownership stated.

(I) General partners. The applicant should provide the complete ownership, regardless of percentage owned, for all general partners. If a general partner is wholly or partially owned by a legal entity and not a natural person, a narrative or diagram must be attached that includes the names and titles of all "managerial officials," as that term is defined in §1.002 of the Texas Business Organizations Code, and a description of the ownership of each legal entity must be provided.

(II) Limited partners. The applicant should provide a complete list of all limited partners owning at least 10%.

(III) Limited partnerships that register as limited liability partnerships. The applicant should provide the same information as that required for limited partnerships.

~~{(iv) Limited Liability Partnership. Each partner, general and limited, owning at least 10% must be listed and the percentage of ownership stated. If a partner is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership greater than 10%.}~~

(v) Limited Liability Company. Each manager, officer, agent, and member owning at least 10% of the company, as those terms are used by the Texas Limited Liability Company Act, Texas Civil Statutes, Article 1528n, must be named. If a member is a business entity and not an individual, a narrative or diagram must be attached that describes each level of ownership greater than 10%.

(vi) Trust or Estate. Each trustee or executor must be listed.

(C) - (E) (No change.)

(F) Fingerprint cards ~~[Card]~~.

(i) For all principal parties, a [A] complete set of legible fingerprints must be provided. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation [for each individual that is a principal party].

(ii) For limited partnerships, if the disclosure of owners and principal parties under subparagraph (B)(iv)(I) of this paragraph does not produce a natural person, the applicant must provide a complete set of legible fingerprints for individuals who are associated with the general partner as principal parties.

(iii) For entities with complex ownership structures that result in the identification of individuals to be fingerprinted who do not have a substantial relationship to the proposed applicant, the applicant may submit a request to fingerprint three officers or similar employees with significant involvement in the proposed business. The request should describe the relationship and significant involvement of the individuals in the proposed business. The agency may approve the request, seek alternative appropriate individuals, or deny the request.

(iv) For individuals [Individuals] who have previously been licensed by the agency and principal parties of entities currently licensed, fingerprints are not required [to provide fingerprints. All fingerprints should be submitted on the format provided by the agency and approved by the Department of Public Safety and the Federal Bureau of Investigation].

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

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

Filed with the Office of the Secretary of State on April 6, 2006.

TRD-200602042

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 936-7640



## TITLE 19. EDUCATION

### PART 2. TEXAS EDUCATION AGENCY

#### CHAPTER 102. EDUCATIONAL PROGRAMS

##### SUBCHAPTER CC. COMMISSIONER'S

##### RULES CONCERNING COORDINATED

##### HEALTH PROGRAMS

###### 19 TAC §102.1031

The Texas Education Agency (TEA) proposes amendment to §102.1031, concerning coordinated health programs for elementary school students. The section establishes the criteria for evaluating school health programs and addresses health programs developed by schools, submission of programs for evaluation, and availability of programs. The proposed amendment would implement the requirements of the Texas Education Code (TEC), Chapter 38, Health and Safety, Subchapter A, General Provisions, §38.013, Coordinated Health Program for Elementary, Middle, and Junior High School Students, as amended by Senate Bill (SB) 42, 79th Texas Legislature, 2005. TEC, §38.013, requires the commissioner of education by rule to extend coordinated school health requirements to include middle and junior high schools.

SB 19, 77th Texas Legislature, 2001, added the TEC, §38.013, requiring school districts to implement school health programs. SB 1357, 78th Texas Legislature, 2003, amended the TEC, §38.013, to require the commissioner of education to include, in rule, the criteria for evaluating school health programs. In accordance with the TEC, §38.013, the commissioner exercised rulemaking authority to adopt 19 TAC §102.1031, Coordinated

Health Programs for Elementary School Students, which became effective May 2, 2004. As specified in SB 1357, the criteria was developed in consultation with the Texas Department of State Health Services School Health Advisory Committee. Currently, 19 TAC §102.1031 requires that the TEA make available to each school one or more coordinated health programs; establishes the criteria for evaluating school health programs; and addresses health programs developed by schools, submission of programs for evaluation, and availability of programs.

SB 42, 79th Texas Legislature, 2005, amended the TEC, §38.013, by requiring the commissioner of education by rule to extend coordinated school health requirements to include middle and junior high schools. The legislation also requires the commissioner by rule to adopt criteria for evaluating the nutritional services component of a program under this section that includes an evaluation of program compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value. The TEA currently has a process in place for reviewing programs for inclusion on the *Approved Coordinated School Health Programs* list based on 19 TAC §102.1031. This process would be modified to include review of programs for middle and junior high schools in addition to elementary schools.

Specifically, the proposed amendment to 19 TAC §102.1031 would change the title to "Coordinated Health Programs for Elementary, Middle, and Junior High School Students" and add language to subsections (a) and (b) to extend the requirements to middle and junior high school. Language would also be added in subsection (a) to clarify that development of school district programs is allowed. The requirement for peer reviewed empirical evidence of effectiveness in subsection (b)(5) would be moved to new subsection (d). New subsection (b)(9) would be added to address evaluation of the nutritional services component of programs. Clarification about materials that must be used for health programs developed by school districts would be added to subsection (c). New subsection (d) would be added to address health programs not developed by school districts. Changes in renumbered subsection (e) would reduce the frequency of program submissions and extend the length of time programs will be approved.

In accordance with statute, the proposed amendment will be sent to the Texas Department of State Health Services School Health Advisory Committee for review and comment prior to adoption.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state government as a result of enforcing or administering the amendment. However, there will be fiscal implications for local government. There will be a cost to districts that will either have to purchase a program with local funds or will have to develop their own programs locally. The cost to a district to purchase a program from the approved program list is expected to average about \$13.00 per student and \$32.00 per teacher. Three of the four currently approved programs have an average cost of \$5.00 or less per student. The fourth program is significantly more expensive. This is a very rough estimate because it is not possible to know how much physical education equipment a particular school might need to be able to implement a particular program. There will also be a cost to districts that develop a program locally; however, it is not possible to reasonably estimate what that cost would be.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as

a result of enforcing the amendment will be that students would be provided the opportunity to participate in coordinated school health programs beyond elementary school, thereby extending the effort to promote healthy eating and physical exercise and continuing efforts to combat childhood obesity. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

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

The amendment is proposed under the Texas Education Code, §38.013, which authorizes the commissioner to by rule adopt criteria for evaluating a coordinated health program. As amended by Senate Bill 42, 79th Texas Legislature, 2005, TEC, §38.013, requires the commissioner of education by rule to extend coordinated school health requirements to include middle and junior high schools. The legislation also requires the commissioner by rule to adopt criteria for evaluating the nutritional services component of a program under this section that includes an evaluation of program compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value.

The amendment implements the Texas Education Code, §38.013.

*§102.1031. Criteria for Evaluating Coordinated Health Programs for Elementary, Middle, and Junior High School Students.*

(a) Program purpose. In accordance with Texas Education Code (TEC), §38.013, the Texas Education Agency (TEA) shall make available to each school district one or more coordinated school health programs or allow for the development of school district programs designed to prevent obesity, cardiovascular disease, and Type 2 diabetes in elementary, middle, and junior high school students. Each program must provide for coordinating:

- (1) health education;
- (2) physical education and physical activity;
- (3) nutrition services; and
- (4) parental involvement.

(b) Evaluation criteria. The commissioner of education may make available under subsection (a) of this section only those coordinated school health programs that meet the following criteria.

(1) The program coordinates physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement.

(2) The program is ~~implemented and~~ coordinated within and across all grade levels on an elementary, middle, or junior high school campus. ~~[Kindergarten-Grade 5. A program may be submitted that also includes Prekindergarten and/or Grade 6.]~~

(3) The program has a training component that includes physical education/physical activity, classroom health education, nutrition/cafeteria services, and parental involvement activities and coordinates the four components of subsection (a) of this section. The training component must include teaching staff and parents.

(4) The program curricular components (health education and physical education) are based on Chapter 115 of this title (relating to Texas Essential Knowledge and Skills for Health Education) and Chapter 116 of this title (relating to Texas Essential Knowledge and Skills for Physical Education).

~~[(5) The program is supported by peer reviewed empirical evidence of effectiveness.]~~

(5) ~~[(6)]~~ The program includes assessment tools for schools to measure cognitive, behavioral, and attitudinal changes related to the four components.

(6) ~~[(7)]~~ The program is based on health education theory and national standards for instructional and/or industry best practices in each of the four components described in subsection (a) of this section.

(7) ~~[(8)]~~ The program allows for tailoring to schools' individual needs and can be adapted to a variety of specific situations: ethnic diversity, children with disabilities, school schedules, socioeconomic status, geographic locations, and gender differences.

(8) ~~[(9)]~~ The program trains school district staff in the annual use of assessment and planning tools for school health programs and policies, such as the elementary school version of the School Health Index available at the National Centers for Disease Control and Prevention website.

(9) The program includes an evaluation of its nutritional services component that includes compliance with the Department of Agriculture guidelines relating to foods of minimal nutritional value.

(c) Health programs developed by school districts. Coordinated school health programs that are developed by school districts and that meet the criteria in subsection (b) of this section may be approved and made available as approved programs. School district programs must use materials that are proven effective, such as TEA-approved textbooks or materials developed by nationally recognized and/or government-approved entities.

(d) Health programs not developed by school districts. Coordinated school health programs not developed by school districts and that meet the criteria in subsection (b) of this section may be approved and made available as approved programs. Such programs must be peer-reviewed and show empirical evidence of effectiveness prior to submission.

(e) ~~[(d)]~~ Submission of programs for evaluation. Coordinated school health programs may be submitted every two years ~~annually~~ for evaluation on a schedule to be determined by the commissioner. Programs will be approved for a period of four ~~three~~ years.

(f) ~~[(e)]~~ Availability of programs. The TEA shall notify each school district of the availability of each coordinated school health program approved by the commissioner under subsection (d) of this section.

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

Filed with the Office of the Secretary of State on April 5, 2006.

TRD-200602039

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Earliest possible date of adoption: May 21, 2006

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

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## CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

### SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING FINANCIAL ACCOUNTABILITY RATING SYSTEM

#### 19 TAC §§109.1002 - 109.1005

The Texas Education Agency (TEA) proposes amendments to §§109.1002 - 109.1005, concerning the financial accountability rating system. The sections establish provisions relating to the financial accountability rating system, including the assignment of ratings, types of ratings, criteria, and reporting. The sections also include the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. The proposed amendments would update the rating system by specifying new provisions that would be implemented beginning with fiscal year 2006-2007, including the addition and enhancement of indicators, along with a new worksheet and calculations; the incorporation of the Governor's Executive Order regarding the 65% instructional expenditure standard; and the establishment of a point system for rating districts; and the delineation of certain disclosures that must be included in districts' annual financial management reports. The rule action presented in this item replaces the previous proposal that was published in the *Texas Register* on May 13, 2005 (30 TexReg 2818). The withdrawal of that proposal was published in the *Texas Register* on November 4, 2005 (30 TexReg 7203).

Senate Bill (SB) 875, 76th Texas Legislature, 1999, added TEC, §39.201, requiring the commissioner of education in consultation with the comptroller of public accounts to develop proposals for a school district financial accountability rating system that was to be presented to the legislature no later than December 15, 2000. TEC, §39.201, expired September 1, 2001. Subsequently, SB 218, 77th Texas Legislature, 2001, added TEC, §§39.201 - 39.204, requiring the commissioner to adopt rules for the implementation and administration of the financial accountability rating system prescribed by TEC, Chapter 39, Subchapter I.

19 TAC Chapter 109, Budgeting, Accounting, and Auditing, Subchapter AA, Commissioner's Rules Concerning Financial Accountability Rating System, adopted to be effective October 20, 2002, establishes provisions that detail the purpose, ratings, types of ratings, criteria, reporting, and sanctions for the financial accountability rating system, in accordance with SB 218, 77th Texas Legislature, 2001. The adopted rules include the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. This form specifies the minimum financial accountability rating information that a district is to report to parents and taxpayers in the district.

The rating worksheet, along with accompanying calculation instructions, was adopted in 19 TAC §109.1002 to be effective October 20, 2002, and later amended to be effective May 7, 2003. The 2003 amendment to 19 TAC §109.1002 included minor technical edits that crosswalked exhibit numbers referenced in the "School FIRST - Rating Worksheet" according to the standard for the Annual Financial and Compliance Report filed by

school districts for fiscal year 2002-2003. This rating worksheet, dated May 2003, establishes the indicators applicable to school district financial accountability ratings assigned for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006.

A proposed amendment to 19 TAC §109.1002, published in the August 6, 2004, issue of the *Texas Register*, would have updated the rating system by adding a new critical indicator and enhancing other existing indicators. The revised rating system would have been applicable to school district financial accountability ratings issued beginning in fiscal year 2005-2006. This proposed amendment was withdrawn and a new proposal was brought forward at a later date that would have added more indicators, established a different scoring process for many measures, and created new disclosure requirements.

Proposed amendments to 19 TAC §§109.1002 - 109.1005, published in the May 13, 2005, issue of the *Texas Register*, would have updated the system by specifying new provisions, including the addition and enhancement of indicators, along with a new worksheet and calculations; establishing a change to the types of district ratings based on a point system; and delineating certain disclosures that must be included in districts' annual financial management reports. The revised rating system would have been applicable to school district financial accountability ratings assigned beginning with fiscal year 2005-2006. These proposed amendments were withdrawn and a new proposal was to be brought forward at a later date that would incorporate the Governor's Executive Order regarding the 65% instructional expenditure standard and the noted proposed changes. The rule actions presented at this time comprise the new proposal.

The proposed amendments developed in consultation with the state comptroller's office, would update the rating system by specifying new provisions that would be implemented beginning with fiscal year 2006-2007, including the addition and enhancement of indicators, along with a new worksheet and calculations; the establishment of a point system for rating districts; the incorporation of the 65% instructional expenditure standard; and the delineation of certain disclosures that must be included in districts' annual financial management reports. The following specific amendments to 19 TAC Chapter 109, Subchapter AA, are proposed.

In 19 TAC §109.1002, Financial Accountability Ratings, the proposed amendment would update the rating system by adding two new critical indicators, adding three noncritical indicators, and enhancing other existing indicators. The revised rating system would be applicable to school district financial accountability ratings assigned beginning with fiscal year 2006-2007 (the ratings that will be issued in summer 2008). The worksheet and calculations used beginning in fiscal year 2006-2007 to report district financial accountability information would be modified. In addition, districts would be required to identify their accreted interest on their bonds. This information would be included in their GASB 34 data feed to the TEA. TEA staff will continue to generate district financial accountability ratings based on data submitted by districts.

The proposed amendment 19 TAC §109.1002 would include the following specific changes.

Language would be added to subsection (a) to cite the statutory reference.

Language would be added to subsection (b) to specify the applicable fiscal years to which the current rating worksheet, dated May 2003, applies.

New subsection (c) would be added to establish the applicable fiscal years to which the new rating worksheet, effective July 2006, applies. The new worksheet and accompanying calculation instructions would be added as a new figure, 19 TAC §109.1002(c).

Subsection (d) would be renumbered accordingly.

New subsection (e) would be added to specify the procedures for submitting a request for the TEA to review a district's preliminary rating. This new subsection would also include provisions that would allow school districts that do not meet the 65% expenditure standard to post their district's check register (excluding their payroll register) and an aggregate total payroll expenditure to the district's website and receive full credit (5 points) for Indicator 16.

In addition, the differences between the May 2003 rating worksheet (currently in rule) and the proposed July 2006 version include the following.

Two new critical indicators would be added: Indicator 2 relating to total net unrestricted asset balance in governmental activities and Indicator 5 relating to academic rating of the district (exceeds academically unacceptable).

Three new noncritical indicators would be added addressing fiscal efficiencies and academic performance: Indicator 8 relating to operating expenditures per Weighted Average Daily Attendance (WADA) in the general fund and the special revenue fund, Indicator 9 relating to operating expenditures per WADA in the general fund, and Indicator 10 relating to a district's academic rating (recognized or exemplary).

Several fiscal responsibility indicators would be revised: Indicator 11 to change the percent of total tax collection standard from 96% to 98% for a three-year average, Indicator 12 to change the percent of aggregate variance for data quality measure from 4.0% to 3.0%, and Indicator 13 to change the standard per-student amount of debt-related expenditures from \$770 if the district's five-year percent change in students was a 2.0% increase or more or if property taxes collected per penny of tax effort were more than \$100,000 to \$250 if the district's five-year percent change in students was a 7.0% increase or more or if property taxes collected per penny of tax effort were more than \$200,000.

A budgeting indicator, Indicator 16, would be revised to increase the standard percentage related to operating expenditures for instruction from 54% to 65% over a three-year period and to change the calculation. This is the indicator that incorporates the Governor's Executive Order. The calculation definition for this indicator includes coding for librarians to count toward the 65% standard.

A personnel indicator, Indicator 20, related to the administrative cost ratio would be revised and a new threshold ratio chart would be added. The ranges for the ratio of students to total staff would also be revised.

A cash management indicator, Indicator 26, would be revised to increase the standard for per-student investment earnings from \$15 to \$20, excluding debt service and capital projects funds. The definition of another cash management indicator, Indicator 23, relating to optimum fund balances, would be simplified.

Applicable indicators and references would be renumbered and the date of the form updated.

New information related to determination of financial accountability rating and determination of points would be added. The

proposal would establish that district financial accountability ratings would be based on a point system.

In 19 TAC §109.1003, Types of Financial Accountability Ratings, the proposed amendment would modify text to incorporate minor technical edits to cross references. The existing types of ratings would continue to apply during fiscal year 2006-2007, in accordance with the procedures, scores, and classifications established in 19 TAC §109.1002.

In 19 TAC §109.1004, Criteria for Financial Accountability Ratings, the proposed amendment would clarify that changes to criteria for ratings will be communicated to school districts in accordance with the applicable effective dates.

In 19 TAC §109.1005, Reporting, the proposed amendment would add requirements that must be presented in the annual financial management report, including a copy of the superintendent's current employment contract, transactions involving the superintendent and board members, and gifts that the superintendent and board members receive from vendors.

Adam Jones, associate commissioner for finance and information technology, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Jones has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be an updated rating system. The financial accountability rating system benefits the public by putting into place a system to ensure that school districts will be held accountable for the quality of their financial management practices and achieve improved performance in the management of their financial resources. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

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

The amendments are proposed under Texas Education Code, §39.204, which authorizes the commissioner of education to adopt rules as necessary for the implementation and administration of a financial accountability rating system.

The amendments implement the TEC, §§39.201 - 39.204.

§109.1002. *Financial Accountability Ratings.*

(a) In accordance with Texas Education Code (TEC), Chapter 39, Subchapter I, each [Eaeh] school district must be assigned a financial accountability rating by the Texas Education Agency (TEA). The specific procedures for determining financial accountability ratings will be established annually by the commissioner of education and communicated to all school districts.

(b) For fiscal years 2002-2003, 2003-2004, 2004-2005 and 2005-2006, each [The] financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner



of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet," effective May 2003 . [u]"

Figure: 19 TAC §109.1002(b) (No change.)

(c) Beginning with fiscal year 2006-2007, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Effective July 2006." On this form, Indicator 16 entitled, "Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%?" will be phased in over a three-year period, as follows.

(1) For fiscal year 2006-2007, the indicator will be "Was The Percent Of Operating Expenditures Expended For Instruction More Than 55%?"

(2) For fiscal year 2007-2008, the indicator will be "Was The Percent Of Operating Expenditures Expended For Instruction More Than 60%?"

(3) For fiscal year 2008-2009 and beyond, the indicator will be "Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%?"

Figure: 19 TAC §109.1002(c)

(d) [(e)] A financial accountability rating by a voluntary association is a local option of the district, but it does not substitute for a financial accountability rating by the TEA.

(e) The TEA will issue a preliminary financial accountability rating to a school district within 150 days of the district's complete financial data being made available to the TEA staff.

(1) The issuance of the preliminary rating will not be delayed if a district fails to meet the statutory deadline for submitting the annual financial and compliance report.

(2) A district may submit a written request that the TEA review a preliminary rating if the preliminary rating was based on a data error solely attributable to the TEA's review of the data for any of the indicators.

(A) The TEA office responsible for financial audits must receive the request for review no later than 30 days after the TEA's release of the preliminary rating, and the request must include substantial evidence that supports the district's position.

(B) Requests for review received 31 days or more after the TEA issues a preliminary rating will not be considered.

(C) Errors by a district in recording data or submitting data through the TEA data collection and reporting system do not constitute a valid basis for requesting a review of a preliminary rating.

(D) A district that does not meet the 65% instructional expenditure standard (Indicator 16) may publish on their website their check register (excluding their payroll register) and their yearly payroll expenditure and receive full credit (5 points) for this indicator. The district must notify the TEA within the 30-day review process that they have posted their register on the district's website and provide the website address to receive credit for this indicator.

(E) If the TEA receives a request to review a preliminary rating, a final rating will be issued to the school district no later than 45 days after the district's request for review has been received by the TEA.

(F) If the TEA does not receive a request to review a preliminary rating, the preliminary rating automatically becomes a final rating on the 31st day after issuance of the preliminary rating.

(G) A final rating issued by the TEA pursuant to this section may not be appealed under the TEC, §7.057, or any other law or rule.

§109.1003. *Types of Financial Accountability Ratings.*

The types of ratings districts may receive are as follows.

(1) Superior Achievement. In accordance with the procedures established in §109.1002 of this title (relating to Financial Accountability Ratings), a district shall be classified as Superior Achievement if it scores within the applicable range established by the commissioner of education for Superior Achievement.

(2) Above Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Above Standard Achievement if it scores within the applicable range established by the commissioner of education for Above Standard Achievement.

(3) Standard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Standard Achievement if it scores within the applicable range established by the commissioner of education for Standard Achievement.

(4) Substandard Achievement. In accordance with the procedures established in §109.1002 of this title, a district shall be classified as Substandard Achievement if the district responds negatively to specified indicators or if the district scores within the applicable range established by the commissioner of education for Substandard Achievement. The commissioner of education may apply sanctions to a district that is assigned a Substandard Achievement rating.

(5) Suspended--Data Quality. If serious data quality issues are disclosed by the commissioner of education, a Suspended--Data Quality rating shall be assigned to the school district. The Suspended--Data Quality rating will be assigned until the district successfully resolves the data quality issues. The commissioner of education may apply sanctions to a district that is assigned a Suspended--Data Quality rating.

§109.1004. *Criteria for Financial Accountability Ratings.*

The criteria for financial accountability ratings will be based upon indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings), in accordance with requirements in state law and after consultation with the comptroller of public accounts. The commissioner of education shall evaluate the rating system annually and may modify the system in order to improve the effectiveness of the rating system. Changes to criteria for ratings and their effective dates will be communicated to school districts ~~[no later than May of each calendar year and will apply to the ratings issued in the first calendar year that follows the modification of any of these indicators].~~

§109.1005. *Reporting.*

(a) Each school district is required to report information and financial accountability ratings to parents and taxpayers by implementing the following reporting procedures.

(1) Each school district is required to prepare and distribute an annual financial management report in accordance with subsection (b) of this section.

(2) The public must be provided an opportunity to comment on the report at a public hearing in accordance with subsection (c) of this section.

(b) The annual financial management report prepared by the school district must include:

(1) a description of the district's financial management performance based on a comparison, provided by the Texas Education Agency (TEA), of the district's performance on the indicators established by the commissioner of education and reflected in §109.1002 of this title (relating to Financial Accountability Ratings). The report will contain information that discloses:

(A) state-established standards; and

(B) the district's financial management performance under each indicator for the current and previous years' financial accountability ratings;

~~{(B) the district's previous performance on the indicators;}~~

(2) any descriptive information required by the commissioner of education, including: ~~;~~ ~~and~~

(A) a copy of the superintendent's current employment contract. The school district may publish the superintendent's employment contract on the school district's Internet site in lieu of publication in the annual financial management report;

(B) a summary schedule for the fiscal year (12-month period) of total reimbursements received by the superintendent and each board member, including transactions resulting from use of the school district's credit card(s) to cover expenses incurred by the superintendent and each board member. The summary schedule shall separately report reimbursements for meals, lodging, transportation, motor fuel, and other items (the summary schedule of total reimbursements is not to include reimbursements for supplies and materials that were purchased for the operation of the school district);

(C) a summary schedule for the fiscal year of the dollar amount of compensation and/or fees received by the superintendent from another school district or any other outside entity in exchange for professional consulting and/or other personal services. The schedule shall separately report the amount received from each entity;

(D) a summary schedule for the fiscal year of the total dollar amount by the executive officers and board members of gifts that had an economic value of \$250 or more in the aggregate in the fiscal year. This reporting requirement only applies to gifts received by the school district's executive officers and board members (and their immediate family as described by Government Code, Chapter 573, Subchapter B, as a person related to another person within the first degree by consanguinity or affinity) from an outside entity that received payments from the school district in the prior fiscal year, and gifts from competing vendors that were not awarded contracts in the prior fiscal year. This reporting requirement does not apply to reimbursement of travel-related expenses by an outside entity when the purpose of the travel is to investigate or explore matters directly related to the duties of an executive officer or board member, or matters related to attendance at education-related conferences and seminars whose primary purpose is to provide continuing education (this exclusion does not apply to trips for entertainment-related purposes or pleasure trips). This reporting requirement excludes an individual gift or a series of gifts from a single outside entity that had an aggregate economic value of less than \$250 per executive officer or board member; and

(E) a summary schedule for the fiscal year of the dollar amount by board member for the aggregate amount of business transactions with the school district. This reporting requirement is not to duplicate the items disclosed in the summary schedule of reimbursements received by board members; and

(3) any other information the board of trustees of the district determines to be useful.

(c) The board of trustees of each school district shall hold a public hearing on the annual financial management report within two months after receipt of a final financial accountability rating (including a final rating of Suspended--Data Quality). The public hearing is to be held at a location in the district's facilities. The board shall give notice of the hearing to owners of real property in the district and to parents of district students. In addition to other notice required by law, notice of the hearing must be provided:

(1) to a newspaper of general circulation in the district once a week for two weeks prior to holding the public meeting, providing the time and place where the hearing is to be held. The first notice in the newspaper may not be more than 30 days prior to or less than 14 days prior to the public meeting. If there is not a newspaper published in the county in which the district's central administration office is located, then the notice is to be published in the county nearest the county seat of the county in which the district's central administration office is located; and

(2) through electronic mail to media serving the district.

(d) At the hearing, the annual financial management report shall be disseminated to the district's parents and taxpayers that are in attendance.

(e) The annual financial management report is to be retained in the district for at least a three-year period after the public hearing and will be made available to parents and taxpayers upon request.

(f) A corrective action plan is to be filed with the TEA by each school district that received a rating of Substandard Achievement or Suspended--Data Quality. The corrective action plan, which is to be prepared in accordance with instructions from the commissioner of education, is to be filed within one month after the district's public hearing. The commissioner of education may require certain information in the corrective action plan to address the factor(s) that may have contributed to a district's rating of Substandard Achievement or Suspended--Data Quality.

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 April 6, 2006.

TRD-200602044

Cristina De La Fuente-Valadez  
Director, Policy Coordination  
Texas Education Agency

Earliest possible date of adoption: May 21, 2006

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

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**TITLE 22. EXAMINING BOARDS**

**PART 27. BOARD OF TAX  
PROFESSIONAL EXAMINERS**

**CHAPTER 623. REGISTRATION AND  
CERTIFICATION**

**22 TAC §623.8**

The Board of Tax Professional Examiners proposes an amendment to §623.8, Qualifications for Certification as Registered Professional Appraiser (RPA). This amendment implements the USPAP course requirement for Class IV-appraiser.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which proposed rule is in effect, the proposed new section will not have an adverse economic effect on small businesses because the amended section of these rules impose no additional burden on small businesses.

Mr. Montoya has determined that for the first five-year period in which the proposed rule is in effect, the anticipated public benefit is the assurance that all tax professionals will be better educated, thus ensuring faith and confidence in the Property Tax Professional Certification Act.

Comments on the proposal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The amendment is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed amendment.

§623.8. *Qualifications for Certification as Registered Professional Appraiser (RPA).*

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

(c) The registrant who is designated as Class III-appraiser must qualify for Class IV-appraisal (certification as registered professional appraiser) at a date no later than two years after the date of designation as Class III-appraiser. To qualify for Class IV-appraiser (RPA) the registrant must:

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

(5) pass an approved education course in USPAP;

(6) [(5)] pass a Class IV-appraisal (RPA) comprehensive board examination on appraisal and related aspects of property taxation in Texas.

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

Filed with the Office of the Secretary of State on April 5, 2006.

TRD-200602038

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 305-7301



## 22 TAC §623.18

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

The Board of Tax Professional Examiners proposes the repeal of Board rule §623.18, USPAP Training for all Registered Professional Appraisers. This proposed repeal provides a more organized Chapter 623 regarding Registration and Certification. The repealed rule is incorporated as a proposed amendment to §623.8, Qualifications for Certification as Registered Professional Appraiser (RPA), and is published elsewhere in this edition of the *Texas Register*.

Mr. David E. Montoya, Executive Director of the Board of Tax Professional Examiners, has determined that for the first five year period in which the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Montoya has also determined that for the first five-year period in which the proposed repeal is in effect, the repeal will not have any adverse economic effect on small businesses because the repealed rule imposes no additional burden on small businesses.

Mr. Montoya has determined that for the first five-year period in which the proposed repeal is in effect, the anticipated public benefit will be more organized rules regarding Registration and Certification.

Comments on the proposed repeal may be submitted to David E. Montoya, Executive Director, Texas State Board of Tax Professional Examiners, 333 Guadalupe, Tower II, Suite 520, Austin, Texas 78701 or faxed to his attention at (512) 305-7304.

The repeal is proposed under the authority of Texas Civil Statutes Occupations Code, Chapter 1151 Property Taxation Professional Certification Act, which provides the Board of Tax Professional Examiners with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other article, statute or code is affected by this proposed repeal.

§623.18. *USPAP Training for all Registered Professional Appraisers.*

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 April 5, 2006.

TRD-200602037

David E. Montoya

Executive Director

Board of Tax Professional Examiners

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 305-7301



## TITLE 28. INSURANCE

### PART 1. TEXAS DEPARTMENT OF INSURANCE

## CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

### SUBCHAPTER D. RISK-BASED CAPITAL AND SURPLUS

#### 28 TAC §7.401

The Texas Department of Insurance proposes amendments to §7.401 concerning risk-based capital and surplus requirements for insurers and health maintenance organizations (HMOs). Section 7.401 regulates risk-based capital and surplus requirements for property and casualty insurers, life insurance companies, fraternal benefit societies, mutual life insurance companies, stipulated premium companies, HMOs and insurers filing the National Association of Insurance Commissioners (NAIC) Health blank. These insurers and HMOs are referred to collectively as "carriers" in this proposal. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. Section 7.401(d) adopts by reference the NAIC risk-based capital formulas. The proposed amendments to §7.401(d) are necessary to adopt by reference the 2005 formulas, including the 2005 NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies, the 2005 NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies, the 2005 NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies, and the 2005 NAIC Health Risk-Based Capital Report including Overview and Instructions for Companies. Copies of the documents proposed for adoption by reference are available for inspection in the Financial Division of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, Tower Number III, Third Floor, Mail Code 303-1A, 333 Guadalupe, Austin, Texas. In addition, an amendment is proposed to §7.401(b)(4)(C) to update the Insurance Code reference for consistency with the revised code project enacted by the Texas Legislature.

Ms. Betty Patterson, Senior Associate Commissioner, Financial Program, has determined that, for each year of the first five years the amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments. The proposal will have no anticipated effect on local employment or local economy.

Ms. Patterson has also determined that for each year of the first five years the amendments are in effect, the amendments will enable the Department to more efficiently and effectively utilize existing resources in the review of the financial condition of carriers, to more efficiently monitor solvency of the carriers subject to the section, and to implement the most current risk-based capital requirements. The risk-based capital requirement is a method of ensuring that a carrier has an appropriate level of policyholders' surplus after taking into account the underwriting, financial, and investment risks of a carrier. The NAIC risk-based capital formulas provide the Department with a widely used regulatory tool to identify the minimum amount of capital and surplus appropriate for a carrier to support its overall business operations in consideration of its size and risk exposure. The cost to complete the risk-based capital report varies from carrier to carrier. Under the

proposal, each carrier subject to the section would be required to acquire NAIC risk-based capital software at a cost of approximately \$600 per entity for each carrier. The labor cost to transfer the information from a carrier's records to the applicable report will vary depending on the size of the carrier and the character of its investments. If a carrier uses the annual statement software that conforms to NAIC specifications provided by authorized vendors to prepare its annual report, and if that software is linked to the risk-based capital formula software, the Department estimates that the information can be transferred and the formula completed in four hours or less. If the annual statement software is not linked to the risk-based capital formula, the Department estimates that a carrier will be able to transfer the information from its records to the risk-based formula in 8 to 16 hours. The Department's estimations are based upon discussions with industry representatives who are responsible for maintaining accounting records for insurers and carriers. Based upon information obtained by the Department from these industry representatives, a carrier would utilize an employee who is familiar with the accounting records of the company and accounting practices in general and who is compensated from \$17 to \$30 an hour. On the basis of cost per hour of labor, there is no anticipated difference in the cost of completing the formula between carriers who are micro, small, and large businesses. After the completion of the formula, it will likely be reviewed by an officer of the carrier who is responsible for the preparation of the financial reports of the carrier. Such officers for small carriers are compensated at approximately \$40 per hour, while such officers for large carriers are compensated at approximately \$100 per hour. Based on the Department's experience, the cost of compliance for small carriers would be less than the cost of compliance for large carriers in reviewing the risk-based capital report. Therefore, the Department anticipates that the proposal will have no adverse economic effect on small or micro businesses. The Department does not expect the formulas to require a level of capital that is significantly different from the current capital requirements since the Department has been using the risk-based capital levels for several years. For those carriers previously subject to the risk-based capital requirements, the Department does not anticipate any material increase in cost resulting from a required capital contribution. However, the function of the risk-based capital formula is to protect policyholders from the effects of insolvency, which may require some carriers to increase their capital. To the extent any carrier must increase its capital as a result of the risk-based capital requirements, that cost is the amount of capital required and is a result of the statutory requirement of TEX. INS. CODE ANN. §§822.210, 841.205, 884.206. Regardless of the fiscal effect on an individual carrier, the requirements of this section are mandated by statute. Although the Department does not believe that the proposed amendments would have an adverse effect on small or micro businesses, the Department has considered the purpose of the applicable statutes, which is to protect policyholders and carriers from the effects of insolvency, and has determined that it is neither legal nor feasible to waive the provisions of the proposed amendments for small or micro businesses. Additionally, it is the Department's position that to waive or modify the requirements of the proposed amendments for small and micro businesses would result in a disparate effect on policyholders and other persons affected by the amendments.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on May 22, 2006 to Gene C. Jarmon, General Counsel and 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

simultaneously submitted to Betty Patterson, Senior Associate Commissioner, Financial Program, Mail Code 305-2A, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code Articles 1.10, 1.32, 21.28-A and §§36.001, 541.401, 822.210, 841.205, 843.404, 885.401, and 884.206. Article 1.10 §5 addresses the duties of the Department when an insurer's solvency is impaired. Article 1.32 authorizes the Commissioner to set standards for evaluating the financial condition of an insurer. Article 21.28-A addresses the prevention of insurer delinquencies and in §2(b) provides that the term "insolvency" of an insurer "and the phrases in further identity of insurer delinquency and threatened insurer delinquency" mean and include any one or more of several statutorily specified conditions, including if a company's required surplus, capital, or capital stock is impaired to an extent prohibited by law, and in §11 authorizes the Commissioner to adopt reasonable rules as necessary for augmentation and accomplishment of Article 21.28-A, including its purposes. Section 541.401 authorizes the Commissioner to adopt reasonable rules necessary to accomplish the purposes of trade practices regulation in Chapter 541. Sections 822.210, 841.205, and 884.206 authorize the Commissioner to adopt rules to require an insurer to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of insurers for the protection of policyholders and insurers. Section 843.404 authorizes the Commissioner to adopt rules to require a health maintenance organization to maintain capital and surplus levels in excess of statutory minimum levels to assure financial solvency of health maintenance organizations for the protection of enrollees. Section 885.401 requires each fraternal benefit society to file an annual report on the society's financial condition, including any information the Commissioner considers necessary to demonstrate the society's business and method of operation, and authorizes the Department to use the annual report in determining a society's financial solvency. Section 36.001 authorizes the Commissioner to adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by this proposal: Insurance Code Articles 1.10, 1.32, and §§541.401, 822.210, 841.205, 843.404, 885.401, 884.206, 982.105, and 982.106.

§7.401. *Risk-Based Capital and Surplus Requirements.*

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

(d) Adoption of RBC formula by reference. The commissioner adopts by reference the following:

(1) The 2005 [2003 and 2004] NAIC Life Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(2) The 2005 [2003 and 2004] NAIC Fraternal Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(3) The 2005 [2003 and 2004] NAIC Property and Casualty Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

(4) The 2005 [2003 and 2004] NAIC Health Risk-Based Capital Report Including Overview and Instructions for Companies which includes the RBC formula.

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

(g) Actions of commissioner. The level of risk-based capital is calculated and reported annually. Depending on the results computed by the risk-based capital formula, the commissioner of insurance may take a number of remedial actions, as considered necessary. The ratio result of the total adjusted capital to authorized control level risk-based capital require the following actions related to an insurer within the specified ranges:

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

(4) An insurer reporting total adjusted capital of less than 70% of authorized control level triggers a mandatory control level which subjects the insurer to one of the following actions:

(A) being placed in supervision or conservation;

(B) being determined to be in hazardous financial condition as provided by the Insurance Code Article 1.32, and §8.3 of this title (relating to Hazardous Conditions) regardless of percentage of assets in excess of liabilities;

(C) being determined to be impaired as provided by the Insurance Code Articles 1.10, §5 or §841.206 [3-60]; or

(D) any other applicable sanctions under the Texas Insurance Code.

(5) (No change.)

(6) A property and casualty insurer subject to this section is subject to a trend test if its total adjusted capital to authorized control level risk-based capital is between 200% and 300%. If the result of the trend test as determined by the formula is "YES", the insurer triggers regulatory attention at the Company Action Level on the trend test. For the year 2005 only, the first year of this trend test, the trend test will be for informational purposes only.

(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 April 7, 2006.

TRD-200602048

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 463-6327

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT**

**CHAPTER 58. OYSTERS AND SHRIMP  
SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION**

**31 TAC §58.22, §58.23**

The Texas Parks and Wildlife Department proposes amendments to §58.22, concerning Commercial Fishing, and §58.23,

concerning Non-Commercial (Recreational) Fishing. The amendments are necessary to clarify the daily bag limit and unit of measurement for oysters.

The amendment to §58.22 would establish a specific volume of oysters that could be legally possessed or taken in one day for commercial purposes.

The amendment to §58.23 would establish a specific volume of oysters that could be legally possessed or taken in one day for non-commercial (recreational) purposes.

Responsibility for adopting rules covering the taking, attempting to take, possession, purchase, and sale of oyster resources in the salt waters of Texas is set forth in Parks and Wildlife Code, Chapter 76.

Following extensive discussions with the department's Oyster Advisory Committee, the department published a proposal in the July 22, 2005, issue of the *Texas Register* (30 TexReg 4195) to reduce the daily limit of oysters taken for commercial purposes and to implement a new standard for the quantitative measurement of oyster harvests. The amendments were adopted and the department published a notice of adoption in the October 21, 2005, issue of the *Texas Register* (30 TexReg 6935). The purpose of the rulemaking was to promote efficiency in the utilization of oyster resources by providing a more stable price structure for oysters over the duration of the open season. The rulemaking was expected to lengthen the productive part (in terms of sacks per vessel landed) of the season. If landings are more stable, a more stable average price throughout the season can be expected, which should create overall economic benefits for the industry. An argument could be made that catching more sacks per trip will increase efficiency and create more catch per unit of effort, leading to greater net profits. If price did not decline during such early harvest peaks, that might in fact be the case; however, dealers indicated that prices decline due to the high harvest levels at the beginning of the season.

The 2004 oyster season was used as an example of a volatile market. Landings declined during the season from an initial average of 7,973 sacks per day (November 2003) to an average 2,868 sacks per day by the last month of the season (April 2004). The corresponding average price per sack in November 2003 was \$14.11 per sack and the average of April 2004 was \$15.28 per sack. This indicates the price at the beginning of the season was 7% lower than the price at the end of the season, without accounting for any quality differences that may have occurred between the fall and spring seasons. If a fisherman who could catch 150 sacks per day at the beginning the season maintained this proportion of the catch throughout the season, only 53 sacks per day would be caught in the last month. Gross receipts would begin the season at \$2,115 per day and drop to \$824 per day by the end of the season.

In contrast, the 2003 oyster season was used as an example of a more stable market. Landings declined slightly during the season from an initial average of 5,753 sacks per day (November 2002) to an average 3,595 sacks per day by the last month of the season (April 2003). The corresponding average price per sack in November 2002 was \$14.42 per sack and the average of April 2003 was \$14.47 per sack. If a fisherman who could catch 150 sacks of oysters per day at the beginning the season maintained this proportion of the catch throughout the season, landings (total sacks) would be approximately 18% higher than total landings during the 2004 season example above. Gross receipts would begin the season at \$2,163 per day and end the

season at \$1,356 per day, and total gross receipts under this scenario would be 19.7% higher than total gross receipts under the 2004 example above.

The rationale behind the rulemaking was that to receive the benefits of a stable market in a majority of future seasons, the daily harvest had to be reduced to a level that would allow the total available oysters in Texas bays to be reduced at a slower rate through the season than can be routinely obtained with the higher bag limit. Intuitively, this would suggest a significant reduction in gross receipts due to the significant reduction in bag. However, the behavior of the market itself provides benefits to the fisherman. If a fisherman during the 2003 season (i.e., used as the stable example above) could catch 90 sacks of oysters per day at the beginning the season and maintain this average catch rate throughout the season, landings (total sacks) would be roughly equivalent to the total landings during the 2004 season example above. However, gross receipts would begin the season at \$1,298 per day and end the season at \$1,301 per day, and total gross receipts under this scenario would be 1.6% higher than total earnings under the 2004 example above. Fishermen will be impacted by this proposal; however, it is expected that the benefits to fishermen will off set the negative impacts of a reduced bag on early season efficiency.

In itself, reducing the amount of oysters taken by an individual boat would not have accomplished this or any other management goal had not the 79th Legislature limited the number of boats allowed to fish for oysters. Therefore, the proposed rulemaking was consistent with the industry's legislative initiative to limit the number of commercial oyster boat licenses that may be issued for use in Texas waters.

The proposed amendments are necessary because the department has determined that the current rule language does not clearly convey the intent of the Parks and Wildlife Commission's that the 90-sack limit function as a daily bag limit and not solely as a possession limit. Similarly, the recreational bag limit also was intended to be a daily bag limit as well as a possession limit. The proposed amendments are intended to clarify that the daily bag limit for commercial oystermen is 90 sacks per day of legal sized oysters and the possession limit for a commercial oysterman while on the water is also 90 sacks. In addition to the commercial limits, the proposed amendment to §58.23, concerning Non-commercial (Recreational) Fishing, offers a similar clarification for recreational oyster fishermen, stipulating a daily bag limit of two sacks of legal sized oysters. The proposed amendment also alters the unit of measure, replacing the bushel with the sack.

Robin Riechers, Director of Science and Policy, has determined that for each of the first five years that the proposed rules are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules.

Mr. Riechers also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be more effective enforcement of rules to protect the oyster resources of the state, a more stable and viable oyster industry, and rules that are clearer, more concise, more accurate, and more user friendly. The enhanced price stability throughout the season and the overall increase in total revenue is expected to outweigh any reductions in efficiency which may happen early in the season. The rules as proposed will clarify the enforcement of the sack limit. A greater level of enforcement is expected with the newly clarified limit.

There will not be an adverse economic effect on small businesses, microbusinesses, or persons required to comply with the rules as proposed. The department anticipates that the proposed rules will result in a reduction in harvest in the early part of the season, which has traditionally been much higher than the later part of the season. However, by stabilizing harvest, the department anticipates that the proposed rule will reduce the decline in late season harvest experienced in recent years, thus offsetting any fiscal impacts experienced in the early season.

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

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

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

Comments on the proposal may be submitted to Jerry L. Cooke, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4492; e-mail: jerry.cooke@tpwd.state.tx.us.

The amendments are proposed under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter, and §76.301, which authorizes the commission to regulate the taking, possession, purchase, and sale of oysters.

The proposed amendments affect Parks and Wildlife Code, Chapters 61 and 76.

#### §58.22. Commercial Fishing.

(a) It is lawful to take oysters for commercial use by non-mechanical means.

(b) Gear Restrictions. During the open public season, it is unlawful while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to:

- (1) use more than one dredge;
- (2) use a dredge which exceeds 48 inches in width and a two-barrel capacity;
- (3) have on board more than one dredge, unless spare dredges are secured, to or on the wheelhouse, or to the deck in such a manner as to not be readily accessible for use;
- (4) have on board more than one winch chain, cable, or rope unless spare chains, cables or ropes are secured below deck; or
- (5) have on board more than one lifting block unless spare blocks are secured below deck.

(c) Possession Limits. It is unlawful to take in one day, for pay or the purpose of sale, barter, or exchange, or any other commercial purpose, or to have on board any licensed commercial oyster boat more than [while taking or attempting to take oysters for pay or the purpose of sale, barter, or exchange or any other commercial purpose to have on board any licensed commercial oyster boat]:

- (1) [~~more than~~] 90 sacks of culled oysters of legal size; or

(2) [~~more than~~] 6 sacks of unculled oysters while on the reef.

(d) Reporting requirements. A dealer who purchases or receives oysters directly from any person other than a licensed dealer must file a report with the department each month as prescribed under Parks and Wildlife Code, §66.019(c).

#### §58.23. Non-commercial (Recreational) Fishing.

(a) It is lawful to take oysters for personal use by non-mechanical means.

(b) Gear Restrictions. It is unlawful while taking or attempting to take oysters for personal use to:

- (1) use a dredge that exceeds 14 inches in width; or
- (2) have more than one dredge connected in any manner to a winch, chain or other lifting device during the open public season; or
- (3) have on board any dredge(s), other than the one connected to a winch, chain, or other lifting device, unless secured below deck, to or on the wheelhouse, or to the deck in such a manner as to not be readily accessible for use.

(c) Possession Limit. It is unlawful for a person to take in one day or possess, more than two sacks [bushels] of legal sized oysters [per person].

(d) Prohibition of Sale. It is unlawful to sell oysters taken without a valid commercial oyster fishing license.

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

Filed with the Office of the Secretary of State on April 10, 2006.

TRD-200602066

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 389-4775



## CHAPTER 65. WILDLIFE SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

### 31 TAC §65.60

The Texas Parks and Wildlife Department proposes an amendment to §65.60, concerning Pheasant: Open Seasons, Bag, and Possession Limits. The proposed amendment would increase the daily bag limit and possession limits for pheasant in Texas Panhandle counties (Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger). From 1995 to 2002, the pheasant season in the Panhandle began on the second Saturday in December and ran for 16 consecutive days. In 2002, the department increased the length

of the pheasant season in the Texas Panhandle from 16 to 30 days, and began the season one week earlier. The ring-necked pheasant is a polygamous species (the male mates with multiple females). For this reason, a hunting season timed to take place after the majority of breeding has taken place and restricted to males will not affect the overall population, provided the bag limit is not set so high that recuperative potential (the ability of the population to sustain itself at a given population level) is affected. Accordingly, as a precautionary measure, when the department lengthened the season and opened it a week earlier, the bag limit was reduced from three cock pheasant to two.

An analysis of harvest data over the last 11 years (eight years at a three-bird bag limit and three years at the two-bird bag limit) indicates that the long-term average of total harvest has remained essentially unchanged. From 1995 to 2003 (three-bird limit, 16-day season), the average total harvest was approximately 26,000 cocks per year. From 2003 to 2005 (two-bird bag limit, 30-day season), the total harvest averaged 24,000 cocks per year. Hunter success during the period from 1995 to 2003 was approximately 1.25 birds per day, while from 2003 to 2005, it was approximately one bird per day. The estimated number of hunters from 1995 to 2003 averaged 25,900; from 2003 to 2005 it was approximately 24,170. If harvest pressure remains stable at the long-term average (i.e. at between 1.0 and 1.25 birds per day), increasing the bag limit by one cock should result in a total increase of between 1,730 and 2,160 birds, which would result in a total harvest less than the average total annual harvest under the three-bird/16-day season structure that was in effect from 1995 to 2003. The department therefore believes that increasing the bag limit by one cock will not result in depletion of the resource.

The possession limit for pheasant is twice the daily bag limit; therefore, in addition to increasing the daily bag limit on male pheasants, the proposed amendment also would increase the possession limit to six birds.

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

Mr. Macdonald also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be increased hunting opportunity for pheasant.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendment as proposed.

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

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

Comments on the proposed rule may be submitted to Steve DeMaso, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4975 (e-mail: steve.demaso@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, Chapter 61, which requires the commission to regulate the periods of time when it is lawful to hunt, take, or possess game ani-

mals, game birds, or aquatic animal life in this state; the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in this state; the species, quantity, age or size, and, to the extent possible, the sex of the game animals, game birds, or aquatic animal life authorized to be hunted, taken, or possessed; and the region, county, area, body of water, or portion of a county where game animals, game birds, or aquatic animal life may be hunted, taken, or possessed.

The amendment affects Parks and Wildlife Code, Chapter 61.

§65.60. *Pheasant: Open Seasons, Bag, and Possession Limits.*

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Cochran, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hartley, Hemphill, Hockley, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler, and Wilbarger counties, there is an open season for pheasants.

(1) Open season: First Saturday of December for 30 consecutive days.

(2) Daily Bag limit: Three [~~Two~~] cock pheasants.

(3) Possession limit: Six [~~Four~~ cock] pheasants.

(b) In Chambers, Jefferson, and Liberty, counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February.

(2) Daily bag limit: Three cock pheasants.

(3) Possession limit: Six cock pheasants.

(c) In all other counties, there is no open season on pheasants.

(d) It is unlawful to hunt pheasant with the aid of a cable, chain, rope, or other device connected to or between a moving object or objects.

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 April 10, 2006.

TRD-200602067

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 389-4775



## SUBCHAPTER H. PUBLIC LANDS PROCLAMATION

### 31 TAC §§65.190, 65.192, 65.204

The Texas Parks and Wildlife Department proposes amendments to §§65.190 and 65.192, and new 65.204, concerning the Public Lands Proclamation.

The amendment to §65.190, concerning Application, would remove the Aquilla Wildlife Management Area from the applicability of the subchapter. The Aquilla area is being removed from the public hunting program by the U.S. Army Corps of Engineers, which owns the area. The amendment also would



indicate a change in the status of Matagorda Island State Park/Wildlife Management Area, which is no longer a unit of the state park system and is being operated solely as a wildlife management area. The amendment is necessary to properly indicate the functional title of that property.

The amendment to §65.192, concerning Powers of the Executive Director, would eliminate subsections (g) - (i).

Current subsection (g) provides that the executive director may permit recreational activities on public hunting lands, compatible with sound resource management practices and public health and safety. The subsection is being eliminated and moved to proposed new §65.204 to more specifically address recreational uses on wildlife management areas. Parks and Wildlife Code, §81.405, provides that the commission may adopt rules governing recreational activities on wildlife management areas. Proposed new §65.204 authorizes recreational activities on wildlife management areas, making §65.192(g) unnecessary.

Current subsection (h) provides that the executive director may waive application and permit fees for events having participation restricted to youth or disabled persons, or for activities conducted for purposes of research, education, or charity. The subsection is being eliminated because currently there are no application or permit fees for events or activities other than hunting. The only fees currently charged at wildlife management areas are those associated with hunting, which is not regarded as a special event.

Current subsection (i) provides that the executive director may establish regulations for camping on public hunting lands, consistent with the type of public use activity authorized and the environmental protection of the area. Camping is an activity other than hunting or fishing and is thus a recreational use as defined in §65.191(34). The subsection is being eliminated for the same reasons as subsection (g).

Proposed new §65.204, concerning Recreational Activities on Wildlife Management Areas, would authorize recreational activities on all wildlife management areas, provided the use does not conflict with the operation or management of an area or with the utilization of an area for the purposes for which it was purchased, leased, or acquired. The new rule is necessary to allow the use of wildlife management areas for purposes other than hunting and fishing. Many if not most of the wildlife management areas in Texas were purchased wholly or in part through the Pittman-Robertson (PR) Federal Aid program. Under PR rules, such property can be used for any purpose not inconsistent with the reasons for which the property was approved for purchase.

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

Mr. Macdonald also has determined that for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the optimized use of wildlife management areas for recreational purposes and regulations that accurately reflect the intent of the legislature and the commission.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the rules as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022,

as the agency has determined that the rules as proposed will not impact local economies.

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

Comments on the proposed rules may be submitted to Dennis Gissell, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4407 (e-mail: dennis.gissell@tpwd.state.tx.us).

The amendments and new section are proposed under Parks and Wildlife Code, Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources, and Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to adopt rules governing recreational activities in wildlife management areas.

The amendments and new section affect Parks and Wildlife Code, Chapters 12 and 81.

*§65.190. Application.*

(a) This subchapter applies to all activities subject to department regulation on lands designated by the department as public hunting lands, regardless of the presence or absence of boundary markers. Public hunting lands are acquired by lease or license, management agreements, trade, gift, and purchase. Records of such acquisition are on file at the Department's central repository.

(b) On U.S. Forest Service Lands designated as public hunting lands (Alabama Creek, Bannister, Caddo, Lake McClellan Recreation Area, Moore Plantation, and Sam Houston National Forest WMAs) or any portion of Units 902 and 903, persons other than hunters are exempt from the provisions of this subchapter, except for the provisions of §65.199(15) of this title (relating to General Rules of Conduct).

(c) On U.S. Army Corps of Engineer Lands designated as public hunting lands (~~[Aquila,]~~ Cooper, Dam B, Granger, Pat Mayse, Ray Roberts, Somerville, and White Oak Creek WMAs), persons other than hunters and equestrian users are exempt from requirements for an access permit.

(d) On state park lands designated as public hunting lands, access for fishing and recreational use is governed by state park regulations.

(e) Public hunting lands include, but are not limited to, the following:

- (1) Alabama Creek WMA (Unit 904);
- (2) Alazan Bayou WMA (Unit 747);
- ~~{(3) Aquilla WMA (Unit 748);}~~
- (3) ~~[(4)]~~ Atkinson Island WMA;
- (4) ~~[(5)]~~ Bannister WMA (Unit 903);
- (5) ~~[(6)]~~ Big Lake Bottom WMA (Unit 733);
- (6) ~~[(7)]~~ Black Gap WMA (Unit 701);
- (7) ~~[(8)]~~ Caddo Lake WMA (Unit 730);
- (8) ~~[(9)]~~ Caddo National Grasslands WMA (Unit 901);
- (9) ~~[(10)]~~ Candy Abshier WMA;

- (10) ~~[(41)]~~ Cedar Creek Islands WMA (includes Big Island, Bird Island, and Telfair Island Units);
- (11) ~~[(42)]~~ Chaparral WMA (Unit 700);
- (12) ~~[(43)]~~ Cooper WMA (Unit 731);
- (13) ~~[(44)]~~ D.R. Wintermann WMA;
- (14) ~~[(45)]~~ Dam B WMA--includes Angelina-Neches Scientific Area (Unit 707);
- (15) ~~[(46)]~~ Designated Units of the Las Palomas WMA;
- (16) ~~[(47)]~~ Designated Units of Public Hunting Lands Under Short-Term Lease;
- (17) ~~[(48)]~~ Designated Units of the Playa Lakes WMA;
- (18) ~~[(49)]~~ Designated Units of the State Park System;
- (19) ~~[(20)]~~ Elephant Mountain WMA (Unit 725);
- (20) ~~[(21)]~~ Gene Howe WMA (Unit 755)--includes Pat Murphy Unit (Unit 706);
- (21) ~~[(22)]~~ Granger WMA (Unit 709);
- (22) ~~[(23)]~~ Guadalupe Delta WMA (Unit 729)--includes Mission Lake Unit (720), Guadalupe River Unit (723), Hynes Bay Unit (724), and San Antonio River Unit (760);
- (23) ~~[(24)]~~ Gus Engeling WMA (Unit 754);
- (24) ~~[(25)]~~ James Daughtrey WMA (Unit 713);
- (25) ~~[(26)]~~ J.D. Murphree WMA (Unit 783);
- (26) ~~[(27)]~~ Keechi Creek WMA (Unit 726);
- (27) ~~[(28)]~~ Kerr WMA (Unit 756);
- (28) ~~[(29)]~~ Lake McClellan Recreation Area (Unit 906);
- (29) ~~[(30)]~~ Lower Neches WMA (Unit 728)--includes Old River Unit and Nelda Stark Unit;
- (30) ~~[(31)]~~ Mad Island WMA (Unit 729);
- (31) ~~[(32)]~~ Mason Mountain WMA (Unit 749);
- (32) ~~[(33)]~~ Matador WMA (Unit 702);
- (33) ~~[(34)]~~ Matagorda Island ~~[State Park and]~~ WMA (Unit 1134);
- (34) ~~[(35)]~~ M.O. Neasloney WMA;
- (35) ~~[(36)]~~ Moore Plantation WMA (Unit 902);
- (36) ~~[(37)]~~ Nannie Stringfellow WMA (Unit 716);
- (37) ~~[(38)]~~ North Toledo Bend WMA (Unit 615);
- (38) ~~[(39)]~~ Old Sabine Bottom WMA (Unit 732);
- (39) ~~[(40)]~~ Old Tunnel WMA;
- (40) ~~[(41)]~~ Pat Mayse WMA (Unit 705);
- (41) ~~[(42)]~~ Peach Point WMA (Unit 721);
- (42) ~~[(43)]~~ Ray Roberts WMA (Unit 501);
- (43) ~~[(44)]~~ Redhead Pond WMA;
- (44) ~~[(45)]~~ Richland Creek WMA (Unit 703);
- (45) ~~[(46)]~~ Sam Houston National Forest WMA (Unit 905);
- (46) ~~[(47)]~~ Sierra Diablo WMA (Unit 767);

- (47) ~~[(48)]~~ Somerville WMA (Unit 711);
- (48) ~~[(49)]~~ Tawakoni WMA (Unit 708);
- (49) ~~[(50)]~~ Walter Buck WMA (Unit 757);
- (50) ~~[(51)]~~ Welder Flats WMA;
- (51) ~~[(52)]~~ White Oak Creek WMA (Unit 727); and
- (52) ~~[(53)]~~ Other numbered units of public hunting lands.

*§65.192. Powers of the Executive Director.*

(a) The executive director is authorized by the Parks and Wildlife Commission to execute lease and management agreements for public hunting lands.

(b) The executive director may designate lands acquired under short-term lease agreement or lands acquired following the adoption of this subchapter for application of regulations governing hunting, fishing, and other public use.

(c) The executive director may designate hunt areas, legal species, hunt dates, shooting hours, bag limits, means and methods, and permit requirements within the framework established by the commission to promote the proper management and public use of wildlife resources on public hunting lands.

(d) The executive director may designate specific hunts for participation only by persons who meet established criteria with respect to age or disability.

(e) The executive director may designate limited-use zones on public hunting lands, within which public use is prohibited, restricted, or limited to certain periods of time.

(f) The executive director may close public hunting lands to public use to protect sensitive sites, and may cancel hunts or close the seasons on certain areas to avoid depletion of wildlife resources or in response to severe weather or other emergencies.

~~[(g) The executive director may permit recreational activities on public hunting lands, compatible with sound resource management practices and public health and safety.]~~

~~[(h) The executive director may waive application and permit fees for events having participation restricted to youth or disabled persons, or for activities conducted for purposes of research, education, or charity.]~~

~~[(i) The executive director may establish regulations for camping on public hunting lands, consistent with the type of public use activity authorized and the environmental protection of the area.]~~

~~[(j) It is a violation to conduct business concessions on public hunting lands unless specifically authorized in writing by the executive director. Business concessions include but are not limited to activities such as selling, buying, leasing, or peddling goods, merchandise or services to the public.]~~

*§65.204. Recreational Use of Wildlife Management Areas.*

(a) Hunting is allowed on wildlife management areas only as provided in this subchapter.

(b) The following recreational uses may be allowed on a wildlife management area if authorized by the executive director:

- (1) camping;
- (2) equestrian activities, including horseback riding;
- (3) hiking;
- (4) bicycling;

(5) water recreation, which may include, but is not limited to boating, canoeing, kayaking and swimming;

(6) nature viewing (wildlife watching, wildflower viewing, etc.);

(7) fishing;

(8) educational and demonstration programs; and

(9) other recreational uses consistent and compatible with the purposes for which the wildlife management area was purchased, leased or otherwise acquired.

(c) Any recreational use allowed under subsection (b) of this section is subject to conditions and restrictions, including dates, times, and locations, prescribed by the executive director.

(d) No person may engage in any of the recreational uses listed in subsection (b) of this section on a wildlife management area unless such use is expressly authorized by the executive director.

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

Filed with the Office of the Secretary of State on April 10, 2006.

TRD-200602068

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 389-4775



## TITLE 34. PUBLIC FINANCE

### PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

#### CHAPTER 9. PROPERTY TAX ADMINISTRATION

##### SUBCHAPTER A. PRACTICE AND PROCEDURE

###### 34 TAC §9.107

The Comptroller of Public Accounts proposes an amendment to §9.107, concerning appraised value limitation and tax credit for certain qualified property.

The section is being amended in response to 79th Legislature, 2005, House Bill 2201, effective September 1, 2005, amending Tax Code, §313.024(b). The new law adds clean coal projects and gasification projects for coal and biomass mixtures as uses of property that are eligible for appraised value limitations.

Subsection (b) is amended to add to the definitions of qualified property eligible for appraised value limitations, to correct standard industrial code references, for clarification, and to omit a reference to Government Code, §481.151 in subparagraph (D), as the provision has expired.

Subsection (c), concerning adopted by reference Form 50-296, is being revised to comply with changes in law and to include other matters necessary to make a determination of a property's qualification for a value limitation.

Subsection (o) is being amended to clarify the requirements for submitting and reviewing applications for tax credits and for administering the tax credit program under Tax Code, Chapter 313.

Subsection (p) is being amended to correct the state agency where the chief appraiser must send an annual report of properties that are subject to an appraised value limitation. Other subsections are amended for clarity.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would benefit the public by providing correct information to taxpayers regarding their tax responsibilities. The proposed amendment would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under and implements Tax Code, §§313.024(b), 313.104, and 313.105.

*§9.107. Appraised Value Limitation and Tax Credit for Certain Qualified Property.*

(a) Appraised value limitation applicant restriction. Corporations and limited liability companies that are subject to franchise tax under Tax Code, §171.001, may apply to the governing body of a school district for a limitation on the appraised value of qualified property in a reinvestment zone subject to the requirements and restrictions in this section. Sole proprietorships, partnerships, and limited liability partnerships are not eligible to apply. Corporations and limited liability companies that qualify for a limitation on the appraised value may also be eligible for a tax credit.

(b) Definitions. The following phrases, words, and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Impact fee--A charge or assessment that is imposed against a qualified property to generate revenue for funding or recoupment of the costs of capital improvements or facility expansions for water, wastewater, or storm water services or for roads that are necessitated by or attributable to property that receives a limitation on appraised value under this section.

(2) Manufacturing--An establishment that is primarily engaged in activities that are described in sector codes 31-33 of the 2002 North American Industry Classification System [categories 2011-3999 of the 1987 Standard Industrial Classification Manual that the federal Office of Management and Budget publishes].

(3) Primary employment--New jobs created by employers in a reinvestment zone as a direct result of incentives offered under Government Code, Chapter 2303 or Tax Code, Chapters 311, 312, or 313 [Chapter 2303, Government Code or Chapter 311, 312, or 313, Property Tax Code].

(4) Qualified investment--Investment that an owner proposes to build or install and that will qualify the owner for a limitation in the appraised value of qualified property. The term does not include land, but means:

(A) tangible personal property that is described as Section 1245 property by Internal Revenue Code of 1986, §1245(a), and that is first placed in service in Texas during the applicable qualifying time period that begins after December 31, 2001;

(B) tangible personal property that is first placed in service in Texas during the applicable qualifying time period that begins after December 31, 2001, and that is used in connection with the manufacturing, processing, or fabrication in a cleanroom environment of a semiconductor product. For purposes of this subparagraph, tangible personal property is neither required to be affixed to or incorporated into real property, nor required to be actually located in the cleanroom environment. Examples include integrated systems, fixtures, and piping; property that is necessary or adapted to reduce contamination or to control environmental conditions (e.g. airflow, temperature, humidity, or chemical purity) or to control manufacturing tolerances; and production equipment and machinery, moveable cleanroom partitions, and cleanroom lighting;

(C) a building or a permanent, non-removable component of a building that is built or constructed during the applicable qualifying time period that begins after December 31, 2001, and that houses tangible personal property described by subparagraph (A) or (B) of this paragraph; or

(D) any property that is described in subparagraphs (A)-(C) of this paragraph that is leased under a capitalized lease, but excludes any property that is leased under an operating lease.

(5) Qualifying job--A new permanent full-time job that:

(A) requires at least 1,600 hours of work per year;

(B) is not transferred from one area in this state to another area in this state;

(C) is not created to replace a previous employee;

(D) is covered by a group health benefit plan[; as defined by Government Code, §481.151,] for which the business pays or offers to pay at least 80% of the premiums or other charges that are assessed for employee-only coverage under the plan; and

(E) pays at least 110% of the county average weekly wage for manufacturing jobs as computed by the Texas Workforce Commission for the county where the job is located.

(6) Qualified property--Property that is used either as an integral part, or as a necessary auxiliary part, in manufacturing, research and development, a clean coal project, a gasification project for a coal and biomass mixture, or renewable energy electric generation and consists of:

(A) a new building or other new improvement that does not exist before the date on which the owner applies for an appraised value limitation;

(B) land that is not subject to a tax abatement agreement into which a school district has entered under Tax Code, Chapter 312; and is located in an area that is designated as a reinvestment zone under Tax Code, Chapter 311 or Chapter 312, or as an enterprise zone under Government Code, Chapter 2303, on which the owner:

(i) proposes to construct, erect, or affix a new building or new improvement that does not exist before the date on which the owner applies for an appraised value limitation; and,

(ii) in connection with that new building or new improvement, also proposes to make at least the minimum amount of qualified investment required by this section; and,

(iii) proposes to create at least 10 new jobs if the land is in a rural school district or at least 25 new jobs if the land is in a school district that is not a rural school district.

(C) tangible personal property that is either first placed in service in the new building or in or on the new improvement that did not exist before the date on which the owner applies for an appraised value limitation (unless the property is considered a semiconductor fabrication cleanroom or equipment under Tax Code, §151.318(q)) or first placed in service on the land on which that new building or new improvement is located, if the personal property is ancillary and necessary to the business that is conducted in that new building or in or on that new improvement. To qualify, tangible personal property may not be subject to a tax abatement agreement into which a school district has entered under Tax Code, Chapter 312.

(7) Qualifying time period--The first two tax years that begin on or after the date on which the approval of an application for a limitation on appraised value occurs.

(8) Renewable energy electric generation--An establishment that is primarily engaged in activities that are described in industry code [category] 221119 of the 2002 [1997] North American Industry Classification System.

(9) Research and development--An establishment that is primarily engaged in activities that are described in industry code 541710 of the 2002 North American Industry Classification System [category 8731 of the 1987 Standard Industrial Classification Manual that the federal Office of Management and Budget publishes].

(10) Clean coal project--The installation of one or more components of the coal-based integrated sequestration and hydrogen research project to be built in partnership with the United States Department of Energy, commonly referred to as the FutureGen project. The term incorporates the definition and requirements of Water Code, §5.001 and §5.558.

(11) Gasification project for a coal and biomass mixture--A project that uses a mixture of coal and other organic, non-fossil material as the primary feedstock to produce gaseous compounds that can be utilized as fuel or other commercial products.

(12) [(10)] Rural school district--A school district that has territory in a strategic investment area, as defined by Tax Code, §171.721, or in a county:

(A) that has a population of less than 50,000;

(B) that is not partially or wholly located in a metropolitan statistical area; and

(C) in which, from 1990 to 2000, according to the federal decennial census, the population remained the same; decreased; or increased, but at a rate of not more than 3.0% per annum.

(c) Forms.

(1) The comptroller adopts by reference the following [amended] model forms:

(A) Application For Appraised Value Limitation On Qualified Property (Form 50-296); and

(B) Application For Tax Credit On Qualified Property (Form 50-300).

(2) The comptroller will make available model forms that are adopted by reference in paragraph (1) of this subsection. Copies of the forms [are available for inspection at the office of the Texas Register or] may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528. The [After adoption of this rule,

copies of the] forms may be viewed or downloaded from the comptroller's [Window on State Government] website, at <http://www.window.state.tx.us/taxinfo/taxforms/02-forms.html>. Copies may also be requested by calling our toll-free number, 1-800-252-9121. In Austin, call (512) 305-9999. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099, toll free. In Austin, the local TDD number is (512) 463-4621.

(3) In special circumstances, a school district may obtain prior approval in writing from the comptroller to use an application form that requires additional information, or sets out the required information in different language or sequence than that which this section requires.

(4) All school districts and appraisal districts shall make available copies of the comptroller model forms that are adopted by reference in paragraph (1) of this subsection for taxpayers to use in their applications for an appraised value limitation and for tax credit under this section. Subject to the prior written approval requirement that is provided in paragraph (3) of this subsection, if a school district uses a form other than the one that the comptroller has adopted, then the alternate form must also be made available for taxpayers to use.

(d) Requirements and restrictions.

(1) A property owner must file with a school district an application for appraised value limitation before September 4 in the year that precedes the first year in which the owner proposes its qualifying time period to begin, unless the property owner proposes an extension of the 120-day period that is allowed in subsection (f)(1)(H) of this section, for the school district to decide on the application, in which instance the property owner must file as many days in advance of September 4 as the number of days in the proposed extension plus one day.

(2) The application for appraised value limitation must be:

(A) made on the comptroller's Application For Appraised Value Limitation On Qualified Property ( Form 50-296) or an alternate form authorized by subsection (c)(3) of this section;

(B) properly completed;

(C) accompanied by the applicable attachments that are specified on the form; and

(D) accompanied by the applicable application fee.

(3) The applicant must identify and quantify the qualified investment that the applicant proposes to build or install in the reinvestment zone during the qualifying time period, and the information must be sufficient to allow the school district to determine whether the applicant will meet the minimum qualified investment amount that is required for the relevant school district category.

(4) To be eligible for a limitation on appraised value under this section, at least 80% of all the new jobs that the property owner has created must be qualifying jobs as defined in subsection (b)(5) of this section.

(5) Property that a person other than the applicant owns and that is pooled or proposed to be pooled with property that the applicant owns may not be included in determination of the amount of the applicant's qualifying investment.

(e) School district categories and minimum qualified investment requirements.

(1) The minimum amount of qualified investment that this section requires is based on the category in which the school district is classified.

(A) School districts other than rural school districts are categorized according to the district's most recent total taxable value of property that is determined under Government Code, Chapter 403, Subchapter M (identified as "T2" on the comptroller's print out entitled "School District Summary Worksheet"), as follows:

Figure: 34 TAC §9.107(e)(1)(A) (No change.)

(B) Rural school districts are categorized according to the sum of the district's most recent market value of industrial real and personal property that is determined under Government Code, Chapter 403, Subchapter M (identified as "F2" and "L2" on the comptroller's print out entitled "School District Summary Worksheet"), less any applicable deductions that are allowed under Government Code, Chapter 403, Subchapter M, for industrial property, as follows:

Figure: 34 TAC §9.107(e)(1)(B) (No change.)

(2) The minimum qualified investment requirement for each category of school districts other than rural school districts is:

Figure: 34 TAC §9.107(e)(2) (No change.)

(3) The minimum qualified investment requirement for each category of rural school districts is:

Figure: 34 TAC §9.107(e)(3) (No change.)

(f) Application review process.

(1) A school district may choose not to consider the application and must notify the applicant of its decision, but if a school district does consider the application, then the following procedures must be followed:

(A) the school district shall immediately send a copy of the application to the comptroller;

(B) the school district shall also send a copy of the application to each appraisal district that appraises property that is described in the application;

(C) the school district, in its discretion, may allow the applicant to supplement the application after the filing date to provide information that is required by the application form that was unavailable prior to the filing date, but must forward any supplemental information that the district has received immediately to the comptroller and the appraisal district;

(D) the school district shall hire a qualified third party to perform an economic impact evaluation. See subsection (g) of this section, for further information on economic impact evaluation;

(E) the school district may obtain assistance from the comptroller, Texas Economic Development, the Council on Workforce and Economic Competitiveness, and the Texas Workforce Commission;

(F) the school district shall obtain a recommendation from the comptroller on whether the application should be approved. The comptroller's recommendation shall be made no later than the 61st day from the date on which the comptroller receives a copy of the application from the school district. The comptroller may consider the reported economic evaluation information in the application or any other available information that the comptroller considers relevant, and the comptroller may make a recommendation that is contingent on the receipt of appropriate supplemental information;

(G) the school district must make a written finding on each economic impact evaluation criterion that is listed in this section before the district approves or disapproves the application, and the district shall deliver a copy of those findings to the applicant; and

(H) the school district shall review the application, including the economic impact evaluation, and the comptroller's recom-

mentation, and must approve or disapprove the application within 120 calendar days from the filing date of the application, unless the governing body and the applicant agree to an extension.

(2) The school district may approve the application only if it finds that the information in the application is true and correct, finds that the applicant is eligible for the limitation on the appraised value, and determines that granting the application is in the best interest of the school district and this state.

(3) If a school district grants the application, it must provide written notice to the applicant, the comptroller, and each appraisal district that appraises property that is described in the application. The school district and the property owner shall enter into a written agreement to incorporate the obligations of each party and provide for the appraised value limitation. See subsection (h) of this section for further information on the agreement.

(g) Economic impact evaluation. As provided by subsection (f) of this section, a school district must hire a qualified third party to perform an economic impact evaluation that will analyze the investment proposed in the application for an appraised value limitation and that will assist the school district to determine whether an appraised value limitation would be in the best interest of the school district and this state. The written report must include:

(1) the comptroller's recommendation on the application;

(2) the relationship between the applicant's industry and the types of qualifying jobs to be created by the applicant, to the long-term economic growth plans of this state as described in the strategic plan for economic development that the Texas Strategic Economic Development Planning Commission has submitted under Government Code, §481.033, as that section existed before February 1, 1999;

(3) the relative level of the applicant's investment per qualifying job to be created by the applicant;

(4) the wages, salaries, and benefits to be offered by the applicant to qualifying job-holders;

(5) the ability of the applicant to locate or relocate in another state or another region of this state;

(6) the impact that the added infrastructure will have on the region, including revenue gains that would be realized by the school district, and subsequent economic effects on the local and regional tax bases;

(7) the economic condition of the region of the state at the time when the person's application is being considered;

(8) the number of new facilities that were built or expanded in the region during the two years that preceded the date of the application and that were eligible to apply for a limitation on appraised value under this subsection; and

(9) the effect of the applicant's proposal, if approved, on the number or size of the school district's instructional facilities, as defined by Education Code, §46.001.

(h) Agreement. The written agreement between the school district and the property owner for the appraised value limitation:

(1) must describe with specificity the qualified investment that the person will make on or in connection with the person's qualified property that is subject to the limitation on appraised value under this section. Property that is not specifically described in the agreement is not subject to the appraised value limitation unless the school district, by official action, provides that other property of the owner is subject to the appraised value limitation;

(2) must incorporate each relevant provision of this section and, to the extent necessary, include provisions for the protection of future school district revenues through the adjustment of the minimum valuations, the payment of revenue offsets, and other mechanisms to which the property owner and the school district agree;

(3) must require the property owner to maintain a viable presence in the school district for at least three years after the date on which the limitation on appraised value of the owner's property expires;

(4) must provide for the termination of the agreement, the recapture of ad valorem tax revenue that is lost as a result of the agreement if the owner of the property fails to comply with the terms of the agreement, and payment of a penalty or interest or both on that recaptured ad valorem tax revenue;

(5) may specify any conditions the occurrence of which will require the district and the property owner to renegotiate all or any part of the agreement; and

(6) must specify the ad valorem tax years that the agreement covers.

(i) Appraised value limitation.

(1) An appraised value limitation applies only to the maintenance and operations portion of a school district's ad valorem tax rate.

(2) A school district may limit the appraised value on qualified property for eight tax years, beginning with the tax year that follows the applicable qualifying time period.

(3) For each tax year in which the appraised value limitation is in effect, the appraised value of the qualified property that is described in the written agreement between the school district and property owner for school district maintenance and operations ad valorem tax may not exceed the lesser of:

(A) the market value of the property; or

(B) the amount to which the school district has agreed, but such amount must be at least the minimum amount of limitation that is set for the applicable school district category and that is enumerated in paragraph (4) of this subsection.

(4) Minimum amount of limitation.

(A) For school districts other than rural school districts: Figure: 34 TAC §9.107(i)(4)(A) (No change.)

(B) For rural school districts: Figure: 34 TAC §9.107(i)(4)(B) (No change.)

(j) Fees.

(1) Application fee. A school district may establish a reasonable nonrefundable application fee to be paid by a person who applies for a limitation on the appraised value of the person's property under this section. The amount of an application fee may not exceed the school district's estimated cost to process and act on an application, including the cost of the economic impact evaluation that this section requires.

(2) Impact fee. Notwithstanding any other law, including Local Government Code, Chapter 395, a municipality or county may impose and collect from the owner of a qualified property a reasonable impact fee to pay for the cost of providing improvements that are associated with or attributable to property that receives a limitation on appraised value under this section.

(k) Appraisal district responsibility. When appraising a person's qualified property that is subject to a limitation on appraised value

under this section, the chief appraiser shall determine the market value of the property and include both the market value and the limited value in the appraisal records.

(l) Property not eligible for tax abatement. Property that is subject to a limitation on appraised value in a tax year under this section is not eligible for tax abatement by a school district under Tax Code, Chapter 312, in that tax year.

(m) Confidential business information. Information that describes the specific processes or business activities to be conducted or the specific tangible personal property to be located on real property that the application that an applicant submits to a school district covers is confidential unless the school district approves the application under this section. A school district may not disclose confidential information to the public.

(n) Tax rate limitation. A school district may not adopt a tax rate that exceeds the school district's rollback tax rate under Tax Code, §26.08, for each tax year during the qualifying time period. If the school district approves a subsequent application for an appraised value limitation while the restriction on the school district's tax rate is in effect, the restriction on the school district's tax rate extends until the expiration of the second anniversary of the subsequent application approval date.

(o) Tax credit.

(1) An owner is entitled to a credit for part of the ad valorem taxes that were paid to a school district for each tax year during the qualifying time period in an amount that is equal to the difference between the amount of tax that was actually paid on the qualified property and the amount of tax that would have been paid based on the appraised value limitation to which the school district agreed, provided that the owner follows the procedures that this subsection requires. The school district tax collector must apply any approved tax credit in the manner and time that is provided in paragraph (3) of this subsection.

(2) To be eligible for a tax credit, an owner must submit an application for tax credit before September 1 of the year that immediately follows the applicable qualifying time period to the school district to which the ad valorem taxes were paid. The application for tax credit must be:

(A) made on the Application for Tax Credit on Qualified Property (Form 50-300) or an alternative form that is authorized by subsection (c)(3) of this section;

(B) accompanied by tax receipts from the collector of taxes for the school district that show full payment of school district ad valorem taxes on the qualified property for the applicable qualifying time period;

(C) accompanied by a copy of the agreement between the applicant and the school district under Tax Code, §313.027 or §313.051; and

(D) accompanied by any other document or information that the ~~comptroller or the~~ school district considers necessary for a determination of the applicant's eligibility for the tax credit or the amount of the tax credit.

(3) A school district must determine the owner's eligibility for a tax credit before the 90th day after the date on which the application for a tax credit is received by the school district. If a school district determines that the owner is eligible for a tax credit and verifies the total tax credit that has been computed as provided by paragraph (1) of this subsection, then the school district shall direct its tax collector to determine and to report to the commissioner of education the amount

of tax credits that will be applied ~~[apply the tax credit]~~ against any taxes that the school district imposes on the qualified property as follows:

(A) subject to the limitation that is imposed by subparagraph (B) of this paragraph, apply one-seventh of the total tax credit for seven tax years beginning with the tax year that follows the tax year in which the application for tax credit was approved, and for six tax years thereafter;

(B) the maximum amount of tax credit that may be applied in each tax year may not exceed 50% of the total amount of ad valorem school taxes that the school district imposes on the qualified property in that tax year;

(C) apply any tax credit that remains as a result of the application of the cap that is imposed by subparagraph (B) of this paragraph in the first tax year that begins on or after the date on which the owner's eligibility for the appraised value limitation expires under this section, but the maximum amount may not exceed the total amount of ad valorem school taxes that the school district has imposed on the qualified property in that tax year. Any remaining tax credit that is not used under this subparagraph expires.

(4) No tax credit will be allowed for either the tax year in which the owner relocates the business outside the school district or the tax years thereafter.

(5) The school district is authorized to investigate or re-view the amount of tax credits approved pursuant to paragraph (3) of this subsection, and to determine whether a person who received a tax credit was ineligible or received more credit than the person should have received. The school district shall consult with the comptroller concerning its determination. If the board of trustees of [the comptroller and a school district determine that a person who received a tax credit was either not eligible for the credit or received more credit than the person was entitled, then] the school district by official action makes a determination that a person who received a tax credit was ineligible or received more credit than the person should have received, it shall impose an additional tax on the qualified property that is equal to the amount of tax credit that was erroneously taken, plus interest at an annual rate of 7.0% calculated from the date on which the credit was issued. In addition:

(A) A tax lien attaches to the qualified property in favor of the school district to secure payment by the person of the additional tax and interest that are imposed and any penalties incurred; ~~and[-]~~

(B) a [A] person who is delinquent in the payment of an additional tax may not submit a subsequent application or receive a tax credit under this subsection in a subsequent year.

(p) Property list by chief appraiser. Before October 1 of each year, the chief appraiser shall compile and send to Office of the Governor, [Texas] Economic Development and Tourism a list of properties that have a market value that exceeds \$100 million in the applicable tax year or that are subject to a limitation on appraised value under Tax Code, Chapter 313. The market value of each property on the list shall include the taxable real and personal property owned by a person at one site. The list shall include, at a minimum, the appraisal district name, the name of any other appraisal district that appraises the property, the appraisal district number that the comptroller has assigned, the name of each school district that taxes the property, each school district number that the education agency has assigned, each account number that the appraisal district has assigned, each taxpayer name, the market value of the taxable real and personal property that the taxpayer owns at that site, the taxable value of the taxable real and personal property that the taxpayer owns at that site, the tax year to which the listed information pertains, and the name and telephone number of a person at the ap-

praisal district who is responsible for the information that is contained in the list.

(q) School district designation of reinvestment zone.

(1) The governing body of a school district may approve qualified land that is located in an area that is designated as a reinvestment zone under Tax Code, Chapter 311 or Chapter 312, or as an enterprise zone under Government Code, Chapter 2303, by the commissioners court of each county or the governing body of each municipality, provided that all the qualified land falls within this designated zone.

(2) The governing body of a school district, in the manner that is required for official action and for purposes of Tax Code, Chapter 313, Subchapter B or C, may designate an area that is entirely within the territory of the school district as a reinvestment zone under Tax Code, §312.0025, if the governing body finds that, as a result of the designation and the granting of a limitation on appraised value under Chapter 313, Subchapter B or C, for property that is located in the reinvestment zone, the designation is reasonably likely to:

(A) contribute to the expansion of primary employment in the reinvestment zone; or

(B) attract major investment in the reinvestment zone that would benefit property in the reinvestment zone and the school district, and contribute to the economic development of the region of this state in which the school district is located.

(3) The governing body of the school district may seek the recommendation of the commissioners court of each county and the governing body of each municipality that has territory in the school district before designating an area as a reinvestment zone under subsection (q)(2) of this section.

(r) Timeline. The following is an example of the timeline to be used for the appraised value limitation and tax credit under House Bill 1200, 77th Legislature, 2001. The timeline is intended as a visual aid to help the applicants' understanding of the overall appraised value limitation and tax credit process. Any conflict between this timeline and the specific language of this rule shall be resolved in favor of the specific language of the rule.

Figure: 34 TAC §9.107(r) (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 April 10, 2006.

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Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 475-0387



## SUBCHAPTER I. VALIDATION PROCEDURES

### 34 TAC §9.4037

The Comptroller of Public Accounts proposes an amendment to §9.4037, concerning use of electronic communications for transmittal of property tax information, to conform to Tax Code, §25.19(b-1). The statute requires that the chief appraiser of each county appraisal district include in the notice of appraised value

for real property, the difference, expressed as a percentage increase or decrease, in the appraised value of the property for the current year as compared to the fifth year before the current tax year.

The section is being amended in response to 79th Legislature, 2005, House Bill 1984, effective January 1, 2006. The law requires additional information to be included on notices of appraised value prepared by appraisal districts. Subsection (d)(1), the electronic XML document schema, is amended to include the percentage increase in value required to be included in the notices of appraised value.

John Heleman, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Heleman also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule would benefit the public by providing correct information to taxpayers regarding their tax responsibilities. The proposed amendment would have no significant fiscal impact on small businesses. There is no anticipated significant economic cost to the public.

Comments on the proposal may be submitted to Buddy Breivogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under and implements Tax Code, §25.19(b-1) and §1.085(e).

§9.4037. *Use of Electronic Communications for Transmittal of Property Tax Information.*

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

- (1) Account ID--the predominant identification number used on the hardcopy.
- (2) CAD--County Appraisal District
- (3) NOT--Notice
- (4) PRP--Property
- (5) OWN--Owner
- (6) ENT--Entity
- (7) minOccurs--Minimum occurrences
- (8) maxOccurs--Maximum occurrences

(b) Transmittal of information. Information in notices of appraised value required by Tax Code, §1.085(g) to be delivered electronically must be transmitted according to the file layout provided by this section. The transmittal must be made by electronic mail, file transfer protocol (ftp) or any other method agreed upon by the property owner and the chief appraiser; however, if the size of the information file or other factors require the use of a 1/4 inch cartridge (1.2 Gb max), 1/2 inch cartridge 18 tract (3480), 8-mm cartridge (5 Gb max), 4-mm cartridge (5 Gb max), CD-ROM, DVD-ROM, or 2 1/2 inch disc, the property owner and the chief appraiser must agree to the use of one of these media, and delivery may be made by hand or by mail, according to the agreement of the property owner and the chief appraiser.

(c) Format and Content. The information included in statutorily required electronic transmissions between property owners and



appraisal districts, taxing units, or other tax officials, must have the following specifications:

(1) Extensible Mark-up Language (XML)

(2) File layout. Items listed must be included in statutorily required electronic transmissions between property owners and appraisal districts, taxing units, or other tax officials. Optional items, or other items agreed upon by the property owner and the appraisal district may be included in the electronic notice.

Figure: 34 TAC §9.4037(c)(2) (No change.)

(d) Notice of Appraised Value--Tax Code §25.19.

(1) Electronic XML Document Schema

Figure: 34 TAC §9.4037(d)(1)

(2) Notice letter. The notice required by Tax Code, §25.19(h), may be transmitted electronically with the file layout provided by 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 April 10, 2006.

TRD-200602064

Martin Cherry

Chief Deputy General Counsel

Comptroller of Public Accounts

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 475-0387



## PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

### CHAPTER 73. BENEFITS

#### 34 TAC §73.26

The Employees Retirement System of Texas (ERS) proposes a new rule to 34 TAC Chapter 73, §73.26, concerning Beneficiary Lineage for Guaranteed Periodic Payments. New rule §73.26 concerns the lineage of designated beneficiaries who are eligible to receive guaranteed periodic payments upon the death of a member or retiree. This new rule is needed to clarify how and to whom the remainder of any guaranteed periodic payments are to be made when a member or retiree dies.

New subsection (a) and (b) are added to provide that a member or retiree who selects a guaranteed periodic payment option under a retirement annuity or death benefit plan may select primary and alternate beneficiaries to receive any remaining payments upon the death of the member or retiree.

New subsection (c) is added to provide for the payment of any remaining guaranteed periodic payments to any living designated primary beneficiary(s) at the time of the death of the member or retiree.

New subsection (d) is added to provide for the payment of any remaining guaranteed periodic payments, where there are no living primary designated beneficiary(s), to any living designated alternate beneficiary(s) at the time of death of the member or retiree. Additionally, this new subsection provides that an alternate beneficiary(s) has no further entitlement in any remaining guaranteed periodic payments where there is a living primary

designated beneficiary(s) at the time of death of the member or retiree.

New subsection (e) is added to provide for proportionate sharing when one of multiple primary beneficiaries dies before all remaining payments have been made.

New subsection (f) is added to clarify that when a designated primary or alternate beneficiary dies and there are no other living designated beneficiaries, any remaining payments shall be made to the estate of the deceased designated primary or alternate beneficiary. Additionally, ERS may pay the estate of a deceased beneficiary any remaining payments in a lump sum at the actuarial present value as provided by Texas Government Code §814.001.

New subsection (g) is added to this new rule to reference the applicability of other sections in the Texas Government Code: §814.006 - simultaneous death of members and beneficiaries, and §814.007 - a beneficiary causing the death of a member or annuitant.

Paula A. Jones, General Counsel, has determined that for the first five-year period the new rule is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering this rule; and small businesses will not be affected. The new rule will affect an ERS member or retiree benefits succession at death. The circumstances are limited to those instances where a designated beneficiary dies and all remaining guaranteed periodic payments have not been made.

Ms. Jones also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing this rule will be clarification of the rules as it applies to designated beneficiaries' eligibility to receive any remaining guaranteed periodic payments, and it is consistent with other forms of payments. There are no known anticipated economic costs to persons who are required to comply with this rule as proposed.

Comments on the proposed new rule may be submitted to Paula A. Jones, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207, or e-mail Ms. Jones at paula.jones@ers.state.tx.us. The deadline for receiving comments is 10:00 a.m. on Monday, May 22, 2006.

The new rule is proposed under Texas Government Code §815.102, which authorizes the board of trustees to adopt rules for the administration of the funds of the retirement system. This new rule affects no other statutes beyond Title 8, Subtitle B of the Texas Government Code.

#### §73.26. Beneficiary Lineage for Guaranteed Periodic Payments.

(a) A member or retiree who selects an optional retirement annuity payable for a guaranteed period may, before or after retirement, designate one or more persons as primary beneficiaries to receive any remaining guaranteed periodic annuity payments if the member or retiree dies after retirement but before all guaranteed payments have been made. The member or retiree may also designate one or more alternate beneficiaries.

(b) A member who selects a death benefit plan for the payment of a death benefit plan annuity for a guaranteed period may designate one or more primary beneficiaries to receive the death benefit annuity upon the death of the member. The member may also designate one or more alternate beneficiaries.

(c) If any designated primary beneficiary is living at the time of the death of the retiree or of the member referred to in subsections

(a) and (b) of this section, the primary beneficiary or beneficiaries will be entitled to receive the guaranteed periodic annuity payments or the death benefit plan annuity payments for the remainder of the guaranteed period.

(d) If no designated primary beneficiary is living at the time of the death of the retiree or of the member referred to in subsections (a) and (b) of this section, the designated alternate beneficiary or beneficiaries will be entitled to receive the guaranteed periodic annuity payments or the death benefit plan annuity payments, as applicable, in place of the designated primary beneficiaries. However, if a designated primary beneficiary is living at the time of the death of the retiree or member, then an alternate beneficiary shall have no further right, title, or interest in any annuity payments.

(e) If multiple primary beneficiaries are designated, upon the death of any one primary beneficiary, the remaining primary beneficiaries will share proportionately, based on the designated percentages, that portion of any remaining guaranteed annuity or death benefit plan annuity payments that was to have been paid to the beneficiary who died.

(f) If a designated primary beneficiary or alternate beneficiary becomes entitled to guaranteed annuity or death benefit plan payments as described in this section, but dies before all of the guaranteed periodic payments have been paid, and there are no other designated beneficiaries then living, any remaining guaranteed periodic payments shall be made to the estate of the beneficiary and not to the estate of the deceased retiree or member. At the sole election of the system, the system may pay the estate of a deceased beneficiary a lump sum amount that is the actuarial present value of the remaining guaranteed annuity payments.

(g) The simultaneous death provisions of Texas Government Code §814.006, and Texas Government Code §814.007, concerning a beneficiary who causes the death of a member or annuitant, apply to 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 April 7, 2006.

TRD-200602046

Paula A. Jones

General Counsel

Employees Retirement System of Texas

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 867-7421



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **PART 20. TEXAS WORKFORCE COMMISSION**

#### **CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER B. ALLOCATIONS**

The Texas Workforce Commission (Commission) proposes the repeal of the following sections of Chapter 800, relating to General Administration:

Subchapter B, Allocations, §800.73 and §800.74

The Commission proposes the following new sections to Chapter 800, relating to General Administration:

Subchapter B, Allocations, §800.73 and §800.74

The Commission proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter B, Allocations, §§800.52, 800.71, and 800.75

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to establish an integrated policy for the deobligation and reallocation of Local Workforce Development Board (Board) administered funds. This policy will further the Commission's support of an integrated workforce system and will promote cost benefits through improved, administrative efficiencies in the local workforce development areas (workforce areas).

In addition, amendments are proposed to reflect changes pursuant to House Bill (HB) 2604, enacted by the 79th Texas Legislature, Regular Session (2005), which directs the transfer of the Disabled Veterans' Outreach Program and Local Veterans' Employment Representative grant from the Agency to the Texas Veterans Commission.

The proposed changes fulfill statutory requirements embodied in Texas Labor Code §301.001, as amended, establishing the Commission to:

- (1) operate an integrated workforce development system in this state, in particular through the consolidation of job training, employment, and employment-related programs;
- (2) standardize, simplify, and make more consistent the procedure of determining amounts for deobligation and reallocation;
- (3) streamline and achieve administrative efficiency and effectiveness in order to foster the integration of workforce development programs, minimize administrative burdens and costs, and maximize the proportion of funding available for services; and
- (4) delete various obsolete provisions, add to various provisions to make references more accurate and complete, and make various technical corrections.

Additionally, Texas Labor Code §302.002 directs the Agency's executive director to:

- (1) consolidate the administrative and programmatic functions of the programs under the authority of the Commission to achieve efficient and effective delivery of services; and
- (2) contract with the Boards for program planning and service delivery.

Based on the Commission's commitment to an integrated workforce development system--wherein siloed funding streams and diverse programs are blended into a functionally unified whole--the Commission requested and received two waivers from the U.S. Department of Labor (DOL). The purpose of the waivers was to align the policies for the deobligation and reallocation of Board-administered funds. By standardizing and making the procedure of deobligation and reallocation

more consistent, the Commission promotes the integration and administration of workforce development programs.

The waivers allow the Commission to make midyear deobligations and reallocations in order to better manage workforce funding. Based on the approved waivers, the rules have been amended to allow deobligations based on an evaluation of a Board's expenditures, pertinent performance data, and a reasonable cost per participant in months five through eight of the appropriate program year for each funding source, and to integrate the processes for the reallocation of funds. This process is more responsive and allows the Commission to better address the changing needs of workforce areas. Should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.

The Commission believes that having its actions clearly delineated in rule provides the best opportunity for the Boards and the Commission to have a common understanding of how expenditures and performance are reviewed, and the impact of the review on potential deobligations. Boards have consistently performed well, ensuring that services are available throughout their workforce areas, but at times the expenditures and performance indicate that the formula for the allocation may be lagging behind current local economic conditions. The Commission encourages Boards to resize their program and, where appropriate, make voluntary deobligations.

As noted, Boards' performance has permitted the Commission to minimize deobligations. Over the past six years, the Commission has deobligated less than two-thirds of one percent of block grant allocations to workforce areas. The Commission's record of carefully considered, judicious, and extremely modest deobligations further serves to promote its guiding principle: the most successful deobligation policy results in no deobligations, because services are being provided and funds expended in the workforce area to which they are allocated.

The Commission embraces this concept and supports Boards in their efforts to meet employers' needs for qualified workers. The proposed rules establish clear standards for potential deobligations and reallocations to further foster ongoing and substantive communications between the Commission in its oversight role, and the Boards in their role as stewards of the funds. The proposed rules establish a common framework for measuring the local service delivery system against the needs-based formulas established by statute and regulation. Moreover, the proposed rules provide a significant opportunity for the Boards to offer information that informs the Commission about any activities or changes in the local economy that might mitigate a deobligation.

The proposed rules further support the Commission's goal of an integrated workforce system and allow for increased efficiency in meeting the workforce development needs of employers and job seekers.

## PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor, nonsubstantive editorial changes are made throughout Subchapter B of this chapter that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### SUBCHAPTER B. ALLOCATIONS

#### §800.52. Definitions.

The Commission proposes adding new §800.52(10), the definition of "relative proportion of the program year."

#### §800.71. General Deobligation and Reallocation Provisions

The Commission proposes amending §800.71(b)(7) by removing the reference to "Veterans' Employment and Training" as a category of funding to reflect the direction of HB 2604. Therefore, §800.71(b)(8) - (10) are renumbered as new §800.71(b)(7) - (9), respectively.

#### §800.73. Child Care Match Requirements and Deobligation.

The Commission proposes repealing current §800.73, Expenditure, Local Match, and Obligation Levels, and adding new §800.73, Child Care Match Requirements and Deobligation, which delineates the policy to which Boards must adhere for securing local child care matching funds, as well as the policy for potential deobligations of federal child care funds that remain unmatched after the fourth month of the program year.

#### §800.74. Deobligation of Funds.

The Commission proposes repealing current §800.74 and adding new §800.74, which establishes an integrated deobligation policy. Currently, with the exception of WIA formula allocated funds, funds may be deobligated at the end of the third and ninth months of the program year. Federal Trade Adjustment Assistance Act funds have an additional point for deobligation at the sixth month. The Commission believes the current three-month point for deobligation occurs too soon during the program year to fully analyze the relationship between expenditures, service delivery design, and performance-and the ninth month is too late in the program year to adequately align reallocations, service delivery design, and enhancements to performance. Therefore, for all Board-administered funds including WIA formula allocated funds, the Commission proposes replacing the current three-month, six-month, and nine-month deobligation points with a new midyear deobligation period that begins at the end of the fifth month and continues through the end of the eighth month in the first year of funds availability.

The proposed deobligation of Board-administered funds, if applicable, would be based on expenditures, pertinent performance data, and related cost per participant data occurring during the fifth month and continuing through the eighth month. For WIA formula funds, the Commission will review data during the first program year of funds availability in the appropriate program year.

Additionally, the proposed rule sets forth another deobligation point for WIA funds at the end of the first year of funds availability if Boards have not expended 80% of each category of WIA formula funds.

Boards will be notified by the Commission of any potential deobligations and will be encouraged to voluntarily deobligate any excess funding or provide justification for projected expenditures, as set forth in the proposed rule.

For Board-administered funds other than WIA formula allocated funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 90% of the corresponding proportion of the category of funds for each of the previous three months. For WIA funds, the Commission will base a potential deobligation on each Board's expenditure of an amount equal to 80% of the corresponding proportion of the category of WIA formula allocated funds for each of the previous three months.

Funds contracted within sixty days prior to a period during which the Board may be subject to deobligations will not be subject to deobligation.

It is important to note that the Commission currently has established an incentive for reaching an 80% expenditure benchmark for WIA formula allocated funds. Boards that reach the 80% expenditure threshold at the end of the first program year are eligible to receive the Commission's Statewide Activity funds, some of the most flexible federal dollars available for unique local initiatives.

If a Board fails to meet the 90% or 80% expenditure benchmarks for any three-month period, the Commission will review a Board's performance for the appropriate category of funds, and the reasonableness of the cost per participant for that category of funds. In reviewing a Board's performance, the Commission will determine whether 95% of the applicable performance measure has been achieved. Additionally, the Commission will determine whether a Board has achieved a reasonable cost per participant, based upon the factors set forth in §800.74(d)(2)(A) - (E).

The proposed rule clarifies that the amount the Commission may deobligate is no greater than the difference between a Board's actual expenditures as of the end of the third consecutive month in which a Board has failed, and the relative proportion of the program year's expected expenditures.

Recognizing that an individual workforce area's service delivery system presents unique opportunities and challenges, the Commission is permitting an opportunity for Boards to justify their current and projected expenditure levels, pertinent performance data, and service levels prior to the Commission's consideration of a potential deobligation of Board-administered funds, including WIA formula allocated funds.

#### §800.75. Reallocation of Funds.

Currently, funds administered by the Commission, with the exception of WIA formula allocated funds, are reallocated to eligible workforce areas based on criteria in §800.75(a). A separate method for reallocating WIA formula allocated funds has been employed to address statutory requirements set forth in WIA §128 and §133. Under WIA, all workforce areas not subject to a deobligation receive amounts available for reallocation. Unlike other Board-administered funds, no consideration has been given to a workforce area's demonstrated need, capacity, or current or past performance.

A waiver granted by the DOL waives federal requirements set forth in WIA §128 and §133 and authorizes the Commission to reallocate recaptured WIA formula funds to workforce areas using the same procedures and criteria the Commission employs for other Board-administered funds. The waiver will promote maximum expenditure of recaptured funds, enabling the Commission to streamline administrative practices and further enhance the Texas workforce system's effectiveness in meeting the needs of employers and job seekers.

Therefore, the Commission proposes amending §800.75(a) by including WIA formula allocated funds. The Commission also proposes removing §800.75(a)(2) and §800.75(b)(3) because these paragraphs are no longer applicable. The Commission seeks to facilitate the maximum expenditure of deobligated Board-administered funds through the redistribution of WIA funds to workforce areas that have achieved not only targeted expenditure levels but also have met established performance targets. Redistributing funds based solely on whether a Board

achieves its expenditure target does not fully address performance issues-such as whether the Board has met employers' needs for a highly skilled and job-ready workforce.

The Commission also proposes amending §800.75(a) and §800.75(b)(1) by removing the reference to "Veterans' Employment and Training" funds to reflect the direction of HB 2604. Additionally, the Commission proposes amending §800.75(b)(1) to include WIA formula allocated funds.

#### Effective Date

The Commission proposes that the provisions regarding the deobligation of WIA formula allocated funds based upon 80% of the relative proportion of the program year shall be in effect starting with Program Year 2006 funds (beginning July 1, 2006). The Commission further proposes that the provisions regarding the deobligation of non-WIA formula allocated funds based upon 90% of the relative proportion of the program year shall be in effect starting with Program Year 2007 funds (beginning October 1, 2006).

#### PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state government expected as a result of enforcing or administering the rules.

We cannot estimate whether there will be additional costs to local governments (i.e., Boards) as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and local governments as a result of enforcing or administering the rules.

There is no increase or loss in revenue to the state or local governments as a result of enforcing or administering the rules.

Enforcing or administering the rules does not have foreseeable implications relating to costs or revenues of the state or local governments.

There is no probable economic cost to persons required to comply with the rules.

There is no estimated adverse economic effect on small businesses.

In order to mitigate any potential additional costs necessary to manage services and monitor expenditures based on this new methodology, the Commission will provide Boards with a management tool to assist in the calculation of financial benchmarks.

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

Mark Hughes, Director of Labor Market Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Luis M. Macias, Director of Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to ensure that the review of the expenditures, performance, and per participant costs are fully understood and aligned to provide the most comprehensive understanding of the service delivery system in a workforce area

before decisions are made on the deobligation of Board-administered funds.

#### PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of each of Texas' 28 Boards and the TWC Advisory Committee. The Commission provided the policy concept regarding the rule amendments to the Boards for consideration and review. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provides clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce and UI Policy, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

#### 40 TAC §§800.52, 800.71, 800.73 - 800.75

The new and amended rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed new and amended rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

#### §800.52. Definitions.

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

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

(10) Relative proportion of the program year--The corresponding part of the program year that is used to compare expenditures. That is, if 50% of the program year has transpired, then the relative proportion of the program year is 50%.

(11) ~~[(10)]~~ WIA Formula Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of funding: WIA Adult, Dislocated Worker, and Youth.

#### §800.71. General Deobligation and Reallocation Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery, ~~and~~ financial planning, and management~~;~~ to ensure full utilization of funding, and to reallocate funds to populations in need.

(b) Scope. Sections 800.71 - 800.75 of this chapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

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

~~[(7) Veterans' Employment and Training;]~~

(7) ~~[(8)]~~ WIA Formula Allocated Funds;

(8) ~~[(9)]~~ WIA Alternative Funding for Statewide Activities; and

(9) ~~[(10)]~~ WIA Alternative Funding for One-Stop Enhancements.

#### §800.73. Child Care Match Requirements and Deobligation.

(a) A Board shall meet the following requirements for unmatched federal Child Care funds that are contingent upon a Board securing local funds.

(1) By the end of the fourth month following the beginning of the program year, a Board shall secure donations, transfers, and certifications totaling at least 100% of the amount it needs to secure in order to access the unmatched federal Child Care funds available to the workforce area at the beginning of the program year.

(2) Throughout the program year and by the end of the twelfth month, a Board shall ensure completion of all donations, transfers, and certifications consistent with the contribution schedules and payment plans specified in the local agreements.

(b) The Commission may deobligate, at any time following the fourth month of the program year, all or part of the difference between a Board's actual level of secured and completed match and the level of performance that is required, as set forth in §800.73(a).

#### §800.74. Deobligation of Funds.

(a) The Commission may deobligate the following funds midyear, as set forth in §800.74(b):

(1) Child Care (with the exception of unmatched federal Child Care funds that are contingent upon a Board securing local funds, as set forth in §800.73), Choices, Employment Service, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds: if a Board fails to achieve the expenditure of an amount corresponding to 90% or more of the relative proportion of the program year; and

(2) WIA formula allocated funds:

(A) if a Board fails to achieve the expenditure of an amount corresponding to 80% or more of the relative proportion of the program year for each category of WIA formula allocated funds; and

(B) after the end of the twelfth month following the beginning of a program year, any unexpended funds that exceed 20% of the allocation for each category of WIA formula allocated funds for the program year.

(b) For midyear deobligations during the first program year:

(1) Boards that are failing to meet the expenditure thresholds, as set forth in §800.74(a), have not achieved at least 95% of the applicable performance measures, or have not achieved a reasonable per participant cost, as set forth in §800.74(d)(2), at the end of months five, six, seven, or eight will be reviewed to determine whether they also have failed to meet such thresholds in the two previous months.

(2) Boards that have failed to meet expenditure and performance thresholds for three consecutive months, as set forth in §800.74(b)(1), may be subject to deobligation.

(c) The Commission may deobligate no more than the difference between a Board's actual expenditures as of the end of the three-consecutive-month period during which the Board has failed to expend the amount corresponding to the relative proportion of the program year, as set forth in §800.74(a), and the amount corresponding to the relative proportion of the program year.

(d) The Commission will not deobligate funds from a Board that failed to meet the expenditure thresholds as set forth in §800.74(a):

(1) if less than 60 days prior to the potential deobligation period, a contract amendment has been executed with the Board for a supplemental allocation or reallocation of funds in the same program category of funding; or

(2) if a Board has achieved at least 95% of the applicable performance measures and has achieved a reasonable per participant cost, as of the end of the third consecutive month during which the Board has failed to expend the amount corresponding to the relative proportion of the program year as set forth in §800.74(a). Factors that the Commission may review to determine the reasonableness of per participant costs include:

(A) the statewide cost per participant served;

(B) the Board's service levels for each category of funding, as specified in the approved Board plan;

(C) transfers or redesignations of funds;

(D) expenditures reported in accordance with the Agency's financial reporting requirements; and

(E) other local factors that may affect the cost of providing services.

(e) The Commission may deobligate funds if a Board is not meeting expenditure thresholds as set forth in §800.74(a), has not achieved at least 95% of the applicable performance measures, or has not achieved a reasonable per participant cost.

(f) A Board subject to deobligation for failure to meet the requirements set forth in §800.74(d)(2) shall submit a written justification within five working days of the date of notification from the Commission. A Board may voluntarily provide a written justification prior to receiving a formal request from the Commission. The written justification shall provide sufficient detail regarding the actions a Board will take to address its deficiencies, and may include:

(1) expansion of services proportionate to the available resources;

(2) projected service levels and related performance;

(3) outstanding obligations; and

(4) any other factors a Board would like the Commission to consider.

(g) To the extent this section is found not to comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect, as applicable.

#### §800.75. Reallocation of Funds.

(a) Reallocation.

~~(1)~~ For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board securing local funds, Choices, Employment Service ~~[Services]~~, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA ~~[Veterans' Employment and Training, Workforce Investment Act (WIA)]~~ Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds provided by the Commission, the Commission may reallocate funds to an eligible workforce area based on the applicable method of allocation, as set forth in this subchapter and may modify the amount to be reallocated by considering the following:

(1) ~~[(A)]~~ the amount specified in a Board's written request for additional funds;

(2) ~~[(B)]~~ the demonstrated ability of a Board to effectively expend funds to address the need for services in the workforce area;

(3) ~~[(C)]~~ Board performance during the current and prior program year; and

~~(4) [(D)]~~ related factors as necessary to ensure that funds are fully utilized.

~~[(2) For WIA formula fund allocations, the Commission shall reallocate funds as provided in WIA §128 and §133.]~~

(b) Eligibility.

(1) For a workforce area to be eligible for a reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board securing local funds), Choices, Employment Services, Food Stamp Employment and Training, Project RIO, Trade Act Services, WIA Formula Allocated Funds, WIA ~~[Veterans' Employment and Training, Workforce Investment Act (WIA)]~~ Alternative Funding for Statewide Activities, and WIA Alternative Funding for One-Stop Enhancements funds, the Commission may consider whether a Board:

(A) has met targeted expenditure levels as required by §800.74(a) and §800.74(b) ~~[\$800.73(a) and (b)]~~ of this subchapter, as applicable, for that period;

(B) - (G) (No change.)

(2) For a workforce area to be eligible for a reallocation of unmatched federal Child Care funds that are contingent upon a Board securing local funds, the Commission may consider whether a Board has met the level for securing and completing local match requirements set out in §800.73(a) ~~[(e)]~~ of this subchapter, relating to Expenditure, Local Match, and Obligation Levels. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) - (G).

~~[(3) For a workforce area to be eligible for a reallocation of WIA formula allocated funds, the Commission may consider whether a Board has met the obligation or expenditure requirement for the applicable category of WIA formula allocated funds applicable to the program year. The Commission may also consider the factors listed in paragraph (1) of this section that apply, including factors referenced in subparagraphs (B) - (G).]~~

~~(c) To the extent this section does not comply with federal requirements, or should any related federal waivers expire, the Commission will be subject to federal requirements in effect at that time.~~

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

Filed with the Office of the Secretary of State on April 4, 2006.

TRD-200602008

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: May 21, 2006

For further information, please call: (512) 475-0829

#### 40 TAC §800.73, §800.74

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

The repeal is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The repeal affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.73. *Expenditure, Local Match, and Obligation Levels.*

§800.74. *Deobligation of Funds.*

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 April 4, 2006.

TRD-200602009

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

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For further information, please call: (512) 475-0829



# WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

##### SUBCHAPTER D. LOTTERY GAME RULES

###### 16 TAC §§401.304, 401.307, 401.308, 401.312, 401.315

The Texas Lottery Commission withdraws the proposed repeal of §§401.304, 401.307, 401.308, 401.312, and 401.315 which appeared in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8249).

Filed with the Office of the Secretary of State on April 4, 2006.

TRD-200602000

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 4, 2006

For further information, please call: (512) 344-5113



###### 16 TAC §401.304

The Texas Lottery Commission withdraws the proposed new §401.304 which appeared in the December 9, 2005, issue of the *Texas Register* (30 TexReg 8250).

Filed with the Office of the Secretary of State on April 4, 2006.

TRD-200602001

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 4, 2006

For further information, please call: (512) 344-5113



## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

#### CHAPTER 65. WILDLIFE

##### SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION

##### DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

###### 31 TAC §65.60

The Texas Parks and Wildlife Department withdraws the proposed amendment to §65.60 which appeared in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1210).

Filed with the Office of the Secretary of State on April 10, 2006.

TRD-200602070

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: April 10, 2006

For further information, please call: (512) 389-4775





# ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

## TITLE 1. ADMINISTRATION

### PART 10. DEPARTMENT OF INFORMATION RESOURCES

#### CHAPTER 202. INFORMATION SECURITY STANDARDS

The Department of Information Resources (department) adopts new 1 TAC §202.28 and §202.78 and amendments to 1 TAC §§202.1, 202.25, and 202.75 without changes from the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7629).

The new sections address the need to remove data from any associated storage device prior to the sale or transfer of the data processing equipment. The amendments add requirements to address security issues related to wireless access to state systems, conducting vulnerability assessments, clarify language and correct grammar.

The department received the following comments on the proposal:

1. Section 202.25(7)(W)(ii), Information Resources Security Safeguards. The proposed language specifies a "...cryptographic keys used are larger than 80-bits." We believe the cryptographic key should be a minimum of 128 bits.

Department reply: The department disagrees with the requested change. The National Institute of Standards and Technology (NIST) Special Publication 800-48, "Wireless Network Security 802.11, Bluetooth and Handheld Devices" addresses this issue under §3.3 Security of 802.11 Wireless LANs. The NIST states that: "As defined in the 802.11 standard, WEP supports only a 40-bit cryptographic keys size for the shared key. However, numerous vendors offer nonstandard extensions of WEP that support key lengths from 40 bits to 104 bits." "...Research has shown that key sizes of greater than 80-bits, for robust designs and implementations, make brute-force cryptanalysis (code breaking) an impossible task. For 80-bit keys, the number of possible keys--a keyspace of more than  $10^{26}$ --exceeds contemporary computing power." Based on the restrictions of the current 802.11 standard and the NIST assessment, no additional change to the rule is made.

2. Can additional language be added to the rule specifically addressing the following 3 questions:

Does the rule prohibit the use of wireless handheld devices, e.g., Blackberry, cell phones, PDAs?

Does the rule allow wireless handheld devices to be used on a state-provide wireless access point (WAP)?

Does the rule prohibit the use of wireless handheld devices on a personal installed WAP?

Department reply: The rule does not prohibit or specify types of handheld devices to be used. The rule only requires that each state agency publish a wireless security policy if the agency elects to allow wireless access to its systems. No additional change to the rule is made in response to the comments.

3. The determination made by Bill Perez, Security Division Director, that there will be no fiscal implications for state or local government if the amendments or new sections are adopted appears to be incorrect. State and local government will be impacted by the cost associated with the software tools needed to prepare the storage media to meet the 5220.22 standard and more importantly the time required to actually execute the software tool to make the storage media 5220.22 compliant.

Department reply: The guideline published by the department identifies free software tools to make the storage media 5220.22 compliant. While the time it takes to make the storage media 5220.22 compliant may vary by media size and number of passes required, no one is required to be present during this process. No additional change to the rule is made in response to these comments.

#### SUBCHAPTER A. DEFINITIONS

##### 1 TAC §202.1

The amendments are adopted under §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

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 April 4, 2006.

TRD-200602003

Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



#### SUBCHAPTER B. SECURITY STANDARDS FOR STATE AGENCIES

## 1 TAC §202.25, §202.28

The amendments and new section are adopted under §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## SUBCHAPTER C. SECURITY STANDARDS FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §202.75, §202.78

The amendments and new section are adopted under §2054.130, Texas Government Code, which requires the department to adopt rules on the removal of data prior to the sale or transfer of data processing equipment, and §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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## CHAPTER 206. STATE WEB SITES

The Department of Information Resources (department) adopts amendments to 1 TAC Chapter 206, §§206.1, 206.50 - 206.52, 206.55, 206.70 - 206.72, and 206.75, relating to state web sites. Comments were received in response to the proposed changes to the rules. Section 206.50 and §206.70 are adopted with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7633). Sections 206.1, 206.51, 206.52, 206.55, 206.71, 206.72, and 206.75 are adopted without changes and will not be republished.

Sections 206.1, 206.50 and 206.70 are amended to align the Texas accessibility standards with the §508 standards of the Rehabilitation Act relating to Web accessibility contained in 36 C.F.R. Part 1194. The changes are made in response to passage of House Bill 2819, which enacted §§2054.451 - 2054.465, Texas Government Code, relating to access to state electronic and information resources by individuals with disabilities. Additional changes were made to §§206.1, 205.50 - 206.52, 206.55, 206.70 - 206.72 and 206.75 to clarify language and correct grammar in the existing rules.

The following comments were received concerning the proposed amendments. Following each comment is the department's response and any resulting change(s).

**Comment:** One comment stated that the "fiscal impact statements are not in substantial compliance with the notice provisions required for proposed rules."

**Response:** The department disagrees and believes that the fiscal impact statement was in full compliance with the notice provisions required for proposed rules. On September 6, 2005 the department sent a notice to all state information resources managers and over 650 other individuals (dir-policy list) that draft copies of the proposed changes to 1 TAC Chapter 206 and to proposed new 1 TAC Chapter 213, concerning accessibility were available for public comment. The department only received a few comments. An individual at one agency indicated that "at this time we do not own any captioning equipment." The individual was contacted by department staff and informed that the software to add captions was free. The one area where the department identified a potential cost was for captioning live meetings. The department included an exception in the rule for this requirement.

**Comment:** Under §206.50 and §206.70, several agencies recommended that new text be added to implement the intent of the Legislature as set forth in §2054.460, Government Code. Additional comments questioned if the rule was retroactive.

**Response:** The department agrees to add language and make the following changes:

§206.50(1) "Effective September 1, 2006, unless an exception is approved by the executive director of the state agency, pursuant to §2054.460, Government Code, all new or redesigned Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:"

§206.70(1) "Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education, pursuant to §2054.460, Government Code, all new or redesigned Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:"

The effect of the changes to the rule is not retroactive. After September 1, 2006, new and redesigned pages are subject to the new standards.

**Comment:** Under §206.50(1)(A), a commenter proposed eliminating the requirement for a text equivalent for non-text elements via "alt," "longdesc," "or in element content."

**Response:** The department disagrees with the request. This is a basic accessibility issue that is required under the current rule.

**Comment:** Under §206.50(1)(B) and §206.70(1)(B) comments were received that indicated that providing synchronized captioning for all Web casts of open meetings and/or training would

involve significant expense, and that there should be options for alternative means of compliance to minimize agency costs.

Response: The department agrees that captioning may not be appropriate in all circumstances, and that the executive director of each state agency should make the final determination as to whether to caption. In response to the comment, the department agrees to add language and make the following changes to the rule:

§206.50(1)(B) "Upon receiving a request for accommodation of a Web cast of an open meeting (as defined in the Open Meetings Act, Chapter 551, Texas Government Code) or of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>)"

§206.70(1)(B) "Upon receiving a request for accommodation of a Web cast of an open meeting (as defined in the Open Meetings Act, Chapter 551, Texas Government Code) or of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for institutions of higher education to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)"

Comment: Under §206.50(2) the rule did not address the exception by the executive director as stated in House Bill 2819, and identify who was responsible for testing.

Response: The department agrees to add language and make the following changes:

§206.50(2) "Effective September 1, 2006, unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Government Code, new Web page/site designs shall be tested by the state agency using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. State agencies shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site Guidelines that are available from <http://www.dir.state.tx.us>."

§206.70(2) "Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, new Web page/site designs shall be tested by the institution of higher education using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. Institutions of higher education shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources

are in the State Web Site Guidelines that are available from <http://www.dir.state.tx.us>."

Comment: Under §206.50(3) a commenter stated that we were unable to determine what "standard extensions" were from the department's site.

Response: The department added a new section to the associated guideline to address this comment.

Comment: Under §206.50(7), comments were received that training for staff members who provide web updates would be a significant expense if this training is not provided free-of-charge.

Response: The department has identified free training in the associated guidelines to address these concerns.

Comment: Under §206.52, the Spanish language requirement as set forth in Senate Bill (SB) 213, is based on priority and as resources permit. However, the implementation date and expectation is not clear.

Response: We disagree. The change adds the following "specific requirements for Spanish language content that are addressed in §2054.116, Government Code." §2054.116 was added by SB 213, and only requires a "reasonable effort to ensure that Spanish-speaking persons of limited English proficiency can meaningfully access state agency information online."

Comment: Geographic Information Systems (GIS) is an inherently visual technology for the display of maps and remote sensing imagery of the earth and its terrain and human activity and facilities. To achieve full §508 compliance there is research underway in a few university laboratories to create tactile maps and other means for the visually impaired. However, this technology is currently not available through commercial vendors and therefore not commonly available to state agencies and universities. Moreover it will require specialized equipment for the end user to access.

Response: The department has determined that major GIS vendors are providing §508 compliant versions of their Web based products. Current assistive technology can be used to access GIS based data with the proper design of the user interface. The department will work with the GIS community to develop the necessary guidelines to assist agencies in the implementation of accessible interfaces to GIS data, or identify the types of GIS data that should have an exemption. However, the ability to identify exceptions or emerging technologies was missing from the proposed change to the rule. The department will add this new paragraph to address exceptions and emerging technology:

§206.50(8) "The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>."

§206.70(8) "The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>."

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §206.1

The amendments are adopted under §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## SUBCHAPTER B. STATE AGENCY WEB SITES

### 1 TAC §§206.50 - 206.52, 206.55

The amendments are adopted under §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

#### §206.50. *Accessibility and Usability of State Web Sites.*

Each state agency shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) Effective September 1, 2006, unless an exception (based on the requirements addressed in §2054.460, Government Code) is approved by the executive director of the state agency, all new or changed Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:

(A) A text equivalent for every non-text element shall be provided (e.g., via "alt," "longdesc," or in element content).

(B) Based on a request for accommodation of a Web cast of a live/real time open meeting (Open Meetings Act Government Code, Chapter 551) or training and informational video productions which support the agency's mission, each state agency shall consider alternative forms of accommodation (examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video and multimedia productions which support the agency's mission are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>).

(C) Web pages shall be designed so that all information conveyed with color is also available without color.

(D) Documents shall be organized so they are readable without requiring an associated style sheet.

(E) Redundant text links shall be provided for each active region of a server-side image map.

(F) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(G) Row and column headers shall be identified for data tables.

(H) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(I) Frames shall be titled with text that facilitates frame identification and navigation.

(J) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(K) A text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.

(L) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(M) When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(i) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(ii) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(iii) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(iv) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(v) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(vi) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(vii) Applications shall not override user selected contrast and color selections and other individual display attributes.

(viii) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(ix) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(x) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(xi) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(xii) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(N) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(O) A method shall be provided that permits users to skip repetitive navigation links.

(P) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(2) Effective September 1, 2006, unless an exception (based on the requirements addressed in §2054.460, Government Code) is approved by the executive director of the state agency, new Web page/site designs shall be tested by the state agency using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. State agencies shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards. Additional information about testing tools and resources are in the State Web Site guidelines that are available from <http://www.dir.state.tx.us>.

(3) Each state Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IEFT (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc. For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, state agencies shall refer to the department's guidelines available at <http://www.dir.state.tx.us>.

(4) The policy should cover testing and validation of Web pages.

(5) Each state Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

(6) Testing/validation tools and manual procedures for validating §508 compliance satisfy compliance with the Texas Web accessibility standards.

(7) All state agencies shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at <http://www.dir.state.tx.us>. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:

- (A) Text Alternatives for non-text content.
- (B) Checking for Accessibility.
- (C) Accessible Navigation.
- (D) Image maps.
- (E) Audio & Multimedia.
- (F) Accessible Forms.
- (G) Accessible Tables.
- (H) Scripts and Applets.
- (I) Using Style Sheets.

(8) The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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## SUBCHAPTER C. INSTITUTION OF HIGHER EDUCATION WEB SITES

### 1 TAC §§206.70 - 206.72, 206.75

The amendments are adopted under §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the provisions contained in 36 C.F.R. Part 1194 in the adoption of rules and to assist state agencies in complying with the requirements of §2054.116, Texas Government Code. The rules are authorized by §2054.052(a), Texas Government Code, which authorizes the department to adopt rules necessary to implement its responsibilities under the Information Resources Management Act.

*§206.70. Accessibility and Usability of Institution of Higher Education Web Sites.*

Each institution of higher education shall develop and publish an accessibility policy for its Web site and/or Web pages that addresses the following:

(1) Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education, pursuant to §2054.460, Government Code, all new or redesigned

Web pages/content shall comply with the following Texas Web accessibility standards/specifications, where applicable:

(A) A text equivalent for every non-text element shall be provided (e.g., via "alt," "longdesc," or in element content).

(B) Upon receiving a request for accommodation of a Web cast of an open meeting (as defined in the Open Meetings Act, Chapter 551, Texas Government Code) or of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for institutions of higher education to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)

(C) Web pages shall be designed so that all information conveyed with color is also available without color.

(D) Documents shall be organized so they are readable without requiring an associated style sheet.

(E) Redundant text links shall be provided for each active region of a server-side image map.

(F) Client-side image maps shall be provided instead of server-side image maps except where the regions cannot be defined with an available geometric shape.

(G) Row and column headers shall be identified for data tables.

(H) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(I) Frames shall be titled with text that facilitates frame identification and navigation.

(J) Pages shall be designed to avoid causing the screen to flicker with a frequency greater than 2 Hz and lower than 55 Hz.

(K) A text-only page, with equivalent information or functionality, shall be provided to make a Web site comply with the provisions of this section, when compliance cannot be accomplished in any other way. The content of the text-only page shall be updated whenever the primary page changes.

(L) When pages utilize scripting languages to display content, or to create interface elements, the information provided by the script shall be identified with functional text that can be read by assistive technology.

(M) When a Web page requires that an applet, plug-in or other application be present on the client system to interpret page content, the page must provide a link to a plug-in or applet that complies with the following:

(i) When software is designed to run on a system that has a keyboard, product functions shall be executable from a keyboard where the function itself or the result of performing a function can be discerned textually.

(ii) Applications shall not disrupt or disable activated features of other products that are identified as accessibility features, where those features are developed and documented according to industry standards. Applications also shall not disrupt or disable activated features of any operating system that are identified as

accessibility features where the application programming interface for those accessibility features has been documented by the manufacturer of the operating system and is available to the product developer.

(iii) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(iv) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology. When an image represents a program element, the information conveyed by the image must also be available in text.

(v) When bitmap images are used to identify controls, status indicators, or other programmatic elements, the meaning assigned to those images shall be consistent throughout an application's performance.

(vi) Textual information shall be provided through operating system functions for displaying text. The minimum information that shall be made available is text content, text input caret location, and text attributes.

(vii) Applications shall not override user selected contrast and color selections and other individual display attributes.

(viii) When animation is displayed, the information shall be displayable in at least one non-animated presentation mode at the option of the user.

(ix) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(x) When a product permits a user to adjust color and contrast settings, a variety of color selections capable of producing a range of contrast levels shall be provided.

(xi) Software shall not use flashing or blinking text, objects, or other elements having a flash or blink frequency greater than 2 Hz and lower than 55 Hz.

(xii) When electronic forms are used, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(N) When electronic forms are designed to be completed on-line, the form shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form, including all directions and cues.

(O) A method shall be provided that permits users to skip repetitive navigation links.

(P) When a timed response is required, the user shall be alerted and given sufficient time to indicate more time is required.

(2) Effective September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, new Web page/site designs shall be tested by the institution of higher education using one or more §508 compliance tools in conjunction with manual procedures to validate compliance with the Texas Web accessibility standards. Institutions of higher education shall establish policies to monitor their Web site for compliance with the Texas Web accessibility standards.

Additional information about testing tools and resources are in the State Web Site Guidelines that are available from <http://www.dir.state.tx.us>.

(3) Each state Web site shall avoid vendor specific "non-standard" extensions and shall comply with applicable standards (e.g., IEFT (if using secure socket layer (SSL) connections), W3C (if using Cascading Style Sheets (CSS) and validated using the W3C CSS Validation Service), etc. For guidance regarding "non-standard" extensions, emerging technologies and applicable standards, state agencies shall refer to the department's guidelines available at <http://www.dir.state.tx.us>.

(4) The policy should cover testing and validation of Web pages.

(5) Each state Web site should be designed with consideration for the types of Internet connections available to the citizens of Texas, and undergo accessibility and usability testing.

(6) Testing/validation tools and manual procedures for validating §508 compliance satisfy compliance with the Texas Web accessibility standards.

(7) All institutions of higher education shall participate in the survey and should participate in the training identified by the department in the State Web Site guidelines available at <http://www.dir.state.tx.us>. As a minimum, Web content providers/developers should understand the requirements for complying with §508 requirements for the following:

- (A) Text Alternatives for non-text content.
- (B) Checking for Accessibility.
- (C) Accessible Navigation.
- (D) Image maps.
- (E) Audio & Multimedia.
- (F) Accessible Forms.
- (G) Accessible Tables.
- (H) Scripts and Applets.
- (I) Using Style Sheets.

(8) The lack of commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## CHAPTER 213. ELECTRONIC AND INFORMATION RESOURCES

The Department of Information Resources (department) adopts 1 TAC Chapter 213, §§213.1 - 213.3, 213.10 - 213.17, and 213.30 - 213.37 to align the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to the accessibility of electronic and information resources contained in 36 C.F.R. Part 1194. Sections 213.1, 213.12, 213.17, 213.32 and 213.37 are adopted with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7639). Sections 213.2, 213.3, 213.10, 213.11, 213.13 - 213.16, 213.30, 213.31, and 213.33 - 213.36 are adopted without changes and will not be republished.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: As currently drafted, it is unclear if state agencies could use the new Buy Accessible Data Center that was just added by GSA. What about any other new tools/resources?

Response: The department agrees and proposes the following change:

§213.1(4) Buy Accessible Wizard--A web-based application (<http://www.buyaccessible.gov>) that guides users through a process of gathering data and providing information about Electronic and Information Resources and §508 compliance, or other tools/resources developed by or for the federal government to indicate product/service compliance with the Section 508 standards (<http://www.section508.gov>).

Comment: Under §213.12 and §213.32 indicated that providing open or closed captions for all training would involve significant expense, and that agencies should have options for alternative means of compliance to minimize agency costs.

Response: The department agrees that captioning may not be appropriate in all circumstances, and proposes the following changes:

§213.12(b) "Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)"

§213.32(b) "Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)"

Comments: The rule did not address the exception by the executive director as stated in House Bill 2819 or the ability to identify exceptions or emerging technologies.

Response: The department agrees, and is making the following clarifying change:

§213.17(a) "As of September 1, 2006, unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a state agency for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the state agency. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>."

§213.37(a) "As of September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a the institution of higher education for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the institution of higher education. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on the institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>."

Comments: That the §508 language of "substantially equivalent or greater access" went beyond the intent of House Bill 2819 ("ensure that state employees with disabilities have access to and the use of those resources comparable to the access and use available to state employees without disabilities").

The department agrees and is making the following change:

§213.17(d) "Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent access to and use of a product for people with disabilities."

§213.37(d) "Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent access to and use of a product for people with disabilities."

Comment: Geographic Information Systems (GIS) is an inherently visual technology for the display of maps and remote sensing imagery of the earth and its terrain and human activity and facilities. To achieve full §508 compliance there is research underway in a few university laboratories to create tactile maps and other means for the visually impaired. However, this technology is currently not available through commercial vendors and therefore not commonly available to state agencies and universities. Moreover it will require specialized equipment for the end user to access.

The United States Geological Survey (USGS) is the lead agency in the federal government for geospatial technology, and most

likely in the forefront on research on §508 compliance for GIS and GIS web accessibility. Amy Berger, the USGS §508 Coordinator reports that her agency currently provides USGS divisions a partial exemption to Section 508 for GIS web accessibility and the procurement of electronic and information resources related to GIS, as compliant software and several type specialized hardware is not commercially available in the marketplace.

Response: The department agrees that GIS computer software under Chapter 213 should have a partial exemption. The exemption is included in the new version of the Department of Information Resources (DIR) guidelines.

Comment: The proposed rules require each state agency and institution of higher education to implement the proposed DIR rules independently of all other agencies and institutions. This approach by DIR will result in unnecessary duplication of effort, the possibility of inconsistent application of the rules and the inefficient use of state resources. Even though numerous state agencies and institutions of higher education may purchase the same IT product, each will be required to independently evaluate whether the product complies with the standards set out in these rules. We request that DIR amend the proposed rules to provide for a mechanism to create a DIR managed registry listing "pre-approved" commonly purchased products so that state agencies and institutions of higher education could rely on the registry and avoid duplication of effort.

Response: The department disagrees as the Voluntary Product Accessibility Template (VPAT) provides this information in a consistent method by the responsible vendor. The department's commodity contracts will require the vendor to provide the URL of the VPAT for each product.

## SUBCHAPTER A. DEFINITIONS

### 1 TAC §§213.1 - 213.3

The new sections are adopted under the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to the accessibility of electronic and information resources contained in 36 C.F.R. Part 1195. The new sections implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1195.

#### §213.1. *Applicable Terms and Technologies for Electronic and Information Resources.*

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

(1) Alternate formats--Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and electronic formats that comply with this chapter.

(2) Alternate methods--Different means of providing information, including product documentation, to people with disabilities. Alternate methods may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

(3) Assistive technology--Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

(4) Buy Accessible Wizard--A web-based application (<http://www.buyaccessible.gov>) that guides users through a process of gathering data and providing information about Electronic and



Information Resources and §508 compliance, or other tools/resources developed by or for the Federal Government to indicate product/service compliance with the Section 508 standards (<http://www.section508.gov>).

(5) Electronic and information resources--Includes information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. The term electronic and information resources includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

(6) Electronic and information resources accessibility standards--Texas accessibility standards for Electronic and Information Resources that comply with the applicable specifications contained in Subchapter B, §§213.10 - 213.16 of this chapter for state agencies and Subchapter C, §§213.30 - 213.36 of this chapter for institutions of higher education.

(7) Information technology--Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

(8) Operable controls--A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, input and output trays, card slots, keyboards, and keypads.

(9) Product--Electronic and information technology.

(10) Self Contained, Closed Products--Products that generally have embedded software and are commonly designed in such a fashion that a user cannot easily attach or install assistive technology. These products include, but are not limited to, information kiosks and information transaction machines, copiers, printers, calculators, fax machines, and other similar products.

(11) Telecommunications--The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

(12) TTY--An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

(13) Voluntary Product Accessibility Template (VPAT)--A Web based summary to assist contracting officials and other buyers in making preliminary assessments regarding the availability of commercial Electronic and Information Resources products and services with

features that support accessibility. The VPAT forms and additional information are available at <http://www.section508.gov>.

(14) Web Accessibility Standards--Texas Web accessibility standards for Web pages/content that comply with the applicable specifications contained in Chapter 206, Subchapter B, §206.50(1) of this title for state agencies and Chapter 206, Subchapter C, §206.70(1) of this title for institutions of higher education.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## SUBCHAPTER B. ELECTRONIC AND INFORMATION RESOURCES FOR STATE AGENCIES

### 1 TAC §§213.10 - 213.17

The new sections are adopted under the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to the accessibility of electronic and information resources contained in 36 C.F.R. Part 1195. The new sections implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1195.

#### §213.12. *Video and Multimedia Products.*

(a) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(b) Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the agency's mission, each state agency which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)

#### §213.17. *State Agency Application.*

(a) As of September 1, 2006, unless an exception is approved by the executive director of the state agency pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a state agency for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the state agency. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on state agencies are identified under "Exceptions and Emerging Technologies" in the

Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>.

(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, state agencies shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) When procuring a product, if a state agency determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the state agency supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.

(b) When procuring a product, each state agency shall procure products which comply with the provisions in this subchapter when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(1) State agencies may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.

(2) State agencies may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.

(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by agencies directly or used by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this subchapter provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

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## SUBCHAPTER C. ELECTRONIC AND INFORMATION RESOURCES FOR INSTITUTIONS OF HIGHER EDUCATION

### 1 TAC §§213.30 - 213.37

The new sections are adopted under the Texas Accessibility Standards with the §508 standards of the Rehabilitation Act relating to the accessibility of electronic and information resources contained in 36 C.F.R. Part 1195. The new sections implement §§2054.453 - 2054.459, Texas Government Code, which require the department to consider the accessibility provisions contained in 36 C.F.R. Part 1195.

### §213.32. Video and Multimedia Products.

(a) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(b) Upon receiving a request for accommodation of a Web cast of training/informational video productions which support the institution of higher education's mission, each institution of higher education which receives such a request for accommodation shall provide an alternative form(s) of accommodation in accordance with §2054.456 and §2054.457, Government Code. (Examples of different technologies and forms of accommodation and additional information for state agencies to consider in the development of accessible training and informational video productions are available in the Accessibility Section of the State Web Site Guidelines under "Multimedia, Audio, and Video Files" available from <http://www.dir.state.tx.us>.)

### §213.37. Institutions of Higher Education Application.

(a) As of September 1, 2006, unless an exception is approved by the president or chancellor of the institution of higher education pursuant to §2054.460, Government Code, all electronic and information resources products developed or procured by a the institution of higher education for each project begun after August 31, 2006, shall comply with the applicable provisions of this subchapter, unless it would impose a significant difficulty or expense for the institution of higher education. The lack of the commercial availability of products, including computer software, and specific technologies that would impose a significant difficulty or expense on the institutions of higher education are identified under "Exceptions and Emerging Technologies" in the Accessibility Section of the State Web Site Guidelines available from <http://www.dir.state.tx.us>.

(1) When compliance with the provisions of this subchapter imposes a significant difficulty or expense, institutions of higher education shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) When procuring a product, if an institution of higher education determines that compliance with any provision of this subchapter imposes a significant difficulty or expense, the documentation by the institution of higher education supporting the procurement shall explain why, and to what extent, compliance with each such provision would impose a significant difficulty or expense.

(b) When procuring a product, each institution of higher education shall procure products which comply with the provisions in this subchapter when such products are available in the commercial marketplace or when such products are developed in response to a procurement solicitation.

(1) Institutions of higher education may use the Voluntary Product Accessibility Template (VPAT) to assess the availability of products in the commercial marketplace.

(2) Institutions of higher education may use the Buy Accessible Wizard to assess compliance with the provisions of this subchapter.

(c) This subchapter applies to electronic and information resources developed, procured, maintained, or used by an institution of higher education directly or used by a contractor under a contract with an institution of higher education which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(d) Nothing in this subchapter is intended to prevent the use of designs or technologies as alternatives to those prescribed in this

subchapter provided they result in substantially equivalent access to and use of a product for people with disabilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Renée Mauzy

General Counsel

Department of Information Resources

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For further information, please call: (512) 475-4700



## TITLE 10. COMMUNITY DEVELOPMENT

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

#### CHAPTER 188. FUEL ETHANOL AND BIODIESEL PRODUCTION INCENTIVE PROGRAM

##### 10 TAC §§188.1 - 188.10

The Office of the Governor, Economic Development and Tourism Office, adopts new Chapter 188, Fuel Ethanol and Biodiesel Production Incentive Program (Program), relating to the registration of fuel ethanol and biodiesel producers and grants of state funds for the production of fuel ethanol and biodiesel. The Program will encourage the development and production of fuel ethanol and biodiesel and will set standards for plant registration. The program is authorized by Texas Agriculture Code, Chapter 16, and will be administered by the Texas Department of Agriculture (Department) as authorized by Texas Agriculture Code, §16.005. Sections 188.1 - 188.10 are adopted without changes to the proposed text published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 788) and will not be republished. No comments were received on the proposed rules.

The new rules are necessary to transfer authority to administer the Program to the Department so that the Program can be implemented. Chapter 188 sets out the Memorandum of Understanding between the Office and the Department and delineates the roles of the parties related to the Program. The Department will adopt guidelines for administration of the Program.

The rules are adopted pursuant to Texas Agriculture Code, §16.006, which directs the Office to adopt rules for distribution of grants under the program and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

Texas Agriculture Code, Chapter 16, is affected by this proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tracye McDaniel

Executive Director

Office of the Governor, Economic Development and Tourism Division

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For further information, please call: (512) 463-1932



## TITLE 16. ECONOMIC REGULATION

### PART 9. TEXAS LOTTERY COMMISSION

#### CHAPTER 402. CHARITABLE BINGO ADMINISTRATIVE RULES SUBCHAPTER G. COMPLIANCE AND ENFORCEMENT

##### 16 TAC §402.706, §402.707

The Texas Lottery Commission (Commission) adopts new Title 16, Part 9, Chapter 402, Subchapter G, §402.706, relating to Standard Administrative Penalty Guideline, and §402.707, relating to Expedited Administrative Penalty Guideline, with changes to the proposed text as published in the November 18, 2005, issue of the *Texas Register* (30 TexReg 7671).

The purpose for new §402.706 is to provide guidance for administering administrative penalties to persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The purpose for new §402.707 is to provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act and the Charitable Bingo Administrative Rules, in which the Director of the Charitable Bingo Operations Division and bingo licensees seek to facilitate expeditious resolution of cases and encourage settlements. The objectives for applying an administrative penalty are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This guideline is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

The Commission received written and oral comments during the comment period. Specifically, written comments were received from one commenter. Comments were received from others at a public hearing the Commission conducted on November 30, 2005, at 11:00 a.m. at the Commission Headquarters located at 611 East 6th Street, Austin, Texas.

The Commission will first address the written comments received. The commenter stated that because the Standard Administrative Penalty Chart referenced in proposed §402.706(c) and (h) was not published in the *Texas Register* and there is no link from the on-line version, licensees had no way of commenting on the chart since it is unpublished.

Commission response: The Commission disagrees. The Standard Administrative Penalty Chart (Chart) was published in the *Texas Register*, and there is a link from the on-line version of the proposed rule. There are four ways to access the Standard Administrative Penalty Chart referenced in §402.706(c) and (h):

(1) The Chart was printed in the paper version of the November 18, 2005, issue of the *Texas Register* on pages 7750 - 7752; (2) The on-line version of the November 18, 2005, issue of the *Texas Register* is accessible through the Secretary of State's website, [www.sos.state.tx.us](http://www.sos.state.tx.us). Individuals have the choice between an Adobe pdf version, or an html version of the issue. For the Adobe pdf version, clicking on "Tables and Graphics" goes directly to the Chart on pages 7750 - 7752; (3) If utilizing the html version available on the Secretary of State's website, clicking on the "Texas Lottery Commission" link goes directly to §402.706 which contains another link to the Chart; and (4) The Chart is available on the Texas Lottery Commission's website, [www.txlottery.org](http://www.txlottery.org) by going to "Legal Notices," "Proposed Rules," "11/18/05," Figure: 16 TAC 402.706(c).

The commenter states that proposed §402.706(e) contains an inaccurate statement of the law by stating that "the appropriate sanction is reserved to the Commission," and that the commission is "not necessarily bound by the recommendations of the administrative law judge." In fact, there are only very limited ways the Commission may change the proposal for decision of the ALJ, found in Government Code §2001.058(e). Unless one of those three exceptions applies, the Commission is bound by that decision.

Commission response: The Commission disagrees. Proposed §402.706(e) pertains to the Commission's duty to determine and assess appropriate sanctions for any violation. Texas Government Code §2001.058(e) does not address an administrative law judge's recommendation on appropriate sanctions for violations, but rather pertains to a finding of fact, conclusion of law, or order of an administrative law judge.

The commenter states that the Expedited Administrative Penalty Guideline referenced in proposed §402.706(j) and §402.707(g) is not published in the *Texas Register* and there is no link from the on-line version. Licensees have no way of commenting on the guideline since it is unpublished.

Commission response: The Commission disagrees. The reference contained in §402.706(j) is a reference to the entire proposed new §402.707, Expedited Administrative Penalty Guideline which was published in the *Texas Register*. Additionally, the Expedited Administrative Penalty Chart referenced in §402.707(g) was also published in the *Texas Register*, and there is a link from the on-line version of the proposed rule. There are four ways to access the Expedited Administrative Penalty Chart referenced in §402.707(g): (1) The Chart was printed in the paper version of the November 18, 2005, issue of the *Texas Register* on pages 7753 - 7754; (2) The on-line version of the November 18, 2005, issue of the *Texas Register* is accessible through the Secretary of State's website, [www.sos.state.tx.us](http://www.sos.state.tx.us). Individuals have the choice between an Adobe pdf version, or an html version of the issue. For the Adobe pdf version, clicking on "Tables and Graphics" goes directly to the Chart on pages 7753 - 7754; (3) If utilizing the html version available on the Secretary of State's website, clicking on the "Texas Lottery Commission" link goes directly to §402.707 which contains another link to the Chart; and (4) The Chart is available on the Texas Lottery Commission's website, [www.txlottery.org](http://www.txlottery.org) by going to "Legal Notices," "Proposed Rules," "11/18/05," Figure: 16 TAC 402.707(g).

The commenter states that the proposed rules could have an adverse effect on small businesses. Specifically, the proposed penalties do not appear to take into account the limited means of certain smaller, for-profit licensees, such as distributors and

commercial lessors, who may risk being put out of business by the assessment of a single administrative penalty. The size of the licensee should be taken into account in determining an appropriate penalty.

Commission response: Section 402.706(i) provides that the Commission will determine the amount of a penalty or the degree to which a remedy is applied by considering certain factors, as applicable, including any "matter that justice may require." Further, during the extensive informal period where this rule was available for comment, individuals in the bingo industry indicated that the size of the licensee should not be included as a factor in the rule.

The Commission now addresses the comments received at the public comment hearing.

Ten comments were made expressing concern that bingo games are primarily conducted by volunteer workers, and that these volunteers may be prone to simple, honest mistakes, including mathematical errors.

Commission response: Seventy-six percent of organizations filing quarterly reports with the Commission in the third quarter of 2005 reported paying salaries to callers, cashiers or ushers. Additionally, all organizations conducting in a unit reported paying salaries to callers, cashiers or ushers. Therefore, the statement that "...bingo games are primarily conducted by volunteer workers..." seems inconsistent with information the organizations themselves submit to the agency. Finally, §402.706(i)(5)(A) states that one factor for consideration when imposing a penalty is "whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation."

Four comments were made expressing concern that "repeat violation" is not clearly defined within the rule.

Commission response: The Commission agrees there is no definition of the term "repeat violation" in the rule. Further, the Commission finds that when a term is not defined in statute or rule then the common interpretation or usage applies and that a repeat violation would apply to an identical violation that had previously occurred.

Twelve comments were made expressing concern that the rule changes will create hardships for and/or take money away from the charities.

Commission response: The Commission disagrees. These rules do not create any new violations that are not already contained in the Act or Rules. Therefore, these rules do not create hardships for organizations. The violations of the Act or Rules committed by organizations may create hardship. The Commission finds that a greater hardship is created for organizations if their license is ultimately denied or revoked. Through these rules, organizations are provided an alternative to license revocation or denial.

Two comments were made expressing concern with the language, "The list of statutory violations and the standard administrative penalty is not an exclusive list." The commenters are concerned that there is not a complete list.

Commission response: The Commission agrees that the rule does not contain every violation provided for in the Bingo Enabling Act and Charitable Bingo Administrative Rules. All violations can be found in the Bingo Enabling Act and Charitable Bingo Administrative Rules. Further, during the extensive infor-

mal comment period, previous draft versions of this rule contained every violation contained in the Act and Rules. Individuals in the bingo industry indicated that the rule was "too long." In response to these informal comments, the rule was amended to only include the most serious and/or the most common violations.

Two comments were made expressing concern that the new rule penalizes people for their right to appeal.

Commission response: The Commission disagrees. There is nothing in either rule that penalizes or otherwise prohibits a person from exercising their right to appeal.

Three comments were made expressing the belief that the new rules are too drastic and/or that there should be proof that someone did something intentionally before a penalty is assessed.

Commission response: The Commission disagrees. The rules conform to the standards contained in the Bingo Enabling Act and Charitable Bingo Administrative Rules. The rules are intended to serve as a guide for persons who wish to resolve disciplinary matters through an alternative process other than an Administrative Hearing. Should the person desire to seek an administrative hearing in lieu of settlement, they have that right. Further, in response to the comment that the "...rules are too drastic..." the Commission makes the assumption that this reference is to the dollar amount of the penalty. In all categories of the Standard Administrative Penalty Chart, the penalty amounts contain a range that starts at zero.

One comment was made expressing concern that the new rules are mostly directed at licensed authorized organizations and very few are directed at manufacturers, distributors and/or licensed commercial lessors.

Commission response: The Commission disagrees. The rules are applicable to all license types. The charts within the rules contain the violations most commonly cited on audits and inspections conducted by the Charitable Bingo Operations Division. Since licensed authorized organizations conducting bingo are the single largest type of license, violations related to the conduct of bingo are the most common. Finally, the Bingo Enabling Act and Charitable Bingo Administrative Rules contain violations not listed in these rules and some of those violations relate to manufacturers, distributors and licensed commercial lessors.

One comment was made concerning the 20-day period that an organization has to accept the recommended penalty. The commenter recommended this period be extended to accommodate nonprofit organizations that only meet quarterly.

Commission response: The Commission disagrees. Section 2001.604 of the Bingo Enabling Act states that not later than the 20th day after the date the person receives the notice, the person may: (1) accept the recommendation of the director, including the recommended administrative penalty; or (2) make a written request for a hearing on the determination.

One comment was made expressing the belief that the new rules are unfair when compared to the penalty guideline rule applicable to lottery retailers.

Commission response: The Commission disagrees. Lottery retailers are governed under a different statute than organizations engaged in bingo related activities. Therefore an exact comparison of the penalty guidelines is not appropriate. For example, unlike the Bingo Enabling Act, the State Lottery Act does not allow for administrative penalties to be assessed.

One comment was made expressing the belief that the new rules will result in significant fiscal implications for state or local governments, and there will be a significant effect on small businesses.

Commission response: The Commission disagrees. The commenter did not provide sufficient information to thoroughly address this comment. The fiscal note prepared by the agency indicates there will be no significant fiscal implications for state or local governments, nor will there be a significant effect on small businesses. It is conceivable that individual businesses that violate the Act or Rules could be fiscally impacted, but that impact is not anticipated for all small business.

One comment was made expressing concern that the new rule is only a guideline, does not seem to be binding on the commission, and is therefore subject to an arbitrary and capricious application.

Commission response: The Commission agrees that the rule is a guideline and does not bind the Commission. The Commission disagrees that the rule is subject to an arbitrary and capricious application. The rule will be applied to the facts specific to an individual case.

One comment was made expressing concern that subsection (i) of §402.706 makes it difficult to ascertain exactly how all of the provisions would apply.

Commission response: The Commission disagrees. The application of the factors contained in subsection (i) of §402.706 are unique to each specific case. All of the factors listed in §402.706(i) will be considered for each case although they may not apply.

One comment was made that the length of time the licensee has held a license should make no difference with regard to the new rules.

Commission response: The Commission disagrees. The longer an organization has held a license to conduct bingo, the more familiar it should be with the requirements of the Act and Rules.

One commenter made several suggestions about the Standard Administrative Penalty Chart. First, some violations have been coupled in a single item and should be considered separately. Second, violations with the potentially highest penalties should require proof of intent. Third, many of the penalties should be moved down into the warning category.

Commission response: The Commission disagrees. First, the organization of the Standard Administrative Penalty Chart does not prohibit violations from being considered separately. Second, violations on the Standard Administrative Penalty Chart are consistent with the Act and the Rules. Third, all categories provide for the possibility of a warning.

One comment stated that the first sentence in §402.706(h) seemed to be unrelated to the second sentence.

Commission response: The Commission agrees. The sentences have been put into separate subsections to eliminate confusion.

One comment stated that he did not understand the intended meaning of §402.707(b).

Commission response: The Commission has added language in §402.707(b) to clarify the meaning.

One comment suggested that the word "alleged" should be added before the word "violation" in §402.707(c) and (d)(5).

Commission response: The Commission agrees that the word "alleged" should be added for consistency.

One comment suggested that the word "expeditiously" should be changed to "expeditiously" in §402.707(c).

Commission response: The Commission agrees and has made the suggested change.

One comment stated that the wording in §402.707(d)(5) "comply with the violation" should be edited to be more accurate.

Commission response: The Commission agrees and has revised the wording.

One comment stated that §402.707(g) should be rewritten for clarity.

Commission response: The Commission agrees and has moved the first sentence of subsection (g) to subsection (b).

Several individuals attending the hearing simply stated that they opposed the rules, and wished to make no further comment.

The following groups or associations made comments on the new rules: Goodtime Bingo, National Council for the Veterans of Foreign Wars, Therapeutic Riding of Texas, Fort Worth Bookkeeping, AKIBA Academy, AMVETS Auxiliary of Dallas, AMVETS Department of Texas, Improved Order of Redmen of Texas, Post 74 AMVET, K & B Sales, and Bingo Interest Group.

The Commission made some changes to correct clerical errors, improve clarity, and simplify the Standard Administrative Penalty and Expedited Penalty Charts. Proposed violation number 36 was deleted because it was essentially duplicative of violation number 31. Accordingly, proposed violation numbers 37 and 38 were renumbered. In addition, the column labeled "Reference" was removed to simplify the charts.

The new rules are adopted pursuant to Occupations Code, §2001.054, which authorizes the Commission to adopt rules necessary to enforce and administer the Bingo Enabling Act.

The new rules implement Occupations Code, Chapter 2001.

*§402.706. Standard Administrative Penalty Guideline.*

(a) The purpose of this section is to provide guidance for administering an administrative penalty to persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The objectives for applying an administrative penalty are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This guideline is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

(b) The Commission, through the Director of the Charitable Bingo Operations Division or his designee, may offer settlements to persons charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(c) Unless otherwise provided by this subchapter, the terms and conditions of a settlement agreement between the Commission and a person charged with violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules will be based on the Standard Administrative Penalty Chart incorporated into this section.

Figure: 16 TAC §402.706(c)

(d) The following words and terms, when used in this section and §402.707, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Bingo Enabling Act--Occupations Code, Chapter 2001.

(2) Charitable Bingo Administrative Rules--Texas Administrative Code, Title 16, Part 9, Chapter 402.

(3) Licensee--a person issued a license under Occupations Code, Chapter 2001, or a Unit.

(4) Organization--a licensee, an applicant for a license, or a person required to obtain a bingo license.

(5) Respondent--a person responsible for answering a charge of violating the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules.

(e) The Commission shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Commission welcomes any recommendation of an administrative law judge as to the appropriate sanctions imposed, but the Commission is not necessarily bound by such recommendations. A determination of the appropriate sanction is reserved to the Commission consistent with the Bingo Enabling Act.

(f) Additional remedies may be imposed along with or in lieu of an administrative penalty which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; a disbursement of net proceeds in order to comply with the minimum 35% charitable distribution requirement; suspension, revocation or denial of a license; or denial or removal from the registry of approved workers.

(g) A settlement agreed to under this section shall be in the form of a written Memorandum of Agreement and Consent Order prepared by the Commission that must be signed by both parties. A Memorandum of Agreement and Consent Order shall contain findings of fact and conclusions of law. The conditions of the settlement, including the payment of an administrative penalty shall be completed within the time frame provided for in the settlement. Failure to comply with the conditions of the settlement may subject the respondent to further administrative action.

(h) The list of statutory violations in the Standard Administrative Penalty Chart is not an exclusive list of violations of the Bingo Enabling Act or the Charitable Bingo Administrative Rules.

(i) If a person is charged with a repeat violation within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Standard Administrative Penalty Chart for repeat violations.

(j) The amount of a penalty or the degree to which a remedy is applied will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent and gravity of the prohibited acts;

(2) history of previous violations which includes:

(A) the number of previous violations; and

(B) the number of repeated violations;

(3) the amount necessary to deter future violations;

(4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;

(5) any other matter that justice may require, including:

(A) whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation;

(B) cooperation with the Commission during its examination, audit, or investigation of the person;

(C) length of time the licensee has held a license;

(D) risk to the public or state;

(E) whether the organization or person has acknowledged a violation and agreed to comply with the terms and conditions of remedial action through an agreed settlement with the Commission; and

(F) the cost of the investigation, examination or audit associated with the violation.

(k) If the Director or the Director's designee and the authorized representative for the respondent agree, the two parties may utilize §402.707, Expedited Administrative Penalty Guideline as alternative guidance related to this subsection.

*§402.707. Expedited Administrative Penalty Guideline.*

(a) The purpose of this subchapter is to provide an alternative disciplinary procedure for certain violations of the Bingo Enabling Act (Act) and the Charitable Bingo Administrative Rules (Rules) in which the Director of the Charitable Bingo Operations Division seeks to facilitate expeditious resolution of cases and encourage settlements.

(b) The list of statutory violations in the Expedited Administrative Penalty Chart is not an exclusive list of violations that may be expedited. The scope of this guideline will be limited to violations of the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules that are identified by the Director or his designee.

(c) Upon completion of an examination, inspection, audit, or investigation, and after which both parties have agreed that an alleged violation of the Bingo Enabling Act or the Charitable Bingo Administrative Rules can be resolved expeditiously, the Director or his designee may cause a Notice of Administrative Violation and Settlement Agreement (NAVSA) to be issued to an authorized representative for the respondent.

(d) The NAVSA shall include the following information:

(1) date of the notice;

(2) names and addresses of both parties;

(3) a brief summary of the alleged violation;

(4) the dollar amount of the administrative penalty recommended by the Director or his designee;

(5) a brief explanation of the additional conditions required to ensure future compliance with the Act or Rules alleged to be violated;

(6) notice that an investigation, including an examination or audit, was conducted which alleges a violation was committed;

(7) a statement signed by an authorized representative for the respondent indicating the respondent agrees to the terms of the settlement being offered;

(8) notice that if the person does not accept the settlement offered, they may request a hearing on the occurrence of the violation, the amount of the penalty or both; and

(9) notice that if the person does not accept the settlement offered or request a hearing, the Commission may seek the maximum penalty authorized for the violation under the Bingo Enabling Act and the Charitable Bingo Administrative Rules, which may include revocation, suspension or denial of the person's license or worker registration, or application for a license or worker registration as applicable.

(e) The respondent shall have 20 days from the date the respondent receives the NAVSA to accept the recommendation of the Director, including the recommended administrative penalty; or make a written request for a hearing on the determination. If notification of acceptance or the written request for a hearing is not made within 20 days, the Director shall cause a hearing to be set and give notice of the hearing to the respondent. The opportunity for an agreement in accordance with this subsection will expire.

(f) After the NAVSA is accepted and returned to the Commission, the NAVSA will be forwarded to the Director for final approval and a copy will be forwarded to the respondent along with the Order. The respondent will have 60 days from the date of the Order to pay the recommended administrative penalty. Failure to comply with the terms of this Agreement may result in the imposition of a more severe degree of penalty which may include the revocation, suspension, denial of the license or worker registration, or removal from the worker registry as applicable.

(g) If a person is charged with a repeat violation that may be expedited within 36 months (3 years) of the first violation, then the penalty for a repeat violation will be imposed according to the Expedited Administrative Penalty Chart for repeat violations.

Figure: 16 TAC §402.707(g)

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 April 5, 2006.

TRD-200602030

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: April 25, 2006

Proposal publication date: November 18, 2005

For further information, please call: (512) 344-5113



## TITLE 34. PUBLIC FINANCE

### PART 3. TEACHER RETIREMENT SYSTEM OF TEXAS

#### CHAPTER 23. ADMINISTRATIVE PROCEDURES

##### 34 TAC §23.5

The Board of Trustees (Board) of the Teacher Retirement System of Texas (TRS) adopts amendments to §23.5 concerning nomination for appointment to the TRS Board of Trustees (Board). The amended rule addresses requirements for nominating petitions and balloting. The amended section is adopted without changes to the text of the proposed rule as published in the January 13, 2006, issue of the *Texas Register* (31 TexReg 274).

The amendments to §23.5 changes the number of eligible members or retirees who must sign and provide identifying information on nominating petitions for the appointment of public school, higher education, and retiree positions on the Board. The number of names required on a nominating petition changes from 500 to 250 for the public school and higher education positions and from 100 to 250 for the retiree position.

In addition, the proposed amended rule also changes the identifying information required to verify members' and retirees' names on nominating petitions. As proposed, amended §23.5 no longer requires persons signing nominating petitions to provide their full Social Security numbers. In lieu of a complete Social Security number, members or retirees must provide the first five digits of their current residential zip code and the last four digits of their Social Security number. As was the case before amendment of the rule, they will still have to sign the petition and provide their printed or typed name.

The amendments also set out the options of using a designated agent to implement and to monitor the ballot process as well as using electronic balloting, alternatives that are within TRS's rule-making authority under §825.002, Government Code. Under the amended rule, voters could request a printed ballot for write-in candidates.

TRS received no public comments regarding the proposed amendments.

Statutory Authority: §825.002, Government Code, which requires the Board to adopt rules for the administration of the process for determining nominations for appointment to the Board, and §825.102, Government Code, which authorizes the Board to adopt rules for the transaction of business of the Board.

Cross-reference to Statute: §825.002, Government Code, concerning nominations for appointment to the Board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 6, 2006.

TRD-200602041

Ronnie G. Jung

Executive Director

Teacher Retirement System of Texas

Effective date: April 26, 2006

Proposal publication date: January 13, 2006

For further information, please call: (512) 542-6438





# 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 30<sup>th</sup> 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 10<sup>th</sup> 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

**Effective Date: May 6, 2006**

EXEMPT FILING NOTIFICATION COMMISSIONER'S ORDER  
NO. 06-0342

PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96 ADOPTION OF AMENDMENTS TO THE TEXAS WORKERS' COMPENSATION STATISTICAL PLAN TO ADD ITEM 17 TO THE REPORTING INSTRUCTIONS TO EXPLAIN HOW THE WORKERS COMPENSATION HEALTH CARE NETWORK PREMIUM CREDIT IS TO BE REPORTED USING STATISTICAL CODE 9874 AND TO INCLUDE CODE 9874 IN THE LISTING OF STATISTICAL CODES FOR PREMIUM NOT SUBJECT TO EXPERIENCE RATING - REPORTED ON LINES D, E, F, OR G.

The Commissioner of Insurance adopts amendments proposed by the staff of the Data Services Division of the Property and Casualty Insurance program at the Texas Department of Insurance (Department) to the Texas Workers' Compensation Statistical Plan (the Plan). The Plan provides insurers licensed in Texas to write workers' compensation insurance with the necessary instructions for the reporting of statistics to the Department. The adopted amendments facilitate implementation of HB 7, enacted by the 79th Texas Legislature, Regular Session, 2005. HB 7, in pertinent part, authorizes the establishment of workers' compensation health care networks for the provision of workers' compensation medical benefits and provides the statutory framework for the establishment of standards for the certification, administration, evaluation, and enforcement of the delivery of health care services to injured employees by workers' compensation health care networks. The purpose of the adopted amendments to the Plan is to provide a means for insurers to report the premium credit that is addressed by Rule VI, Section K of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance as recently adopted by Commissioner's Order No. 06-0273, dated March 22, 2006, and published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2881).

The Commissioner adopts the amendments as proposed in the staff's petition filed on February 27, 2006. Notice of the proposal was published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1735). No hearing was requested on this matter. The Department received no comments concerning the proposed amendments.

The adopted amendments to the Plan are filed pursuant to the Insurance Code Articles 5.58 and 5.96. Article 5.58(a) requires the Commissioner to develop reasonable statistical plans for the reporting of workers' compensation insurance statistics to the Department. Article 5.96 authorizes the Commissioner to prescribe, promulgate, adopt, approve, amend or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans and policy and endorsement forms for workers' compensation insurance.

The adoption amends the Plan as follows:

Amend Part III of the Plan (relating to Exposure and Premium) to add Item 17 to the reporting instructions to explain how the certified workers compensation health care premium credit is to be reported using Statistical Code 9874.

Amend Part X of the Plan (relating to Statistical Codes) to include Code 9874 Certified Workers Compensation Health Care Network Premium Credit in the listing of statistical codes for Premium Not Subject to Experience Rating - Reported on Lines D, E, F, or G.

The adopted amendments are more particularly set forth in the applicable portions of the Plan 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 Articles 5.58 and 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-0206-03-I and are incorporated by reference into Commissioner's Order No. 06-0342.

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 Workers' Compensation Statistical Plan as described herein and 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-200602112

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: April 12, 2006



# REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

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## Adopted Rule Review

Texas Education Agency

### Title 19, Part 2

The State Board of Education (SBOE) adopts the review of 19 TAC Chapter 105, Foundation School Program, Subchapter A, Definitions, and Subchapter B, Use of State Funds, pursuant to the Texas Government Code, §2001.039. The SBOE proposed the review of 19 TAC Chapter 105 in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8453).

The SBOE finds that the reasons for adopting 19 TAC Chapter 105, Subchapters A - B, continue to exist. The SBOE received no comments related to the rule review requirement.

No changes are necessary to rules in Subchapters A - B, and the SBOE is proposing no amendments to these rules at this time.

TRD-200602054

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: April 7, 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 §402.706(c)

## Standard Administrative Penalty Chart

### Category 1

**\$0 (Warning) to \$1,000 per offense**

No.	Violation
1	A person knowingly participated in the award of a prize to a bingo player in a manner that disregarded the random selection of numbers or symbols.
2	A person made a false statement in an application for a license.
3	A person falsified or made false entries in books and records.
4	A person conducted, promoted, or administered bingo without a license.
5	The licensee or a person designated as an agent for a unit failed to timely produce for inspection or audit any book, record, document, or other form of information requested by the Commission.

### Category 2

**\$0 (Warning) to \$600 for the 1<sup>st</sup> offense**

**\$0 (Warning) to \$800 for the 2<sup>nd</sup> offense**

**\$0 (Warning) to \$1,000 for the 3<sup>rd</sup> offense**

No.	Violation
6	The organization conducted bingo outside of the licensed time.
7	The organization sold pull-tab bingo tickets at an unauthorized time.
8	The organization conducted bingo at an unauthorized location.
9	The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.
10	The unit with an agent designated under Section 2001.438(b) failed to immediately notify the Commission of any change in the designated agent.
11	The organization allowed a game of chance on the premises other than those allowed under Section 2001.416 during an occasion when bingo was being played.
12	The organization allowed a person other than a bona fide member of the licensed authorized organization to conduct, promote, or administer, or assist in conducting, promoting, or administering, bingo.
13	The organization failed to have an authorized operator present at the bingo occasion.
14	A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.
15	The organization allowed a person(s) under the age of 18 to conduct or assist in the conduct of bingo.
16	The organization or unit failed to disburse for charitable purposes at least 35% of the average adjusted gross receipts.
17	The organization obtained by purchase or other manner bingo equipment, devices or supplies from a person other than a licensed distributor (except as provided in Section 2001.257(b)).

**Category 3****\$0 (Warning) to \$400 for the 1<sup>st</sup> offense****\$0 (Warning) to \$600 for the 2<sup>nd</sup> offense****\$0 (Warning) to \$800 for the 3<sup>rd</sup> offense**

No.	Violation
18	The licensee failed to report to the Commission in writing within ten (10) working days of the date of any change respecting any facts set forth in the application.
19	The licensee failed to respond, or timely respond, in writing to all relevant audit findings and recommendations in the draft audit report presented at the exit conference.
20	The organization failed to withhold prize fees.
21	The organization or unit failed to deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.
22	The organization incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable and necessarily expended for authorized expenses.
23	Proceeds given to a person for a charitable purpose were used by the donee to pay for services rendered or materials purchased in connection with the conduct of bingo by the donor organization.
24	The net proceeds of any game of bingo and of any rental of premises for bingo were not used exclusively for charitable purpose or were used by the donee for an activity that would not constitute a charitable purpose, if the activity were conducted by the donor organization.
25	A person failed to maintain records that fully and truly record all transactions connected with the conduct of Bingo, the leasing of premises to be used for the conduct of bingo, or the manufacture, sale, or distribution of bingo supplies or equipment.
26	A commercial lessor licensed to conduct bingo, did not properly deposit in its bingo checking account all rental payments from authorized organizations conducting bingo at the location of the lessor.
27	Rent for premises used for the conduct of bingo that was paid to the lessor was not paid in a lump sum that included all expenses authorized by the Bingo Enabling Act, Section 2001.458.
28	Deposits were made later than the end of the next business day following the day of the bingo occasion on which the receipts were obtained, except as provided by Subsection (b-1).

**Category 4****\$0 (Warning) to \$300 for the 1<sup>st</sup> offense****\$0 (Warning) to \$450 for the 2<sup>nd</sup> offense****\$0 (Warning) to \$600 for the 3<sup>rd</sup> offense**

No.	Violation
29	The organization or unit deposited funds, other than from the conduct of bingo, in the bingo account.
30	The organization failed to clearly identify the conductor, by name exactly as it is shown on the license, on an advertisement or promotion of a bingo occasion.
31	Check(s) or slip(s) were made payable to 'cash', 'bearer', or to a fictitious payee.
32	Checks did not contain the required information.

**Category 5****\$0 (Warning) to \$200 for the 1<sup>st</sup> offense****\$0 (Warning) to \$300 for the 2<sup>nd</sup> offense****\$0 (Warning) to \$400 for the 3<sup>rd</sup> offense**

No.	Violation
33	Funds from the sale of a bingo gift certificate were not maintained separately from bingo funds until the certificate was redeemed for a bingo card, pull-tab bingo or a card-minding device.
34	The organization failed to have required information imprinted on each bingo gift certificate.

**Category 6****\$0 (Warning) to \$100 for the 1<sup>st</sup> offense****\$0 (Warning) to \$150 for the 2<sup>nd</sup> offense****\$0 (Warning) to \$200 for the 3<sup>rd</sup> offense**

No.	Violation
35	The organization failed to withdraw funds from the bingo account by preprinted, consecutively numbered checks or withdrawal slips.
36	The organization failed to keep and account for all checks, including voided checks and slips.

**Category 7****\$0 (Warning) for the 1<sup>st</sup> offense****\$0 (Warning) for the 2<sup>nd</sup> offense****\$0 (Warning) to \$1,000 for the 3<sup>rd</sup> offense**

No.	Violation
37	The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.

Figure: 16 TAC §402.707(g)

**Expedited Administrative Penalty Chart**

<b>Violation</b>	<b>Penalty</b>
The organization conducted bingo outside of the licensed time.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization sold pull-tab bingo tickets at an unauthorized time.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization that is a member of a unit did not conduct its bingo games separately from the bingo games of the other members of the unit.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization failed to have an authorized operator present at the bingo occasion.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The limit of \$750.00 was exceeded on a single prize for regular or pull-tab bingo.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
Prizes with an aggregate value of more than \$2,500.00 for bingo games other than pull-tab bingo were offered or awarded for a single bingo occasion.	1 <sup>st</sup> Offense - \$200 2 <sup>nd</sup> Offense - \$300 3 <sup>rd</sup> Offense - \$500
The organization failed to prevent bingo workers from playing bingo.	1 <sup>st</sup> Offense - \$150 2 <sup>nd</sup> Offense - \$225 3 <sup>rd</sup> Offense - \$375
The organization offered or provided to a person the opportunity to play bingo without charge.	1 <sup>st</sup> Offense - \$150 2 <sup>nd</sup> Offense - \$225 3 <sup>rd</sup> Offense - \$375
The organization or lessor failed to conspicuously display the license issued at the place where the game was conducted at all times during the conduct of the game.	1 <sup>st</sup> Offense - \$100 2 <sup>nd</sup> Offense - \$150 3 <sup>rd</sup> Offense - \$250
The organization failed to have required information imprinted on each bingo gift certificate, specifically: the name and address of the licensed location(s) where the certificate may be redeemed for bingo paper, pull-tab bingo or card-minding devices; the monetary value of the certificate; the name of the licensed organization(s) authorized to accept the certificate; or the expiration date or blank space for the organization or unit to fill in an expiration date.	1 <sup>st</sup> Offense - \$50 2 <sup>nd</sup> Offense - \$75 3 <sup>rd</sup> Offense - \$125

<b>Violation</b>	<b>Penalty</b>
A door prize with a value of more than \$250.00 was offered or awarded.	1 <sup>st</sup> Offense - \$50 2 <sup>nd</sup> Offense - \$75 3 <sup>rd</sup> Offense - \$125
The organization failed to conspicuously display during a bingo occasion a sign indicating the operator in charge, the sign contained letters less than one (1) inch in height, the sign failed to inform the players that they should direct any questions or complaints regarding the conduct of the bingo occasion to the operator listed on the sign, or the sign failed to state that if the player is not satisfied with the operators response that the player has the right to file a formal complaint with the Commission.	1 <sup>st</sup> Offense - \$30 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
The organization failed to verify winning bingo cards by someone at another table or location other than the winners, or by an electronic verifier system, winning cards were not shown on a monitor visible to all players, or the disposable card(s) or electronic representation of the card, was not posted for inspection for at least 30 minutes after the completion of the last game of that organization's occasion.	1 <sup>st</sup> Offense - \$30 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
The organization failed to obtain, maintain, keep current and make available for review to any person upon request a copy of the Bingo Enabling Act and the Rules of the Commission.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - Warn 3 <sup>rd</sup> Offense - \$75
The organization failed to display on a card-minding device or was displayed in such a manner that was not conspicuous and clearly visible to a player using the device, the toll-free "800" number operated by the Problem Gamblers' Help Line of the Texas Council on Problem and Compulsive Gambling.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - Warn 3 <sup>rd</sup> Offense - Warn
<b>Violations by a Worker</b>	
A person not listed on the registry of approved bingo workers acted as an operator, manager, cashier, usher, caller, or salesperson for an organization.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$45 3 <sup>rd</sup> Offense - \$75
A registered worker or operator for an organization did not wear, present, visibly display, or list the individuals name and unique registration number in a legible manner on his/her prescribed identification card, while on duty.	1 <sup>st</sup> Offense - Warn 2 <sup>nd</sup> Offense - \$20 3 <sup>rd</sup> Offense - \$35

Figure: 19 TAC §109.1002(c)

School Year \_\_\_\_\_ Rating Worksheet Effective July 2006  
 Fiscal Year Ended June 30 \_\_\_\_\_ Or August 31 \_\_\_\_\_  
 County District # \_\_\_\_\_  
 District Name \_\_\_\_\_

Critical Indicators	Check The Appropriate Box Below		Determination of Points					0				
	Yes	No	5	4	3	2	1					
<b>Fiscal Efficiencies And Academic Performance</b>												
1) Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?												
2) Was The Total Unrestricted Net Asset Balance (Net Of The Accrual Of Interest For Capital Appreciation Bonds) In The Governmental Activities Column In The Statement Of Net Assets Greater Than Zero?												
3) Were There No Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?												
4) Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?												
5) Did The District's Academic Rating Exceed Academically Unacceptable?												
6) Was There An Unqualified Opinion In The Annual Financial Report?												
7) Did The Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?												
<b>Fiscal Efficiencies And Academic Performance</b>												
8) Were Operating Expenditures Per WADA In The General Fund And Special Revenue Fund Less Than Or Equal To \$4,700 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, And 35, Food Services)?			<= \$4,700	> \$4,700	<= \$5,170	> \$5,170	<= \$5,640	> \$5,640	<= \$6,110	> \$6,110	<= \$6,580	> \$6,580
9) Were Operating Expenditures Per WADA In The General Fund Less Than Or Equal To \$4,200 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, And 35, Food Services)?			<= \$4,200	> \$4,200	<= \$4,620	> \$4,620	<= \$5,040	> \$5,040	<= \$5,460	> \$5,460	<= \$5,880	> \$5,880
10) Did The District Have A Recognized Or Exemplary Academic Rating?	Yes	No										
<b>Fiscal Responsibility</b>												
11) Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?			> 98%	> 95%	> 92%	> 89%	> 86%	> 83%	> 80%	> 77%	> 74%	> 71%
12) Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	Yes	No										
13) Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$250,000 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$200,000, Then The District Receives 5 Points)			< \$250	> \$250	< \$500	> \$500	< \$750	> \$750	< \$1,000	> \$1,000	< \$1,250	> \$1,250
14) Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?	Yes	No										
15) Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Conservator Or Monitor Assigned)	Yes	No										
<b>Budgeting</b>												
16) Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%? (Phased In Over Three Years: 55% For 2006-2007; 60% For 2007-2008; And 65% For 2008-2009)			> 65%	> 62%	> 59%	> 56%	> 53%	> 50%	> 47%	> 44%	> 41%	> 38%
17) Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources And Fund Balance In General Fund?	Yes	No										
18) If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	Yes	No										
19) Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)			=> 1.00	=> 0.95	=> 1.00	=> 0.90	=> 0.85	=> 0.80	=> 0.75	=> 0.70	=> 0.65	=> 0.60
<b>Personnel</b>												
20) Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	Yes	No										
21) Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size?	UL <= 100%	LL >= 100%	> 100%	<= 105%	> 105%	<= 110%	> 110%	<= 115%	> 115%	<= 120%	> 120%	<= 125%
22) Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size?	UL <= 100%	LL >= 100%	> 100%	<= 105%	> 105%	<= 110%	> 110%	<= 115%	> 115%	<= 120%	> 120%	<= 125%
<b>Cash Management</b>												
23) Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% Of Optimum According To The Fund Balance And Cash Flow Calculation Worksheet In The Annual Financial Report?	UL < 150%	LL > 50%	> 150%	<= 152.5%	> 152.5%	<= 155.0%	> 155.0%	<= 157.5%	> 157.5%	<= 160.0%	> 160.0%	<= 162.5%
24) Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points)			< 20%	< 21%	< 21%	< 22%	< 22%	< 23%	< 23%	< 24%	< 24%	< 25%
25) Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?	Yes	No										
26) Were Investment Earnings In All Funds (Excluding Debt Service Fund and Capital Projects Fund) More Than \$20 Per Student?	> \$20	<= \$20	> \$18	> \$19	> \$17	> \$16	> \$15	> \$14	> \$13	> \$12	> \$11	> \$10
<b>Total Points</b>												



**Determination Of Rating**

<p><b>A. Did The District Answer No To Indicators 1, 2, 3, 4 Or 5; OR Both 6 And 7</b>                  If The District Answered No To Either, The District's Rating Is <b>Substandard Achievement</b></p>	
<p><b>B. Determine Rating By Applicable Number Of Points</b></p>	
<p><b>Superior Achievement</b></p>	<p>Points</p>
<p><b>Above Standard Achievement</b></p>	<p>&gt;=85 AND Yes To Indicator 10                  &gt;=75 &lt;85                  OR &gt;=85 AND No To Indicator 10</p>
<p><b>Standard Achievement</b></p>	<p>&gt;=65 &lt;75</p>
<p><b>Substandard Achievement (If Less Than 65 Points OR If The District Answered No To Indicators 1, 2, 3, 4 Or 5; OR Both 6 And 7)</b></p>	<p>&lt;65 OR Answered No To One Default Indicator</p>

\* UL - Upper limit  
 \*\* LL - Lower limit

For Questions Call The Division Of Financial Audits At (512) 463-9095.

**Administrative Cost Ratio Indicator 20**

ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparsely	0.3614

**Student To Teacher Ratio Indicator 21**

District Size - Number of Students Between	Low	High
<500	7.0	22
500 - 999	10.0	22
1,000 - 4,999	11.5	22
5,000 - 9,999	13.0	22
=>10,000	13.5	22

**Student To Staff Ratio Indicator 22**

District Size - Number of Students Between	Low	High
<500	5.0	14
500 - 999	5.8	14
1,000 - 4,999	6.3	14
5,000 - 9,999	6.8	14
=>10,000	7.0	14

Completed By: \_\_\_\_\_ Date: \_\_\_\_\_

Notes:

<b>School FIRST - Rating Worksheet Calculations Effective July 2006</b>		
	<b>Indicator</b>	<b>Calculation Defined</b>
1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?	$A > 0$ Where A = [Aggregate Of Unreserved, Designated Fund Balance And Unreserved, Undesignated Fund Balance In General Fund At June 30 or August 31 Depending On Fiscal Year End]
2	Was the Total Unrestricted Net Asset Balance (Net Of The Accretion Of Interest For Capital Appreciation Bonds) In The Governmental Activities Column In The Statement Of Net Assets Greater Than Zero?	$A + B > 0$ Where A = Total Unreserved Net Asset Balance in the Governmental Activities Column in Exhibit A-1, Statement of Net Assets in the Annual Financial Report; B= Accretion of Interest for Capital Appreciation Bonds
3	Were There No Disclosures In The Annual Financial Report And/Or Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?	No Calculation Involved
4	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?	No Calculation Involved
5	Did The District's Academic Rating Exceed Academically Unacceptable?	No Calculation Involved
6	Was There An Unqualified Opinion In The Annual Financial Report?	No Calculation Involved
7	Did The Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?	No Calculation Involved
8	Were Operating Expenditures Per WADA In The General Fund And Special Revenue Fund Less Than Or Equal to \$4,700 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, And 35, Food Services)?	$((A+B) / C)$ Where A = [Expenditures In General Fund And Special Revenue Fund (Excluding Expenditure Object Code 6141, Social Security/Medicare, And Expenditures Under SSA Fund Codes) In Function Codes 11-33 and 36-61 And Object Codes 6112-6499]; B = [Expenditures Reported On Behalf Of District By Fiscal Agent In 033 District Finance Data - Shared Services Arrangement Actual PEIMS Record]; C = [WADA]

<b>School FIRST - Rating Worksheet Calculations Effective July 2006</b>		
	<b>Indicator</b>	<b>Calculation Defined</b>
9	Were Operating Expenditures Per WADA In The General Fund Less Than Or Equal to \$4,200 (Exclude Expenditures Under Expenditure Object Code 6141, Social Security/Medicare, And Function Codes 34, Student (Pupil) Transportation, And 35, Food Services)?	$((A + B) / C)$ Where A = [Expenditures In General Fund (Excluding Expenditure Object Code 6141, Social Security/Medicare) In Function Codes 11-33 and 36-61 Object Codes 6112-6499]; B = [Expenditures In General Fund In Function Code 93 And Object Code 6492]; C = [WADA]
10	Did The District Have A Recognized Or Exemplary Academic Rating?	No Calculation Involved
11	Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?	$((A / B) \times 100)$ Where A = [Tax Collections For Three Years ]; B = [Tax Levy For Three Years] Reported In Exhibit J-1 Schedule of Delinquent Taxes Receivable In The Annual Financial Report
12	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	$((A / B) \times 100) / C$ Where A = [Absolute Value Of All Differences In Expenditures In Exhibit C-2 Statement of Revenues, Expenditures, and Changes in Fund Balance And PEIMS]; B = [Sum Of Expenditure In PEIMS Per Fund Type Presented In Exhibit C-2]; C = [Fund Class]
13	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$250.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$200,000 Per Student, Then The District Receives 5 Points)	If $((B - D) / D) \times 100 < 7\%$ Or $E / F < \$200,000$ , Then Continue Calculation $((A - C) / B)$ Where A = [Function 71 Expenditures Report In The Debt Service And General Funds (Excluding Expenditure Object Codes 6524 and 6525)]; B = [Number Of Students In Year 5 From Base Year]; C = [IFA + EDA Allotments]; D = [Number Of Students In Base Year]; E = [Total Tax Collections]; F = [Total Tax Rate In Pennies]
14	Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?	No Calculation Involved
15	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., No Conservator Or Monitor Assigned)	No Calculation Involved

<b>School FIRST - Rating Worksheet Calculations Effective July 2006</b>		
	<b>Indicator</b>	<b>Calculation Defined</b>
16	Was The Percent Of Operating Expenditures Expended For Instruction More Than 65%? (Phased In Over Three Years: 55% For 2006-2007; 60% For 2007-2008; And 65% For 2008-2009)	$((A / B) \times 100)$ Where A = [Expenditures In General Fund, Special Revenue Funds (Excluding SSA Fund Codes) and Capital Projects In Functions 11, 12, 36, 93, 95 And Object Codes 6112-6499]; B = [Expenditures In General Fund, Special Revenue Fund, And Enterprise Fund 701(Child Nutrition Program); (Excluding SSA Fund Codes) And Capital Projects Fund; Functions 11 through 61 and 93 & 95; Object Codes 6112 through 6499]
17	Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources and Fund Balance In General Fund?	$(A + B) - (C + D + E) < 0$ Where A = [Budgeted Appropriations In General Fund]; B = [Budgeted Other Uses In The General Fund]; C = [Budgeted Revenues In General Fund]; D = [Budgeted Other Resources In The General Fund]; E = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]
18	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	If $(C + D) < 0$ Then Continue Calculation As $(A - B - (C + D)) < 0$ Where A = [Expenditures Function 81 In General Fund and Capital Projects Fund]; B = [Other Resources For Real Property Financing In General Fund and Capital Projects Fund]; C = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]; D = [Fund Balance In Capital Projects Fund At July 1 or September 1 Depending On Fiscal Year End]
19	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)	If $B > 0$ Then Continue Calculation As $(A / B)$ Where A = [Cash And Investments In General Fund]; B = [Deferred Revenue In General Fund – Property Tax Receivable Net Of Uncollectible]

**School FIRST - Rating Worksheet Calculations Effective July 2006**

	<b>Indicator</b>	<b>Calculation Defined</b>
20	Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	$(A > B)$ A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The District]
21	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size?	$(A / B)$ Where A = [Number Of Students]; B = [Number Of Teachers FTEs]
22	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size?	$(A / B)$ Where A = [Number Of Students]; B = [Total Staff FTEs]
23	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% Of Optimum According To The Fund Balance And Cash Flow Calculation Worksheet In The Annual Financial Report?	B = Optimum and Deficient Fund Balance Amount In General Fund Is Defined As $A < ((B \times .5)$ And Excess Is Defined As $A > (B \times 1.5)$ Where A = [Total General Fund Balance At June 30, 20XX or August 31, 20XX Depending On Fiscal Year End]; B = Line 10 in Exhibit J-3, Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report.
24	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points).	If $(A - B) > 0$ And Optimum Fund Balance $\times 1.5$ Is Less Than Total Fund Balance In General Fund And $[C] \times .80 > [D]$ , Then Continue Calculation $[A] - [B]$ Where A = [Expenditures In General Fund In Functions 11 Through 61 And Expenditure Object Codes 6100 Through 6400]; B = [Total Revenues In General Fund]; C = [Undesignated, Unreserved Fund Balance In General Fund At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior]; D= [Undesignated, Unreserved Fund Balance In General Fund For The Last Fiscal Year]
25	Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?	$A > 0$ Where A = [Cash and Investments In General Fund]
26	Were Investment Earnings In All Funds (Excluding Debt Service Fund And Capital Projects Fund) More Than \$20 Per Student?	$(A / B)$ Where A = [Investment Earnings In All Funds Except Debt Service Fund And Capital Projects Fund]; B = [Number Of Students]

Indicator 20	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3614

		Ranges for Ratios	
District Size - Number of Students Between		Low	High
<b>Indicator 21</b>			
	<500	7.0	22
	500 999	10.0	22
	1,000 4,999	11.5	22
	5,000 9,999	13.0	22
	=>10,000	13.5	22
<b>Indicator 22</b>			
	<500	5.0	14
	500 999	5.8	14
	1,000 4,999	6.3	14
	5,000 9,999	6.8	14
	=>10,000	7.0	14

For Questions Call The Division Of Financial Audits At (512) 463-9095.

Figure: 34 TAC §9.4037(d)(1)

```
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# 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

*(Editor's note: The Department of Aging and Disability Services submitted a Notice of Public Hearing that appeared in the April 7, 2006, issue of the Texas Register (31 TexReg 3073). Due to a publication error, part of the first sentence was omitted. The corrected notice is republished in its entirety.)*

The Department of Aging and Disability Services (DADS) has prepared the agency's Strategic Plan for inclusion in the Texas Health and Human Services Enterprise (HHS) Strategic Plan for fiscal years (FYs) 2007 - 2011. 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](mailto: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 web site at <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-200602116



## Austin-San Antonio Intermunicipal Commuter Rail District

Request for Proposals for Federal Legislative Assistance

**AUSTIN-SAN ANTONIO INTERMUNICIPAL COMMUTER RAIL DISTRICT**

**C/O AUSTIN-SAN ANTONIO CORRIDOR COUNCIL**

**P.O. BOX 1618**

**SAN MARCOS, TEXAS 78667**

### Notice to All Interested Parties

The Austin-San Antonio Intermunicipal Commuter Rail District (District) is issuing this Request for Proposals (RFP) that requests all firms or teams of firms that have the capability and interest in undertaking and performing the scope of work described below submit their Proposals

to the District on May 15, 2006 at the time and place specified below. Each firm or team of firms is officially a proposer. Each proposer must submit a package containing an original and 16 copies of its proposal to the District no later 2:00 p.m. on May 15, 2006 to the Interim Executive Director at the address identified above. Proposals may be submitted in person, by messenger, or delivery service, or by regular mail. All proposals will be logged in and date and time stamped. Any proposal package that is received after the date and time specified will be logged and date and time stamped as "late" and returned unopened to the proposer.

### Background

The District was created by the State Legislature for the express purpose of planning, designing, constructing, and operating a commuter rail system between the greater metropolitan areas of Austin and San Antonio. The governing body of the District is composed of 17 persons that are appointed in accordance with the provisions of the Legislation. Specifically, the goal of the District is to advance to completion and operations a commuter rail project of approximately 110 miles in length within the existing Union Pacific (UP) Railroad right-of-way extending from the City of Georgetown in Williamson County on the north through Travis County and the City of Austin to the south, and further extending south through the City of San Marcos, and into Bexar County terminating in the central business district (CBD) of the City of San Antonio. Assistance with negotiations, engineering, and financing a proposed relocation of Union Pacific's existing through-freight operations into a new grade-separated freight rail line in, near, or adjacent to the new State Highway 130 Corridor may play a key role in the eventual successful completion of this project. Furthermore, it is the expressed intent of the Board to quantify the cost/benefits of the proposed service at various operating speeds and ridership levels to determine the overall economic development and congestion mitigation potential of the proposed service and its impact on retail, commercial, industrial, and residential development in the immediate vicinity of the right of way and urban railheads.

Congressman Lamar Smith led an effort to earmark funding of \$5.6 million in the 1998 Transportation Equity Act for the 21st Century (TEA-21) to "Construct Austin to San Antonio Corridor."

The first meeting of the Austin-San Antonio Inter-Municipal Commuter Rail District Board was held on February 7, 2003. The District was created following votes by Travis and Bexar Counties and the city of San Antonio to form the organization in late 2002; Austin voted to form the District in 1998. Area cities and counties have appointed board members to the District, with two members selected by the Texas Transportation Commission.

At its regular meeting on September 5, 2003, the Board approved a Contract for Engineering Services for a Program Management Consultant team to oversee the commuter rail project. It was also announced that the Federal Project Authorization and Agreement (letter of authority), certified by the Federal Highway Administration (FHWA), was received confirming that the Austin-San Antonio Intermunicipal Commuter Rail District was fully authorized to commence with preliminary engineering and planning studies needed to develop regional commuter rail between the cities of Georgetown and San Antonio.

### **Purpose of this Solicitation**

The purpose of this solicitation is to retain one or more Consultants to assist the District in securing grants and other federal assistance to:

1. fund part or all of the management, planning, design, construction, property and facility purchases, equipment acquisition and/or operation of a commuter rail system in the corridor; and
2. leverage available local and State funding to maximum extent possible consistent with the objectives of the Commuter Rail District.

### **Scope of Services**

The Consultant(s) shall perform, at the direction of the Commuter Rail District Interim Executive Director (Interim Executive Director), the below work tasks. It should be noted that this list is subject to change, and may be expanded or contracted due to circumstances including change in scope, magnitude of the project, and fiscal and budget constraints.

1. Develop a strategy to secure grants and other assistance through federal legislation and existing federal agency programs. The strategy should include at least objectives, tasks, funding targets, and a timeline. This strategy should be developed in consultation with the Interim Executive Director and appropriate committees of the District Board.
2. Make and/or maintain contact with key federal legislators and their staffs as well as federal agency decision-makers in order to make the needs of the District known to these federal legislators and administrators and to implement the strategy outlined above.
3. Arrange for key meetings between District representatives and federal legislators and/or administrators at appropriate times.
4. Provide at least monthly written updates to the District on progress being made toward the implementation of the strategy described above.
5. Meet at least quarterly with the Interim Executive Director and selected members of the District Board to review the strategy developed in the first task and revise as needed.
6. Be available during the course of the engagement to the Interim Executive Director to respond to questions and concerns as they may arise.

### **Contents of the Proposal**

The District is hereby requesting the following be included in each copy of the proposal submissions of all proposers:

1. A transmittal letter identifying the team members, key personnel, project manager and related information;
2. The qualifications of the proposer including all team members, as appropriate;
3. The resumes of the key persons on the team as identified by the proposer;
4. A discussion of the work plan that defines the approach that will be utilized by the proposer. The work plan should identify key milestones over the next two years;
5. An explanation of the ways that the Consultant will maintain communications with the District during the course of the engagement;
6. Brief descriptions of similar engagements within the last five years, including client contact information, of the proposer; and
7. A budget and schedule for the performance of the work.

Proposals should be limited to a maximum of 30 pages. No more than 5 of these pages should be anything but standard 8 1/2 by 11 inches in size.

### **Level of Effort and Duration of Engagement**

The District is seeking a two-year contract with a successful proposer. Local contributions are the source of funds for this project.

### **Proposer Selection Process**

The selection of the successful proposer will be made solely by the Board of Directors. There will be no pre-proposal conference conducted by the District. However, any potential proposers may arrange a meeting with the Interim Executive Director to discuss the contents of this RFP and the expectations of the District related to this commuter rail project, subject to his time and availability.

If in the judgment of the Interim Executive Director, changes in the contents of the RFP are required, an addendum will be issued by the District. Any addendum that may be issued will be transmitted by fax and e-mail to all firms and teams that have expressed an interest in this RFP. The addendum by the District will provide all potential proposers at least three calendar days of time to incorporate the necessary changes before the submission of their proposals.

Due to potential conflict of interest, no potential proposer or a person representing a potential proposer may arrange or meet with the individual members of the Board of Directors of the District to discuss any items or matters related to this RFP during the period of time between the date of the release of this RFP and the date the Board makes the decision selecting the successful proposer(s).

The following is a general schedule that will be followed to complete the selection process:

April 19, 2006--Publication of a Notice in the Press and Release of the RFP;

May 15, 2006--Receipt of the Original and 16 copies of the proposals from all proposers;

May 18, 2006--District Board Committee reviews and scores proposals and arrives at a short list of up to three proposers to be recommended to the full Board for interviews;

May 18, 2006--Finalists notified of interviews scheduled for May 18 - 30, 2006;

May 22, 2006--District Board of Directors interviews up to three proposers and selects the Consultant to undertake the work and authorizes Interim Executive Director to develop a contract to be approved by the Board of Directors;

June 2, 2006--District Board of Directors approves the contract and authorizes the Interim Executive Director to issue a Notice to Proceed.

Any questions about the contents of this RFP should be directed in writing to the Interim Executive Director at the address noted above.

TRD-200602073

Ross Milloy

Interim Executive Director

Austin-San Antonio Intermunicipal Commuter Rail District

Filed: April 10, 2006

## **Brazos Valley Council of Governments**

Notice of Release of Request for Proposal for Child Care Management Services

On April 7, 2006, the Brazos Valley Council of Government (BVCOG) and Workforce Solutions, Brazos Valley Board (WSBVB) release a Request for Proposal (RFP) for Child Care Management Services. Child Care Management Services include:

\* Child Care Client Services - to offer child care to eligible families and to improve the quality, availability, and affordability of child care in the Brazos Valley.

\* Provider Management - to recruit eligible child care providers in all seven counties on a monthly basis to expand the availability of child care within the Brazos Valley workforce development area and to improve the quality of child care services provided.

\* Financial Management - to provide financial management services for Child Care Client Services and Operations, and Child Care Provider Management.

#### Mandatory Bidders Conference

A mandatory Bidder's Conference will be held to discuss this RFP and to answer other questions concerning the procurement process. The Bidders Conference will be held at 1:30 p.m., Monday, April 17, 2006 at the Workforce Solutions Brazos Valley Board offices located at:

Workforce Solutions Brazos Valley Board

3991 East 29th Street

Bryan, Texas 77802

#### Due Date

An original and four copies of a written proposal are due to the Board's offices no later than 4:00 p.m., May 2, 2006. No proposals will be accepted after this deadline.

Potential respondents may pose written questions concerning this RFP by e-mail or fax. Contact Shawna Chambers at [schambers@bvcog.org](mailto:schambers@bvcog.org). The fax number is (979) 595-2810. The RFP may be viewed and printed from the Internet on [www.bvjobs.org](http://www.bvjobs.org). The contact person for this RFP is Shawna Chambers, (979) 595-2800.

TRD-200602043

Tom Wilkinson

Executive Director

Brazos Valley Council of Governments

Filed: April 6, 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 31, 2006, through April 6, 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 April 12, 2006. The public comment period for these projects will close at 5:00 p.m. on May 12, 2006.

#### FEDERAL AGENCY ACTIONS:

**Applicant: Texas General Land Office;** Location: The project is located at the east shore of the Gulf Intracoastal Waterway (GIWW), just

south of the John F. Kennedy Causeway High Bridge. The project can be located on the U.S.G.S. quadrangle map entitled: Crane Islands NW, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 673720; Northing: 3057668. Project Description: The applicant proposes to develop an area of shoreline for commercial use by creating boat slips, decking, and retaining walls. This will involve dredging a 14,200-square-foot area, covering a 2,106-square-foot area with fill, and constructing a 13,092-square-foot deck. Additionally, 2,166 square feet of uplands will be converted into submerged habitat. The material from the initial dredging will be placed in offsite upland disposal. Maintenance dredging material will also be placed in offsite upland disposal; but because of the proposed configuration and proximity to the GIWW, maintenance dredging is anticipated to be minimal. CCC Project No.: 06-0231-F1; Type of Application: U.S.A.C.E. permit application #18538(05) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

**Applicant: BOSS Exploration and Production Corporation;** Location: The project proposal is known as Well No. 1 in State Tract (ST) 400 (400-1). The project includes construction of a flowline from Well 400-1, north to an existing well know as 348-4 in ST 348. The project is located in Corpus Christi Bay approximately 3.2 miles east of Gulf Intracoastal Waterway (GIWW) Marker 71, in ST 400, Nueces County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, TX. Approximate UTM Coordinates in NAD 27 (meters): Proposed Well 400-1: Zone 14; Easting 681657; Northing: 3074930. Existing Well 348-4: Zone 14; Easting: 681663; Northing: 3077425. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. The proposal is to drill an oil well in ST 400. The drilling activity includes installation of typical marine barges and keyways. Upon completion of drilling, the applicant proposes to leave in place an 8-by-20-foot well head and platform with a U.S. Coast Guard navigational light atop it. Once the new well is complete, the applicant proposes to construct an 8,165-foot flowline to an existing well know as Well 348-4 in ST 348. During drilling and flowline installation activities, the applicant proposes to use a 500-foot radius around the drilling rig as a work area. The applicant proposes to access Well Nos. 400-1 and 348-4 from the west via deep water from GIWW Marker No. 71 proceeding east to Well No. 400-1. The water depth along the proposed access route is approximately -8.9 to -12.9 feet MHW. CCC Project No.: 06-0233-F1; Type of Application: U.S.A.C.E. permit application #24127 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.

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](mailto: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-200602071

Larry L. Laine  
Chief Clerk/Deputy Land Commissioner, General Land Office  
Coastal Coordination Council  
Filed: April 10, 2006

◆ ◆ ◆  
**Office of Consumer Credit Commissioner**

**Notice of Rate Bracket Adjustment**

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in TEX. FIN. CODE §341.203.<sup>1</sup>

The amounts of brackets in TEX. FIN. CODE §342.201(a) are changed to \$1,680.00 and \$14,000.00, respectively.

The amounts of brackets in TEX. FIN. CODE §342.201(e) are changed at \$2,800.00, \$5,880.00, and \$14,000.00, respectively.

The ceiling amount in TEX. FIN. CODE §342.251 is changed to \$560.00 and \$1,120.00, respectively.

The amounts of the brackets in TEX. FIN. CODE §345.055 are changed to \$2,800.00 and \$5,600.00, respectively.

The amounts of the bracket in TEX. FIN. CODE §345.103 is changed to \$2,800.00.

The ceiling amount of TEX. FIN. CODE §371.158 is changed to \$14,000.00.

The amounts of the brackets in TEX. FIN. CODE §371.159 are changed to \$168.00, \$1,120.00, and \$1,680.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2006, and extending through June 30, 2007.

<sup>1</sup> Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2005 Index = 573.3. The percentage of change is 564.27%. This equates to an increase of 560% after disregarding the percentage of change in excess of multiples of 10%.

TRD-200602091  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 11, 2006

◆ ◆ ◆  
**Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/17/06 - 04/23/06 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/17/06 - 04/23/06 is 18% for Commercial over \$250,000.

<sup>1</sup> Credit for personal, family or household use.

<sup>2</sup> Credit for business, commercial, investment or other similar purpose.

TRD-200602089

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: April 11, 2006

◆ ◆ ◆  
**Texas Commission on Environmental Quality**

**Notice of District Petition**

Notices mailed April 11, 2006

TCEQ Internal Control No. 11282005-D02; County Line Water Supply Corporation (Petitioner) has filed a petition with the Texas Commission on Environmental Quality (TCEQ) to convert County Line Water Supply Corporation to County Line Special Utility District (District), to transfer Certificate of Convenience and Necessity (CCN) No. 10292 from County Line Water Supply Corporation to County Line Special Utility District, and for approval of an Impact Fee of \$3,765. County Line Special Utility District's business address will be: 140 Grist Mill Road; Umland, Texas 78640-9365. The petition was filed pursuant to Chapters 13 and 65 of the Texas Water Code; 30 Texas Administrative Code Chapters 291 and 293; and the procedural rules of the TCEQ. The nature and purpose of the petition are for the conversion of County Line Water Supply Corporation and the organization, creation and establishment of County Line Special Utility District under the provisions of Article XVI, Section 59, Texas Constitution, and Chapter 65 of the Texas Water Code, as amended. The District shall have the purposes and powers provided in Chapter 65 of the Texas Water Code, and CCN No. 10292 shall be transferred as provided in Chapter 13, of the Texas Water Code, as amended. The nature of the services presently performed by County Line Water Supply Corporation is to purchase, own, hold, lease and otherwise acquire sources of water supply; to build, operate and maintain facilities for the transportation of water; and to sell water to individual members, towns, cities, private businesses, and other political subdivisions of the State. The nature of the services proposed to be provided by County Line Special Utility District is to purchase, own, hold, lease, and otherwise acquire sources of water supply; to build, operate, and maintain facilities for the storage, treatment, and transportation of water; and to sell water to individuals, towns, cities, private business entities and other political subdivisions of the State. Additionally, it is proposed that the District will protect, preserve and restore the purity and sanitary condition of the water within the District. It is anticipated that conversion will have no adverse effects on the rates and services provided to the customers. The submitted creation application also requested approval of an Impact Fee of \$3,765 for the proposed District. The proposed District is located in Hays and Caldwell Counties and will contain approximately 33.3 square miles. The territory to be included within the proposed District includes all of the singularly certified service area covered by CCN No. 10292. CCN No. 10292 will be transferred after a positive confirmation election. The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice.

TCEQ Internal Control No. 02222006-D02; Skinner Lands Turkey Creek, LLC and Resscomm Trust #1 (Petitioner) filed a petition for creation of Harris County Municipal Utility District No. 454 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is one lien holder, Texas State Bank, on the property to be included in the proposed District, and the Petitioner has provided

the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 191.26 acres of land located in Harris County, Texas; and (4) the proposed District is entirely within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village of the State of Texas. By Ordinance No. 2005-1323, effective December 7, 2005, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial, and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) finance one or more facilities designed or utilized to perform fire-fighting services; and (4) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. 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 \$15,500,000.

TCEQ Internal Control No. 02162006-D03; V & W Partners, Ltd., Vintage Lakes Center, L.P. and IMF Investments 105 L.P. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 468 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owner of a majority in value of the land to be included in the proposed District; (2) there are two lien holders, Laredo National Bank and Amegy Bank National Association, on the property to be included in the proposed District, and the Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District; (3) the proposed District will contain approximately 529.14 acres located in Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2006-1, effective January 10, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for municipal, domestic, industrial and commercial purposes; (2) acquire, construct, operate and maintain a system to gather, conduct, divert, and control local storm water or other local harmful excesses of water within the District; (3) purchase, acquire, construct, own, lease, extend, improve, operate, maintain, and repair such additional improvements, facilities, plants, equipment, and appliances consistent with the purposes for which the District is organized, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition. According to the petition, the Petitioners have conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$45,400,000.

#### 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 rep-

resentative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

TRD-200602105

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 12, 2006



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 22, 2006**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and

must be **received by 5:00 p.m. on May 22, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Arlin Terrell dba Terrell's Mobile Home Park; DOCKET NUMBER: 2004-1016-PWS-E; TCEQ ID NUMBERS: 1520192 and RN101249852; LOCATION: 312 East 82nd Street, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: residential development with a public water supply system; RULES VIOLATED: 30 TAC §290.106(f)(3) and §290.122(b), by exceeding the maximum contaminant level (MCL) for fluoride and by failing to provide notice thereof to persons served by the water system; PENALTY: \$6,014; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(2) COMPANY: Crest Enterprises, Inc. dba Chevron Mart; DOCKET NUMBER: 2003-0240-PST-E; TCEQ ID NUMBERS: 69100 and RN101566412; LOCATION: 3544 East 14th Street, Plano, Collin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.10(b)(1)(A) and (B), by failing to maintain records as required to demonstrate proper release detection, in accordance with 30 TAC §334.50(b)(2), for the product piping associated with all UST systems; 30 TAC §115.245(2) and Texas Health Safety Code (THSC), §382.085(b), by failing to conduct a pressure decay test during the 12-month period preceding the inspection and by failing to verify proper operation of the Stage II equipment at least once every five years; PENALTY: \$5,850; STAFF ATTORNEY: Robert Mosley, Litigation Division MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Darren Taylor; DOCKET NUMBER: 2005-1205-OSS-E; TCEQ ID NUMBER: RN104026380; LOCATION: Highway 147 South, San Augustine, San Augustine County, Texas; TYPE OF FACILITY: on-site sewage facility; RULES VIOLATED: THSC, §366.017(a)(1) and 30 TAC §285.3, by failing to repair a malfunctioning on-site sewage disposal system on the site not later than the 30th day after the date on which the owner is notified by the commission if the owner has not been notified of the malfunctioning system during the preceding 12 months; PENALTY: \$8,531; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Datar Corporation dba One Stop Mobil; DOCKET NUMBER: 2003-0389-PST-E; TCEQ ID NUMBER: RN101436038; LOCATION: 4024 Nasa Road 1, El Lago, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$1,050; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Felipe Gutierrez dba Buffalo Drive In Grocery; DOCKET NUMBER: 2004-2005-PST-E; TCEQ ID NUMBERS:

45316 and RN102048642; LOCATION: 2712 South Alamo Road, Alamo, Hidalgo County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; 30 TAC §334.22(a) and Texas Water Code (TWC), §5.702, by failing to pay UST fees for TCEQ Account Number 0048931U for Fiscal Year 2005; PENALTY: \$2,140; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(6) COMPANY: Hamsho, Inc.; DOCKET NUMBER: 2005-1287-PST-E; TCEQ ID NUMBER: RN102409430; LOCATION: 1125 Jefferson Drive, Port Arthur, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §114.246(4) and (5) and THSC, §382.085(b), by failing to maintain a record of the testing conducted at the motor vehicle fuel dispensing facility, and proof of attendance and completion of all Stage II training for each employee to be maintained as long as that employee continues to work at the facility; 30 TAC §334.50(a)(1)(A), (b)(2)(A)(i)(III), and (d)(9)(A)(iii) and TWC, §26.3475(a), by failing to provide a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other underground ancillary equipment; 30 TAC §115.242(3) and (3)(A), by failing to provide and maintain the Stage II vapor recovery system in proper operating condition and free of defects; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of Stage II equipment at least every 12 months or upon major system replacement or modification; 30 TAC §334.49(a)(2) and TWC, §26.3475(d), by failing to equip the UST with corrosion protection and have the system designed, installed, operated, and maintained in a manner that will ensure that corrosion protection will be continuously provided to all underground metal components of the UST system; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(c)(2), by failing to provide proper overfill prevention equipment for the UST system; 30 TAC §334.48(c), by failing to reconcile inventory control records on a monthly basis; 30 TAC §334.50(d)(9)(A)(iv) and §334.72, by failing to report to the agency any UST system analysis report results other than "pass" as a suspected release from a UST; 30 TAC §334.71(1), by failing to immediately investigate and confirm all suspected releases of regulated substances at a UST site within 30 days; PENALTY: \$35,125; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Jose A. Menjivar, Sr.; DOCKET NUMBER: 2005-0729-LII-E; TCEQ ID NUMBERS: RN104191622; LOCATION: 499 Flowering Wells Road, Pottsboro, Grayson County, Texas; TYPE OF FACILITY: landscape irrigation; RULES VIOLATED: 30 TAC §344.4(a) and §30.5(a) and (b), TWC, §37.003, and Texas Occupations Code, §1903.251, by failing to hold an irrigation license prior to selling, designing, consulting, installing, maintaining, altering, repairing, or servicing an irrigation system; PENALTY: \$1,250; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: Nehal, Inc. dba Oasis Food Mart; DOCKET NUMBER: 2005-0286-PST-E; TCEQ ID NUMBERS: 74986 and RN101846699; LOCATION: 4751 North Beltline Road, Mesquite,

Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$1,940; STAFF ATTORNEY: Becky Combs, Litigation Division, MC 175, (512) 239-6939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Torres Ready-Mix, Inc.; DOCKET NUMBER: 2004-0252-MLM-E; TCEQ ID NUMBERS: 70774 and RN103967469; LOCATION: seven miles north of United States Highway 83 and 1.2 miles east of Farm-to-Market Road 1436, La Pryor, Zavala County, Texas; TYPE OF FACILITY: quarry with a rock crusher and equipment which generates used oil; RULES VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to obtain a permit or satisfy the conditions of a permit by rule to construct a rock crusher; 30 TAC §324.6 and 40 Code of Federal Regulations §279.22(c)(1), by failing to label or mark clearly containers and aboveground tanks used to store used oil with the words "Used Oil"; 30 TAC §21.3 and §101.24, THSC, §382.062, and TWC, §26.0291, by failing to pay wastewater general permit fees and air inspection fees; PENALTY: \$61,250; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(10) COMPANY: Z.A.O., Inc.; DOCKET NUMBER: 2005-0341-PST-E; TCEQ ID NUMBERS: 104137 and RN102281177; LOCATION: 9817 Dyer Street, El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline station with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.78 and §334.80, by failing to submit information about the site and the nature of the release and failure to conduct investigations of the release; PENALTY: \$18,850; STAFF ATTORNEY: Xavier Guerra, Litigation Division, MC R-13, (210) 403-4016; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

TRD-200602113

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: April 12, 2006



#### Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 22, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes

to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 22, 2006**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: A P G & Z, Inc. dba McKinney Food Store; DOCKET NUMBER: 2002-1016-PST-E; TCEQ ID NUMBERS: 49369 and RN102049228; LOCATION: 1117 East McKinney Street, Denton, Denton County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: Texas Water Code (TWC), §26.3475(c)(2) and 30 TAC §334.51(b)(2)(B), by failing to equip the fill tubes on the facility's three underground storage tanks (USTs) with spill and overflow prevention equipment to prevent any spilling or overflowing of regulated substances; PENALTY: \$2,000; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Aristos, Inc. dba Smart Stop; DOCKET NUMBER: 2003-1172-PST-E; TCEQ ID NUMBERS: 71598 and RN102256088; LOCATION: 811 Strickland Drive, Orange, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide proper release detection for the UST system at the facility; PENALTY: \$2,000; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(3) COMPANY: Chevron Phillips Chemical Company, L.P.; DOCKET NUMBER: 2005-0007-AIR-E; TCEQ ID NUMBER: RN103919817; LOCATION: 9500 Interstate Highway 10 East, Baytown, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: Texas Health Safety Code (THSC), §382.085(b), 30 TAC §116.115(c), and New Source Review (NSR) Air Permit Number 37063, Special Condition 1, Maximum Allowable Emission Rate Table (MAERT), by failing to limit emissions in the Normal Alpha Olefin Unit 1797 from two block valves Emission Point Number (EPN F-130) and the SYS-740 Flare (EPN 136), to those limited by the permit; PENALTY: \$4,350; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Baird; DOCKET NUMBER: 2005-1043-PWS-E; TCEQ ID NUMBERS: 0300001 and RN101387462; LOCATION: Baird, Callahan County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: THSC, §341.0315(c) and 30 TAC §290.113(f)(4), by exceeding the maximum contaminant level (MCL) of 0.080 milligrams per liter (mg/L) for trihalomethanes for the third and fourth quarters of 2004 and the first quarter of 2005; THSC, §341.0315(c) and 30 TAC §290.113(f)(5), by exceeding the MCL of 0.060 mg/L for haloacetic acid (five) (HAA5) for the third and fourth quarters of 2004 and the first quarter of 2005; PENALTY: \$1,250; STAFF ATTORNEY: Shana Horton, Litigation Division,



MC 175, (512) 239-1088; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(5) COMPANY: City of Lovelady; DOCKET NUMBER: 2003-1298-MWD-E; TCEQ ID NUMBERS: 10734-001 and RN102185543; LOCATION: approximately 0.5 miles southwest of the intersection of State Highway 19 and Farm-to-Market Road 1280, Lovelady, Houston County, Texas; TYPE OF FACILITY: domestic wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10734-001 Effluent and Monitoring Requirements, by failing to comply with its permitted effluent quality limitations; 30 TAC §305.125(1) and (5), §305.126(a), and TPDES Permit Number 10734-001, Permit Conditions Number 2.b and Operational Requirements Numbers 1 and 8, by failing to maintain units of conveyance; by failing to initiate plans for expansion or submit an engineering report to document a request for a waiver of the 75/90 rule requirement; by failing to properly maintain all units of treatment; by failing to maintain the flow measurement device to provide accurate readings; and 30 TAC §319.7(a) and (c) and TPDES Permit Number 10734-001, Monitoring and Reporting Requirements Number 3.b and 3.c, by failing to maintain pH calibration records and to record the name of the individual and the time that the pH measurements and flow readings were taken; PENALTY: \$19,550; STAFF ATTORNEY: Deborah A. Bynum, Litigation Division, MC 175, (512) 239-1976; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Duinick Brothers, Inc. dba Duinick Brothers Construction Company; DOCKET NUMBER: 2004-1091-PST-E; TCEQ ID NUMBERS: 65411 and RN102265972; LOCATION: 4701 North Highway 377, Roanoke, Denton County, Texas; TYPE OF FACILITY: road construction equipment storage and maintenance company with underground storage tanks for refueling activities; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with UST systems; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(c)(3), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, and submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid current TCEQ delivery certificate before receiving a delivery of a regulated substance into the USTs; 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: \$6,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(7) COMPANY: E. I. Dupont De Nemours & Company, Inc.; DOCKET NUMBER: 2003-1371-MLM-E; TCEQ ID NUMBER: RN100216035; LOCATION: 5470 Twin City Highway, Nederland, Jefferson County, Texas; TYPE OF FACILITY: industrial organic chemicals plant; RULES VIOLATED: 30 TAC §101.20(1) and §116.115(c), TCEQ Permit Number 2769A - Special Condition 12F, 40 Code of Federal Regulations (CFR) §60.46b(e)(1), and THSC, §382.085(b), by failing to conduct valid stack sampling for nitrogen oxides (NOx) on Boiler 7, EPN P&S-BLR7, within 60 days, but no later than 180 days after the initial start up of the Plant, which occurred in December 2002; 30 TAC §305.125(1), TPDES Permit Number 00473 - Effluent Limitations and Monitoring Requirements, and TWC, §26.121(a), by failing to comply with permitted effluent limitations at Outfall 001A and 101A; 30 TAC §116.115(b)(2)(F) and (c), TCEQ Permit Number 1743 - Special Conditions 1, and THSC, §382.085(b),

by failing to maintain an emission rate within the allowable emission limits in the Maximum Allowable Emissions Rate Table (MAERT) of the permit; 30 TAC §116.115(b)(2)(F) and (c), TCEQ Permit Number 1743 - Special Conditions 1 and 4, and THSC, §382.085(b), by failing to maintain an emission rate within the allowable emission limits in the MAERT of the permit; 30 TAC §116.115(b)(2)(F); Air Permit Number 4351 - Special Condition 1, and THSC, §382.085(b), by allowing unauthorized emissions from a dehydrating nitrogen line at the Aniline Unit on October 2, 2004; 30 TAC §116.115(b)(2)(F); Air Permit Number 4351 - Special Condition 1, and THSC, §382.085(b), by allowing unauthorized emissions from an absorber vent (EPN ACR-VNT 51) at the acrylonitrile process area on December 27, 2004; PENALTY: \$53,230; STAFF ATTORNEY: Jennifer Cook, Litigation Division, MC 175, (512) 239-1873; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Gary P. Jaquess dba Gary's Haltom City Car Wash; DOCKET NUMBER: 2004-1347-PST-E; TCEQ ID NUMBERS: 01059 and RN101553816; LOCATION: 5403 East Belknap Street, Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.22(a) and TWC, §5.702, by failing to pay outstanding UST fees, including penalties and interest; PENALTY: \$4,280; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Gateway Truck Terminal, Inc.; DOCKET NUMBER: 2005-1406-PST-E; TCEQ ID NUMBER: RN102405719; LOCATION: 5301 Santa Maria Avenue, Laredo, Webb County, Texas; TYPE OF FACILITY: retail service station and truck stop; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1)(A) and TWC, §26.3475(a) and (c)(1), by failing to demonstrate the utilization of a valid method of release detection capable of detecting a release from any portion of the UST system which contained regulated substances, including tanks, piping, and other underground ancillary equipment; PENALTY: \$6,825; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(10) COMPANY: MBE, Inc. dba Bryan's 2 and dba Bryan's 3; DOCKET NUMBER: 2003-1144-PST-E; TCEQ ID NUMBERS: RN101432334 and RN102375557; LOCATION: 901 East Main, San Augustine, San Augustine County (Bryan's 2), and 462 State Highway 7 East, Center, Shelby County (Bryan's 3), Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULES VIOLATED: at Bryan's 2, 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line, a UL-listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.48(c), by failing to conduct inventory control for all USTs involved in the retail sales

of petroleum substances used as motor fuel; at Bryan's 3, 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line, a UL-listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §334.50(b)(2)(A)(i)(III), by failing to test a line detector at least once per year for performance and operational reliability; 30 TAC §334.48(c), by failing to reconcile inventory control records at least once each month, sufficiently accurately to detect a release which equals or exceeds the sum of 1% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.21 and § 334.128, by failing to pay UST and above ground storage tank fees; PENALTY: \$18,000; STAFF ATTORNEY: Courtney St. Julian, Litigation Division, MC 175, (512) 239-0617; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: MMR Joint Ventures, Ltd.; DOCKET NUMBER: 2005-1096-EAQ-E; TCEQ ID NUMBER: RN104548904; LOCATION: within the Edwards Aquifer recharge zone, at the southeast corner of Highway 281 and Encino Commons, San Antonio, Bexar County, Texas; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain commission approval of an Edwards Aquifer Protection Plan prior to commencing construction activities, including clearing trees from the land and constructing a caliche pad for a building, on the Edwards Aquifer Recharge Zone; PENALTY: \$13,950; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(12) COMPANY: P & J Industries, Inc.; DOCKET NUMBER: 2004-1369-IHW-E; TCEQ ID NUMBER: R101517753; LOCATION: 44 Butterfield Circle, El Paso, El Paso County, Texas; TYPE OF FACILITY: metal plating facility; RULES VIOLATED: 30 TAC §335.513(c) and §335.70(a) and (b); and 40 CFR §262.40(c), by failing to maintain records of hazardous waste determinations and waste classifications, including process knowledge and analytical data; 30 TAC §335.6(c), by failing to notify the executive director of all waste streams managed at each unit and any waste management changes; 30 TAC §335.10(b), by failing to properly complete all waste manifests; 30 TAC §335.13(k), by failing to submit an exception report to the executive director when the original signed copy of the manifests were not received from the designated facility within 45 days of the date the waste was accepted by the initial transporter; 30 TAC §335.474(1)(C) and (J)(iv), by failing to include all required information in the pollution prevention plan; 30 TAC §335.431(c) and 40 CFR §268.7(a)(1), by failing to determine if the waste meets land disposal restriction standards; 30 TAC §335.69(a)(1)(A) and 40 CFR §265.173 and §262.34(a)(1)(i), by failing to keep hazardous waste containers closed during storage; 30 TAC §335.69(a)(4)(A) and 40 CFR §262.34(a)(4) and §265.35, by failing to maintain aisle space to allow unobstructed movement of personnel and emergency response equipment; 30 TAC §335.69(a)(4)(A) and 40 CFR §262.34(a)(4) and §265.52, by failing to include all required elements for an effective emergency response program in the contingency plan for the facility; 30 TAC §335.69(a)(4)(A) and 40 CFR §262.34(a)(4) and §265.37, by failing to make proper arrangements with local authorities; 30 TAC §335.69(a)(2) and 40 CFR §262.34(a)(2), by failing to have the beginning date of accumulation marked on each container; PENALTY: \$25,956; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(13) COMPANY: Sonntag Materials, Inc. DOCKET NUMBER: 2005-1641-WQ-E; TCEQ ID NUMBER: RN104739123; LOCATION: off

United States Highway 377, Granbury, Hood County, Texas; TYPE OF FACILITY: sand mining facility; RULES VIOLATED: 30 TAC §281.25(a)(4), TWC, §26.121, and 40 CFR §122.26, by failing to obtain storm water permit coverage to discharge storm water associated with an industrial activity; 30 TAC §205.6 and TWC, §5.702, by failing to pay General Wastewater Permit fees and associated late fees for Financial Account Number 20500295 for Fiscal Year 2005; PENALTY: \$2,000; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: Star Tex Gasoline & Oil Distributors, Inc. dba Star Trac 1; DOCKET NUMBER: 2005-1146-PST-E; TCEQ ID NUMBERS: 23481 and RN101378263; LOCATION: 5416 Leopard Street, Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (c)(5)(B)(ii), by failing to renew a TCEQ delivery certificate by timely and proper submission of a new UST registration and self-certification form to the agency; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before the delivery of a regulated substance into the UST system; PENALTY: \$2,040; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: The Goodyear Tire & Rubber Company; DOCKET NUMBER: 2004-1450-AIR-E; TCEQ ID NUMBERS: HG0289K and RN100870898; LOCATION: 2000 Goodyear Drive, Houston, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULES VIOLATED: 30 TAC §§115.352(4), 101.20(2), 116.715(a); 40 CFR §63.167(a)(1); TCEQ Permit Number 6618, Special Provision Number 3E; and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on 138 open-ended lines; 30 TAC §115.352(9); TCEQ Permit Number 6618, Special Provision Number 3F; and THSC, §382.085(b), by failing to reinstall pressure gauges between the relief valve and the rupture disk; 30 TAC §117.206(i), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 1.E; and THSC, §382.085(b), by failing to cease operations of firewater pump diesel engines for testing or maintenance between the hours of 6:00 a.m. and noon on March 4 - 6, 2003, March 10, 2003, March 20, 2003, and March 26, 2003; 30 TAC §111.145(2), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 2.C(ii); and THSC, §382.085(b), by failing to conduct sandblasting with adequate enclosure of work areas to prevent airborne particulate emissions on February 12, 2003; 30 TAC §115.122(a)(1), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 1.F; and THSC, §382.085(b), by failing to use a vapor control system to control a vent gas stream with a control efficiency of at least 90% or to a Volatile Organic Compound (VOC) concentration of no more than 20 parts per million by volume (on a dry basis corrected to 3.0% oxygen for combustion devices); 30 TAC §116.715(a), §116.721(a); TCEQ Permit Number 6618, General Condition Number 1; and THSC, §382.085(b), by failing to follow operational procedures that resulted in the release of insignificant amounts of contaminants; 30 TAC §§115.354(4), 101.20(2), 122.143(4); 40 CFR §63.165(b)(2); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 1.D; and THSC, §382.085(b), by failing to measure emissions from a relief valve which has vented to the atmosphere within 24 hours; 30 TAC §115.421(a)(9)(A)(iii), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 1.A; and THSC, §382.085(b), by

failing to use a surface coating that would not exceed VOC emissions limits for miscellaneous metal parts coating; 30 TAC §117.214(b)(2), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Provision Number 1.E; and THSC, §382.085(b), by failing to check the engines C2007 and C2008 for proper operation at least quarterly; 30 TAC §116.715(a); TCEQ Permit Number 6618, General Condition Number 10; and THSC, §382.085(b), by failing to keep the thermal oxidizer operating when vapors were routed to it; 30 TAC §116.715(a), §122.143(4); TCEQ Permit Number 6618, Special Condition 1, Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 10.A.; and THSC, §382.085(b), by failing to maintain emissions below permitted limits; 30 TAC §116.715(a), §122.143(4); TCEQ Permit Number 6618, Special Condition 1, Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 11.A.; and THSC, §382.085(b), by failing to maintain emissions below permitted limits; 30 TAC §116.715(a), §122.143(4); TCEQ Permit Number 6618, Special Condition 1, Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 10.A.; and THSC, §382.085(b), by failing to comply with the rolling 12-month, permitted emission cap for ammonia; 30 TAC §116.715(a), §122.143(4); TCEQ Permit Number 6618, Special Condition 3.F., Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 10.A.; and THSC, §382.085(b), by failing to install a pressure gauge between a relief valve and a rupture disk; 30 TAC §116.715(a), §122.143(4); TCEQ Permit Number 6618, Special Condition 3.F., Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 11.A.; and THSC, §382.085(b), by failing to install a pressure gauge between a relief valve and a rupture disk; 30 TAC §§115.352(4), 122.143(4), 101.20(2), 116.715(a), 40 CFR §63.167(a)(1), TCEQ Permit Number 6618, Special Provision Number 3E; Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 10.A.; and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on eight open ended lines; 30 TAC §§115.352(4), 122.143(4), 101.20(2), 116.715(a), 40 CFR §63.167(a)(1), TCEQ Permit Number 6618, Special Provision Number 3E; Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions 11.A.; and THSC, §382.085(b), by failing to install a second valve, a blind flange, or a tightly-fitting plug or cap on 13 open ended lines; 30 TAC §117.214(b)(2), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Special Terms and Conditions Number 1.E.; and THSC, §382.085(b), by failing to monitor for NOx and carbon monoxide emissions; 30 TAC §§101.20(2); 115.781(a), 122.143(4), 40 CFR §63.162(c); and Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Condition Numbers 1.A. and 1.K.(iv); and THSC, §382.085(b), by failing to identify fugitive components in a process unit in highly-reactive volatile organic compound service; 30 TAC §117.219(f)(10), §122.143(4); Operating Permit Number O-01227, General Terms and Conditions, and Special Terms and Conditions Number 1.E.; and THSC, §382.085(b), by failing to record complete information of engine testing and maintenance; 30 TAC §101.20(b), §122.143(4); and Operating Permit Number O-01227, General Terms and Conditions and Special Terms and Conditions Number 2.F. and THSC, §382.085(b), by failing to timely create a final record of emissions event; 30 TAC §122.143(4), §122.145(2)(A); and Operating Permit Number O-01227, General Terms and Conditions; and THSC, §382.085(b), by failing to report all instances of deviations in a deviation report; PENALTY: \$204,603; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200602114

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: April 12, 2006



## Notice of Water Rights Application

Notice issued April 5, 2006:

APPLICATION NO. 5906; TXU Mining Company LP, 1601 Bryan Street, Dallas, Texas 75201- 3411, applicant, has applied to the Texas Commission on Environmental Quality (TCEQ) for a Water Use Permit pursuant to Texas Water Code 11.121 and TCEQ Rules 30 Texas Administrative Code 295.1, et seq. Applicant seeks authorization to divert and use not to exceed 220 acre-feet of water per year for lignite surface mining purposes (dust suppression, construction, and miscellaneous mining activities) within the Monticello-Thermo Lignite Mining Area (LMA) in Hopkins County, Texas. The water will be diverted within the boundary of the Monticello-Thermo LMA at or upstream of four (4) proposed diversion points at a maximum combined diversion rate not to exceed 13.369 cfs (6,000 gpm). The proposed diversion points (DP) are located in Hopkins County on various unnamed tributaries to Rock Creek, tributary of White Oak Creek, tributary to the Sulphur River, Sulphur River Basin. For a listing of the diversion points view the complete notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at 512-239-3300 to obtain a copy of the complete notice. Applicant also seeks authorization to maintain three existing reservoirs constructed during activities associated with the mining process and have received approval from the Railroad Commission of Texas. They are located in the Thomas Tobar Original Survey, Abstract No. 953, Hopkins County, on various unnamed tributaries of Rock Creek, and impound a combined total of 1,002.00 acre-feet of water. The on-channel reservoirs will remain as permanent domestic and livestock ponds after the cessation of mining activities. For a complete description of the on-channel reservoirs, view the complete notice on our web site at [www.tceq.state.tx.us/comm\\_exec/cc/pub\\_notice.html](http://www.tceq.state.tx.us/comm_exec/cc/pub_notice.html) or call the Office of the Chief Clerk at 512- 239-3300 to obtain a copy of the complete notice. The properties within the Monticello-Thermo LMA are completely owned by TXU Mining Company, LP or leased for a period of time for mining purposes as evidenced by warranty deeds and leases filed with the Texas Railroad Commission and in the Deed Records of Hopkins County, Texas. The Commission will review the application as submitted by the applicant(s) and may or may not grant the application as requested. The application was received on July 6, 2005. Additional information and fees were received on December 20, 2005 and February 9, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on February 27, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

### INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name

and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us). Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200602104

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 12, 2006



#### Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on April 7, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Heart of Texas Investments, Inc. dba A&A Chevron and Nabil Hakim; SOAH Docket No. 582-06-0663; TCEQ Docket No. 2005-1168-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Heart of Texas Investments, Inc. dba A&A Chevron and Nabil Hakim on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguia, Office of the Chief Clerk, (512) 239-3300.

TRD-200602106

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: April 12, 2006



#### 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 22, 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 22, 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: Clark Miller dba American Underground Utilities; DOCKET NUMBER: 2005-2086-WQ-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104788906; LOCATION: Brownwood, Brown County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$840; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Bontke Brothers Construction Company; DOCKET NUMBER: 2006-0210-WQ-E; IDENTIFIER: RN104867296; LOCATION: Abilene, Taylor County, Texas; TYPE OF FACILITY: road construction; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a)(1)(ii), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$720; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(3) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2005-0224-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §§101.20(3), 111.111(a)(1)(C), and 116.115(b) and (c), Permit Numbers 8810/PSD-TX-402M2, 2609, 2612, and 18707, and THSC, §382.085(b), by failing to comply with permitted emission limits; 30 TAC §101.211(c) and THSC, §382.085(b), by failing to timely submit the final notification for a shutdown event; 30 TAC §101.201(a)(1)(B) and (2)(G) and (b)(8), and THSC, §382.085(b), by failing to notify the TCEQ within 24 hours of an emissions event and by failing to properly report an emissions event that occurred on February 8, 2003, and September 25, 2004; 30 TAC §122.142(a) and §122.143(4), Federal Operating Permit (FOP) Number 01541, and THSC, §382.085(b), by failing to perform an applicability determination and compliance review and by failing to install monitoring equipment or obtain an alternate means of compliance; and 30 TAC §122.145(2)(A), FOP Number 01541, and THSC, §382.085(b), by failing to submit a complete semiannual deviation report; PENALTY: \$336,556; ENFORCEMENT COORDINATOR:

Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Covenant Health System; DOCKET NUMBER: 2006-0047-MSW-E; IDENTIFIER: RN104795299; LOCATION: Levelland, Hockley County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §330.5(a), by failing to prevent the disposal of medical waste at a facility that was not authorized to dispose of the waste; PENALTY: \$4,800; ENFORCEMENT COORDINATOR: Jaime Garza, (956) 425-6010; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(5) COMPANY: ExxonMobil Oil Corporation; DOCKET NUMBER: 2006-0007-AIR-E; IDENTIFIER: RN100542844; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 18838, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$6,640; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Fort Bend County Municipal Utility District Number 124; DOCKET NUMBER: 2006-0101-MWD-E; IDENTIFIER: RN101390995; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 14134001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations for ammonia nitrogen (NH<sub>3</sub>N); and 30 TAC §21.4 and the Code, §5.702, by failing to pay outstanding consolidated water quality assessment fees; PENALTY: \$2,400; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Overseas Enterprises, USA, Inc. dba Gateway Travel Plaza; DOCKET NUMBER: 2005-2064-WQ-E; IDENTIFIER: RN101743730; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: truck with convenience store, restaurant, motel, and wastewater lift station; RULE VIOLATED: the Code, §26.121(a)(1), by failing to prevent an unauthorized discharge of wastewater from a manhole and lift station; the Code, §26.039(b), by failing to notify the TCEQ of an accidental discharge; 30 TAC §317.3(b)(4)(A) and (e)(4)(C) and (5), by failing to have a water tight wetwell, by failing to have a fence with controlled access, and by failing to have a functional audio-visual high level alarm on the lift station; PENALTY: \$6,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Hermenegildo Bueno dba Paisano Truck Stop; DOCKET NUMBER: 2006- 0009-PST-E; IDENTIFIER: RN100809995; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(2)(C) and the Code, §26.3475(d), by failing to inspect the cathodic protection system; and 30 TAC §334.50(d)(1)(B)(ii) and the Code, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records; PENALTY: \$4,080; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: Rivero Restaurants, Inc.; DOCKET NUMBER: 2005-0862-PWS-E; IDENTIFIER: RN102683240; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and (3)(A)(ii), and §290.122(c)(2)(B) and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis, by failing

to collect and submit repeat water samples of a total coliform positive sample result, and by failing to post public notification; PENALTY: \$1,605; ENFORCEMENT COORDINATOR: Tel Croston, (512) 239-5717; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(10) COMPANY: City of Rockdale; DOCKET NUMBER: 2006-0032-MLM-E; IDENTIFIER: RN101190189 and RN101388288; LOCATION: Rockdale, Milam County, Texas; TYPE OF FACILITY: public water supply and wastewater treatment; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to install back flow prevention assemblies or an air gap at all residences or establishments; and 30 TAC §305.125(1), TPDES Permit Number 10658001, and the Code, §121.26(a), by failing to prevent the discharge and accumulation of sludge in the receiving water; PENALTY: \$7,920; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: Edward Leiber and Janet Leiber dba Shady Oaks Mobile Home Park; DOCKET NUMBER: 2006-0118-PWS-E; IDENTIFIER: RN102683109; LOCATION: Navasota, Grimes County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.43(d)(9) and (e), by failing to obtain approval of the installation of more than three pressure tanks and by failing to enclose pressure maintenance facilities with an intruder-resistant fence; 30 TAC §290.45(b)(1)(E)(i) and (ii) and THSC, §341.0315(c), by failing to provide a minimum well capacity of one gallon per minute per connection and by failing to provide a minimum pressure tank capacity of 50 gallons per connection with maximum of 2,500 gallons; PENALTY: \$462; ENFORCEMENT COORDINATOR: Sandy VanCleave, (512) 239-0667; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Tina Lee dba Village Grocery; DOCKET NUMBER: 2006-0344-PST-E; IDENTIFIER: RN104426853; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: David Van Soest, (512) 239-0468; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(13) COMPANY: Robert Dwayne Wankan dba Wankan Distribution Services; DOCKET NUMBER: 2006-0120-SLG-E; IDENTIFIER: RN104808852; LOCATION: Huntington, Angelina County, Texas; TYPE OF FACILITY: sludge transportation business; RULE VIOLATED: 30 TAC §312.142(a), by failing to apply for and receive a registration to transport sewage sludge or domestic septage; PENALTY: \$600; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239- 4490; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: We Are Crazy, Inc. dba Country Pantry 10; DOCKET NUMBER: 2005- 2019-PST-E; IDENTIFIER: RN102855947; LOCATION: Vidor, Orange County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; PENALTY: \$2,140; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(15) COMPANY: City of Willis; DOCKET NUMBER: 2006-0168-MWD-E; IDENTIFIER: RN102075793; LOCATION: Willis, Montgomery County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit

Number 10315001, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for NH3N and by failing to timely submit the annual sludge discharge monitoring report; PENALTY: \$1,452; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200602087

Stephanie Bergeron Perdue

Acting Deputy Director, Office of Legal Services

Texas Commission on Environmental Quality

Filed: April 11, 2006



**Texas Health and Human Services Commission**

**Rates by TILE (Texas Index for Level of Effort) class:**

TILE	TILE base rate
201	\$164.43
202	\$146.72
203	\$138.84
204	\$116.13
205	\$107.87
206	\$109.08
207	\$99.10
208	\$95.75
209	\$89.34
210	\$77.87
211	\$75.06
212 (default)	\$75.06
<b>Supplemental Payments:</b>	
Ventilator - Continuous	\$88.77
Ventilator - Less than Continuous	\$35.51
Pediatric Tracheostomy	\$53.26

Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology at 1 TAC Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 (relating to Reimbursement Setting Methodology) and §355.308 (relating to Direct Care Staff Rate Component). These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, subchapter A (relating to Cost Determina-

**Notice of Adopted Medicaid Provider Payment Rates**

Adopted Rates. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) has adopted new per diem payment rates for the nursing facilities program operated by the Texas Department of Aging and Disability Services (DADS). These payment rates are based on the rates in effect December 31, 2005, plus an average 11.75 percent increase, which reflects the availability of additional appropriated state and federal funds for nursing facility services.

Payment rates are adopted to be effective January 1, 2006 as follows:

tion Process), §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs).

Facilities participating in the Enhanced Direct Care Staff Rate will receive one of the following payment rates per day in addition to the above payment rates based upon their level of enrollment in the Enhanced Direct Care Staff Rate. Enrollment levels are indicated by the

number of Licensed Vocational Nurse (LVN)-equivalent minutes a facility is required to provide to avoid recoupment of enhanced funds. LVN-equivalent minutes can be provided by Registered Nurses (RNs), LVNs, Medication Aides and/or Certified Nurse Aides.

<b>Minutes Associated with Adopted Rate</b>	<b>Adopted Rate Per Diem</b>
1 LVN Minute = 1.88 Aide Minutes = 0.68 RN Minutes	\$0.34
2 LVN Minutes = 3.75 Aide Minutes = 1.36 RN Minutes	\$0.67
3 LVN Minutes = 5.63 Aide Minutes = 2.05 RN Minutes	\$1.00
4 LVN Minutes = 7.50 Aide Minutes = 2.73 RN Minutes	\$1.33
5 LVN Minutes = 9.38 Aide Minutes = 3.41 RN Minutes	\$1.66
6 LVN Minutes = 11.25 Aide Minutes = 4.09 RN Minutes	\$1.99
7 LVN Minutes = 13.13 Aide Minutes = 4.77 RN Minutes	\$2.32
8 LVN Minutes = 15.00 Aide Minutes = 5.45 RN Minutes	\$2.65
9 LVN Minutes = 16.88 Aide Minutes = 6.14 RN Minutes	\$2.98
10 LVN Minutes = 18.75 Aide Minutes = 6.82 RN Minutes	\$3.31
11 LVN Minutes = 20.63 Aide Minutes = 7.50 RN Minutes	\$3.64
12 LVN Minutes = 22.50 Aide Minutes = 8.18 RN Minutes	\$3.97
13 LVN Minutes = 24.38 Aide Minutes = 8.86 RN Minutes	\$4.30
14 LVN Minutes = 26.25 Aide Minutes = 9.55 RN Minutes	\$4.63
15 LVN Minutes = 28.13 Aide Minutes = 10.23 RN Minutes	\$4.96
16 LVN Minutes = 30.00 Aide Minutes = 10.91 RN Minutes	\$5.29
17 LVN Minutes = 31.88 Aide Minutes = 11.59 RN Minutes	\$5.62
18 LVN Minutes = 33.75 Aide Minutes = 12.27 RN Minutes	\$5.95
19 LVN Minutes = 35.63 Aide Minutes = 12.95 RN Minutes	\$6.28
20 LVN Minutes = 37.50 Aide Minutes = 13.64 RN Minutes	\$6.61
21 LVN Minutes = 39.38 Aide Minutes = 14.32 RN Minutes	\$6.94
22 LVN Minutes = 41.25 Aide Minutes = 15.00 RN Minutes	\$7.27
23 LVN Minutes = 43.13 Aide Minutes = 15.68 RN Minutes	\$7.60
24 LVN Minutes = 45.00 Aide Minutes = 16.36 RN Minutes	\$7.93
25 LVN Minutes = 46.88 Aide Minutes = 17.05 RN Minutes	\$8.26
26 LVN Minutes = 48.75 Aide Minutes = 17.73 RN Minutes	\$8.59
27 LVN Minutes = 50.63 Aide Minutes = 18.41 RN Minutes	\$8.92



Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology at 1 TAC Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities) and §355.308 (relating to Direct Care Staff Rate Component). These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, subchapter A (relating to Cost Determination Process), §355.101 (relating to Introduction) and §355.109

(relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs). Facilities that verify liability insurance coverage acceptable to HHSC will receive one of the following payment rates per day in addition to the above payment rates based upon the type of liability insurance coverage they maintain:

<b>Type of Liability Insurance</b>	<b>Adopted Rate Per Diem</b>
<b>General and Professional</b>	<b>\$1.89</b>
<b>Professional Only</b>	<b>\$1.73</b>
<b>General Only</b>	<b>\$0.16</b>

Methodology and justification. The adopted rates in the chart above were determined in accordance with the rate setting methodology at 1 TAC Chapter 355, subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 (relating to Reimbursement Setting Methodology) and §355.312 (relating to Reimbursement Setting Methodology - Liability Insurance Costs). These rates were subsequently adjusted in accordance with 1 TAC Chapter 355, subchapter A (relating to Cost Determination Process), §355.101 (relating to Introduction) and §355.109 (relating to Adjusting Reimbursement When New Legislation, Regulations or Economic Factors Affect Costs).

Este documento, El Plan de Acción del Estado de Texas para Donatarios de la Recuperación de Desastre de CDBG bajo el Acto de las Apropriaciones 2006 del Departamento de Defensa--Borrador para Comentario Público, se está haciendo disponible en español para alcanzar las poblaciones con la habilidad de leer ingles limitada que pueden ser afectados por el plan.

El comentario público sobre la versión del plan en ingles fue aceptado desde el 14 de marzo de 2006, asta el 30 de marzo de 2006. Comentario público fue aceptado en la región afectada y en Austin a través de cinco audiencias públicas. Las audiencias fueron llevadas a cabo en Nacogdoches, Beaumont, Livingston, Austin, y Houston. Este período de comentario público fue anunciado por correo en ambos inglés y español y por los sitios de internet de TDHCA y de ORCA. Para ofrecer la oportunidad de comentar a una audiencia más ancha con respecto al plan, este período de comentario adicional se está proporcionando para la traducción del plan en español. Este período de comentario funcionará desde el 21 de abril de 2006 asta el 8 de mayo de 2006.

La traducción del plan en español estará disponible para revisión comenzando en sábado el 15 de abril de 2006. A ese tiempo, el documento será fijado en los websites siguientes: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) y [www.orca.state.tx.us](http://www.orca.state.tx.us). Copias imprimibles del documento estarán disponibles por llamando al (512) 475-3976.

Comentario público será aceptado por correo, fax, o e-mail por la dirección de abajo.

TDHCA  
 Division of Policy and Public Affairs  
 P.O Box 13941  
 Austin, Texas 78711-3941  
 Fax: (512) 469-9606  
 E-mail: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us)

Para mas informacion, por favor llame a TDHCA al (512) 475-3976.

TRD-200602120  
 William Dally  
 Acting Executive Director  
 Texas Department of Housing and Community Affairs  
 Filed: April 12, 2006

TRD-200602115

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: April 12, 2006

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## **Texas Department of Housing and Community Affairs**

**Announcement of a Public Comment Period on a Spanish Translation of the U.S. Department of Housing and Urban Development (HUD) Consolidated Planning Document Required to Provide Community Development Block Grant Hurricane Disaster Relief Assistance for the State of Texas**

Aviso de Período de Comentario Público Sobre la Traducción en Español de Los Documentos de Planificación Consolidados Requeridos Por el Departamento de Vivienda y Desarrollo Urbano de los Estados Unidos (HUD) Para Proporcionar Asistencia de Alivio de Desastre de Huracán en el Estado de Texas

Public comment on an English version of a U.S. Department of Housing and Urban Development (HUD) Consolidated Planning Document Required to Provide Community Development Block Grant Hurricane Disaster Relief Assistance for the State of Texas was accepted from March 14, 2006 through March 30, 2006. To offer an opportunity to comment on the plan to an even wider audience, an additional comment period as described below is being provided for a Spanish translation of the Plan.

El Departamento de Vivienda y Asuntos Comunitarios del Estado de Texas (TDHCA) y La Oficina de Asuntos Comunitarios Rurales (ORCA) anuncian un periodo de comentario público para el desarrollar de un Plan de Acción del Estado de Texas para la Recuperación del Desastre del Huracán Rita. Este plan se requiere para utilizar el financiamiento del Community Development Block Grant (CDBG) de HUD asociado con el acto de las apropiaciones 2006 del Departamento de Defensa (Derecho Público 109-148, aprobado el 30 de diciembre de 2005).

◆ ◆ ◆

**Announcement of a Public Comment Period on a Vietnamese Translation of the U.S. Department of Housing and Urban Development (HUD) Consolidated Planning Document Required to Provide Community Development Block Grant Hurricane Disaster Relief Assistance for the State of Texas**

The Texas Department of Housing and Community Affairs (TDHCA) and the Office of Rural Community Affairs (ORCA) announce a public comment period to develop a Texas Action Plan for Hurricane Rita Disaster Recovery. This plan is required to use HUD Community Development Block Grant funding associated with the Department of Defense Appropriations Act, 2006 (Public Law 109-148, approved December 30, 2005).

This document, the *State of Texas Action Plan for CDBG Disaster Recovery Grantees under the Department of Defense Appropriations Act 2006--Draft for Public Comment*, is being made available in Vietnamese to reach populations with limited English proficiency that may be affected by the Plan.

Public comment on the English version of the Plan was accepted from March 14, 2006, through March 30, 2006. Public comment was accepted at five public hearings held throughout the affected region and in Austin. Hearings were held in Nacogdoches, Beaumont, Livingston, Austin, and Houston. This public comment period was advertised in both English and Vietnamese via mailings and the TDHCA and ORCA websites. To offer an opportunity to comment on the plan to an even wider audience, this additional comment period is being provided for a Vietnamese translation of the Plan. This comment period will run from Friday, April 21, 2006, through Monday, May 8, 2006.

The Vietnamese translation of the plan will be available for review on Friday, April 21, 2006 at the latest. At that time, the document will be posted on the following websites: [www.tdhca.state.tx.us](http://www.tdhca.state.tx.us) and [www.orca.state.tx.us](http://www.orca.state.tx.us). Printed copies of the document will also be available upon request by calling (512) 475-3976.

Public comment will be accepted by mail, fax, or e-mail to the address below.

TDHCA

Division of Policy and Public Affairs

P.O. Box 13941

Austin, Texas 78711-3941

Fax: (512) 469-9606

E-mail: [info@tdhca.state.tx.us](mailto:info@tdhca.state.tx.us)

For more information, please contact TDHCA at (512) 475-3976.

TRD-200602119

William Dally

Acting Executive Director

Texas Department of Housing and Community Affairs

Filed: April 12, 2006

## Texas Department of Insurance

### Company Licensing

Application for incorporation to the State of Texas by FIDELIS SECURE CARE OF TEXAS, INC., a domestic health maintenance organization. The home office is in Austin, Texas.

Application to change the name of CHASE LIFE & ANNUITY COMPANY to PROTECTIVE NATIONAL LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Newark, Delaware.

Application to change the name of CHASE INSURANCE LIFE COMPANY to PROTECTIVE AMERICAN LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Elgin, Illinois.

Application to change the name of CHASE INSURANCE LIFE AND ANNUITY COMPANY to PROTECTIVE AMERICAN LIFE AND ANNUITY INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Elgin, Illinois.

Application for incorporation to the State of Texas by CATASTROPHE REINSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Application to change the name of AGENTS TITLE INSURANCE COMPANY, INC. to ALLIANT NATIONAL TITLE INSURANCE COMPANY, INC. a foreign title company. The home office is in Longmont, Colorado.

Application to change the name of ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY COMPANY to COMMONWEALTH LIFE INSURANCE AND ANNUITY COMPANY, a foreign life, accident and/or health company. The home office is in Haddonfield, New Jersey.

Application for incorporation to the State of Texas by ALAMO CASUALTY INSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in San Antonio, Texas.

Application to change the name of FIREMAN'S FUND INSURANCE COMPANY OF WISCONSIN to AXIS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Chicago, 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-200602111

Gene C. Jarmon

Chief Clerk and General Counsel

Texas Department of Insurance

Filed: April 12, 2006

## Texas Lottery Commission

### Instant Game Number 660 "\$50,000 Golden Spin"

#### 1.0 Name and Style of Game.

A. The name of Instant Game No. 660 is "\$50,000 GOLDEN SPIN". The play style is "key number match".

#### 1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 660 shall be \$5.00 per ticket.

#### 1.2 Definitions in Instant Game No. 660.

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 red play symbols are: 1, 3, 5, 7, 9, 12, 14, 16, 18, 19, 21, 23, 25, 27, 30, 32, 34, 36 and "ANY RED NUMBER". The possible black play symbols are: 2, 4, 6, 8, 10, 11, 13, 15, 17, 20, 22, 24, 26, 28, 29, 31, 33, 35, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, \$500, \$1,000, \$5,000, \$50,000, "ANY EVEN NUMBER", "ANY ODD NUMBER" and "ANY BLACK NUMBER".

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. 660 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
1 (red)	ONE
3 (red)	THR
5 (red)	FIV
7 (red)	SVN
9 (red)	NIN
12 (red)	TLV
14 (red)	FTN
16 (red)	SXN
18 (red)	ETN
19 (red)	NTN
21 (red)	TWON
23 (red)	TWTH
25 (red)	TWV
27 (red)	TWSV
30 (red)	TRTY
32 (red)	TRTO
34 (red)	TRFR
36 (red)	TRSX
<b>ANY RED NUMBER (red)</b>	<b>ANY RED NUMBER (red)</b>
2	TWO
4	FOR
6	SIX
8	EGT
10	TEN
11	ELV
13	TRN
15	FFN
17	SVT
20	TWY
22	TWTO
24	TWFR
26	TWSX
28	TWET
29	TWNI
31	TRON
33	TRTH
35	TRFV
<b>ANY EVEN NUMBER (black)</b>	<b>ANY EVEN NUMBER</b>
<b>ANY ODD NUMBER (black)</b>	<b>ANY ODD NUMBER</b>
<b>ANY BLACK NUMBER (black)</b>	<b>ANY BLACK NUMBER</b>

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. 660 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>
<b>TWN</b>	<b>\$20.00</b>

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 \$5.00, \$10.00, \$15.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100.00 or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000 or \$50,000.

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 (660), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 75 within each pack. The format will be: 660-0000001-001.

L. Pack - A pack of "\$50,000 GOLDEN SPIN" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and 075.

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 "\$50,000 GOLDEN SPIN" Instant Game No. 660 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 "\$50,000 GOLDEN SPIN" Instant Game is determined once the latex on the ticket is scratched off to expose 46 (forty-six) Play Symbols. Scratch to reveal YOUR BETS and SPIN RESULTS play symbols. If a player matches one or more of YOUR BETS play symbols to the SPIN RESULTS play symbols in the same SPIN the player wins the prize shown for that SPIN. 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 46 (forty-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 46 (forty-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 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-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 more than one winner of \$100 and higher per pack.

C. No duplicate YOUR BETS in any order on a ticket.

D. No duplicate SPIN RESULTS on a ticket.

E. No duplicate non-winning prize symbols on a ticket.

F. There will always be at least six red YOUR BETS play symbols on a ticket.

G. All tickets will have a maximum of two single YOUR BETS and a maximum of three double YOUR BETS.

H. There will be a minimum of five red SPIN RESULTS play symbols on a ticket.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "\$50,000 GOLDEN SPIN" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim,

the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "\$50,000 GOLDEN SPIN" Instant Game prize of \$1,000, \$5,000 or \$50,000, 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 "\$50,000 GOLDEN SPIN" 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 "\$50,000

GOLDEN SPIN" 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 "\$50,000 GOLDEN SPIN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 660. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 660 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	672,000	7.50
\$10	336,000	15.00
\$15	134,400	37.50
\$20	134,400	37.50
\$50	67,200	75.00
\$100	11,592	434.78
\$500	840	6,000.00
\$1,000	210	24,000.00
\$5,000	42	120,000.00
\$50,000	7	720,000.00

\*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 3.71. 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. 660 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. 660, 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-200602088  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 11, 2006



Instant Game Number 664 "Pac-Man"

1.0 Name and Style of Game.

A. The name of Instant Game No. 664 is "PAC-MAN". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 664 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 664.

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, CHERRIES SYMBOL, PAC-MAN SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$30.00, \$50.00, \$100, \$1,000, \$25,000 and ARCADE 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. 664 - 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
CHERRIES SYMBOL	WINX10
PAC-MAN SYMBOL	WIN
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
\$25,000	25 THOU
ARCADE	GAME TBL

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. 664 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$100.

I. High-Tier Prize - A prize of \$1,000, ARCADE or \$25,000.

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 (664), 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: 664-0000001-001.

L. Pack - A pack of "PAC-MAN" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. 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 "PAC-MAN" Instant Game No. 664 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 "PAC-MAN" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two) Play

Symbols. If a player matches any of YOUR NUMBERS to either WINNING NUMBER, the player wins the prize shown for that number. If a player reveals a CHERRY PLAY SYMBOL the player wins 10 TIMES the prize shown. If a player reveals a PAC-MAN PLAY SYMBOL the player wins a PAC-MAN COCKTAIL TABLE ARCADE GAME instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;



15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

#### 2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. The "cherry" play symbol will only appear as dictated by the prize structure and only once on a ticket.

F. When the "cherry" play symbol appears, there will be no occurrence of a YOUR NUMBER play symbol matching either Winning Number play symbol.

G. Non-winning prize symbols will never be the same as the winning prize symbol(s).

H. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and \$5).

I. The PAC-MAN play symbol will only appear as dictated by the prize structure and only once on a ticket.

J. The PAC-MAN play symbol and ARCADE prize symbol will always appear together and only as dictated by the prize structure.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "PAC-MAN" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identi-

fication, 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 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "PAC-MAN" Instant Game prize of \$1,000, ARCADE or \$25,000, 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 "PAC-MAN" 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 lia-

bility 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 "PAC-MAN" 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 "PAC-MAN" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game

ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 664. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 664 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,280,160	7.87
\$4	695,520	14.49
\$5	120,960	83.33
\$10	262,080	38.46
\$20	40,320	250.00
\$50	40,320	250.00
\$100	6,048	1,666.67
\$1,000	47	214,468.09
ARCADE	80	126,000.00
\$25,000	10	1,008,000.000

\*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 4.12. 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. 664 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. 664, 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-200602110  
 Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 12, 2006



Instant Game Number 724 "Diamond Dazzler 3x"

1.0 Name and Style of Game.

A. The name of Instant Game No. 724 is "DIAMOND DAZZLER 3X". The play style is "key symbol match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 724 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 724.

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: SEVEN SYMBOL, CLOVER SYMBOL, HORSE SHOE SYMBOL, LEMON SYMBOL, BANANA SYMBOL, POT OF GOLD SYMBOL, MELON SYMBOL, CHERRY SYMBOL, APPLE SYMBOL,

GRAPE SYMBOL, BELL SYMBOL, CROWN SYMBOL, DIAMOND SYMBOL, BAG OF MONEY SYMBOL, COIN SYMBOL, STACK OF BILLS SYMBOL, BAR SYMBOL, BOOT SYMBOL, SADDLE SYMBOL, HAT SYMBOL, SPUR SYMBOL, HORSE SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, \$500, \$7,500 and \$75,000.

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. 724 - 1.2D

<b>PLAY SYMBOL</b>	<b>CAPTION</b>
SEVEN SYMBOL	SEVN
CLOVER SYMBOL	CLVR
HORSE SHOE SYMBOL	SHOE
LEMON SYMBOL	LEMN
BANANA SYMBOL	BNNA
POT OF GOLD SYMBOL	GOLD
MELON SYMBOL	MELN
CHERRY SYMBOL	CHRY
APPLE SYMBOL	APPL
GRAPE SYMBOL	GRPE
BELL SYMBOL	BELL
CROWN SYMBOL	CRWN
DIAMOND SYMBOL	DMND
BAG OF MONEY SYMBOL	BAG
COIN SYMBOL	COIN
STACK OF BILLS SYMBOL	DLRS
BAR SYMBOL	BAR
BOOT SYMBOL	BOOT
SADDLE SYMBOL	SDLE
HAT SYMBOL	HAT
SPUR SYMBOL	SPUR
HORSE SYMBOL	HRSE
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$7,500	75 HUND
\$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

**Figure 2: GAME NO. 724 - 1.2E**

<b>CODE</b>	<b>PRIZE</b>
<b>FIV</b>	<b>\$5.00</b>
<b>TEN</b>	<b>\$10.00</b>
<b>FTN</b>	<b>\$15.00</b>

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 \$5.00, \$10.00 or \$15.00.

H. Mid-Tier Prize - A prize of \$25.00, \$50.00, \$100, \$150 or \$500.

I. High-Tier Prize - A prize of \$7,500 or \$75,000.

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 (724), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 724-0000001-001.

L. Pack - A pack of "DIAMOND DAZZLER 3X" Instant Game tickets contains 075 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075. Please note the books will be in a 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 "DIAMOND DAZZLER 3X" Instant Game No. 724 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 "DIAMOND DAZZLER 3X" Instant Game is determined once the latex on the ticket is scratched off to expose 80 (eighty) Play Symbols. If a player reveals 3 matching play symbols within a game, the player wins the prize shown for that game. If a

player reveals one (1) diamond play symbol, the player wins the prize shown for that game. If a player reveals two (2) diamond play symbols, the player wins double the prize shown for that game. If a player reveals three (3) diamond play symbols, the player wins triple the prize shown for that game. 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 80 (eighty) 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 80 (eighty) 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 80 (eighty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 80 (eighty) 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 duplicate non-winning games on a ticket.

C. No more than 4 like non-winning prize symbols on a ticket.

D. No occurrence of 3 matching play symbols in a vertical column.

E. When the diamond symbol appears, there will be no other duplicate play symbols within that game (except for another diamond(s) as dictated by the prize structure).

F. Non-winning prize symbols will not match a winning prize symbol.

G. Two and three diamond symbols within a game will only appear as dictated by the prize structure.

H. No three like adjacent non-winning play symbols will appear in two adjacent games.

#### 2.3 Procedure for Claiming Prizes.

A. To claim a "DIAMOND DAZZLER 3X" Instant Game prize of \$5.00, \$10.00, \$15.00, \$25.00, \$50.00, \$100, \$150 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 \$25.00, \$50.00, \$100, \$150 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 "DIAMOND DAZZLER 3X" Instant Game prize of \$7,500 or \$75,000, 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 "DIAMOND DAZZLER 3X" 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 "DIAMOND DAZZLER 3X" 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 "DIAMOND DAZZLER 3X" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 5,040,000 tickets in the Instant Game No. 724. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 724 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	655,200	7.69
\$10	235,200	21.43
\$15	218,400	23.08
\$25	117,600	42.86
\$50	67,200	75.00
\$100	10,500	480.00
\$150	840	6,000.00
\$500	630	8,000.00
\$7,500	8	630,000.00
\$75,000	5	1,008,000.00

\*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

\*\*The overall odds of winning a prize are 1 in 3.86. 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. 724 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. 724, 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-200602040

Kimberly L. Kiplin  
 General Counsel  
 Texas Lottery Commission  
 Filed: April 6, 2006

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**Texas Parks and Wildlife Department**

Public Notice

Acceptance of Surface and Mineral Rights

Brown County

On May 25, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed acceptance of mineral rights as-

sociated with 1,972.50 acres in Brown County donated to the Texas Parks and Wildlife Department (TPWD) in 2000. The property will eventually be managed as the McGillivray and Leona McKie Muse Wildlife Management Area by TPWD Wildlife Division staff and will be open to the public. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Public comment may be submitted to Jack Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at jack.bauer@tpwd.state.tx.us, or in person at the time of the meeting.

TRD-200602107  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 12, 2006



#### Public Notice

Purchase of Inholding Tract  
Big Bend Ranch State Park  
Presidio County

On May 25, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the purchase of a 40-acre inholding tract at Big Bend Ranch State Park in Presidio County. The tract is located in the southwestern part of the park and will eventually be part of a trail network to improve public access. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Public comment may be submitted to Jack Bauer, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at jack.bauer@tpwd.state.tx.us, or in person at the time of the meeting.

TRD-200602108  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 12, 2006



#### Public Notice

Sale of Land  
Garner State Park  
Uvalde County

On May 25, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the sale of 1.27 acres at Garner State Park in Uvalde County. The proposed sale will be to an adjacent landowner who currently owns property on two sides of the 1.27 acres. The 1.27-acre tract is not being used as part of Garner State Park. The sales price would be the appraised value of \$14,250. The 1.27 acres also will be subject to a conservation easement that will prevent an incompatible use of the property. In addition, as part of the transaction, the buyer would donate a conservation easement on five acres currently owned by the buyer that includes 500 feet of riverfront property on the east side of the Frio River, across the river from Garner State Park property. The conservation easement would prohibit incompatible use of the property. The Commission meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Public comment may be submitted to Corky Kuhlman, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, by email at corky.kuhlman@tpwd.state.tx.us, or in person at the time of the meeting.

TRD-200602109  
Ann Bright  
General Counsel  
Texas Parks and Wildlife Department  
Filed: April 12, 2006



### Public Utility Commission of Texas

#### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on April 5, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Universal Cable Holdings, Inc., d/b/a Cebridge Connections for a State-Issued Certificate of Franchise Authority, Project Number 32590 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area footprint is Sundown, 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 32590.

TRD-200602065  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 10, 2006



#### Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 6, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Rapid Acquisition Company, LLC for a State-Issued Certificate of Franchise Authority, Project Number 32595 before the Public Utility Commission of Texas.

Applicant intends to provide cable service. The requested CFA service area includes the City Limits of Beasley, Bovina, Claude, Clifton, Crosbyton, Crowell, Eden, Eldorado, Flatonia, Freeport, Goodrich, Hale Center, Happy, Hedley, Karnes City, Kendleton, Kenedy, Kress, Lockney, Lorenzo, Meadow, Muleshoe, Murchison, New Deal, O'Brien, Orchard, Oyster Creek, Plains, Ralls, Rocksprings, Ropesville, Runge, Saint Jo, Shallowater, Smyer, Stratford, Surfside Beach, Vernon, Waco Bay, Wolfforth, and Yorktown within the state 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 32595.



TRD-200602102  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 11, 2006

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**Notice of Application for a Certificate of Convenience and Necessity for a Proposed Transmission Line in Wood County, Texas**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on April 7, 2006, for a certificate of convenience and necessity for a proposed transmission line in Wood County, Texas.

Docket Style and Number: Application of Wood County Electric Cooperative, Inc. for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Wood County, Texas. Docket Number 32070.

The Application: The project is designated the Sand Springs 138-kV Transmission Line Project and associated Sand Springs Substation. The proposed project is needed to address reliability concerns to ensure that reliable electric service is maintained to all customers at an acceptable level, and to deter future low voltage issues. The proposed miles of right-of-way for this project is 1.80; the right-of-way width for this project will be approximately 100 feet. The estimated cost for the project is \$934,110.78 for the transmission facilities and \$1,931,000.00 for the substation facilities.

Persons wishing to intervene or 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. The deadline for intervention in this proceeding is May 22, 2006. 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 32070.

TRD-200602101  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 11, 2006

◆ ◆ ◆  
**Notice of Application to Amend Certificated Service Area Boundaries**

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on April 3, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Los Camperos Restaurant). Docket Number 32583.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Arturo Martinez requesting BPUB to provide electric utility service to 5.418 acres of land. The estimated cost to BPUB to provide service to this proposed area is \$1,195.11. The area is presently unde-

veloped. If the application is granted, the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than April 28, 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 32583.

TRD-200602050  
Adriana Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 7, 2006

◆ ◆ ◆  
**Notice of Intent to File LRIC Study Pursuant to P.U.C. Substantive Rule §26.215**

Notice is given to the public of the filing on April 10, 2006, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or after April 20, 2006.

Docket Title and Number: Application of Verizon Southwest for Approval of LRIC Study for FlexGrow Trunk Service--2 Year Term Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 32603.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 32603. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at 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 telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32603.

TRD-200602117  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: April 12, 2006

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**Stephen F. Austin State University**

**Notice of Consultant Contract Amendment**

Stephen F. Austin State University, Nacogdoches, Texas, has amended a contract for web shell coordinating and programming services for the University Web site redesign with The Kerry Company, 1101 30th Street NW, Washington, DC 20007. The Notice of Award for the original contract was filed in the September 2, 2005, issue of the *Texas Register* (30 TexReg 5448). The contract amendment was signed on February 17, 2006, for the amount of \$10,000.

No documents, films, recording, or reports of intangible results will be required to be presented by the outside consultant.

For further information, please call (936) 468-4101.

TRD-200602045

R. Yvette Clark  
General Counsel  
Stephen F. Austin State University  
Filed: April 7, 2006

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**Texas A&M University System Health Science Center**

**Post-Award Publication**

The Texas A&M University System Health Science Center (A&M System Health Science Center) requested proposals from qualified firms for general consulting services to assist the HSC administration in the development of a faculty practice plan, including, but not limited to, the development of the plan's mission and scope, governance and administrative structure, billing and collections, funds flow and compensation, and regulatory compliance.

The BARD Group, LLC, with its principle office at 246 Walnut Street, Suite 302, Newton, MA was awarded the project for \$57,750. The beginning date of the contract is March 31, 2006 and will ensue until the project is completed.

TRD-200602049  
Keely Dunn  
Senior Management Analyst  
Texas A&M University System Health Science Center  
Filed: April 7, 2006

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**Texas A&M University, Board of Regents**

**Consultant Contract Award**

In compliance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, The Texas A&M University System furnishes this notice of consultant contract awards. The consultant will provide guidance in the development of information technology strategic plans and implementation alternatives for The Texas A&M University System. A notice for request for proposals was filed in the December 30, 2005, issue of the *Texas Register* (30 TexReg 9074).

The contract was awarded to Kenneth D. Theut, 20111 Chasestone Court, Katy, Texas 77450. The contract amount will not exceed \$100,000. The contract term is until completion, but not later than August 31, 2007.

Each proposal was evaluated on the ability to meet the system's requirements and to provide the best value to the system and included competency, demonstrated ability to deliver, and consulting rates. Proposals were received on or before 2:00 p.m., January 13, 2006.

TRD-200602103  
Vickie Burt Spillers  
Executive Secretary to the Board  
Texas A&M University, Board of Regents  
Filed: April 12, 2006

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**WorkSource of the South Plains**

**Notice of Request for Proposal**

The South Plains Regional Workforce Development Board (dba WorkSource of the South Plains) announces the issuance of a Request for Proposal (#RFP-2006-50-002-CC) to solicit proposals from qualified and eligible organizations for the management and operation of South Plains Child Care Services. Proposing entities must submit proposals for the entire South Plains Regional Workforce Development area which consists of Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry and Yoakum counties. Proposals to serve less than the entire area will be deemed non-responsive. The selected provider will directly manage the primary functions of client services and provider management for the South Plains Region. WorkSource of the South Plains expects to award one contract for the management and operation of the South Plains Child Care Services.

All written inquiries and questions must be received at the above-referenced address not later than 1:30 p.m. (CZT) on Tuesday, May 9, 2006. Questions received after this time and date will not be considered. A mandatory pre-proposal conference will be held on May 9th, 2006 at 1:30 PM.

The submission deadline for proposals is June 12, 2006 at 5:00 P.M. The successful respondent will be expected to begin performance of the contract on October 1, 2006. All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. WorkSource of the South Plains reserves the right to accept or reject any or all proposals submitted. WorkSource of the South Plains is under no legal or other obligation to issue an award on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits WorkSource of the South Plains to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting Maria Keenmon at (806) 744-1987 or Maria.Keenmon@twc.state.tx.us. 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=63969](http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=63969) or from the WorkSource website at <http://www.worksourceonline.net>.

WorkSource is an Equal Opportunity Employer/Program. Historically Underutilized Businesses (HUB's) are encouraged to apply. Auxiliary aid and services are available upon request to individuals with disabilities.

TRD-200602121  
Martin Aguirre  
Chief Executive Officer  
WorkSource of the South Plains  
Filed: April 12, 2006

# 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](mailto: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/>

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**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.

### 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).