TEXAS REGISTER

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Najwa Al-Mohamed

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Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

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

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

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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.

THE ATTORNEY GENERAL

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

Request for Opinions

RQ-0484-GA

Requestor:

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Constitutionality of the Texas grandparent access statute, section 153.433 of the Family Code, as amended in 2005, in light of the U.S. Supreme Court's ruling in *Troxel v. Granville*, 530 U.S. 57 (2000) (Request No. 0484-GA)

Briefs requested by June 19, 2006

RQ-0485-GA

Requestor:

The Honorable Vicki Pattillo

25th Judicial District Attorney

113 South River, Suite 205

Seguin, Texas 78155

Re: Whether a part-time deputy district clerk may be simultaneously employed by a private attorney (Request No. 0485-GA)

Briefs requested by June 22, 2006

RQ-0486-GA

Requestor:

The Honorable D. Matt Bingham

Smith County Criminal District Attorney

Smith County Courthouse

100 North Broadway, 4th Floor

Tyler, Texas 75702

Re: Validity of the Smith County incentive bonus plan under article III, section 53 of the Texas Constitution (Request No. 0486-GA)

Briefs requested by June 22, 2006

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

TRD-200602887
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 23, 2006

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PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 12. SWORN COMPLAINTS
SUBCHAPTER A. GENERAL PROVISIONS AND PROCEDURES

1 TAC §12.27

The Texas Ethics Commission proposes new §12.27, relating to deadline extensions for sworn complaints.

Section 12.27 would give the executive director the authority to extend sworn complaint deadlines pursuant to §571.136 of the Government Code.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new section is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new section affects §571.136 of the Government Code.

§12.27. Deadline Extension.

The executive director may extend a deadline pursuant to §571.136 of the Government Code.

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602822
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 463-5800

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SUBCHAPTER E. FORMAL HEARING

1 TAC §12.117

The Texas Ethics Commission proposes new §12.117, relating to formal hearings for sworn complaints.

Section 12.117 would clarify §571.121 of the Government Code regarding the proper venue for a formal hearing held under the sworn complaint process. Section 571.121 of the Government Code authorizes the commission to "hold hearings" without limiting the type of hearings the commission may hold. The rule would provide that the commission may hold a formal hearing either before the commission or before the State Office of Administrative Hearings (SOAH).

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070,

or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The new section is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed new section affects Chapter 571 of the Government Code.

§12.117. Formal Hearing: Venue.

When the commission orders a formal hearing the commission shall decide whether the formal hearing will be held before the commission or before the State Office of Administrative Hearings.

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602823
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 463-5800

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CHAPTER 18. GENERAL RULES CONCERNING REPORTS

1 TAC §18.9

The Texas Ethics Commission proposes an amendment to §18.9, relating to corrected reports.

Section 18.9 relates to the filing of corrected reports. Currently, §18.9(c) provides instances in which a corrected report is not considered late for purposes of a late fine. That provision is no longer needed because it was superseded by statutory changes made by H.B. 1800, 79th Legislature, Regular Session. The proposed rule would include a reference to the relevant sections of the law relating to "substantial compliance."

David A. Reisman, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the rule as proposed. Mr. Reisman has also determined that the rule will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be clarity in what is required by the law.

Mr. Reisman has also determined there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the rule.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The amendment affects §571.0771 of the Government Code and §305.033 of the Government Code.

§18.9. Corrected Reports.

(a) A filer may correct a report filed with the commission or a local filing authority at any time.

(b) A corrected report must clearly identify how the corrected report is different from the report being corrected.

~~[(c) A report that is corrected is not considered late for purposes of any late fine if:]~~

~~[(1) the original report was filed by the applicable filing deadline;]~~

~~[(2) the original report substantially complies with the applicable law;]~~

~~[(3) the corrected report is filed not later than the 14th business day after the date the person learns that the report as originally filed is inaccurate or incomplete; and]~~

~~[(4) the corrected report is complete and accurate.]~~

(c) ~~[(d)]~~ A filer who files a corrected report must submit an affidavit identifying the information that was corrected.

(d) A corrected report is not subject to a late fine if filed in accordance with Sections 571.0771 and 305.033(f) of the Government Code, as applicable.

(e) This section does not apply to a corrected report filed under Section 571.069, Government Code, or a corrected report filed in response to a sworn complaint.

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602821
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 463-5777

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.1

The Texas Ethics Commission proposes an amendment to §20.1, relating to definitions.

Section 20.1 relates to Title 15 of the Election Code definitions. The proposed amendment deletes the parts of definitions that are an exact duplicate of the statute. Those parts are unnecessary and confusing. The proposal also amends the definition of campaign communication and the definition of political advertising that a communication made by e-mail is not included in those definitions.

David A. Reisman, Executive Director, has determined that for each year of the first five years that the amendment is in effect there will be no fiscal implication for the state and no fiscal implication for local government as a result of enforcing or administering the amendment as proposed. Mr. Reisman has also determined that the amendment will have no local employment impact.

Mr. Reisman has also determined that for each year of the first five years the amendment is in effect, the anticipated public benefit will be clarity in the law.

Mr. Reisman has also determined that there will be no direct adverse effect on small businesses or micro-businesses because the rule does not apply to single businesses.

Mr. Reisman has further determined that there are no economic costs to persons required to comply with the amended rule.

The Texas Ethics Commission invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Natalia Luna Ashley, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed amendment may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed amendment. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325-8506.

The amendment is proposed under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

The proposed amendment affects §251.001(16) and (17) of the Election Code.

§20.1. Definitions.

The following words and terms, when used in Title 15 of the Election Code, in this chapter, Chapter 22 of this title (relating to Restrictions on Contributions and Expenditures), and Chapter 24 of this title (relating to Restrictions on Contributions and Expenditures Applicable to Corporations and Labor Organizations), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Campaign communication--The term does not include a communication made by e-mail. [~~A written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.~~]

[~~(2) Campaign contribution--A contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.~~]

[~~(3) Campaign expenditure--An expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.~~]

(2) [~~(4)~~] Campaign treasurer--Either the individual appointed by a candidate to be the campaign treasurer, or the individual responsible for filing campaign finance reports of a political committee under Texas law or the law of any other state.

[~~(5) Candidate--A person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:~~]

[~~(A) the filing of a campaign treasurer appointment;~~]

[~~(B) the filing of an application for a place on the ballot;~~]

[~~(C) the filing of an application for nomination by convention;~~]

[~~(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;~~]

[~~(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;~~]

[~~(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;~~]

[~~(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; or~~]

[~~(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.~~]

(3) [~~(6)~~] Contribution--[~~A direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subsection, and a guarantee of a loan or extension of credit, including a loan described by this subsection. The term includes an in-kind contribution.~~] The term does not include[~~:~~]

[~~(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made;~~]

[~~(B) an expenditure required to be reported under the Government Code, Chapter 305; or~~]

[~~(C)~~] a transfer for consideration of any thing of value pursuant to a contract that reflects the usual and normal business practice of the vendor.

(4) [~~(7)~~] Corporation--[~~A corporation that is organized under the Texas Business Corporation Act, the Texas Non-Profit Corpo-~~

ration Act, federal law, or law of another state or nation. The term also includes the following associations, whether incorporated or not: banks, trust companies, savings and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, government-regulated cooperatives, stock companies, and abstract and title insurance companies.] The term does not include professional corporations or professional associations.

(5) [(8)] Direct campaign expenditure--A campaign expenditure that does not constitute a contribution by the person making the expenditure. A campaign expenditure is not a contribution from the person making the expenditure if:

(A) it is made without the prior consent or approval of the candidate or officeholder on whose behalf the expenditure was made; or

(B) it is made in connection with a measure, but is not a political contribution to a political committee supporting or opposing the measure.

(6) [(9)] Election cycle--A single election and any related primary or runoff election.

[(10) Expenditure--A payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.]

[(11) General-purpose committee--A political committee that has among its principal purposes:]

[(A) supporting or opposing:]

[(i) two or more candidates who are unidentified or are seeking offices that are unknown; or]

[(ii) one or more measures that are unidentified; or]

[(B) assisting two or more officeholders who are unidentified.]

(7) [(12)] Identified measure--A question or proposal submitted in an election for an expression of the voters' will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

(8) [(13)] In-kind contribution--A contribution of goods, services, or any other thing of value, except money, and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make such a contribution. The term does not include a direct campaign expenditure.

[(14) Labor organization--An agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.]

(9) [(15)] Non-political expenditure--An expenditure from political contributions that is not an officeholder expenditure or a campaign expenditure.

[(16) Officeholder contribution--A contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:]

[(A) the officeholder incurs in performing a duty or engaging in an activity in connection with the office; and]

[(B) are not reimbursable with public money.]

[(17) Officeholder expenditure--An expenditure made by any person to defray expenses that:]

[(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and]

[(B) are not reimbursable with public money.]

(10) [(18)] Opposed candidate--A candidate who has an opponent whose name is to appear on the ballot. The name of a write-in candidate does not appear on the ballot.

(11) [(19)] Out-of-state political committee--A political committee that makes political expenditures outside Texas and in the 12 months immediately preceding the making of a political expenditure by the committee inside Texas (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80% or more of the committee's total political expenditures in any combination of elections outside this state and federal offices not voted on in this state. Section 20.13 of this title (relating to Out-of-State Committees) explains the practical application of this definition.

(12) [(20)] Pledge--A contribution in the form of an unfulfilled promise or unfulfilled agreement, whether enforceable or not, to provide a specified amount of money or specific goods or services. The term does not include a contribution actually made in the form of a check.

(13) [(21)] Political advertising: [--]

(A) A communication that supports or opposes a political party, a public officer, a measure, or a candidate for nomination or election to a public office or office of a political party, and:

(i) [(A)] is published in a newspaper, magazine, or other periodical in return for consideration;

(ii) [(B)] is broadcast by radio or television in return for consideration; [or]

(iii) [(C)] appears in a pamphlet, circular, flier, billboard, or other sign, bumper sticker, or similar form of written communication; or [.]

(iv) appears on an Internet website.

(B) The term does not include a communication made by e-mail.

(14) [(22)] Political committee--Two or more persons that have as a principal purpose accepting political contributions or making political expenditures to support or oppose candidates, officeholders, or measures. The term does not include a group composed exclusively of two or more individual filers or political committees required to file reports under Election Code, Title 15 (concerning Regulating Political Funds and Campaigns), who make reportable expenditures for a joint activity such as a fundraiser or an advertisement.

[(23) Political contribution--A campaign contribution or an officeholder contribution.]

[(24) Political expenditure--A campaign expenditure or an officeholder expenditure.]

(15) [(25)] Political subdivision--A county, city, or school district or any other governmental entity that:

(A) embraces a geographic area with a defined boundary;

(B) exists for the purpose of discharging functions of government; and

(C) possesses authority for subordinate self-government through officers selected by it.

(16) [~~(26)~~] Report--Any document required to be filed by this title, including an appointment of campaign treasurer, any type of report of contributions and expenditures, and any notice.

[~~(27) Reportable activity--A political contribution, political expenditure, or other activity required to be reported under this title.~~]

(17) [~~(28)~~] Specific-purpose committee--A political committee that does not meet the definition of general-purpose committee and that has among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known; or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

[~~(29) Telegram report--A shorthand term for a report filed in accordance with the requirements of §§20.221, 20.333, or 20.435 of this title (relating to Telegram Report by Certain Candidates; Telegram Report by Certain Specific-Purpose Committees; Telegram Reports by Certain General-Purpose Committees). The report may be filed by telegram, telephonic facsimile machine, or by hand.~~]

(18) [~~(30)~~] Unidentified measure--A question or proposal that is intended to be submitted in an election for an expression of the voters' will and that is not yet legally required to be submitted in an election, except that the term does not include the circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will. The circulation or submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will is considered to be an identified measure.

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

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602858
Natalia Luna Ashley
General Counsel
Texas Ethics Commission
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 463-5800

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §17.52, §17.55

The Texas Department of Agriculture (the department) proposes amendments to §17.52, concerning application to use GO TEXAN and Design and other department marks, and §17.55 concerning expiration dates for GO TEXAN membership renewal and fees.

The amendment to §17.52 is proposed to make subsection (g) consistent with the department's current practice of providing applicant's access to the GO TEXAN mark by means other than hard copies. The amendments to §17.55 are proposed to change the procedures for renewal of a GO TEXAN membership to conform with the recent amendment of §17.52 that changed the expiration date of a membership registration from August 31 to the last day of the month corresponding to the registration anniversary date.

Delane Caesar, Senior Policy Advisor for Marketing and Promotion, has determined that for the first five-year period the proposed amendments are in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule amendments, as proposed.

Ms. Caesar also has determined that for each year of the first five years the proposed amendments are in effect, the public benefits anticipated as a result of administering and enforcing the sections, as amended, will be that the amendments will allow members to renew and receive a full year of benefits, no matter when they renew within the 366 days of the due date. This will encourage members to renew by knowing that the fee will last a full year instead of expiring on August 31, thereby retaining higher membership enrollment. The amendments will also allow the department to more evenly distribute licensing workflow throughout the year, which will provide for a better turnaround time to customers. There is no additional cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendment.

Comments on the proposal may be submitted to Delane Caesar, Senior Policy Advisor for Marketing and Promotion, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code. and the Code, §12.0175, which provides that the department, by rule, may establish programs to promote and market agricultural products and other products grown, processed, or produced in the state, and adopt rules necessary to administer a program established under this section.

The code affected by the proposal is the Texas Agriculture Code, Chapter 12.

§17.52. Application for Registration to Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark.

(a) - (f) (No change.)

(g) Upon receipt of the registration fee, the department shall mail to the registrant or licensee a certificate of registration, which is valid for one year and shall expire on the last day of the month corresponding to the license anniversary date. The department shall also provide [~~enclose~~] copies of the mark, suitable for reproduction.

(h) - (q) (No change.)

§17.55. Registration of Those Entitled to Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark.

(a) (No change)

(b) Procedure for annual renewal of registration of persons authorized to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark.

(1) Forty-five days before the expiration date of the registration [~~August 31~~], the department shall mail to each person previously registered or licensed to use the GO TEXAN and Design mark a statement setting forth the amount due as an annual registration fee.

(2) All payments are due by the expiration date of the registration [~~August 31~~].

(3) (No change)

(4) Failure to remit the annual registration fee by [~~within 60 days of~~] the due date shall result in the registrant being designated as inactive [~~late~~]. Failure to remit the annual registration fee within 366 days of the due date shall result in the expiration of the registration and a new application for membership will be required for re-instatement to the program.

(c) - (e) (No change)

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

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602851
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 463-4075

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CHAPTER 21. CITRUS
SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

4 TAC §21.30, §21.40

The Texas Department of Agriculture (the department) proposes amendments to §21.30 and new §21.40, concerning the citrus budwood certification program.

The amendments to §21.30 are proposed to define the terms "mandatory variety" and "mandatory". New §21.40 is proposed to require certified budwood be used for the production of specified varieties of citrus trees produced in Texas on or after September 1, 2006.

Dr. Robert L. Crocker, coordinator for integrated pest management, citrus and biotechnology programs, has determined that for the first five-year period the proposed amendments and new section are in effect, there is no anticipated fiscal impact on state or local governments as a result of administration and enforcement of the sections, as proposed.

Dr. Crocker also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of administering and enforcing the amended and new sections is an adequate supply of citrus trees produced with pest free citrus budwood. Because budwood for mandatory varieties of citrus must be obtained from a foundation grove, there will be an estimated cost of $0.10/bud to producers required to comply with the proposal.

Comments on the proposal may be submitted to Dr. Robert L. Crocker, Coordinator for Integrated Pest Management, Citrus and Biotechnology Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of the publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under the Texas Agriculture Code (the Code), §19.006, which provides the department with authority, with the advice of the Citrus Budwood Advisory Council, to adopt rules necessary to administer the citrus budwood certification program; and the Code, §71.005, which provides the department with the authority to adopt rules as necessary to restrict movement of plants, plant products, and other substances for the effective enforcement and administration of Chapter 71.

The code that is affected by the proposal is Texas Agriculture Code, Chapters 19 and 71.

§21.30. Definitions.

In addition to the definitions set out in the Texas Agriculture Code, Chapter 19 (the Act), and in Chapter 21, Subchapter A of this title (relating to Citrus Quarantines) the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) - (5) (No change)

(6) Mandatory variety or mandatory--A variety of citrus tree that may be produced only directly from certified budwood obtained from an approved foundation grove.

(7) [~~(6)~~] Non-certified budwood--Budwood that has been tested for tristeza only.

§21.40. Mandatory Varieties.

(a) For purposes of this subchapter, the following citrus tree varieties are designated as mandatory for citrus budwood certification:

(1) Grapefruits--"Rio Red";

(2) Valencia oranges--"Standard", "Olinda";

(3) Navel oranges--"N-33";

(4) Other oranges--"Marrs", "Pineapple";

(5) Lemons--"Meyer";

(6) Limes--"Thorny Mexican", "Thornless Mexican".

(b) Mandatory variety trees produced in Texas prior to September 1, 2006, are exempt from the requirements of this section.

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

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Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 4. ENVIRONMENTAL PROTECTION

SUBCHAPTER B. COMMERCIAL RECYCLING

16 TAC §§4.201 - 4.226

The Railroad Commission of Texas (Commission) proposes new §§4.201 - 4.226, relating to Purpose; Applicability and Exceptions; Responsibility for Management of Waste to be Recycled; Definitions; General Permit Application Requirements for Commercial Recycling Facilities; Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Design and Construction Information; Minimum Operating Information; Minimum Monitoring Information; Minimum Closure Information; Notice; Protests and Hearings; Administrative Decision on Permit Application; Standards for Permit Issuance; General Permit Provisions; Minimum Permit Provisions for Siting; Minimum Permit Provisions for Design and Construction; Minimum Permit Provisions for Operations; Minimum Permit Provisions for Monitoring; Minimum Permit Provisions for Closure; Permit Renewal; Exceptions; Modification, Suspension, and Termination; and Penalties, in 16 Texas Administrative Code, Chapter 4, new Subchapter B to be entitled "Commercial Recycling." The Commission proposes the new rules in response to a petition for rulemaking concerning commercial recycling facilities, and based on its experience with permitting such facilities over the past several years.

On November 14, 2005, the Commission received a petition for rulemaking submitted by US Liquids of La., L.P. (petitioner), pertaining to permit applications, general siting, construction, operation, and closure requirements for commercial oil and gas waste recycling facilities. On January 10, 2006, the Commission directed staff to initiate a limited rulemaking proceeding pursuant to Texas Government Code, §2001.021, and 16 Texas Administrative Code §1.21 in response to the petition.

The petitioner recommended that the new language be added to the Commission's rules in Chapter 4, relating to Environmental Protection.

It is the policy of the Commission to encourage such use or reuse of oil and gas wastes for beneficial purposes, but as the agency solely responsible for the prevention and abatement of surface and subsurface water pollution attributable to oil and gas waste or other substances and materials generated by activities the Commission regulates, it must ensure that the storage, handling, treatment, and recycling of oil and gas wastes and recyclable product do not threaten or impair the environment or public health and safety.

The petitioner included fairly detailed suggestions, generally based on the Commission's current application and permitting practices for stationary commercial recycling facilities, at which oil and gas waste is treated or processed to create a recyclable product, such as road base. The Commission proposes to incorporate into the proposed new rules the Commission's current application and permitting practices for commercial oil and gas waste recycling facilities, including general siting, construction, operation, and closure requirements for such facilities.

To successfully recycle waste, there must be a market for the recyclable product. In the absence of a legitimate market for the recyclable product, there is an increased likelihood that the recyclable product will become valueless and will, therefore, not be used. In this case, the recyclable product then would become a waste that must be managed. Accordingly, the proposed new rules require permits for commercial recycling facilities to contain provisions to ensure that the recyclable product has characteristics consistent with legitimate commercial products or ingredients, to control how much of the recyclable product may accumulate through the record keeping and reporting requirements, and to limit the storage of recyclable product. These conditions are intended to ensure that the recyclable product can be and is used and not abandoned or disposed of, and that the feedstock oil and gas waste, the partially treated waste, and the recyclable product do not threaten or impair the environment or public health and safety.

Proposed new §4.201, relating to Purpose, states that the purpose of new Subchapter B is to establish minimum requirements for the recycling of oil and gas wastes at a commercial recycling facility for the purpose of protecting public health and safety and the environment within the scope of the Commission's statutory authority. The new subchapter prohibits any person conducting activities under the subchapter from causing or allowing pollution of surface or subsurface waters of the state.

Proposed new §4.201(c) states that the provisions of the new subchapter do not supercede other Commission regulations relating to oilfield fluids or oil and gas wastes.

The Commission proposes new §4.202, relating to Applicability and Exceptions, to state that new Subchapter B applies to mobile and stationary commercial recycling facilities, but does not apply to recycling methods authorized for certain wastes by other Commission rules, or to recycling facilities regulated by entities other than the Commission, such as those regulated by the Texas Commission on Environmental Quality.

Proposed new §4.203, relating to Responsibility for Management of Waste to be Recycled, states that a Commission permit is required to operate a commercial recycling facility and that hauling of oil and gas waste to a commercial recycling facility requires an oil and gas waste hauler permit pursuant to §3.8(f) of this title, relating to Water Protection. In addition, a person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all the necessary Commission permits.

Proposed new §4.204, relating to Definitions, defines certain terms used in the subchapter. This section also provides that, unless a word or term is defined differently in this section, the definitions in §3.8 of this title, relating to Water Protection, apply in Subchapter B.

The Commission proposes to define "100-year flood plain" to mean an area that is inundated by a 100-year flood, which is

a flood that has a one percent or greater chance of occurring in any given year.

The Commission proposes to define "adjoining" to identify tracts for which the surface owners are entitled to notice of a permit application under this subchapter.

The Commission proposes to define "commercial recycling facility" to mean a mobile or stationary facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and whose primary business purpose is to provide these services for compensation, whether from the generator of the waste, anther receiver, or the purchaser of the recyclable product produced at the recycling facility.

The Commission proposes to define "Commission" to mean the Railroad Commission of Texas.

The Commission proposes to define "Director" as the director of the Commission's Oil and Gas Division or the director's delegate.

The Commission proposes to define three analytical methods proposed for use by a commercial recycling facility. These methods are "EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)" and the "Louisiana Department of Natural Resources Leachate Test Method," which are used to evaluate leaching of constituents to subsurface water; and "TxDOT Method Tex-126-E," which is a method for testing and evaluating base materials to be used for road base.

The Commission proposes to define "legitimate commercial use" to mean use or reuse of a recyclable product as defined in a permit issued pursuant to this subchapter as an effective substitute for a commercial product or as an ingredient to make a product; as a replacement for a product or material that otherwise would have been purchased; and in a manner that does not constitute disposal.

The Commission proposes to define "mobile commercial recycling" to mean commercial recycling that is restricted in the amount of time and/or volume of waste that may be processed at any one location and that is performed using equipment that moves from one location.

The Commission proposes to define "oil and gas waste" consistent with the definition of oil and gas waste in Texas Natural Resources Code, §91.1011.

The Commission proposes to define "partially treated waste" to mean oil and gas waste that has been treated or processed, but which has not been determined to meet the environmental and engineering standards established in the permit for the recyclable product.

The Commission proposes to define "recyclable product" to mean a reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized by a Commission permit and that meets the environmental and engineering standards established by the permit for the intended use as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit.

The Commission proposes to define "recycle" to mean to store, handle, and/or treat oil and gas wastes for use or reuse as, or for processing into, a product for which there is a legitimate commercial use.

The Commission proposes to define "stationary commercial recycling facility" as a commercial recycling facility in an immobile, fixed location.

The Commission declines the petitioner's recommendation that the Commission define the term "treat" in the rule in such a way as to require that organic liquids be separated out to an undiluted maximum concentration limit of five (5) percent total petroleum hydrocarbons (TPH) in order for oil and gas waste to be recycled as road base. The proposed new rules do not include this recommendation because market forces will ensure that marketable crude oil will be removed from any waste that would be taken to a recycling facility. Furthermore, the hydrocarbon content of the oil and gas waste to be taken to these facilities is oftentimes the characteristic that makes the waste suitable for the intended use, particularly for the use of the recyclable product as road base.

The petitioner further suggested that the Commission define total petroleum hydrocarbons, or TPH, to include hydrocarbon chains up through C40. The proposed amendments do not include such a definition because the analytical method used to determine TPH content defines total petroleum hydrocarbons. The Commission proposes to require that a permittee use the Louisiana Department of Natural Resources leachate test to determine whether or not a treated and/or processed material meets the TPH criteria as a recyclable product for uses such as road base. This test method and TPH limit is specific to treated and/or processed materials destined for recycling as road base.

The proposed application requirements generally parallel the Commission's current permit application practices for commercial recycling facilities. The Commission proposes new §4.205, relating to General Permit Application Requirements for Commercial Recycling Facilities, which would require that an applicant for a commercial recycling facility permit file the application with the Commission's headquarters office in Austin and send a copy to the Commission district office for the county in which the facility is to be located; that the application contain the operator name organizational report number, physical, mailing, and facility addresses, telephone and fax numbers, and the name of a contact person; and that the application contain an original signature in ink, the date of signing, and a certification, which is set forth in the rule text. This proposed rule also requires that an application must be complete before it may be administratively processed or referred for hearing.

Proposed new §4.206, relating to Minimum Engineering and Geologic Information, incorporates the current Commission practice of requesting any engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health and safety. The new section further would require that all engineering and geologic work prepared by the applicant be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

The Commission proposes new subsection new §4.207, relating to Minimum Siting Information, which outlines the minimum siting information required to be submitted with an application for a stationary commercial recycling facility permit. This information includes a description of the proposed facility site and the surrounding area; the name and physical address, and phone and fax numbers of the owner or owners of the tract on which the proposed facility is to be located; the depth to the shallowest fresh water and direction of groundwater flow; the average an-

nual precipitation and evaporation at the proposed site; information concerning the soil and subsoil; a copy of a county highway map showing the proposed facility location; and a topographic may showing the outline of the proposed facility, any pipelines that underlay the facility, and the location of the 100-year flood plain in the area.

Proposed new §4.208, relating to Real Property Information, would require in any permit application for a commercial recycling facility a plat showing the section and survey name and abstract number; the site coordinates; a clear outline of the boundaries of the proposed facility; all tracts, and the names of the owners of those tracts, that adjoin the tract upon which the facility is proposed to be located; and the distance from the proposed facility's outermost perimeter boundary to any water wells, residences, schools, churches, or hospitals within 500 feet of the proposed site.

Proposed new §4.209, relating to Minimum Design and Construction Information, outlines the minimum construction information required to be submitted with an application for a commercial recycling facility permit, including the location and information on the design and size of all receiving, processing, and storage areas and all equipment, tanks, silos, monitor wells, dikes, and access roads. Also to be required is a description of the types and thickness of liners for all tanks, silos, and storage areas; a map view of the storage areas, a plan for installation of the monitor wells, and a plan to control and manage storm water runoff and to retain incoming wastes during wet weather.

Proposed new §4.210, relating to Minimum Operating Information, outlines the operating information required to be submitted with an application for a commercial recycling facility permit. This information includes estimated volume of waste, partially treated waste, and recyclable product to be stored at the facility; a detailed waste acceptance plan, including testing of the waste to ensure acceptance of only authorized oil and gas waste; record keeping; a general description of the recycling process and all equipment and chemicals to be used in the process; and an estimate of the duration of the operation of the proposed facility.

Proposed new §4.211, relating to Minimum Monitoring Information, outlines the minimum monitoring information the applicant is required to submit to the Commission, including a plan for sampling the partially treated waste to ensure compliance with permit conditions; a plan for sampling any monitoring wells; and a plan and schedule for conducting periodic inspections of the facility and all elements of the facility.

Proposed new §4.212, relating to Minimum Closure Information, outlines the minimum closure information the applicant is required to submit to the Commission, including how the applicant proposes to remove waste, partially treated waste, and/or recyclable product; close all storage areas; remove dikes; sample and analyze soil and groundwater; plug monitor wells; and contour and reseed disturbed areas.

The Commission proposes new §4.213, relating to Notice, to incorporate the Commission's current requirements for providing published and personal notice of an application for a commercial recycling facility. An applicant is required to provide published notice of an application for a commercial recycling facility in a newspaper of general circulation in the county in which the proposed facility will be located at least once a week for two consecutive weeks. An applicant also is required to give personal notice to the surface owner of the tract upon which the facility will be located; surface owners of tracts within a minimum of one-half mile of the outermost boundary of the proposed facility; the city clerk, if the tract is within the corporate limits of an incorporated city, town, or village; and any other person or class of persons that the director determines should receive notice of a particular application. The proposed new section outlines the contents of the published and personal notice; instructs the applicant on delivery of the personal notice; and requires submission to the Commission of proof that the applicant has given the required notice.

Proposed new §4.214, relating to Administrative Decision on Permit application, incorporates the Commission's current practice and requirements relating to administrative approval or denial of a permit application for a commercial recycling facility.

Proposed new §4.215, relating to Protests and Hearings, incorporates the Commission's current requirements concerning filing and receipt of protests, and notice and holding of hearings on a permit application for a commercial recycling facility.

Proposed new §4.216, relating to Standards for Permit Issuance, incorporates the Commission's current standards for determining whether to issue a permit for a commercial recycling facility. The Commission may issue such a permit only if the activity will not result in waste of oil, gas, or geothermal resources, the pollution of surface or subsurface waters, or a threat to public health and safety, and if the recyclable product is capable of performing in its intended use.

Proposed new §4.217, relating to General Permit Provisions, incorporates the Commission's current practice of issuing a permit for a commercial recycling facility for a term of no more than five years; limiting the waste to be received, stored, handled, treated or recycled to waste that is under the jurisdiction of the Commission, that is not a hazardous waste as defined by the Environmental Protection Agency and that is not oil and gas naturally occurring radioactive material (NORM) waste; and requiring that a commercial recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title, relating to Fees and Financial Security Requirements.

Proposed new §4.218, relating to Minimum Permit Provisions for Siting, incorporates the Commission's standards for siting of a commercial facility. The proposed new section restricts the location of a commercial recycling facility in any area where there is an unreasonable risk of pollution or where there is a threat to pubic health or safety. The Commission proposes to require that a stationary commercial recycling facility be located at least 500 feet from a water supply or domestic or irrigation water well, a coastal natural resource area as defined in §3.8 of this title, relating to Water Protection, and a sensitive area, as defined by §3.91 of this title, relating to Cleanup of Soil Contaminated by a Crude Oil Spill. As defined in §3.91, a sensitive area is defined by "the presence of factors, whether one or more, that make an area vulnerable to pollution from crude oil spills. Factors that are characteristic of sensitive areas include the presence of shallow groundwater or pathways for communication with deeper groundwater; proximity to surface water, including lakes, rivers, streams, dry or flowing creeks, irrigation canals, stock tanks, and wetlands; proximity to natural wildlife refuges or parks; or proximity to commercial or residential areas." Because it is probable that location of a commercial recycling facility in a sensitive area would present an unreasonable risk to the environment and/or public health and safety, the Commission is not likely to issue a permit for such a facility. The Commission further proposes

to prohibit location of a stationary commercial recycling facility within a 100-year flood plain. For the purpose of assessing risk, the Commission also proposes to consider other factors such as the characteristics of the oil and gas waste and other substances and materials being stored, handled, treated and recycled at the facility; and the distance to the nearest property line or public road. The Commission further proposes to include language to clarify that the siting requirements for distance offsets for a stationary commercial facility refer to conditions at the time the facility is constructed.

The petitioner recommended that the Commission include in the rule a specific prohibition against siting a commercial recycling facility within 500 feet of a water supply or domestic water well or within 1,000 feet of a church, school or hospital. With respect to the recommended restrictions on the distances between a commercial recycling facility and a church, school, or hospital, the Commission currently requires in any application for a commercial recycling facility, and proposes to incorporate such requirement into new Subchapter B, information concerning the location of churches, schools and hospitals within 500 feet of the proposed commercial recycling facility, but does not currently impose a specific restriction on the distance. The Commission agrees that there is value in knowing about the distance of commercial facilities from such structures and/or wells; however, the Commission finds that including a specific distance restriction in this rulemaking is not necessary because the Commission will receive enough information in each application to make an informed determination of the potential for unreasonable risk to human health and safety and the environment on a case-by-case basis.

The Commission proposes new §4.219, relating to Minimum Permit Provisions for Design and Construction, to incorporate the Commission's current performance standard for the design and construction of a commercial recycling facility. A commercial recycling facility must be designed and constructed such that contact of oil and gas wastes, partially treated waste, and recyclable product with the ground surface, surface water, and subsurface water is minimized. The Commission proposes to include in any permit for a commercial recycling facility conditions necessary to ensure that this performance standard is met, including installation of monitor wells, and any necessary provisions to guard against pollution from spills, leachate, and/or discharges from the facility. The petitioner recommended that the Commission require that incoming waste be stored in above-ground tanks, and that other storage at such facilities be in lined or concrete cells. The Commission declines to add such a restrictive requirement, preferring to determine on a case-by-case basis requirements for ensuring that the performance standard is met.

The Commission proposes new §4.220, Minimum Permit Provisions for Operations, to incorporate the Commission's current practices relating to the operation of commercial recycling facilities. A permit for a commercial recycling facility will include requirements that the Commission determines are reasonably necessary to ensure that only authorized wastes and other materials are received at the facility and to ensure that the processing operation and the resulting recyclable product meet the environmental and engineering standards established in the permit. The Commission also proposes to include a provision that the permittee may have to perform a trial run prior to full operation of the facility to ensure that the equipment and methods used by the permittee will result in a recyclable product that meets the engineering and environmental standards established in the permit by the Commission, consistent with the Commission's current practice. In addition, the Commission proposes to include in any permit issued under this section any conditions, including volume restrictions, it determines to be reasonably necessary to ensure that speculative accumulation of oil and gas waste, partially treated waste, and recyclable product does not occur.

The petitioner recommended that the Commission place specific limitations on the volumes of oil and gas wastes based on the volume of recyclable product actually used. The Commission declines to include in the rule a specific volume restriction, but intends to continue its current practice of including in the permits for commercial recycling facilities volume limits that are determined on a case-by-case basis.

The petitioner also recommended that the Commission place limits on the amount of recyclable product that could be used on the property of the owner of the surface estate of the tract on which the commercial recycling facility is located. The Commission declines to include such a restriction because the Commission anticipates that adherence to the provisions of permits issued pursuant to this subchapter will result in the production of recyclable products that perform as intended and do not pose an unreasonable risk to public health, safety or the environment. In addition, the proposed definition of recycling would require the "legitimate commercial use" of the recyclable product. Use of the recyclable product in a manner that is not "legitimate commercial use" would be disposal, which is not authorized by the recycling permit. Such disposal without a permit would subject the permittee of the recycling facility to Commission enforcement, which could include permit revocation or suspension, as well as penalties.

Proposed new §4.221, relating to Minimum Permit Provisions for Monitoring, incorporate the Commission's current requirements for ensuring that the recyclable product meets the standards established by the Commission and included in the permit, by requiring periodic sampling and analysis of "batches" of partially treated waste by a third party laboratory. The Commission also proposes to incorporate into this new section a statement that the Commission will establish standards for recyclable product based on the type of waste received at a particular commercial recycling facility and the intended use of the recyclable product from that facility. In addition, the Commission proposes to incorporate into new subsection §4.221(b) its current the standards for recyclable product intended to be used as road base, as requested by the petitioner.

The Commission proposes new §4.222, relating to Standard Permit Provisions for Closure, to incorporate the Commission's current requirements for closure of a commercial recycling facility.

Proposed new §4.223, relating to Permit Renewal, sets forth the Commission's current practices relating to renewal of a commercial recycling facility permit. All applications to renew a commercial recycling facility permit issued pursuant to either §3.8 of this title (relating to Water Protection) or this new proposed subchapter, must be submitted to the Commission in writing at least 60 days before the permit is scheduled to expire and the renewal application must comply with the requirements of §4.205 of this title, relating to General Permit Application Requirements for Commercial Recycling Facilities, and the notice requirements in proposed new §4.213, relating to Notice. The applicant for permit renewal may be required to comply with the other application requirements in the subchapter, if the permittee has made, or plans to make, any changes that would impact the information

currently on file with the Commission regarding the construction, operation, monitoring, and/or closure of the facility. In addition, the Commission will include in any renewal permit for a commercial recycling facility any conditions necessary to comply with the requirements in effect at the time of renewal, consistent with the Commission's current practice. For example, any permit issued to renew an earlier permit that does not currently require monitor wells would include such a requirement.

The Commission proposes new §4.224, relating to Exceptions, to allow an applicant or permittee to request an exception to provisions of the new subchapter. Such request must be in writing, must be submitted to the Commission, and must demonstrate that the requested exception is at least equivalent in the protection of public health and safety and the environment as the provisions of this subchapter to which the applicant or permittee is seeking an exception. The Commission will review each written request on a case-by-case basis.

The Commission proposes new §4.225, relating to Modification, Suspension, and Termination, consistent with current practices and existing §3.8, relating to Water Protection.

The Commission proposes new §4.226, relating to Penalties, to advise persons that violations of this subchapter may subject the person to penalties and remedies specified in the Texas Natural Resources Code.

The petitioner recommended that the Commission include permit revocation procedures for chronic violators. The Commission declines to include specific language that would apply exclusively to owners and operators of commercial recycling facilities who are chronic violators because the Commission's current enforcement procedures pertain to all violators, including chronic violators and violators of all Commission regulations.

The petitioner also recommended that the Commission include in the rules a statement that generators of oil and gas wastes that are recycled in accordance with these rules are released from liability from prosecution by the Commission. The Commission declines to add language specific to oil and gas waste that is recycled at a commercial recycling facility. Other Commission rules and permits authorize recycling. For example, §3.8 authorizes the use of used drilling fluid from one well to "spud" another well. The Commission historically holds liable for remediation any entity determined to be responsible for any contamination based on evidence as a result of any type of waste management, including improper "recycling," that results in contamination. If a generator of an oil and gas waste takes that waste to a commercial recycling facility and "knows or should have known" that the oil and gas waste would be improperly treated/processed and/or disposed of, rather than recycled, then the Commission reserves the option of enforcing against all parties if the result were pollution. In addition, the process established by this subchapter is intended to result in oil and gas waste becoming a legitimate commercial product. So long as generators, haulers, and recyclers adhere to the provisions of this subchapter, generators should be confident that potential liability for waste taken to a Commission recycling facility is, in fact, significantly minimized. Furthermore, assuming compliance with the Commission's rules and the permit, when put to "legitimate commercial use," the Commission considers the recyclable product to no longer be a waste. The Commission specifically requests comment on release of liability issues, including citation to legal authority.

Leslie Savage, Planning and Administration, Oil and Gas Division, has determined that for each year of the first five years the proposed amendments will be in effect, the fiscal implications as a result of enforcing or administering new Subchapter B will be negligible because the Commission proposes to incorporate into the rule current Commission requirements and standards.

There will be no fiscal implications for local governments.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Ms. Savage has determined that the proposed amendments would not affect any small or micro-businesses so there would be no cost of compliance for small businesses or micro-businesses. However, Commission staff has attempted to calculate the anticipated average economic cost of upgrading facilities to meet the proposed new Subchapter B. Currently, the Commission has issued permits for three stationary commercial recycling facilities and one mobile commercial recycling facility. These facilities and the permits issued for the facilities, for the most part, already comply with the proposed amendments, because the amendments--for the most part--reflect current Commission requirements. Therefore, there will be no additional cost of complying with the new subchapter.

Ms. Savage has determined that for each year of the first five years that the amendments will be in effect the primary public benefit will be an increase in environmental protection and in the safety of persons living and working in areas where commercial recycling facilities are located or could be located in the future.

Texas Government Code, §2001.0225, requires a state agency to conduct a regulatory impact analysis if is considering adoption of a "major environmental rule" that (1) exceeds a standard set by federal law, unless the rule is specifically required by state law; (2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; (3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopts a rule solely under the general powers of the agency instead of under a specific state law. Texas Government Code, §2001.0225(g)(3), defines "major environmental rule" as a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The Commission has determined that proposed new Subchapter B does not require a regulatory analysis of a major environmental rule because it is not a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). In particular, the Commission has determined that proposed new Subchapter B will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Further, the Commission has determined that even if proposed new Subchapter B did qualify as a "major environmental rule," it does not (1) exceed a standard set by federal law, (2) exceed an express requirement of state law, or (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and it is not (4) adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission specifically requests comment on release of liability issues, including citation to legal authority. The Commission will accept comments for 30 days after publication in the *Texas Register*. Comments should refer to Oil & Gas Docket No. O&G 20-0246942. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Leslie Savage at (512) 463-7308. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes new Subchapter B under Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, which provide that the Commission is solely responsible for the prevention and abatement of water and subsurface water pollution attributable to activities the Commission regulates, and that the Commission may adopt rules related to the discharge, storage, handling, transportation, processing, or disposal of oil and gas waste, or of any other substance or material associated with operations or activities regulated by the Commission pursuant to Texas Natural Resources Code, §91.101(a)(1), (2), and (3). In addition, Texas Natural Resources Code, §91.109(a), provides that the Commission may require a bond or other form of financial security from person applying for or acting under a Commission permit to store, handle or treat oil and gas waste.

The partially treated waste and recyclable product resulting from processing and/or treatment of oil and gas waste pursuant to a Commission permit constitutes a "substance or material associated with any operation or activity regulated by the by the Commission" under Texas Natural Resources Code, §91.101(a)(1), (2), and (3). The recyclable product is associated with operation or activity regulated by the Commission because it was created using oil and gas waste over which the Commission has exclusive jurisdiction, and which the Commission no longer considers to be an oil and gas waste if the recyclable product will be used as intended pursuant to permit conditions.

Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109, are affected by the proposed rules.

Statutory authority: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Cross-reference to statutes: Texas Water Code, §26.131, and Texas Natural Resources Code, §§91.101, 91.1011, and 91.109.

Issued in Austin, Texas, on May 16, 2006.

§4.201. Purpose.

(a) This subchapter establishes, for the purpose of protecting public health, public safety, and the environment within the scope of the Commission's statutory authority, the minimum permitting and operating standards and requirements for mobile and stationary commercial facilities that recycle oil and gas wastes under the jurisdiction of the Commission.

(b) No person conducting activities subject to this subchapter may cause or allow pollution of surface or subsurface water in the state.

(c) The provisions of this subchapter do not supersede other Commission regulations relating to oil field fluids or oil and gas waste.

§4.202. Applicability and Exceptions.

(a) The provisions of this subchapter apply to mobile and stationary commercial recycling facilities.

(b) The provisions of this subchapter do not apply to recycling methods authorized for certain wastes by §3.8 of this title, relating to Water Protection; §3.57 of this title, relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials; or §3.98 of this title, relating to Standards for Management of Hazardous Oil and Gas Waste.

(c) The provisions of this subchapter do not apply to recycling facilities regulated by the Texas Commission on Environmental Quality or its predecessor or successor agencies, another state, or the federal government.

§4.203. Responsibility for Management of Waste to be Recycled.

(a) Permit required. A person who operates a commercial recycling facility shall obtain a permit from the Commission under this subchapter before engaging in such operation.

(b) Hauling of waste. A waste hauler transporting and delivering oil and gas waste to a stationary commercial recycling facility permitted pursuant to this subchapter shall be permitted by the Commission as an Oil and Gas Waste Hauler pursuant to §3.8(f) of this title, relating to Water Protection.

(c) Responsibility of generator and carrier. No generator or carrier may knowingly use the services of a commercial recycling facility unless the facility has a permit issued under this subchapter. A person who plans to use the services of a commercial recycling facility has a duty to determine that the commercial recycling facility has all permits required by statute or Commission rule.

§4.204. Definitions.

Unless a word or term is defined differently in this section, the definitions in §3.8 of this title, relating to Water Protection, shall apply in this subchapter. In addition, the following words and terms when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise:

(1) 100-year flood plain--An area that is inundated by a 100-year flood, which is a flood that has a one percent or greater chance of occurring in any given year.

(2) Adjoining--Every tract of property surrounding the tract of property upon which the activity sought to be permitted will occur, including those tracts that meet only at a corner point.

(3) Commercial recycling facility--A mobile or stationary facility whose owner or operator receives compensation from others for the storage, handling, treatment, and recycling of oil and gas wastes and whose primary business purpose is to provide these services for compensation, whether from the generator of the waste, another receiver, or the purchaser of the recyclable product produced at the facility.

(4) Commission--The Railroad Commission of Texas.

(5) Director--The director of the Commission's Oil and Gas Division or the director's delegate.

(6) EPA Method 1312, Synthetic Precipitation Leaching Procedure (SPLP)--An analytical method used to evaluate the potential for leaching of metals into surface and subsurface water.

(7) Legitimate commercial use--Use or reuse of a recyclable product as defined in a permit issued pursuant to this subchapter:

(A) as effective substitute for a commercial product or as an ingredient to make a product;

(B) as a replacement for a product or material that otherwise would have been purchased; and

(C) in a manner that does not constitute disposal.

(8) Louisiana Department of Natural Resources Leachate Test Method--An analytical method designed to simulate water leach effects on treated oil and gas wastes included in "Laboratory Manual for the Analysis of E&P Waste," Louisiana Department of Natural Resources, May 2005.

(9) Mobile commercial recycling--Commercial recycling that is restricted in the amount of time and/or volume of waste that may be processed at any one location and that is performed using equipment that moves from one location to another.

(10) Oil and gas wastes--For purposes of this subchapter, this term means materials which have been generated in connection with activities associated with the exploration, development, and production of oil or gas or geothermal resources, as that term is defined in §3.8 of this title, relating to Water Protection, and materials which have been generated in connection with activities associated with the solution mining of brine. The term "oil and gas wastes" includes, but is not limited to, saltwater, other mineralized water, sludge, spent drilling fluids, cuttings, waste oil, spent completion fluids, and other liquid, semiliquid, or solid waste material. The term "oil and gas wastes" includes waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants unless that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code §6901 et seq.).

(11) Partially treated waste--Oil and gas waste that has been treated or processed with the intent of being recycled, but which has not been determined to meet the environmental and engineering standards established in a permit by the Commission for a recyclable product.

(12) Recyclable product--A reusable material that has been created from the treatment and/or processing of oil and gas waste as authorized by a Commission permit and that meets the environmental and engineering standards established by the permit for the intended use, and is consistently used as a legitimate commercial product. A recyclable product is not a waste, but may become a waste if it is abandoned or disposed of rather than recycled as authorized by the permit.

(13) Recycle--To store, handle, and/or treat oil and gas wastes for use or reuse as, or for processing into, a product for which there is a legitimate commercial use.

(14) Stationary commercial recycling facility--A commercial recycling facility in an immobile, fixed location.

(15) TxDOT Method Tex-126-E--A procedure for molding, testing, and evaluating base materials to determine compressive strength, included in the procedures and methods established by the Texas Department of Transportation for testing and evaluating soils, aggregates, and flexible road base materials.

§4.205. General Permit Application Requirements for Commercial Recycling Facilities.

(a) An application for a permit for a commercial recycling facility shall be filed with the Commission's headquarters office in Austin. The applicant shall mail or deliver a copy of the application to the Commission District Office for the county in which the facility is to be located on the same day the original application is mailed or delivered to the Commission's headquarters office in Austin. A permit application shall be considered filed with the Commission on the date it is received by the Commission's headquarters office in Austin.

(b) The permit application shall contain the applicant's name; organizational report number; physical office and, if different, mailing address; facility address; telephone number; and facsimile transmission (fax) number; and the name of a contact person.

(c) The permit application shall contain information addressing each application requirement of this subchapter and all information necessary to initiate the final review by the director. The director shall neither administratively approve an application nor refer an application to hearing unless the director has determined that the application is administratively complete. If the director determines that an application is incomplete, the director shall notify the applicant in writing and shall describe the specific information required to complete the application. An applicant may make no more than two supplemental filings to complete an application.

(d) The permit application shall contain an original signature in ink, the date of signing, and the following certification: "I certify that I am authorized to make this application, that this application was prepared by me or under my supervision and direction, and that the data and facts stated herein are true, correct, and complete to the best of my knowledge."

§4.206. Minimum Engineering and Geologic Information.

(a) The director may require a permit applicant to provide the Commission with engineering, geological, or other information which the director deems necessary to show that issuance of the permit will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, or a threat to the public health or safety.

(b) Engineering and geologic work products prepared by the applicant shall be sealed by a registered engineer or geologist, respectively, as required by the Texas Occupations Code, Chapters 1001 and 1002.

§4.207. Minimum Siting Information.

(a) A permit application for a stationary commercial recycling facility shall include:

(1) a description of the proposed facility site and surrounding area; and

(2) the name, physical address and, if different, mailing address; telephone number; and facsimile transmission (fax) number of every owner of the tract on which the facility is to be located. If any owner is not an individual, the applicant shall include the name of a contact person for that owner.

(b) A permit application also shall include the following information:

(1) the depth to the shallowest fresh water and the direction of groundwater flow at the proposed site, and the source of this information;

(2) the average annual precipitation and evaporation at the proposed site and the source of this information;

(3) the identification of the soil and subsoil by typical name and description of the approximate proportion of grain sizes, texture, consistency, moisture condition, and other pertinent characteristics, and the source of this information;

(4) a copy of a county highway map with a scale and north arrow showing the location of the proposed facility; and

(5) a complete, original 7 1/2 minute United States Geological Survey topographic quadrangle map clearly indicating the outline of the proposed facility; the location of any pipelines that underlay the facility but are not included on the topographic map; and the location of the 100-year flood plain and the source of the flood plain information.

§4.208. Minimum Real Property Information.

(a) A permit application for a stationary commercial recycling facility shall include a copy of the signed lease agreement between the applicant and the owner of the tract upon which the facility is to be located.

(b) A permit application for a stationary commercial recycling facility shall identify the location of the facility by including a plat or plats showing:

(1) a scale and north arrow showing the tract size in square feet or acres, the section/survey lines, and the survey name and abstract number;

(2) the site coordinates in degrees, minutes, and seconds of longitude and latitude;

(3) a clear outline of the proposed facility's boundaries;

(4) all tracts adjoining the tract upon which the facility is to be located;

(5) the name of the surface owner or owners of such adjoining tracts; and

(6) the distance from the facility's outermost perimeter boundary to water wells, residences, schools, churches, or hospitals that are within 500 feet of the boundary.

§4.209. Minimum Design and Construction Information.

(a) A permit application for a commercial recycling facility shall provide the layout and design of the facility by including a plat drawn to scale with north arrow to top of map showing the location and information on the design and size of all receiving, processing, and storage areas and all equipment (e.g., pug mill), tanks, silos, monitor wells, dikes, and access roads.

(b) The application also shall include:

(1) a description of the type and thickness of liners (e.g., fiberglass, steel concrete), if any, for all tanks, silos, and storage areas/cells;

(2) for storage areas where tanks and/or liners are not used, credible engineering and/or geologic information demonstrating that tanks or liners are not necessary for the protection of surface and subsurface water;

(3) a map view and two perpendicular cross-sectional views of storage areas/cells to be constructed, showing the bottom, sides, and dikes, showing the dimensions of each;

(4) a plan for the installation of monitor wells at the facility; and

(5) a plan to control and manage storm water runoff and to retain incoming wastes during wet weather, including the location and dimensions of dikes and/or storage basins that would collect storm water from the facility during a 25-year, 24-hour maximum rainfall event, and all calculations made to determine the required capacity and design.

§4.210. Minimum Operating Information.

A permit application for a commercial recycling facility shall include the following operating information:

(1) the estimated maximum volume of untreated oil and gas waste and partially treated oil and gas waste to be stored at the facility;

(2) the estimated maximum volume and time that the recyclable product will be stored at the facility;

(3) a plan to control unauthorized access to the facility;

(4) a detailed waste acceptance plan that:

(A) identifies anticipated volumes and specific types of wastes (e.g., oil-based drilling fluid and cuttings, crude oil-contaminated soils, production tank bottoms, etc.) to be accepted at the facility for treatment and recycling; and

(B) provides for testing of incoming wastes to ensure that only oil and gas waste authorized by this subchapter or the permit will be received at the facility;

(5) plans for keeping records of the source and volume of incoming wastes, including maintenance of records of the source of waste received by well number, API number, lease or facility name, lease number and/or gas identification number, county, and Commission district;

(6) a general description of the recycling process to be employed; a flow diagram showing the process and identifying all equipment and chemicals or additives (e.g., asphalt emulsion, quicklime, Portland cement, fly ash, etc.) to be used in the process; and the Material Safety Data Sheets for any chemical or additive;

(7) a description of all inert material (e.g., brick, rock, gravel, caliche) to be stored at the facility and used as aggregate in the treatment process; and

(8) an estimate of the duration of operation of the proposed facility.

§4.211. Minimum Monitoring Information.

A permit application for a stationary commercial recycling facility shall include:

(1) a sampling plan for the partially treated waste to ensure compliance with permit conditions;

(2) a plan for sampling any monitoring wells required by the permit and this subchapter; and

(3) a plan and schedule for conducting periodic inspections of the facility, equipment, processing, and storage areas.

§4.212. Minimum Closure Information.

A permit application for a stationary commercial recycling facility shall include a detailed plan for closure of the facility when operations terminate. The closure plan shall address how the applicant intends to:

(1) remove waste, partially treated waste, and/or recyclable product from the facility;

(2) close all storage areas/cells;

(3) remove dikes;

(4) sample and analyze soil and groundwater throughout the facility;

(5) plug groundwater monitoring wells; and

(6) contour and reseed disturbed areas.

§4.213. Notice.

(a) A permit applicant for a stationary commercial recycling facility shall publish notice and file proof of publication in accordance with the following requirements.

(1) A permit applicant shall publish notice of the application in a newspaper of general circulation in the county in which the proposed facility will be located at least once each week for two consecutive weeks with the first publication occurring not earlier than the date the application is filed with the Commission and not later than the 30th day after the date on which the application is filed with the Commission.

(2) The published notice shall:

(A) be entitled, "Notice of Application for Commercial Oil and Gas Waste Recycling Facility";

(B) provide the date the applicant filed the application with the Commission for the permit;

(C) identify the name of the applicant;

(D) state the physical address of the proposed facility and its location in relation to the nearest municipality or community;

(E) identify the owner or owners of the property upon which the proposed facility will be located;

(F) state that affected persons may protest the application by filing a protest with the Railroad Commission within 15 days of the last date of publication; and

(G) provide the address to which protests may be mailed.

(3) The applicant shall submit to the Commission proof that the applicant published notice as required by this section. Proof of publication of the notice shall consist of a sworn affidavit from the newspaper publisher that states the dates on which the notice was published and the county or counties in which the newspaper is of general circulation, and to which are attached the tear sheets of the published notices.

(b) A permit applicant for a stationary commercial recycling facility shall give personal notice and file proof of such notice in accordance with the following requirements.

(1) The applicant shall mail or deliver notice to the following persons on or after the date the application is filed with the Commission's headquarters office in Austin:

(A) the surface owner or owners of the tract upon which the commercial recycling facility will be located;

(B) the city clerk or other appropriate official, if the tract upon which the facility will be located lies within the corporate limits of an incorporated city, town, or village;

(C) the surface owners of tracts with a boundary within a minimum of one-half mile of the outermost boundary of the proposed facility; and

(D) any affected person or class of persons that the director determines should receive notice of a particular application.

(2) Personal notice of the permit application shall consist of:

(A) a copy of the application;

(B) a statement of the date the applicant filed the application with the Commission;

(C) a statement that a protest to the application should be filed with the Commission within 15 days of the last date of published notice, a statement identifying the publication in which published notice will appear, and the procedure for making a protest of the application to the Commission;

(D) a description of the location of the site for which the application was made, including the county in which the site is to be located, the name of the original survey and abstract number, and the direction and distance from the nearest municipality;

(E) the name of the owner or owners of the property on which the facility is to be located;

(F) the name of the applicant;

(G) the type of fluid or waste to be handled at the facility; and

(H) the recycling method proposed and the proposed end-use of the recycled material.

(3) The applicant shall submit to the Commission proof that personal notice has been given as required. Proof of notice shall consist of a copy of each notification letter sent, along with a statement signed by the applicant that includes the names and addresses of each person to whom the notice was sent, and the date that each was notified of the application.

(c) If the director has reason to believe that a person to whom the applicant was required to give notice of an application has not received such notice, then the director shall not take action on the application until the applicant has made reasonable efforts to give such person notice of the application and an opportunity to file a protest to the application with the Commission.

§4.214. Administrative Decision on Permit Application.

(a) If the Commission does not receive a protest to the application, the director may administratively approve the application if the application otherwise complies with the requirements of this subchapter.

(b) The director may administratively deny the application if does not meet the requirements of this subchapter or other laws, rules, or orders of the Commission. The director shall provide the applicant written notice of the basis for administrative denial.

(c) The applicant may request a hearing upon receipt of notice of administrative denial. A request for hearing shall be made to the director within 30 days of the date on the notice. If the director receives a request for a hearing, the director shall refer the matter to the Office of General Counsel for assignment of a hearings examiner who shall conduct the hearing in accordance with the Commission's rules of Practice and Procedure, 16 Texas Administrative Code Chapter 1.

§4.215. Protests and Hearings.

(a) If a person who receives notice or other affected person files a proper protest with the Commission, the director shall give the applicant written notice of the protest and of the applicant's right to either request a hearing on the application or withdraw the application. The applicant shall have 30 days from the date of the director's notice to respond, in writing, by either requesting a hearing or withdrawing

the application. In the absence of a timely written response from the applicant, the director may consider the application to have been withdrawn.

(b) Even if there is no protest filed, the director may refer an application to a hearing if the director determines that a hearing is in the public interest. In determining whether a hearing is in the public interest, the director will consider the characteristics and volume of oil and gas waste to be stored, handled and treated at the facility; the potential risk posed to surface and subsurface water; and any other factor identified in this subchapter relating to siting, construction, and operation of the facility.

(c) Before a hearing on a permit application for a commercial recycling facility, the Commission shall provide notice of the hearing to all affected persons, and other persons or governmental entities who express, in writing, an interest in the application.

§4.216. Standards for Permit Issuance.

A permit issued pursuant to this subchapter may be issued only if the director or the Commission determines that:

(1) the storage, handling, treatment, and/or recycling of oil and gas wastes and other substances and materials will not result in the waste of oil, gas, or geothermal resources, the pollution of surface or subsurface water, a threat to public health and safety; and

(2) the recyclable product can meet engineering and environmental standards the permit establishes for its intended use.

§4.217. General Permit Provisions.

(a) A permit issued pursuant to this subchapter shall be issued for a term of not more than five years, subject to renewal, and shall not be transferable to another operator without the written approval of the director.

(b) A permit issued pursuant to this subchapter shall provide that the facility may only receive, store, handle, treat, or recycle waste:

(1) under the jurisdiction of the Commission;

(2) that is not a hazardous waste as defined by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended (42 United States Code, §6901, et seq.); and

(3) that is not oil and gas naturally occurring radioactive (NORM) waste as defined in §4.603 of this title, relating to Oil and Gas Naturally Occurring Radioactive Waste.

(c) A permit issued pursuant to this subchapter shall require that, prior to operating, a stationary commercial recycling facility comply with the financial security requirements of Texas Natural Resources Code, §91.109, relating to Financial Security for Persons Involved in Activities Other than Operation of Wells, as implemented by §3.78 of this title, relating to Fees and Financial Security Requirements.

§4.218. Minimum Permit Provisions for Siting.

(a) A permit for a commercial recycling facility may be issued only if the director or the Commission determines that the facility is to be located in an area where there is no unreasonable risk of pollution or threat to public health or safety.

(b) A stationary commercial recycling facility permitted pursuant to this subchapter and after the effective date of this subchapter shall not be located within 500 feet of the nearest:

(1) water supply, or domestic or irrigation water well;

(2) coastal natural resources area; or

(3) a sensitive area as defined by §3.91 of this title, relating to Cleanup of Soil Contaminated by a Crude Oil Spill.

(c) A stationary commercial recycling facility permitted pursuant to this subchapter and after the effective date of this subchapter shall not be located within a 100-year flood plain.

(d) Other factors that will be considered in assessing potential risk include:

(1) the volume and characteristics of the oil and gas waste, partially treated waste and recyclable product to be stored, handled, treated and recycled at the facility;

(2) depth to and quality of the shallowest groundwater; and

(3) distance to the nearest property line or public road.

(e) All siting requirements in this section for distance offsets for a stationary commercial recycling facility refer to conditions at the time the facility is constructed.

§4.219. Minimum Permit Provisions for Design and Construction.

(a) A permit issued pursuant to this subchapter for a commercial recycling facility shall contain any requirement that the director or the Commission determines to be reasonably necessary to ensure that:

(1) the design and construction of storage areas, containment dikes, and processing areas minimize contact of oil and gas waste and partially recycled waste with the ground surface, and prevent pollution of surface and subsurface water;

(2) the pollution of surface and subsurface water from spills, leachate, and/or discharges from the facility is prevented by:

(A) prohibiting the unauthorized discharge of oil and gas waste and other substances or materials, including contaminated storm water runoff, from the facility to the land surface at and adjacent to the facility or to surface and subsurface water;

(B) requiring that the permittee control spills at the facility; and

(C) requiring that the permittee make regular inspections of the facility; and

(3) the design and construction of the facility allows for monitoring for, and detection of, any migration of oil and gas waste or other substance or material from the facility.

(b) A permit issued for a stationary commercial recycling facility pursuant to this subchapter shall require that the permittee:

(1) install monitoring wells in accordance with 16 Texas Administrative Code, Part 4, Chapter 76, relating to Water Well Drillers and Water Well Pump Installers; and

(2) submit to the Commission's office in Austin a soil boring log and other information for each well.

(c) The soil boring log and other information required in subsection (b) of this section shall:

(1) describe the soils using the Unified Soils Classification System (equivalent to ASTM D 2487 and 2488);

(2) identify the method of drilling, total depth, and the top of the first encountered water or saturated soils;

(3) include a well completion diagram for each monitoring well;

(4) include a survey elevation for each wellhead reference point; and

(5) include a potentiometric map showing static water levels and the direction of groundwater flow.

(d) The Commission or the director may waive any or all of the requirements in subsection (b) and (c) of this section if the permittee demonstrates that an on-site boring to a minimum depth of 100 feet recovers no water during a 24-hour test.

(e) A stationary commercial recycling facility permit issued pursuant to this subchapter shall require that the permittee notify the Commission district office for the county in which the facility is located prior to commencement of construction, including construction of any dikes, and again upon completion of construction and that the permittee may commence operations under the permit only after the facility has been inspected by the Commission to ensure that construction of all elements of the facility is consistent with the representations in the application and the requirements of the permit.

§4.220. Minimum Permit Provisions for Operations.

(a) A permit issued pursuant to this subchapter shall contain requirements the Commission determines to be reasonably necessary to ensure that:

(1) only wastes and other materials authorized by the permit are received at the facility, including requirements that the permittee test incoming oil and gas waste and keep records of amounts and sources of incoming wastes; and

(2) the processing operation and resulting recyclable product meet the environmental and engineering standards established in the permit.

(b) A permit issued under this subchapter may require the permittee to perform a trial run in accordance with the following procedure.

(1) The permittee shall notify the Commission district office for the county in which the facility is located prior to commencement of the trial run.

(2) The permittee shall sample and analyze the partially treated waste that results from the trial run, and submit to the director for review a report of the results of the trial run prior to commencing operations.

(3) The director shall approve the trial run if the report demonstrates that the recyclable product meets or exceeds the environmental and engineering standards established in the permit.

(4) The permittee shall not use the recyclable product until the director approves the trial run report.

(c) A permit issued pursuant to this subchapter shall include any requirements, including limits on the volumes of oil and gas waste, partially treated waste, and recyclable product stored at the facility, that the Commission determines to be reasonably necessary to ensure that the permittee does not speculatively accumulate oil and gas waste, partially treated waste, and/or recyclable material at the facility.

§4.221. Minimum Permit Provisions for Monitoring.

(a) A permit issued pursuant to this subchapter shall include requirements the director or Commission determines to be reasonably necessary to ensure that the recyclable product meets the environmental and engineering standards established by the director or the Commission and included in the permit.

(b) Consistent with the requirements of §4.216 of this title, relating to Standards for Permit Issuance, the director or the Commission shall establish and include in the permit the parameters for which the partially treated waste is to be tested, and the limits of those parameters based on:

(1) the type of oil and gas waste to be accepted at the commercial recycling facility; and

(2) the intended use for the recyclable product.

(c) A permit may include a requirement that the permittee use an independent third party laboratory to sample and analyze a minimum standard volume of partially treated waste for parameters established by the director or the Commission.

(d) A permit issued pursuant to this subchapter from which the recycled product will be used as road base or other similar uses shall include a requirement that the samples of partially treated waste be analyzed for the following minimum parameters and may not exceed the following limits:

Figure: 16 TAC §4.221(d)

§4.222. Standard Permit Provisions for Closure.

A permit issued pursuant to this subchapter shall include closure standards and any requirement reasonably necessary to ensure that the permittee can meet the standards. The Commission shall determine the closure standards for a particular facility based on the type of materials stored, handled and treated at the facility, and the design and construction of the facility. A permit may include requirements for removal of all waste, partially treated waste, and recyclable product; removal of dikes, storage, liners, and equipment; recontouring of the land; collection and analyzing of soil and groundwater samples from the facility property; and post-closure monitoring.

§4.223. Permit Renewal.

Before the expiration of a permit issued pursuant to this subchapter, the permittee may submit an application to renew the permit. An application for renewal of an existing permit issued pursuant to this subchapter or §3.8 of this title (relating to Water Protection) shall be submitted in writing a minimum of 60 days before the expiration date of the permit and shall include the permittee's permit number. The application shall comply with the requirements of §4.205 of this title, relating to General Permit Application Requirements for Commercial Recycling Facilities, and the notice requirements of §4.213 of this title, relating to Notice. The director may require the applicant to comply with any of the requirements of §§4.206 - 4.212 of this title, relating to Minimum Engineering and Geologic Information; Minimum Siting Information; Minimum Real Property Information; Minimum Construction Information; Minimum Operating Information; Minimum Monitoring Information; and Minimum Closure Information, depending on any changes made or planned to the construction, operation, monitoring, and/or closure of the facility.

§4.224. Exceptions.

An applicant or permittee may request an exception to the provisions of this subchapter by submitting to the director a written request and demonstrating that the requested alternative is at least equivalent in the protection of public health and safety, and the environment as the provisions of this subchapter to which the exception is requested. The director shall review each written request on a case-by-case basis. If the director denies a request for an exception, the applicant or permittee may request a hearing consistent with the hearing provisions of this subchapter relating to hearings requests but may not use the requested alternative until the Commission approves it.

§4.225. Modification, Suspension, and Termination.

A permit granted pursuant to this subchapter may be modified, suspended, or terminated by the Commission for good cause after notice and opportunity for hearing. A finding of any of the following facts shall constitute good cause:

(1) pollution of surface or subsurface water is occurring or is likely to occur as a result of the permitted operations;

(2) waste of oil, gas, or geothermal resources is occurring or is likely to occur as a result of the permitted operations;

(3) the permittee has violated the terms and conditions of the permit or Commission rules;

(4) the permittee misrepresented any material fact during the permit issuance process;

(5) a material change of conditions has occurred in the permitted operations;

(6) the information provided in the application has changed materially; or

(7) the permittee failed to give the notice required by the Commission during the permit issuance or renewal process.

§4.226. Penalties.

Violations of this subchapter or a permit issued pursuant to this subchapter may subject a person to penalties and remedies specified in the Texas Natural Resources Code, Title 3, and any other statutes administered by the Commission.

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

Filed with the Office of the Secretary of State on May 16, 2006.

TRD-200602759
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §8.101

The Railroad Commission of Texas proposes amendments to §8.101, relating to Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines, to allow for staff approval of direct assessment and other technology methods for use in integrity assessments of natural gas and hazardous liquids pipelines. This change will assign the Safety Division director as the Commission's designee for approval of direct assessment and other integrity assessment technology methods not listed in the rule. This change will allow the staff to work more closely with the federal Office of Pipeline Safety as new technologies become available for integrity assessment.

Mary McDaniel, P.E., Director, Safety Division, has determined that for each of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state government. There will be no fiscal implications for local governments, because under Texas Government Code, §121.202, only the Commission has jurisdiction over pipeline safety matters affecting the transportation of gas and gas pipeline facilities in this state.

Ms. McDaniel has also determined that for each year of the first five years the amendments as proposed will be in effect, the public benefit anticipated as a result of enforcing the amendments will be improvement in safety due to availability of direct assessment methodologies and the specific procedures for obtaining approval of assessment technologies. In addition, delegation to staff the authority to approve direct assessment and other integrity assessment technology methods not listed in the rule makes it more likely that pipeline operators can implement their integrity assessment plans on a more expedited basis, because approval will not have to come through a Commission order.

Pursuant to Texas Government Code, §2006.002(c), the Commission cannot determine the exact cost of compliance with the proposed amendments to §8.101 for individual, small business, or micro-business pipeline operators, but the Commission anticipates that there will be either no cost or a reduction in the cost. The Commission assumes that there are operators that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for pipeline operators. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each $100 of sales pursuant to Texas Government Code, §2006.002(c). However, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of the proposed amendments to §8.101, it is not feasible to reduce any adverse effect, if there is any, that the proposed amendments could have on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register* and should refer to Gas Utilities Docket No. 9665. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7058. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments pursuant to Texas Natural Resources Code, §§117.001-117.101, which authorize the Commission to adopt safety standards and practices applicable to the transportation of hazardous liquids and carbon dioxide and associated pipeline facilities within Texas to the maximum degrees permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, et seq.; Texas Natural Resources Code, §§118.001-118.005, which authorize the Commission by rule to require an operator to file for Commission approval a plan for assessment or testing of a pipeline if the Commission makes certain findings; and Texas Utilities Code, §§121.201-121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §60101, et seq.

Statutory authority: Texas Natural Resources Code, §§117.001 - 117.101 and 118.001 - 118.005; and Texas Utilities Code, §§121.201 - 121.210.

Cross-reference to statute: Texas Natural Resources Code, Chapters 117 and 118; and Texas Utilities Code, Chapter 121.

Issued in Austin, Texas, on May 16, 2006.

§8.101. Pipeline Integrity Assessment and Management Plans for Natural Gas and Hazardous Liquids Pipelines.

(a) (No change.)

(b) By February 1, 2002, operators of intrastate transmission and gathering lines subject to the requirements of 49 CFR Part 192 or 49 CFR Part 195 shall have designated to the Commission on a system-by-system or segment within each system basis whether the pipeline operator has chosen to use the risk-based analysis pursuant to paragraph (1) of this subsection or the prescriptive plan authorized by paragraph (2) of this subsection. Hazardous liquid pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by January 1, 2006, and the remainder by January 1, 2011; operators using the prescriptive plan shall complete the initial integrity testing by January 1, 2006, or January 1, 2011, pursuant to the requirements of paragraph (2) of this subsection. Natural gas pipeline operators using the risk-based plan shall complete at least 50% of the initial assessments by December 17, 2007, and the remainder by December 17, 2012; operators using the prescriptive plan shall complete the initial integrity testing by December 17, 2007, or December 17, 2012, pursuant to the requirements of paragraph (2) of this subsection.

(1) The risk-based plan shall contain at a minimum:

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

(C) assessment of pipeline integrity using at least one of the following methods appropriate for each segment:

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

(iii) direct assessment after approval by the Safety Division director; [~~Commission,~~] or

(iv) other technology or assessment methodology not specifically listed in this paragraph after approval by the Safety Division director [~~Commission~~].

(D) - (E) (No change.)

(2) (No change.)

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

(e) Operators of pipelines for which an integrity assessment was performed prior to April 30, 2001 (the effective date of this rule), [~~the effective date of this proposed new rule~~] shall not be required to implement a new plan as long as the original assessment meets the minimum requirements of this section.

(f) (No change.)

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

Filed with the Office of the Secretary of State on May 16, 2006.

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Mary Ross McDonald
Managing Director
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER HH. COMMISSIONER'S RULES CONCERNING CLASSROOM SUPPLY REIMBURSEMENT PROGRAM

19 TAC §61.1081

The Texas Education Agency (TEA) proposes an amendment to §61.1081, concerning the classroom supply reimbursement program. Section 61.1081 establishes a program whereby classroom teachers may be reimbursed for personal expenditures made for classroom supplies. The proposed amendment would update several provisions of the program, including the addition of reimbursements to campus library media specialists, the replacement of the requirement for a "district policy" with a "district procedure," and the elimination of the requirement that districts receiving grant funds create a separate account for these funds.

House Bill 1844, 78th Texas Legislature, 2003, added TEC, §21.413, that established a program whereby classroom teachers may be reimbursed for personal expenditures made for classroom supplies. The legislation required that the commissioner establish the reimbursement program and adopt rules for the local allocation of funds. TEC, §21.413 specified that a school district must match any funds provided to the district under the program with local funds and the funds used to match may not replace local funds. Teachers may use the funds at their discretion, as long as the use is of benefit to the district's students. Effective September 1, 2005, the TEC, §21.413, was renumbered as TEC, §21.414, by the 79th Texas Legislature, 2005.

The commissioner adopted 19 TAC §61.1081, effective January 4, 2004, to implement legislation by establishing the process for districts to apply for the Teacher Supply Reimbursement Grant Program funds, the eligibility requirements for district participation, and the criteria by which the TEA will evaluate district applications. The rule also addresses other provisions such as district compliance, disputes about allowable teacher expenditures, district ownership of durable goods, and the timeline for expenditure of funds for each school year.

The proposed amendment would update several provisions of the program. Reimbursement of campus library media specialists would be added in subsections (a)-(e) whenever reimbursement to teachers is referenced. Senate Bill 1, 79th Texas Legislature, General Appropriations Act, Rider 60 authorizes the TEA to include "campus library media specialist" for the reimbursement of personal expenditures made for classroom supplies. Additional specific updates include the following.

Subsection (a) regarding the application process would be revised to remove the requirement that districts submit information about actual local fund expenditures and to change the requirement that districts report the number of recipients of reimbursements from the last five years to the last two years.

Subsection (b) regarding eligibility requirements would be revised to eliminate the requirement that districts receiving grant funds create a Teacher Supply Reimbursement Grant account separate from other accounts to which the grant shall be deposited and the requirement that participating districts deposit

local matching funds into the designated account. This revision would also clarify that local matching funds may be donated by a variety of entities. The requirement to retain receipts obtained from teachers for reimbursement would also be eliminated. Subsequent to the rule adoption in 2004, several business officials expressed concern about the creation of a separate account for the Teacher Supply Reimbursement Grant funds. They noted that doing so is not a common practice for business officials and although they track the funds, opening a separate account is burdensome. The proposed revision included in subsection (b) would address this concern.

Subsection (c) regarding evaluation criteria would be revised to update a reference in revised subsection (a).

Subsection (d) regarding other provisions would be revised to clarify that funds for each grant period must be expended by the end date of that grant period.

Christi Martin, senior advisor in the office of education initiatives, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. The proposed amendment, that includes expanding the reimbursement program to include campus library media specialists, would not impact the amount of grant awards.

Ms. Martin 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 would be to allow campus library media specialists, as well as teachers, to obtain more and better supplies for their classrooms, directly benefiting student learning. The proposed amendment would also provide flexibility to school districts applying for and in implementing the specific grant program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

The public comment period on the proposal begins June 2, 2006, and ends July 2, 2006. 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* 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 (TEC), §21.414, which authorizes the commissioner of education to adopt rules and establish a reimbursement program under which the commissioner provides funds to a school district for the purpose of reimbursing classroom teachers in the district who expend personal funds on classroom supplies. Rider 60, page III-18, Senate Bill 1, Acts of the 79th Legislature, Regular Session, 2005 (the General Appropriations Act), extends the reimbursement program to include campus library media specialists.

The amendment implements the Texas Education Code, §21.414, and Rider 60, page III-18, Senate Bill 1, Acts of the 79th Legislature, Regular Session, 2005 (the General Appropriations Act).

§61.1081. Teacher Supply Reimbursement Grant Program.

(a) Application process. In order to participate in the classroom supply reimbursement program authorized by Texas Education Code (TEC), §21.414 [~~§21.413~~] , a school district must apply to the Texas Education Agency (TEA) for these funds by a date set by the commissioner of education. The application must include the following:

(1) a standard Teacher Supply Reimbursement Grant Program district application;

[~~(2) actual total local fund expenditures on teacher supply reimbursements for school year 2003 if applying during school year 2004, for school years 2003 and 2004 if applying during school year 2005, and for the most recent three school years if applying after school year 2005 (to aid in determining if local expenditures are being reduced). Local funds are all funds over which the district exercises control or approval authority used to reimburse teachers for tangible items of direct benefit to students;~~]

(2) [~~(3)~~] the number of teachers and campus library media specialists who have received reimbursement for supply purchases in the last two [~~five~~] years;

(3) [~~(4)~~] the number of teachers and campus library media specialists anticipated to receive reimbursement under this program and the amount each teacher and campus library media specialist will be eligible to receive; and

(4) [~~(5)~~] a district procedure [~~policy~~] that would ensure each teacher and campus library media specialist meets the requirement that an expenditure will benefit students.

(b) Eligibility requirements. To be eligible to participate in the classroom supply reimbursement program, a district will be required to:

(1) re-apply to participate each year;

(2) [~~create a Teacher Supply Reimbursement Grant account separate from other accounts to which the grant shall be deposited and~~] account for funds in accordance with applicable state and federal requirements;

(3) match individual [~~deposit in the designated account an amount of local funds defined in subsection (a)(2) of this section at least equal to the greater of the amount of the grant or the previous year's expenditure on teacher supply reimbursements. Individual~~] reimbursements from the Teacher Supply Reimbursement Grant Program [~~must be matched~~] with an equal amount of local funds . Local matching funds may be donated, or otherwise provided, to the school district by local community groups, parent/teacher organizations, businesses, professional organizations, etc.;

(4) ensure that items purchased with grant funds [~~in the designated account~~] are tangible items, of direct benefit to students;

(5) retain ownership of all durable goods purchased under this program. A district may develop a procedure [~~policy~~] allowing each teacher and campus library media specialist to retain ownership of goods of nominal value purchased with grant money; and

[~~(6) retain receipts obtained from teachers for reimbursement and make these records available for audit purposes; and~~]

(6) [~~(7)~~] return unexpended Teacher Supply Reimbursement Grant Program balances at the end of the state fiscal year for which they were awarded.

(c) Evaluation criteria. Applications to the TEA will be evaluated on the following criteria:

(1) information about a district's existing supply reimbursement program, if applicable;

(2) the balance between the number of teachers and campus library media specialists receiving reimbursements and the size of the reimbursements;

(3) the process by which a district would determine whether an expenditure meets the student benefit criteria as required in subsection (a)(4) [~~(a)(5)~~] of this section; and

(4) the district's size relative to other applicants.

(d) Other provisions.

(1) A district found in noncompliance with the provisions specified in this section must reimburse the state for funds unaccounted for or used for purposes not meeting the requirements in TEC, §21.414 [~~§21.413~~].

(2) A district found to have reduced its local expenditures may be required to refund the entire grant to the state.

(3) A district may allow, but not require, teachers and campus library media specialists to pool their respective supply monies for the purchase of an item, as long as the item meets the student benefit criteria established by the district.

(4) Funds for each grant period [~~school year~~] must be expended by the end date of that grant period [~~July 31 of that school year~~].

(5) Total reimbursement to an individual teacher or campus library media specialist in a single year from the Teacher Supply Reimbursement Grant Program may not exceed $200. Reimbursements from local funds may exceed the matching requirement in subsection (b)(3) of this section.

(6) The reimbursement program may be implemented only if funds are specifically appropriated by the legislature for the program or if the commissioner identifies available funds, other than general revenue funds, that may be used for the program.

(e) Dispute resolution.

(1) A determination by the local school district board of trustees of any dispute involving teacher or campus library media specialist reimbursement is final and may not be appealed to the TEA, except as provided by TEC, §7.057. Nothing in this provision precludes the TEA from recovering funds from a district pursuant to an audit.

(2) A determination by the TEA in the administration of this program is final and may not be appealed.

(f) Expiration date. This section, issued under TEC, §21.414 [~~§21.413~~] , expires September 1, 2007.

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

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602859
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 475-1497

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The Figure is available in the on-line edition of the June 2, 2006, issue of the Texas Register.)

The Texas Education Agency (TEA) proposes an amendment to §97.1001, concerning accountability. Section 97.1001 describes the state accountability rating system and adopts applicable excerpts of the most recently published accountability manual. The proposed amendment would adopt applicable excerpts of the *2006 Accountability Manual*, dated May 2006.

Legal counsel with the TEA has recommended that the procedures for issuing accountability ratings for public school districts and campuses be adopted as part of the *Texas Administrative Code*. This decision was made in 2000 given a court decision challenging state agency decision making via administrative letter/publications. Given the statewide application of the accountability rating process and the existence of sufficient statutory authority for the commissioner of education to formally adopt rules in this area, portions of each annual accountability manual have been adopted since 2000. The accountability system evolves from year to year so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to annually update 19 TAC §97.1001 to refer to the most recently published accountability manual.

The proposed amendment to 19 TAC §97.1001 would adopt excerpts of the *2006 Accountability Manual*, dated May 2006, into rule as a figure. The excerpts, *Chapters 2-6, 8, 10-12, 14-16,* and *Appendix I* of the *2006 Accountability Manual*, specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings, both standard and alternative education accountability (AEA), for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine Gold Performance Acknowledgment (GPA) on additional indicators for Texas public school districts and campuses. In addition, these chapters specify procedures for submitting an appeal and evaluating districts and campuses impacted by Hurricanes Katrina and/or Rita. The TEA will issue accountability ratings under the procedures specified in the *2006 Accountability Manual* in August 2006. Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

In 2006, campuses and districts will be evaluated using four base indicators: Texas Assessment of Knowledge and Skills (TAKS) results, completion rates, annual dropout rates, and student performance on the State Developed Alternative Assessment (SDAA) II. In 2006, the GPA system will award acknowledgment on 14 separate indicators to districts and campuses rated *Academically Acceptable* or higher: Attendance Rate for Grades 1-12; Advanced Course/ Dual Enrollment Completion; Advanced Placement/ International Baccalaureate Results; College Admissions Test Results; Commended Performance on Reading/ English Language Arts (ELA), Mathematics, Writing, Science and/or Social Studies; Recommended High School Program/ Distinguished Achievement Program Participation; Comparable Im-

provement on Reading/ ELA and Mathematics; and Texas Success Initiative - Higher Education Readiness Component on ELA and/or Mathematics.

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

Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be to continue to inform the public of the existence of annual manuals specifying rating procedures for the public schools by including this rule in the *Texas Administrative Code*. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

The public comment period on the proposal begins June 2, 2006, and ends July 2, 2006. 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* 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 (TEC), §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e), which authorize the commissioner of education to specify the indicators, standards, and procedures used to determine standard accountability ratings and alternative education accountability ratings and to determine acknowledgment on additional indicators.

The amendment implements the Texas Education Code, §§39.051(c)-(d), 39.072(c), 39.0721, 39.073, and 29.081(e).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §39.051(c) and (d), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings under both standard and alternative education accountability (AEA) procedures will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following procedures:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine acknowledgment on Additional Indicators; and

(4) procedures for submitting a rating appeal.

(b) The standard and alternative procedures by which districts, campuses, and charter schools are rated and acknowledged for 2006 [~~2005~~] are based upon specific criteria and calculations, which are described in excerpted sections of the *2006* [~~*2005*~~] *Accountability Manual*, dated May 2006 [~~June 2005~~] , provided in this subsection.
Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.074 and §39.075.

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

(e) The specific criteria and calculations used in the annual accountability manual adopted for school years prior to 2006-2007 [~~2005-2006~~] remain in effect for all purposes, including accountability, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602860
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 475-1497

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CHAPTER 105. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING OPTIONAL EXTENDED YEAR PROGRAM

19 TAC §105.1001

The Texas Education Agency (TEA) proposes an amendment to §105.1001, concerning the optional extended year program. Section 105.1001 establishes provisions relating to the administration of the optional extended year program. The proposed amendment would update the rule to reflect existing statute and the related rider and agency administration of the program.

The Texas Education Code (TEC), §29.082, Optional Extended Year Program, was added in 1995 by the 74th Texas Legislature and amended in 1997 and 2003 by the 75th and 78th Texas Legislatures, respectively. TEC, §29.082, allows the commissioner of education to adopt rules for the administration of programs provided under this section. In accordance with the TEC, §29.082, a school district may set aside an amount from the district's allotment under the TEC, §42.152, or may apply to the TEA for funding of an extended year program for a period not to exceed 30 instructional days for students in Kindergarten-Grade 11 who are identified as likely not to be promoted to the next grade level for the succeeding school year. A school district may also apply for funding for a program for students in Grade 12 who are identified as likely not to graduate from high school before the beginning of the succeeding school year. 19 TAC §105.1001 is the rule adopted by the commissioner of education to implement the TEC, §29.082. Since the adoption of this commissioner's rule in 1997 and the last amendment to the rule in 1999, several changes to the program have taken place impacting some provisions currently in rule.

In 2003, statutory changes expanded the grade levels to be served by the optional extended year program to include Grades

9-12 in addition to Kindergarten-Grade 8. Accordingly, the proposed amendment to 19 TAC §105.1001 would change all grade references from Kindergarten-Grade 8 to Kindergarten-Grade 12.

Additionally, the proposed amendment would revise subsection (b)(1) to align the optional extended year program with the No Child Left Behind (NCLB) requirement to serve 40% economically disadvantaged students. Districts currently serving 35%-39% will not receive optional extended year program funding. Currently, the districts funded by the program that are serving 35%-39% economically disadvantaged students have less economic need than districts serving 40% or greater. Increasing the percentage rate to 40% will enable additional allocations to eligible school districts based on the amount necessary to provide extended year instructional services to 10% of the at-risk student population in Kindergarten-Grade 12. The proposed amendment would also revise subsection (b)(2) to clarify the 10% maximum entitlement.

In a March 1, 2000, letter to administrators, then Commissioner of Education Jim Nelson authorized a change in policy relevant to Kindergarten students in the optional extended year program and in the accelerated reading instructional program. Prior to this letter, school districts were not allowed to serve Kindergarten students with both fund sources. In accordance with the administrative letter, school districts have been allowed to serve Kindergarten students with one or both of these fund sources since the 1999-2000 school year. However, the optional extended year program and the accelerated reading instruction program remain as two separate programs and must be implemented and funded according to statute and guidelines. Since the 1999-2000 school year, the optional extended year program and the accelerated reading instructional program have progressed one year at a time to provide the programs to Grades 1 and 2 as well. The proposed amendment would modify language in subsection (e) to reflect the policy change authorized by the March 2000 letter.

The proposed amendment would add language in subsection (l) to clarify what type of tutorial programs are accepted under the optional extended year program. Completing daily homework assignments is not the intent of the program. The purpose of the term "tutorial" is to clarify the instructional setting. The one-teacher-to-one-student model is not appropriate for the optional extended year program format. The small group tutorial with a limited number of students working on a specifically designed component of an academic program to increase academic achievement is acceptable.

The proposed amendment would modify subsection (m) to clarify the existing requirement to submit statistical data concerning student participation.

Judy de la Garza, deputy associate commissioner for school support services, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment. The proposed amendment does not cost more money; it just changes the way money flows. The proposal to align the optional extended year program with NCLB requirements to serve 40% economically disadvantaged students would shift funding away from those school districts currently serving 35%-39%. For example, based on school year 2004-2005 allocated funds, this would cause $926,400 (based on $120 per student funding) to be shifted for those schools serving 40%-100% economically disadvantaged students (based on $132 per student funding). Currently, the districts funded by the program that are serving 35%-39% economically disadvantaged students have less economic need than districts serving 40% or greater. Increasing the percentage to 40% would enable additional allocations to eligible school districts based on the amount necessary to provide extended year instructional services to 10% of the at-risk population in Kindergarten-Grade 12. The proposed change to expand from Grade 8 to Grade 12 does not change any funding.

Ms. de la Garza 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 would be that more at-risk populations would be served in Kindergarten-Grade 12. The public will realize a benefit of having an increasingly prepared workforce exiting from the public high schools. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

The public comment period on the proposal begins June 2, 2006, and ends July 2, 2006. 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* 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 (TEC), §29.082, which authorizes the commissioner of education to adopt rules for the administration of optional extended year programs.

The amendment implements the Texas Education Code, §29.082.

§105.1001. Optional Extended Year Program.

(a) Each school district seeking funding for an optional extended year program under the Texas Education Code, §29.082, must submit an application in a format prescribed by the commissioner of education. Once funded, the program shall comply with the provisions of the Texas Education Code, §29.082.

(b) School districts shall be funded annually based on the most recent district data available to the Texas Education Agency through the Public Education Information Management System (PEIMS). Funding shall be based on the following:

(1) Eligibility. School districts in which at least 40% [~~35%~~] of the students in Kindergarten through Grade 12 [~~8~~] are from economically disadvantaged families will be eligible for funding.

(2) Maximum entitlement. Funding for an eligible school district under this section shall be based on the amount necessary to provide extended year instructional services to [~~not more than~~] 10% of the at-risk student population in Kindergarten through Grade 12 [~~8~~].

(3) Per capita amount. The per capita amount will be determined by dividing the total program allocation by the sum of the maximum entitlement populations in Kindergarten through Grade 12 [~~8~~] in eligible school districts.

(4) Reallocation. Program funds not requested by eligible school districts will be reallocated to school districts with 50% or more economically disadvantaged students.

(c) At a minimum, school districts will be required to provide services to the number of students identified on the school district's entitlement notice used for funding. School districts that have fewer students participating in the optional extended year program than identified for calculating the school district's maximum entitlement (including reallocation, if applicable) will have their entitlement reduced on a per-capita basis.

(d) A school district receiving funds under the Texas Education Code, §29.082, that is also receiving funds for an optional extended year program for students in Kindergarten through Grade 12 [~~8~~] under the Option 4 wealth equalization agreement authorized under the Texas Education Code, Chapter 41, must adjust its Option 4 equalization agreement. The district must adjust the agreement to redirect the use of funds to a qualifying activity other than an optional extended year program for students in Kindergarten through Grade 12 [~~8~~] to the extent necessary to avoid duplicate funding of optional extended year programs.

(e) A school district receiving funds for the accelerated reading instruction program authorized under the Texas Education Code, §28.006(g), is eligible [~~ineligible~~] to use funds authorized under the Texas Education Code, §29.082, to serve students in Kindergarten through [~~during the 1999-2000 school year, Kindergarten-Grade 1 during the 2000-2001 school year, and Kindergarten-~~] Grade 2 [~~during the 2001-2002 school year~~]. Each optional extended year program must have auditable funding documentation linking direct service expenditures and optional extended year program funds used to identify eligible students.

(f) An optional extended year program may extend the day, the week, or the year. The program shall be conducted beyond the required instructional days which may include intercessions for year-round programs.

(g) A school district may use funds under this section for follow-up activities so long as the optional extended year program is provided for no less than 30 instructional days. Follow-up activities provided by this subsection are restricted to participants of the program.

(h) All costs under the optional extended year program must be necessary and reasonable for carrying out the objectives of the program and for the proper and efficient performance and administration of the program.

(i) Students who do not meet district standards or policies for promotion on the basis of academic achievement or demonstrated proficiency of the subject matter of the course or grade level shall be eligible for services under the optional extended year program.

(j) A school district must include a parent/family awareness component in the program.

(k) Training required under Texas Education Code, §29.082(d), shall provide teachers with the knowledge and skills needed to help students in the program meet challenging state content and student performance standards. Training is to occur prior to the implementation of the program. Additional professional development may be provided throughout the implementation of the program.

(l) A school district shall incorporate effective instructional strategies into the design of the program to ensure students are provided with the skills needed to be successful in the following school year. An extended day program must be implemented beyond the regular seven-hour day and may not include tutorials or extended in-school day-care services. A tutorial program with the basic design to complete homework is not an acceptable instructional design for the program. A tutorial program using pre- and post-testing with each student working on a sequenced and focused program over time to enable the student to attain greater academic success is acceptable.

(m) A school district shall submit an annual report evaluating the program in the time and format required by the Agency. A school district shall also submit, in a manner determined by the commissioner, [~~The report shall include~~] a complete list of students who participated in the program for at least one day.

(n) For audit purposes, a school district shall maintain documentation to support each of the requirements 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 May 22, 2006.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 273. GENERAL RULES

22 TAC §273.4

The Texas Optometry Board proposes amendments to §273.4, concerning fees. The amendment sets the fee for licensees who have not timely complied with continuing education requirements at $182.00, as set by §351.308 of the Texas Optometry Act.

Chris Kloeris, Executive Director of the Texas Optometry Board, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for local government as a result of enforcing or administering the amendments. For state government, it is projected that there will be increased revenue of less than $100 for the first year of the biennium and each year thereafter that fee amounts are in effect.

Chris Kloeris also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of the amendments will be assurances that licensees obtain continuing education timely, and that the license renewal process will operate efficiently.

The economic costs for persons who are required to comply with the amendments, including small businesses, will be the same additional $7.00 penalty fee for each licensee who does not obtain continuing education in the required time frame. Licensees in compliance with the deadline do not pay this fee. No disparate effect is foreseen on small or micro-businesses as the fee is imposed on individual professionals regardless of the size of any business.

Comments on the proposal may be submitted to Chris Kloeris, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942. The deadline for furnishing comments is 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Optometry Act, Texas Occupations Code, §§351.151, 351.152, and 351.308.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession; §351.152 as granting the Board the authority to establish by rule reasonable and necessary fees to cover the costs of administering the act; and §351.308 as setting the fee for delayed continuing education compliance.

No other sections are affected by the amendments.

§273.4. Fees (Not Refundable).

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

(j) Late fees (for all renewals with delayed continuing education) $182.00 [~~$175.00~~]

(k) - (o) (No change.)

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

Filed with the Office of the Secretary of State on May 17, 2006.

TRD-200602799
Chris Kloeris
Executive Director
Texas Optometry Board
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 305-8502

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TITLE 28. INSURANCE

PART 3. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

CHAPTER 181. BYLAWS

28 TAC §181.1

The Texas Certified Self-Insurer Guaranty Association (Association) proposes amendments to §181.1, concerning the Bylaws of the Association. These amendments are necessary to implement changes to Chapter 407 of the Texas Labor Code enacted by House Bill 7 (HB 7), passed by the 79th Texas Legislature, effective on September 1, 2005. This legislation abolished the Texas Workers' Compensation Commission (TWCC) and transferred its duties to the Texas Department of Insurance, Division of Workers' Compensation (DWC).

In addition to agency organizational changes, HB 7 changed the composition of the Association's Board of Directors by deleting the two members of the TWCC Commission and adding one member designated by the DWC Commissioner. The reduction in the number of Board members necessitated a corresponding change in the number of votes needed for a quorum.

The proposed amendments reflect the organizational changes to the agency and to the Association's Board of Directors. Other changes are proposed to remove outdated references, deadlines, and procedures.

Judy Roach, Executive Director of the Association, has determined that for the first five year period the amendments as proposed are in effect, there will be no fiscal implications to state and local governments as a result of enforcing or administering the amendments.

Ms. Roach also has determined that for each year of the first five year period the amendments as proposed are in effect, the public benefits expected as a result of adoption of the amendments will be the implementation of changes enacted by HB 7. There are no anticipated additional economic costs to small businesses, micro-businesses, or persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Judy Roach, Executive Director, Texas Self-Insurer Guaranty Association, 1115 San Jacinto Boulevard, Suite 275, Austin, Texas 78701. Comments must be received by July 3, 2006.

The amendments are proposed under the Texas Labor Code, Chapter 407, Subchapter G, §407.123, which authorizes the Board of Directors of the Association, subject to approval of the DWC Commissioner, to adopt rules necessary to operate the Association.

The following code is affected by this proposal: The Labor Code, Chapter 407, Subchapter G, §407.123.

§181.1. Bylaws of the Texas Certified Self-Insurer Guaranty Association.

(a) The membership of the Texas Certified Self-Insurer Guaranty Association (the Association) shall consist of all certified self-insurers (members) that hold a certificate of authority to self-insure issued by the Commissioner of Workers' Compensation of the Texas Department of Insurance, Division of Workers' Compensation (the Commissioner) [~~Texas Workers'~~ ~~Compensation~~ ~~Commission~~ ~~(the Commission)~~]. Only certified self-insurers may be members of the Association.

(1) - (5) (No change.)

(b) The business of the Association shall be managed by the Board of Directors (the Board).

(1) The Board shall consist of three members of the Association, one member designated by the Commissioner [~~one member of the Commission representing wage earners, one member of the Commission representing employers~~], and the Public Insurance Counsel. [~~The Executive Director of the Commission and the Director of the Commission's Division of Self-Insurance Regulation shall serve as non-voting members~~]. The members of the Board shall hereinafter be referred to as Directors. Each Director representing members of the Association must be a current employee of a member of the Association.

(2) A quorum of the board is three [~~four~~] voting directors [~~members~~]. No business may be conducted by the board unless a quorum of its members is present at the meeting. An action by the board requires the concurring vote of three directors [~~four members~~]. A motion to recommend an application for certification that fails to receive the concurring vote of three directors [~~four board members~~] constitutes disapproval of the application. [~~Within 40 days of receiving an application for self-insurance, the board shall advise the director of the Division of Self-Insurance Regulation of the status of the application. This constitutes a response for purposes of commission §114.7 of this title (relating to Certification Process) and shall not be deemed approval of the application by the board.~~]

(3) (No change.)

(4) The board shall meet at least once during each calendar quarter. Additional meetings may be held as necessary to conduct the business of the association. Meetings shall be held at the call of the

chair or upon written request to the chair by any three directors [~~four members~~] of the board.

(5) The board shall have the authority to hire an executive director to conduct the day-to-day operations of the association. The board may also authorize the hiring of additional staff as necessary. The executive director serves at the pleasure of the board. The employment or removal of an executive director requires the affirmative vote of at least three [~~four~~] members of the board. The salaries of the executive director and staff shall be set by the board and be commensurate with the salaries paid by state agencies.

(6) - (8) (No change.)

(c) (No change.)

(d) The Board shall levy assessments against each member necessary to create and maintain the Texas Certified Self-Insurer Guaranty Trust Fund (the Trust Fund). Assessments shall be levied in amounts that will provide at least $1 million, but not more that $2 million[~~, by January 1, 2003~~]. For purposes of assessments, "payments" means all income benefits paid in the preceding reported calendar year pursuant to obligations as a certified self-insurer, or in the case of a first-year member of the Association, made by the member's carrier on behalf of the member, pursuant to the Texas Workers' Compensation Act. All earned income of the trust fund is retained by the trust fund and may be used by the Board of Directors as provided in subsection (f)(1) of these Bylaws.

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

(3) When all liabilities of an impaired certified self-insurer (or former self-insurer) have been paid, and the trust fund has been reimbursed, excess funds may be held in lieu of or in reduction of an Administrative Fee, paid to the Division of Workers' Compensation [~~Texas Workers' Compensation Commission~~] in lieu of or in reduction of a regulatory fee, used by the Board to pay administrative expenses of the Association, or otherwise used for the benefit of the members of the Association.

(4) The Board of Directors shall have the authority to collect from the impaired certified self-insurer (or former self- insurer) any amount that has been assessed against other self-insurers to pay the liabilities of the impaired certified self-insurer (or former self-insurer). The board may use any appropriate means for collection of the assessment up to and including filing suit against the impaired member or former member. Continued failure to pay the assessment may result in a recommendation to the Commissioner [~~commission~~] that the member's certificate of self-insurance be revoked.

(5) If the Trust Fund is terminated for any reason, the funds then held in the Trust Fund shall be paid to the Division of Workers' Compensation [~~Texas Workers' Compensation Commission~~] to be used for the administration of the Workers' Compensation Act.

(e) The association shall mail notice of any assessment to the designated representative of each member or former member of the association. Each member or former member shall pay all assessments not later than 30 days after it is notified of the assessment. Late payments shall accrue interest at the rate of 1.5% per month on any unpaid balance. The board may use any appropriate means for collection of the assessment up to and including filing suit against the member or former member and continued failure to pay the assessment may result in a recommendation to the Commissioner [~~commission~~] that the member's certificate of self-insurance be revoked.

(f) The board of directors shall approve a budget for the operating expenses for the succeeding year not later than December 31 of each year.

(1) Income earned from the investment of the trust fund shall be used for expenses of administration of the association and of the trust fund [~~in accordance with the Texas Property Code, §113.111(a)~~].

(2) (No change.)

(g) If the Commissioner [~~commission~~] declares that a certified self-insurer (or former self-insurer) is impaired and determines that the payment of benefits and claims administration shall be made through the association, the board shall provide for the administration and payment of claims on behalf of the impaired certified self-insurer (or former self-insurer) in accordance with the Texas Workers' Compensation Act. The board shall provide for the creation of a separate account for the administration of each impaired certified self-insurer (or former self-insurer) and for the payment from the trust fund to the separate account if the Commissioner [~~director of self-insurance~~] advises the board that additional funds are needed to supplement the security deposit.

(h) (No change.)

(i) The board shall adopt and amend rules, including these bylaws, in accordance with the Administrative Procedure Act, Government Code, Chapter 2001. After proposing, publishing, and receiving comments on rules, the board shall meet and vote on a final version. Adoption of rules must be made contingent on approval by the Commissioner [~~commission~~] and ratification by the association. The rules so adopted shall be sent to the Commissioner [~~commission~~]. Upon approval by the Commissioner [~~commission~~], and ratification by the association, the rules shall be filed with the Texas Register and shall become effective in accord with the provisions of the Administrative Procedure Act. Failure to obtain ratification by the members will result in the board reconsidering the rule and voting on a revised version.

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

(j) - (l) (No change.)

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602807
Judy Roach
Executive Director
Texas Certified Self-Insurer Guaranty Association
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 322-0514

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 334. UNDERGROUND AND ABOVEGROUND STORAGE TANKS

The Texas Commission on Environmental Quality (agency, commission, or TCEQ) proposes amendments to §§334.2, 334.5, 334.8, 334.71, 334.84, 334.301 - 334.303, 334.306, 334.310, and 334.313.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The purpose of the proposed amendments is to incorporate into agency rules, changes to statute which were effective September 1, 2005, based on language in Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5) from the 79th Legislature, 2005, and to incorporate changes suggested by stakeholders during and following a meeting of the Petroleum Storage Tank (PST) Rules Advisory Group held November 29, 2005.

SECTION BY SECTION DISCUSSION

Throughout this rulemaking package, administrative changes have been made as necessary in accordance with Texas Register requirements.

Subchapter A - General Provisions

The following amendments are proposed to comply with statutory changes. Proposed §334.2 amends paragraph (41), the definition of "Free-product" by specifying that the term has the same meaning with or without a hyphen, and amends paragraph (92), the definition of "Release" by adding language defining the term "subsurface soils" as used in that definition to reflect the inclusion of the term "subsurface soil" in statutory definitions. Proposed §334.5(b)(1)(A), (B), and (C), (2)(A), and (3) are amended by adding and/or deleting language as necessary to reflect the statutory removal of common carrier liability with respect to deliveries into underground storage tanks and to specify clearly that liability regarding such deliveries rests entirely with underground storage tanks (USTs) system owners and operators. Proposed §334.8(c)(2) is amended to add the insertion of a descriptive opening sentence to provide textual consistency. Proposed §334.8(c)(5)(A)(i) is amended to add language applicable to delivery prohibitions to reflect statutory language which allows a UST owner/operator to provide verification to a common carrier of compliance with UST certification requirements by obtaining or by directing the common carrier to view a copy of the delivery certificate for a site from the agency's Web site.

Subchapter D - Release Reporting and Corrective Action

The following amendments are proposed to comply with statutory changes. Proposed §334.71(a) is amended by adding the phrase "unless otherwise provided in §350.2(g) of this title (relating to Applicability)" at the end of the subsection to provide reference to that section for possible exceptions to §334.71(a). Proposed §334.71(b)(6) is amended to change the language and extend the deadline applicable to the submission of site closure requests for eligible sites that require either a corrective action plan or groundwater monitoring to reflect statutory amendments. Proposed §334.84(a)(4) is added to provide language in accordance with statute allowing owners or operators who are eligible for an extension for corrective action reimbursement to apply to the agency to have their sites placed in the Petroleum Storage Tank State Lead Program administered by the commission and the word "or" is moved from the end of paragraph (3) to the end of the new paragraph (4). The subsequent paragraph is renumbered accordingly.

The following amendment is proposed to comply with stakeholder requests. A proposed new §334.84(c) is added to place a practicable time limit on the agency with regard to response to a proper written application to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program.

Subchapter H - Reimbursement Program

The following amendments are proposed to comply with statutory changes. Proposed §334.301(c) is amended by adding language in accordance with statute which extends the deadline for the performance of corrective action from September 1, 2005, to August 31, 2007, for eligible owners/operators who have been granted an extension for corrective action reimbursement by the agency; by amending in accordance with statute the deadline for filing a claim for reimbursement from March 1, 2006, to March 1, 2008; and by amending in accordance with statute the final deadline for payment of reimbursements from September 1, 2006, to September 1, 2008. Proposed §334.301(f) and (h) are each amended to add the insertion of a descriptive opening sentence to provide textual consistency. Proposed §334.301(h)(2) is amended by adding language which allows the executive director to postpone considering, processing, or paying claims for reimbursement for corrective action work which was begun without prior commission approval and deletes language which prevents such claims from being considered, processed, or paid until all agency pre-approved claims for reimbursement have been completed. Proposed §334.302(c)(5) is amended by adding language in accordance with statute which provides an extension of the final deadline for the performance of corrective action from September 1, 2005, to August 31, 2007, with regard to the reimbursement of related corrective action expenses to an eligible owner or operator from the Petroleum Storage Tank Remediation Account. Proposed §334.302(c)(6) is amended by changing in accordance with statute the deadline for filing a claim for corrective action reimbursement with the agency from March 1, 2006, to March 1, 2008. Proposed §334.302(c)(7) is amended by changing the final deadline for payment of any expenses related to corrective action reimbursements from September 1, 2006, to September 1, 2008. Proposed §334.303(a) is amended by changing the deadline for filing an application (claim) for reimbursement from March 1, 2006, to March 1, 2008. Proposed §334.306(b)(7) is amended to change the word "though" to the word "through" to correct an error. Proposed §334.306(f)(5) is amended by changing the phrase "within 120 days of the effective date of this subchapter" to the actual beginning and ending dates of that period to prevent confusion when current proposed amendments become effective. Proposed §334.310(f) is amended by adding a reference to language in §334.301(h)(2) and §334.313(d) as an additional exception. Proposed §334.313(d) is amended by adding language which allows the executive director to postpone considering, processing, or paying claims for reimbursement for corrective action work which was begun without prior commission approval and deletes language which prevents such claims from being considered, processed, or paid until all agency pre-approved claims for reimbursement have been completed.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment Section, has determined that, for the first five-year period the proposed rules are in effect significant fiscal implications are anticipated for the agency and other units of federal, state, and local governments. The proposed rules implement changes to statute made by Senate Bill 485, House Bill 1987, and Senate Bill 1863, 79th Legislature, 2005, which relate to Petroleum Storage Tank (PST) fuel deliveries, remediation, and remediation cost reimbursement.

Some of the more significant statutory changes to the Petroleum Storage Tank (PST) Reimbursement Program include: removing

liability from common carriers with regard to the physical delivery of petroleum products into an underground storage tank (UST); extending the PST reimbursement program expiration date until September 1, 2008; eliminating the bienniel reduction for the bulk delivery fee which provides funds for the Petroleum Storage Tank Remediation (PSTR) Account and maintaining that fee at Fiscal Year (FY) 2005 levels; removing the limit the agency can spend on administrative costs from the PSTR Account; enhancing the ability of eligible owners/operators to transfer PST sites to the state lead program; and exempting owners/operators of PST sites transferred to the state lead program from any further liability for costs the agency would incur to take corrective action at these sites.

Liability for Common Carriers

The proposed rules will have a beneficial fiscal impact on common carriers delivering products to underground storage tanks (USTs). These carriers will no longer be liable for delivering fuel to uncertified USTs and may experience lower insurance costs if they currently purchase insurance. These costs would vary greatly depending on the carrier, the amount of liability insurance purchased, and the insurance company. Future federal regulations will likely reinstate the liability requirements for common carriers.

Extending deadlines

It is anticipated that 1,260 sites will be remediated by responsible parties by September 1, 2008. It is estimated that the PSTR Account (0655) will spend an estimated $58 million in FY 2006 and an estimated $58 million in FY 2007 to reimburse the remediation costs at these sites. Reimbursements for these sites could cost as much as $45 million in 2008. The total estimated reimbursement costs of $161 million for FY 2006, FY 2007, and FY 2008 would include: costs for eligible cleanup activities at the 1,260 sites until September 1, 2008; costs for the payment of protested claims that have arisen during that period; and costs for the payment of claims submitted during that period, for work performed in previous years for which claims had not been previously filed.

Collection of Bulk Delivery Fee and Administrative Costs

The agency received appropriations of approximately $7.4 million in FY 2006 and $2.9 million in FY 2007 to administer PST cleanups, but collection of the bulk delivery fee, which funds the major portion of the PST Reimbursement program, is scheduled to expire at the end of FY 2007. Some administrative and cleanup activities in FY 2008 will be funded through balances in the PSTR Account (0655), but staff anticipates that balances in this account will be insufficient to meet the administrative and cleanup costs of all the sites expected to transfer to the state lead program and the cost of PST cleanup and emergency response activities for future spills and releases threatening public health. Cleanup costs alone for transfers to the state lead program, coupled with the sites already in the state lead program are estimated to be $12 million in FY 2007, $36 million in FY 2008, $30 million in FY 2009, and $24 million in FY 2010, totaling $102 million for the period. Projected reimbursement of remediation costs to responsible parties, continued administrative costs at current levels, and projected state lead program remediation costs are expected to exceed available PSTR Account (0655) balances in FY 2008. Unless a revenue source to fund the continuing program and administrative activities is determined in future legislative sessions, the agency would experience a significant fiscal impact, and other agency programs could be compromised.

Transfer of Sites to State Lead Program and Exemption from Liability

Staff estimates that 500 PST sites will elect to transfer (opt-in) to the state lead program by July 1, 2007. This transfer will be in addition to the state lead program's current inventory of 213 sites. In addition, approximately 300 more sites are expected to be added to the state lead program over the next five years, based on routine criteria. These 300 sites are currently not in the reimbursement program and not eligible to opt-in to the state lead program. These anticipated transfers coupled with the sites already in the state lead program could cost as much as $12 million in FY 2007, $36 million in FY 2008, $30 million in FY 2009, and $24 million in FY 2010. Thus, total state lead program cleanup costs from FY 2007 through FY 2010 are estimated to be $102 million, and it is not known how many of these sites will be fully remediated by that time. In addition, once sites which are eligible to opt-in are transferred to the state lead program, owners or operators of those sites are exempted from any further liability for costs related to site cleanup.

Units of federal, state, or local governments owning petroleum storage tanks (PSTs) will experience beneficial fiscal impact as a result of administration or enforcement of the proposed rules. It is estimated that 70 local governments and 38 state and federal agencies will benefit from extending the expiration date of the PST Reimbursement Program and from allowing PST sites to be more easily transferred to the state lead program.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be continued environmental cleanup of contaminated PST sites.

The proposed rules will benefit eligible owners/operators of PSTs in two ways. By extending the time they can file for reimbursement of cleanup costs, owners/operators have longer to recoup cleanup expenses. Besides making it easier to transfer eligible sites to the state lead program, the proposed rules benefit those owners/operators by exempting them from any further liability for costs related to site cleanup.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Staff estimates that 1,464 small or micro-businesses will benefit from the extension of the PST Reimbursement Program and easier transfer of PST sites to the state lead program. This could save small or micro-businesses as much as $45,000 per site per year. In addition, once small or micro-business sites which are eligible to opt-in are transferred to the state lead program, owners or operators of those sites are exempted from any further liability for costs related to site cleanup.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The rule changes proposed in this package are either minor definitional or procedural changes, or they are changes which benefit the regulated community in the form of such things as extended reimbursement deadlines, expanded opportunity for the transfer of sites to the state lead program, and removal of liability for common carriers regarding delivery certificates. The changes do not increase burdens on regulated entities in particular or the economy in general.

A major environmental rule means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Further, it does not meet any of the four requirements listed in §2001.0225(a). That section states: "*(a) This section applies only to a major environmental rule adopted by a state agency, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law*." The rulemaking does not exceed any of the requirements as previously described.

Written comments on the draft regulatory impact analysis determination of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the rules are subject to Texas Government Code, Chapter 2007. The rulemaking incorporates statutory changes which will not create a burden on private real property. The statutory changes being incorporated basically extend the deadlines related to reimbursements from the Petroleum Storage Tank Remediation (PSTR) Account. This should result in the cleanup of more contaminated property in Texas. As a whole, this rulemaking will not be the cause of a reduction in market value of private real property, does not create a burden on private real property, and will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules (31 TAC §505.11(b)(2)) subject to the Texas Coastal Management Program (CMP) and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process.

CMP Goals: 31 TAC §501.12 states in part that "*the goals of the Texas Coastal Management Program (CMP) are: (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); (2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; (3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs*;" and "*(5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone*."

The previously stated goals will not be adversely affected by the rule changes described in this preamble for the reason that although changes in rule language are proposed to incorporate statutory changes and changes requested by stakeholders, none of these changes will ease or lessen regulatory requirements for regulated underground or aboveground storage tanks. In fact, statutory changes which provide for extension of the sunset date of the PSTR Account and provide enhanced opportunity for owners/operators of eligible leaking petroleum storage tank (LPST) sites to transfer them into the agency's state lead program will result in the proper cleanup of a greater number of contaminated LPST sites.

CMP Policies: 31 TAC §501.13, "Administrative Policies," states in relevant part: "*(a) Agency and subdivision rules and ordinances subject to §501.10 of this title (relating to Compliance with Goals and Policies) shall: (1) require applicants to provide information necessary for an agency or subdivision to make an informed decision on a proposed action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program); (2) identify the monitoring established to ensure that activities authorized by actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) or §505.60 of this title (relating to Local Government Actions Subject to the Coastal Management Program) comply with all applicable requirements; (3) identify circumstances in which agencies and subdivisions have the authority to issue variances from standards or requirements for the protection of CNRAs, including the grounds for granting variances*."

The previously stated policies will not be adversely affected by the rule changes described in this preamble for the reason that there are no substantive changes relating to provision of information, monitoring of compliance, or variances.

The commission is seeking public comment on the consistency of the proposed rulemaking with the proposed CMP. Written comments may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Comments may be submitted to Holly Vierk, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2005-056-334-PR. Comments must be received by 5:00 p.m., July 3, 2006. For further information, please contact Anton E. Rozsypal, Jr., P.E., Remediation Division, at (512) 239-5755 or Cullen McMorrow, Litigation Division, at (512) 239-0607.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §§334.2, 334.5, 334.8

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also proposed under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule.

The proposed rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§334.2. Definitions.

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

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

(7) Allowable cost--As defined by[~~,~~] §334.308 of this title (relating to Allowable Costs and Restrictions on Allowable Costs).

(8) - (18) (No change.)

(19) Closure letter--A letter issued by the agency which states that, based on the information available, the agency agrees that corrective action has been completed for the referenced release in accordance with agency requirements. [~~.~~]

(20) - (40) (No change.)

(41) Free product [~~Free-product~~] (or free-product or non-aqueous phase liquid)--A regulated substance in its free-flowing non-aqueous liquid phase at standard conditions of temperature and pressure (i.e., that portion of the product not dissolved in water or adhering to soil).

(42) - (72) (No change.)

(73) Owner--Any person who holds legal possession or ownership of an interest in an underground storage tank (UST) system or an aboveground storage tank (AST). For the purposes of this chapter, if the actual ownership of a UST system or an [~~a~~] AST is uncertain, unknown, or in dispute, the fee simple owner of the surface estate of the tract on which the UST system or the AST is located is considered the UST system or AST owner unless that person can demonstrate by appropriate documentation, including a deed reservation, invoice, bill of sale, or by other legally acceptable means that the UST system or AST is owned by another person. A person who has registered as an owner of a UST system or AST with the commission under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems) (or a preceding rule section concerning tank registration) after September 1, 1987, shall be considered the UST system owner and/or AST owner until such time as documentation demonstrates to the executive director's satisfaction that the legal interest in the UST system or AST was transferred to a different person subsequent to the date of the tank registration. This definition is subject to the limitations found in Texas Water Code [~~TWC~~], §26.3514, Limits on Liability of Lender; §26.3515, Limits on Liability of Corporate Fiduciary; and §25.3516, Limits on Liability of Taxing Unit.

(74) - (91) (No change.)

(92) Release--Any spilling including overfills, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank or aboveground storage tank into groundwater, surface water, or subsurface soils. In this definition, the term "subsurface soils" does not include backfill or native material in the tank hole that is placed immediately adjacent to or surrounding an underground storage tank system when the system is installed or the system's individual components are replaced unless petroleum free product is present in the backfill or native material.

(93) - (123) (No change.)

§334.5. General Prohibitions for Underground Storage Tanks (USTs) and UST Systems.

(a) (No change.)

(b) Delivery prohibitions.

(1) Concerning UST systems which the tank owner or operator must self-certify under §334.8(c) of this title (relating to Certification for Underground Storage Tanks (USTs) and UST Systems), the following applies.

(A) Except as provided under subparagraphs (B) and (C) of this paragraph, no owner or operator of a [~~common carrier (as defined in §334.2 of this title (relating to Definitions)) shall deposit any regulated substance into a~~] UST system regulated under this chapter shall allow the deposit of any regulated substance into that UST system unless [~~he observes~~] that [~~the~~] owner or operator has a valid, current delivery certificate issued by the agency covering that UST system.

(B) For new or replacement UST systems, only during the initial period ending 90 days after the date that a regulated substance is first deposited into the new or replacement system(s), [~~a common carrier may accept, as adequate to meet the requirements of subsection (a) of this section,~~] documentation that the owner or operator has a "temporary delivery authorization," as defined in §334.8(c)(5)(D) of this title, issued by the agency for the facility at which the new or replacement UST system(s) exist will be considered adequate to meet the requirements of subparagraph (A) of this paragraph.

[~~(C) If in the exercise of good faith, a common carrier who deposits a regulated substance into a UST system is first presented with an apparently valid, current Texas Commission on Environmental Quality delivery certificate (or temporary delivery authorization, if applicable) represented by the UST system owner or operator to meet the requirements of subsection (a) of this section, this will be considered prima facie evidence of compliance by that common carrier with this subparagraph.~~]

(2) Concerning UST systems which are not required to be self-certified compliant at a given time under §334.8(c) of this title, but which are required to be registered under §334.7 of this title (relating to Registration for Underground Storage Tanks (USTs) and UST Systems), the following applies.

(A) Except as provided under subparagraph (B) of this paragraph, no owner or operator of a [~~person (as defined in §334.2 of this title) shall deposit any regulated substance into a~~] UST system regulated under this chapter shall allow the deposit of any regulated substance into that UST system unless [~~he observes~~] that [~~the~~] owner or operator has a valid, current registration certificate issued by the agency covering that UST system.

(B) (No change.)

(3) Concerning both types of delivery prohibition referenced in this subsection, the following documentation is considered [~~can be accepted as~~] adequate:

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

§334.8. Certification for Underground Storage Tanks (USTs) and UST Systems.

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

(c) UST compliance self-certification requirements.

(1) (No change.)

(2) Non-provision of delivery certificate. The agency will not provide a UST delivery certificate for USTs covered by the exceptions in paragraph (1)(A) of this subsection.

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

(5) UST delivery certificate.

(A) Certificate availability.

(i) The owner and operator of USTs regulated under this section must make available to a common carrier a valid, current Texas Commission on Environmental Quality (TCEQ) delivery certificate (or TCEQ temporary delivery authorization under subparagraph (D) of this paragraph, as applicable) before delivery of a regulated substance into the UST(s) can be accepted. The delivery certificate must cover each UST at the facility accepting a delivery. (The owner or operator may comply with this requirement by obtaining or by directing the common carrier to view a current copy of the delivery certificate from the agency's Internet Web site.) The bill of lading for the first delivery of regulated substance into any new or replacement UST at the facility must be attached to the temporary delivery authorization for that facility.

(ii) - (iii) (No change.)

(B) - (D) (No change.)

(6) (No change.)

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602804
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 239-0177

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SUBCHAPTER D. RELEASE REPORTING AND CORRECTIVE ACTION

30 TAC §334.71, §334.84

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also proposed under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule.

The proposed rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§334.71. Applicability and Deadlines.

(a) For releases discovered and reported to the executive director on or before August 31, 2003, the provisions of this subchapter are applicable to owners and operators of all underground storage tanks (USTs) and all petroleum product aboveground storage tanks (ASTs) unless otherwise specified in Subchapters A or F of this chapter (relating to General Provisions and Aboveground Storage Tanks, respectively). For releases reported to the agency on or after September 1, 2003, the provisions of this subchapter are applicable to owners and operators of all USTs and all petroleum product ASTs, except that Chapter 350 of this title (relating to Texas Risk Reduction Program) shall be used in lieu of §§334.78 - 334.81 of this title (relating to Site Assessment, Removal of Non-Aqueous Phase Liquids (NAPLs), Investigation for Soil and Groundwater Cleanup, and Corrective Action Plan [~~Plans~~], respectively) unless otherwise provided in §350.2(g) of this title (relating to Applicability).

(b) If the release was reported to the agency on or before December 22, 1998, the person performing the corrective action shall meet the following deadlines:

(1) - (5) (No change.)

(6) for sites that require either a corrective action plan or groundwater monitoring, have met all other deadlines under this subsection, and have submitted annual progress reports that demonstrate progress toward meeting closure requirements, a site closure request must be submitted to the executive director [~~site closure requests for all sites where the executive director agreed in writing that no corrective action plan was required must be received by the agency~~] no later than September 1, 2007 [~~2005~~]. The request must be complete, as judged by the executive director.

(c) (No change.)

§334.84. Corrective Action by the Agency.

(a) The agency may undertake corrective action in response to a release or a threatened release if:

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

(3) the owner or operator of the AST or UST, in the opinion of the agency, is unable to take the corrective action necessary to protect the public health and safety and/or the environment; [~~or~~]

(4) the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571; has been granted such extension by the executive director; has applied to the agency in writing on an agency application form not later than July 1, 2007, to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program administered by the commission; and has agreed on the application form to allow access to that site to state personnel and state contractors. Once the executive director places such a site in the state lead program, the eligible owner or operator of that site is not liable to the commission for any corrective action costs incurred by the state lead program with regard to the site, unless the statutorily allowable maximum cost per site is exceeded; or

(5) [~~(4)~~] notwithstanding any other provision of this subchapter, the executive director determines that more expeditious corrective action than is provided by this subchapter is necessary to protect the public health and safety or the environment.

(b) (No change.)

(c) The agency shall generate a written response either accepting or denying the application of an eligible owner or operator, who has applied to the agency in accordance with the requirements of subsection (a)(4) of this section to have an eligible corrective action site placed in the Petroleum Storage Tank State Lead Program, within 30 calendar days, as practicable, of the date that application is received by the agency's state lead program.

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

Filed with the Office of the Secretary of State on May 18, 2006.

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Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER H. REIMBURSEMENT PROGRAM

30 TAC §§334.301 - 334.303, 334.306, 334.310, 334.313

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.345, which authorizes the commission to develop a regulatory program and to adopt rules regarding underground storage tanks (USTs); §26.351, which directs the commission to adopt rules establishing the requirements for taking corrective action in response to a release from a UST or aboveground storage tank (AST); and §26.3573, which allows the commission to use funds from the Petroleum Storage Tank Remediation (PSTR) Account to reimburse an eligible owner or operator or insurer for the expenses of corrective action or to pay the claim of a contractor hired by an eligible owner or operator to perform corrective action. The amended sections are also proposed under the general authority of Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; §5.105, which directs the commission to establish and approve all general policy of the commission by rule; and §26.011, which requires the commission to control the quality of water by rule.

The proposed rule package implements changes in laws of this state made during the 79th Legislature, 2005, with the passage of Senate Bill 485, House Bill 1987, and Senate Bill 1863 (Article 5).

§334.301. Applicability of this Subchapter.

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

(c) Expenses considered for payment--time frame in which corrective action performed. Subject to the other requirements of this subchapter, the expenses which may be considered for payment from the petroleum storage tank remediation fund [~~(PSTR)~~] are limited to expenses of corrective action which was performed for the owner or operator on or after September 1, 1987, and conducted in response to a confirmed release that was initially discovered and reported to the agency on or before December 22, 1998. Expenses for corrective action performed prior to September 1, 1987, are not subject to reimbursement or payment. No expenses for corrective action performed after September 1, 2005 will be reimbursed unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007. No reimbursements will be made for corrective action expenses sought in claims submitted to the agency after March 1, 2008 [~~2006~~]. Under no circumstances will any reimbursements be made on or after September 1, 2008 [~~2006~~].

(d) - (e) (No change.)

(f) Possibility of invalidity. If any section, subsection, paragraph, subparagraph, clause, or subclause of this subchapter is held invalid, such invalidity shall not affect any other section, subsection, paragraph, subparagraph, clause, or subclause which can be given effect without the invalid provision, and to this end the provisions of this subchapter are declared to be severable.

(g) (No change.)

(h) Order of consideration, processing, and payment of claims. Effective September 1, 1995, the executive director shall consider and process a claim by an eligible owner or operator for reimbursement from the PSTR fund in the order in which it is received, with the following provisions:

(1) (No change.)

(2) The executive director may postpone considering, processing, or paying a claim for reimbursement for corrective action work begun without prior commission approval after September 1, 1993, that

is filed with the commission before January 1, 2005. [~~not consider, process, or pay a claim for reimbursement from the PSTR fund for corrective action work begun after September 1, 1993, and without prior approval until all claims for reimbursement for preapproved corrective action work have been considered, processed, and paid.~~]

§334.302. General Conditions and Limitations Regarding Reimbursement; Assignments.

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

(c) No payments shall be made by the agency under this subchapter for:

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

(5) any expenses related to corrective action performed after September 1, 2005, unless the owner or operator is eligible for an extension for corrective action reimbursement under Texas Water Code, §26.3571 and has been granted such an extension by the executive director. The Petroleum Storage Tank Remediation (PSTR) Account may be used to reimburse an eligible owner or operator for corrective action performed under an extension before August 31, 2007;

(6) any expenses related to corrective action contained in a reimbursement claim filed with the agency after March 1, 2008 [~~2006~~];

(7) any expenses on or after September 1, 2008 [~~2006~~]; or

(8) payments to an owner and/or operator, who acts as his own prime contractor or consultant, in the form of markup of amounts paid to subcontractors (see Appendix A Note 1 in "Part 9: Markup" or in excess of the limitation listed in Note 5 in "Part 1: Professional Personnel/Labor Rates" and/or in excess of the limitation listed in Note 2 in "Part 8: Report Generation Costs" of §334.560 of this title (relating to Reimbursable Cost Specifications)).

(d) - (k) (No change.)

§334.303. When to File Application.

(a) An application for reimbursement under this subchapter must be filed on or after January 17, 1990, but not after March 1, 2008 [~~2006~~].

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

§334.306. Form and Contents of Application.

(a) (No change.)

(b) The application must contain the following:

(1) the name, address, telephone number, and signature of all of the following: the applicant, the application preparer, and the prime contractor and/or prime corrective action specialist required by §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement; Assignments), unless otherwise approved by the agency;

(2) - (6) (No change.)

(7) certification on the designated agency form, either that the amounts described in §334.309(c) of this title (relating to Reimbursable Costs) have been paid in full by the claimant, or have been ensured to be paid in full through [~~though~~] the posting of a payment bond in the amount not yet paid in full by the claimant. The certification must include:

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

(8) - (10) (No change.)

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

(f) A subcontractor may submit information to the agency to assert a claim that the subcontractor has performed pre-approved work and has not been fully paid for the work. To be considered for direct reimbursement by the commission under this subchapter, each of the following requirements must be met:

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

(5) between November 18, 2004, and March 18, 2005, inclusive, the subcontractor has filed [~~within 120 days of the effective date of this subchapter~~] the following:

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

(g) (No change.)

§334.310. Requirements for Eligibility.

(a) For a person to be an eligible owner or operator under this subchapter, each of the following requirements must be met.

(1) The person must meet the other requirements of this chapter (including, but not limited to, the restrictions under §334.302 of this title (relating to General Conditions and Limitations Regarding Reimbursement; Assignments)) and must be:

(A) - (F) (No change.)

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

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

(f) Unless otherwise approved by the executive director and except as provided in §334.301(h)(2) and §334.313(d) of this title (relating to Applicability of this Subchapter and Review of Application), all corrective action activities, including activities proposed in corrective action plans, must be approved in writing by the executive director prior to implementation. Pre-approval of proposed corrective action activities and costs does not create an entitlement to reimbursement for any corrective action task, at the amount pre-approved or a different amount. For reimbursement of emergency, initial abatement measures and phase-separated product recovery as required by §334.77 of this title (relating to Initial Abatement Measures and Site Check), approval by the executive director is not required prior to implementation, unless the emergency action extends beyond 72 hours, then written approval will be required for all activities.

§334.313. Review of Application.

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

(d) The executive director may postpone considering, processing, or paying a claim for reimbursement for corrective action work begun without prior commission approval after September 1, 1993, that is filed with the commission before January 1, 2005. [~~not consider, process, or pay a claim for reimbursement for corrective action work begun after September 1, 1993, and without prior agency approval until all claims for reimbursement for corrective action work pre-approved by the agency have been considered, processed, and paid.~~]

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602806
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 239-0177

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.315, 65.318 - 65.321

The Texas Parks and Wildlife Department (the department) proposes amendments to §§65.315 and 65.318 - 65.321, concerning the Migratory Game Bird Proclamation.

The proposed amendment to §65.315, concerning Open Seasons and Bag and Possession Limits--Early Season Species, would adjust the season dates for early-season species of migratory game birds to account for calendar-shift. The proposed amendment also would implement a 16-day teal season, which must be approved by the U.S. Fish and Wildlife Service (Service) before it can be implemented. In previous years, the Service has authorized a teal season not to exceed nine days.

The proposed amendment to §65.318, concerning Open Seasons and Bag and Possession Limits--Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift. The proposed amendment also sets forth conditional bag limits for ducks, coots, and mergansers. The current bag limits and season structure for these species reflect continuing concerns on the part of the Service over breeding populations of canvasback and pintail ducks. For the last three years, the Service has not authorized full-season hunting opportunity for those two species, electing to require states to impose a truncated season-within-a-season instead. The proposed amendment also includes a potential alternative to the season-within-a-season structure currently in place. The Service is considering implementation of the "Hunter's Choice" structure. The Hunter's Choice would reduce the daily bag limit for ducks from six to five and create an aggregate daily bag limit of one mallard hen, pintail, canvasback, or dusky duck (mottled duck, black duck, Mexican duck, or their hybrids). The purpose of the Hunter's Choice structure is to allow for season-long harvest of canvasbacks and pintails, which would eliminate compliance and enforcement confusion and allow more hunting time for waterfowl hunters who seek those species. The proposed amendment also eliminates the term "Mexican-like duck" in the definition of "dusky ducks" and replaces it with a more accurate description. Mexican-like ducks are hybrids of mottled ducks, black ducks, and/or Mexican ducks. The change is necessary because of concerns that the mottled duck is being misidentified by hunters, which potentially could result in overharvest of mottled ducks. By clarifying what the category of dusky ducks includes, additional protection is afforded to mottled ducks by reducing the potential for overharvest due to misidentification. The department also notes that if the conservation season is not retained, the department intends to adopt longer light goose (snow and Ross') and sandhill crane seasons in order to provide the full 107 days of opportunity allowable under federal frameworks. Currently, the normal seasons are truncated in order to hold the conservation season.

The proposed amendment to §65.319, concerning Extended Falconry Season--Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry to reflect calendar shift.

The proposed amendment to §65.320, concerning Extended Falconry Season--Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry, also to reflect calendar shift.

The proposed amendment to §65.321, concerning Special Management Provisions, would adjust the dates for the conservation season on light geese to account for calendar shift and would provide for the elimination of the conservation season on January 1, 2007. The conservation season is a population control mechanism originally authorized by the Service in 2000 as a response to serious habitat degradation on light goose breeding grounds in Canada. The department has determined that the effect of the conservation season in Texas on overall light goose numbers has been negligible. The season has also proven to be unpopular with some hunters, primarily because seasons for other species of geese and sandhill crane have had to be truncated in order to provide the conservation season. Texas' conservation season was a good-faith effort to contribute to a multistate and international effort to control light geese numbers; however, if it is producing negligible benefits and curtails other types of opportunity desired by hunters, the department sees no reason to continue it. Ordinarily, the department would propose the repeal of an unnecessary section; however, in this case, a proposed repeal would make it impossible to retain the section and adjust the conservation season dates for calendar shift. Conversely, to publish only the proposed calendar-shift adjustments would make it impossible to eliminate the conservations season. Therefore, the department publishes the proposed calendar-shift dates and a provision that would eliminate the conservation season on January 1, 2007 in order to provide an opportunity for public comment on both possibilities. Obviously, the intent is to either adjust the conservation season for calendar shift or eliminate the conservation season, but not both.

The proposed amendments are generally necessary to implement commission policy to provide the greatest hunter opportunity possible, consistent with hunter preference for season starting dates and segment lengths, under frameworks issued by the Service. The Service has not issued regulatory frameworks for the 2006 - 2007 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative and may change significantly, depending on federal actions. However, it is the policy of the commission to adopt the most liberal provisions possible, consistent with hunter preference, under the frameworks in order to provide maximum hunter opportunity.

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

Mr. Macdonald also has determined that for each of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizenry.

There will be no adverse economic effect on small businesses or microbusinesses and no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department 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 Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64.

§65.315. Open Seasons and Bag and Possession Limits--Early Season.

(a) Rails.

(1) Dates: September 16 - 24, 2006 and November 4, 2006 - January 3, 2007 [~~September 10 - 25, 2005 and October 29 - December 21, 2005~~].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2006 [~~September 1 - October 30, 2005.~~]

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1 - October 30, 2006 and December 26, 2006 - January 4, 2007 [~~September 1 - October 30, 2005 and December 26, 2005 - January 4, 2006~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 22 - November 12, 2006 and December 26, 2006 - January 12, 2007 [~~September 23 - November 10, 2005 and December 26, 2005 - January 15, 2006~~].

(B) Daily bag limit: 12 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 24 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 2, 3, 9, and 10, 2006 [~~September 3, 4, 10, and 11, 2005~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than four mourning doves and two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than eight mourning doves and four white-tipped doves in possession.

(B) Dates: September 22 - November 12, 2006 and December 26, 2006 - January 8, 2007 [~~September 23 - November 10, 2005 and December 26, 2005 - January 11, 2006~~].

(i) Daily bag limit: 12 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than two white-tipped doves per day;

(ii) Possession limit: 24 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 16 - 24, 2006 and November 4, 2006 - January 3, 2007 [~~September 10 - 25, 2005 and October 29 - December 21, 2005~~].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 9 - 24, 2006 [~~September 17 - 25, 2005~~].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Woodcock: December 18, 2006 - January 31, 2007 [~~December 18, 2005 - January 31, 2006~~]. The daily bag limit is three. The possession limit is six.

(h) Wilson's snipe (Common snipe): November 4, 2006 - February 18, 2007 [~~October 29, 2005 - February 12, 2006~~]. The daily bag limit is eight. The possession limit is 16.

§65.318. Open Seasons and Bag and Possession Limits--Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. If the U.S. Fish and Wildlife Service establishes a [~~The~~] daily bag limit for ducks of [~~is~~] six,

the daily bag limit shall [~~which may~~] include no more than five mallards, only two of which may be hens, two scaup, one "dusky" duck (mottled duck, black duck, Mexican duck, or hybrid of those species, [~~or Mexican-like duck~~]) one canvasback, one pintail, two redheads, and two wood ducks. Canvasback and pintail may be taken only during the restricted seasons provided for those species. If the U.S. Fish and Wildlife Service establishes an aggregate bag limit of five, the daily bag shall include no more than two scaup, two redheads, two wood ducks, and no more than one (in the aggregate) of the following: mallard hen, pintail, dusky duck, or canvasback. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser. [~~Canvasback and pintail may be taken only during the restricted seasons provided for those species.~~]

(A) High Plains Mallard Management Unit: October 21 - 22, 2006, and October 27, 2006 - January 28, 2007 [~~October 22 - 23, 2005, and October 28, 2005 - January 29, 2006~~]. The open season for pintail and canvasback begins December 21, 2006 and runs through January 28, 2007 [~~December 22, 2005 and runs through January 29, 2006~~].

(B) North Zone: November 4 - 26, 2006 and December 9, 2006 - January 28, 2007 [~~November 5 - 27, 2005 and December 10, 2005 - January 29, 2006~~]. The open season for pintail and canvasback begins December 21, 2006 and runs through January 28, 2007 [~~December 22, 2005 and runs through January 29, 2006~~].

(C) South Zone: November 4 - 26, 2006 and December 9, 2006 - January 28, 2007 [~~November 5 - 27, 2005 and December 10, 2005 - January 29, 2006~~]. The open season for pintail and canvasback begins December 21, 2006 and runs through January 28, 2007 [~~December 22, 2005 and runs through January 29, 2006~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: November 4, 2006 - February 6, 2007 [~~November 5, 2005 - February 7, 2006~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: November 4, 2006 - February 6, 2007 [~~November 5, 2005 - February 7, 2006~~]. The daily bag limit for dark geese is four, which may not include more than three Canada geese or more than one white-fronted goose.

(B) Eastern Zone.

(i) Light geese: November 4, 2006 - January 28, 2007 [~~November 5, 2005 - January 29, 2006~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) white-fronted geese: November 4, 2006 - January 14, 2007 [~~November 5, 2005 - January 15, 2006~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese: November 4, 2006 - January 28, 2007 [~~November 5, 2005 - January 29, 2006~~]. The daily bag limit for Canada geese is three.

(3) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued.

(A) Zone A: November 4, 2006 - February 4, 2007 [~~November 5, 2005 - February 5, 2006~~]. The daily bag limit is three. The possession limit is six.

(B) Zone B: November 24, 2006 - February 4, 2007 [~~November 26, 2005 - February 5, 2006~~]. The daily bag limit is three. The possession limit is six.

(C) Zone C: December 23, 2006 - January 28, 2007 [~~December 24, 2005 - January 29, 2006~~]. The daily bag limit is two. The possession limit is four.

(4) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season--Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section, except that pintail ducks and canvasback ducks may be taken. The bag limit for pintail ducks is one per day and the bag limit for canvasback ducks is one per day. The possession limit is two. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 14 - 15, 2006 [~~October 15 - 16, 2005~~];

(B) North Zone: October 28 - 29, 2006 [~~October 29 - 30, 2005~~]; and

(C) South Zone: October 28 - 29, 2006 [~~October 29 - 30, 2005~~].

§65.319. Extended Falconry Season--Early Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 19 - December 25, 2006 [~~November 19 - December 25, 2005~~].

(2) rails and gallinules: January 4 - February 9, 2007 [~~December 22, 2005 - January 27, 2006~~].

(3) woodcock: November 24 - December 17, 2006 [~~November 24 - December 17, 2005 and February 1 - March 10, 2006~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season--Late Season Species.

It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons.

(1) Ducks, coots, and mergansers:

(A) High Plains Mallard Management Unit: no extended season;

(B) North Duck Zone: January 29 - February 19, 2007 [~~January 30 - February 20, 2006~~];

(C) South Duck Zone: January 29 - February 19, 2007 [~~January 30 - February 20, 2006~~].

(2) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1) - (3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in

effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

(1) Means and methods. In addition to the means and methods authorized in §65.310(a) of this title (relating to Means, Methods, and Special Requirements), the following means and methods are lawful during the time periods set forth in paragraph (4) of this section:

(A) shotguns capable of holding more than three shells; and

(B) electronic calling devices.

(2) Possession. During the time periods set forth in paragraph (4) of this section:

(A) there shall be no bag or possession limits; and

(B) the provisions of §65.312 of this title (relating to Possession of Migratory Game Birds) do not apply; and

(C) a person may give, leave, receive, or possess legally taken light geese or their parts, provided the birds are accompanied by a wildlife resource document from the person who killed the birds. The wildlife resource document is not required if the possessor lawfully killed the birds; the birds are transferred at the personal residence of the donor or donee; or the possessor also possesses a valid hunting license, a valid waterfowl stamp, and is HIP certified. The wildlife resource document shall accompany the birds until the birds reach their final destination, and must contain the following information:

(i) the name, signature, address, and hunting license number of the person who killed the birds;

(ii) the name of the person receiving the birds;

(iii) the number and species of birds or parts;

(iv) the date the birds were killed; and

(v) the location where the birds were killed (e.g., name of ranch; area; lake, bay, or stream; county).

(3) Shooting hours. During the time periods set forth in paragraph (4) of this section, shooting hours are from one half-hour before sunrise until one half-hour after sunset.

(4) Special Light Goose Conservation Period.

(A) From January 29 - March 25, 2007 [~~January 30, 2006 through March 26, 2006~~], the take of light geese is lawful in Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 7 - March 25, 2007 [~~February 8 - March 26, 2006~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(5) The provisions of this section cease effect on January 1, 2007.

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

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602857

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 389-4775

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 368. FLOOD MITIGATION ASSISTANCE PROGRAM

31 TAC §§368.1, 368.5, 368.10

The Texas Water Development Board (the board) proposes amendments to 31 TAC §§368.1, 368.5, and 368.10 concerning the Flood Mitigation Assistance Program. The amendments provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

Amendment to §368.1 is proposed to allow a political subdivision or other authority to apply for Flood Mitigation Assistance (FMA) funding if the political subdivision or other authority is specifically authorized by FEMA to apply for FMA. Under the existing rules, only a political subdivision (or an authority acting at the direction of a political subdivision) that has zoning and building code jurisdiction over a particular area having special flood hazards and which is participating in the National Flood Insurance Program (NFIP) is eligible to apply for FMA. The proposed amendment makes eligible certain political subdivisions who do not have zoning and building code jurisdiction over a particular area having special flood hazards or participate in the NFIP but who have the responsibility in their area for flood control and flood mitigation planning, and who have been specifically authorized by FEMA to apply for FMA. The proposed amendment also makes eligible any other authority which has been specifically authorized by FEMA to apply for FMA.

The board proposes an amendment to §368.5 to clarify that planning grants may not be awarded to conduct drainage studies and reflects new guidance from FEMA.

The board proposes an amendment to §368.10 to provide an exception to the ceiling for project grant funding to all communities state-wide ($20 million) and to any individual community ($3.3 million) in the event of a Presidential disaster declaration for flooding, at the discretion of FEMA. This proposed amendment is in line with FEMA rules and guidance and provides notice of an increased opportunity for funding to communities that fall within a disaster area declared by the President.

Melanie Callahan, Acting Chief Financial Officer, has determined that, for the first five-year period the amendments are in effect, there will not be fiscal implications on state government as a result of enforcement and administration of the amended sections. There will be a undetermined fiscal impact on local economies for those additional entities eligible to apply for program funding. For communities currently eligible to apply for program funding, there will be no fiscal impact.

Ms. Callahan has also determined that for the first five years the amendments, as proposed, are in effect, the public benefit anticipated as a result of enforcing the proposed amendments will be the potential for additional FMA from FEMA, especially to areas which receive a Presidential disaster declaration. Ms. Callahan

has determined there will not be economic costs to small businesses or individuals required to comply with the amendments as proposed.

Comments on the proposal will be accepted for 30 days following publication and may be submitted to Srin Surapanani, Attorney, Office of the General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

The amendments are proposed under the authority of the Texas Water §6.101 and Chapter 15, Subchapter F, which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties of the board and for administration of the research and planning fund and under Texas Government Code, Chapter 742 which provides for state coordination of local applications for federal funds.

The statutory provisions affected by the proposed amendments are Texas Water Code Chapter 15.

§368.1. Definitions.

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

(1) (No change.)

(2) Community--

(A) a political subdivision, including any Indian tribe or authorized native organization, that has zoning and building code jurisdiction over a particular area having special flood hazards, and which is participating in the NFIP; [~~or~~]

(B) a political subdivision or other authority, that is designated to develop and administer a mitigation plan by political subdivisions, all of which meet the requirements of subparagraph (A) of this paragraph; or[~~.~~]

(C) a political subdivision or other authority that is specifically authorized by FEMA to apply for FMA.

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

§368.5. Eligibility Criteria.

(a) Planning grants. A community which is not on probation or not suspended under 44 CFR Part 60 of the NFIP is eligible to apply for a planning grant to fund preparation of a flood mitigation plan. Planning grants will not be awarded to develop new or improved floodplain maps or to conduct drainage studies.

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

§368.10. Funding Limitations.

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

(c) Project grants. The total amount of project grant funds provided during any five-year period cannot exceed $3.3 million to any community. The total amount of project grant funds provided to all communities located in the state will not exceed $20 million during any five-year period. In the event that a disaster is declared by the President in a State or community as a result of flooding, FEMA has the authority to waive these assistance limits.

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602808

Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Proposed date of adoption: July 18, 2006
For further information, please call: (512) 475-2052

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 2. MENTAL RETARDATION AUTHORITY RESPONSIBILITIES

SUBCHAPTER F. CONTINUITY OF SERVICES--STATE MENTAL RETARDATION FACILITIES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §2.253, concerning definitions, §§2.264 - 2.269, concerning admission and commitment, and §2.274, concerning living options for individuals residing in state mental retardation facilities (state MR facilities); new §2.283, concerning mental retardation authority (MRA) and state MR facility responsibilities; and the repeal of §2.283 and §2.284, concerning references and distribution, in Chapter 2, Subchapter F, Continuity of Services--State Mental Retardation Facilities.

Background and Purpose

The purpose of the amendments and new section is to implement Senate Bill (SB) 40 and House Bill (HB) 2579, 79th Legislature, Regular Session, 2005, which amended the Texas Government Code, Chapter 531, Subchapter D-1, governing permanency planning for individuals under 22 years of age. For an individual under 22 years of age for whom admission to an institution is sought or who is receiving services in an institution, SB 40 requires DADS to delegate the development of a permanency plan to an MRA, to a private entity other than an entity providing long-term institutional care, or to DADS personnel. For state MR facilities, DADS has chosen to delegate these responsibilities to the designated MRA for the individual. HB 2579 requires that DADS ensure that an individual's legally authorized representative (LAR) is fully informed of all available community-based services for which the individual may be eligible, the benefits to the individual of living in a family or community setting, that the placement is considered temporary, and that an ongoing permanency planning process is required. HB 2579 also requires DADS to require an LAR to provide detailed contact information and agree to make reasonable efforts to participate in the individual's life and planning activities.

The amendments and new section are also proposed to update and clarify permanency planning requirements. The proposed amendments correct rule cross-references and agency names that were rendered incorrect from the consolidation of several state agencies, including the Texas Department of Human Services and part of the Texas Department of Mental Health and Mental Retardation, to create DADS.

The purpose of the repeal is to make this subchapter more consistent with the majority of DADS rules, which do not include sections about references and distribution.

Section-by-Section Summary

The amendment to §2.253 adds or updates the following acronyms: CARE, CRCG, DADS, ICAP, and MRA. The amendment also updates other definitions in the section to correct agency names and mailing addresses.

The amendments to §§2.264 - 2.269 and 2.274 make minor clarifications and remove the permanency planning requirements in these sections in order to incorporate all permanency planning requirements in new §2.283. The amendments also correct agency names, rule cross references, and mailing addresses.

New §2.283 details the responsibilities of an MRA and a state MR facility for permanency planning for an individual under 22 years of age by referencing rules governing the Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program. These rules are proposed elsewhere in this issue of the *Texas Register* under Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Responsibilities, Subchapter E, ICF/MR Programs--Contracting. Specifically, an MRA must inform an LAR of the benefits of living in a family setting, that the placement is temporary, and that the MRA will continue ongoing permanency planning. In addition, an MRA must provide information to the LAR in accordance with the notification requirements in the ICF/MR Program, take or ensure actions are taken to conduct permanency planning, take actions regarding a volunteer advocate, and conduct the permanency planning review. A state MR facility must, upon admission of an individual under 22 years of age, request from and encourage the LAR to provide detailed contact information, make notifications in accordance with the notification requirements in the ICF/MR Program, and incorporate permanency planning as an integral part of the initial individual program plan (IPP). A state MR facility must, for an individual under 22 years of age who resides in the facility, incorporate permanency planning as an integral part of the IPP, take action to assist the individual's MRA in conducting permanency planning, and request from and encourage the LAR to provide detailed contact information. A state MR facility must also provide notice to the LAR of the annual review meeting of the IPP, attempt to notify the LAR of an emergency situation, attempt to locate the LAR if the LAR does not respond to the notification, and notify DADS if the LAR cannot be located. If DADS cannot locate the LAR within one year after the facility's request, DADS will refer the case to the Department of Family and Protective Services. A state MR facility must make reasonable accommodations to promote participation of the LAR and document compliance with the requirements of permanency planning in the individual's record.

The repeal of §2.283 and §2.284 will make this subchapter more consistent with the majority of DADS rules that do not include references and distribution for information within the rules.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments, new section, and repeal are in effect, there are foreseeable implications relating to costs or revenues of local governments. There are no foreseeable implications relating to costs or revenues of state government.

The effect on local governments for the first five years the proposed amendments, new section, and repeal are in effect is an estimated additional cost of $33,482 in fiscal year (FY) 2006; $36,087 in FY 2007; $38,689 in FY 2008; $41,292 in FY 2009; and $43,895 in FY 2010. These costs are based on the requirement that an MRA conduct the permanency planning process, including regularly convening a permanency planning meeting and developing a permanency plan for an individual every six months after the initial plan is developed.

Small Business and Micro-business Impact Analysis

DADS 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 amendments, new section, and repeal, because the proposal places no new requirements on businesses that would have a significant cost to businesses.

Public Benefit and Costs

Barry Waller, DADS Assistant Commissioner for Provider Services, has determined that, for each year of the first five years the amendments, new section, and repeal are in effect, the public benefit expected as a result of enforcing the amendments, new section, and repeal is that having an MRA conduct the permanency planning process helps ensure that no conflict of interest exists in developing an individual's permanency plan. In addition, the amendments, new section, and repeal will ensure that a state MR facility cooperates with the individual's designated MRA and will encourage the LAR to be involved and participate in the life of an individual residing in the state MR facility.

Mr. Waller anticipates that there will be an economic cost to MRAs as explained in the fiscal note above. The amendments, new section, and repeal will not affect a local economy.

Takings Impact Assessment

DADS 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 Christy Dees at (512) 438-3162 in the Policy Development and Oversight Unit of DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-011, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DIVISION 1. GENERAL PROVISIONS

40 TAC §2.253

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, Chapter 531, Subchapter D-1, which provides that the HHSC executive

commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendment implements Texas Government Code, §§531.0055, 531.1521, and 531.166, and Texas Human Resources Code, §161.021.

§2.253. Definitions.

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

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

(3) CARE--DADS' Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested. [~~The department's Client Assignment and Registration System, an on-line data entry system that provides demographic and other data about individuals served by the department.~~]

(4) Commissioner--The commissioner of DADS [~~the department~~].

[~~(5) Community Resource Coordination Group (CRCG)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The role and responsibilities of the involved agencies, including MRAs, school districts, and providers, are described in §411.56 of this title (relating to Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths).~~]

(5) [~~(6)~~] Consensus--A negotiated agreement that all parties can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

(6) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(7) DADS--The Department of Aging and Disability Services.

(8) [~~(7)~~] Dangerous behavior--Behavior exhibited by an individual who is physically aggressive, self-injurious, sexually aggressive, or seriously disruptive and requires a written behavioral intervention plan to prevent or reduce serious physical injury to the individual or others.

(9) [~~(8)~~] Department--[~~The Texas~~] Department of Aging and Disability Services [~~Mental Health and Mental Retardation~~].

(10) [~~(9)~~] Designated MRA--The MRA assigned to an individual in CARE.

(11) [~~(10)~~] Discharge--The release by DADS [~~the department~~] of an individual voluntarily admitted or committed by court order for residential mental retardation services from the custody and care of a state MR facility and termination of the individual's assignment to the state MR facility in CARE.

(12) [~~(11)~~] Emergency admission/discharge agreement--A written agreement between the state MR facility, the individual or LAR, and the designated MRA, sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030 [~~, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711~~], that describes [~~the~~]:

(A) the purpose of the emergency admission, including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the responsibilities of each party regarding the care, treatment, and discharge of the individual, including how the terms of the agreement will be monitored;

(C) the length of time of the emergency admission, which is that amount of time necessary to accomplish the purpose of the admission; and

(D) the anticipated date of discharge.

(13) [~~(12)~~] Facility of record--The facility that serves the local service area(s) assigned to the individual's designated MRA.

(14) [~~(13)~~] Family-based alternative [~~Family-Based Alternative~~]--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(15) [~~(14)~~] Head of the facility--The superintendent or director of a state MR facility [~~of a state school or the director of a state center~~].

(16) ICAP (Inventory for Client and Agency Planning)--A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports the individual needs.

(17) [~~(15)~~] ICAP [~~(Inventory for Client and Agency Planning)~~] service level--A designation that [~~which~~] identifies the level of services needed by an individual as determined by the ICAP [~~assessment instrument~~]. [~~(For information on how to obtain a copy of the ICAP assessment instrument contact TDMHMR, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668.)~~]

[~~(16) Individual--A person who has or is believed to have mental retardation.~~]

(18) [~~(17)~~] IDT (Interdisciplinary team) [~~(IDT)~~]--Mental retardation professionals and paraprofessionals and other concerned persons, as appropriate, who assess an individual's treatment, training, and habilitation needs and make recommendations for services, including recommendations of whether the individual is best served in a facility or in a community setting.

(A) Team membership always includes:

(i) the individual;

(ii) the individual's LAR, if any; and

(iii) persons specified by an MRA or a state MR facility, as appropriate, who are professionally qualified and/or certified or licensed with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation.

(B) Other participants in IDT meetings may include:

(i) other concerned persons whose inclusion is requested by the individual or the LAR;

(ii) at the discretion of the MRA or state MR facility, persons who are directly involved in the delivery of mental retardation services to the individual; and

(iii) if the individual is school eligible, representatives of the appropriate school district.

(19) Individual--A person who has or is believed to have mental retardation.

(20) [~~(18)~~] Interstate transfer--The admission of an individual to a state MR facility directly from a similar facility in another state.

(21) [~~(19)~~] IQ (intelligence quotient)--A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(22) [~~(20)~~] LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual [~~a person~~] with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(23) [~~(21)~~] Legally adequate consent--Consent given by a person when each of the following conditions has been met:

(A) legal status: The individual giving the consent:

(i) is 18 years of age or older, or younger than 18 years of age and is or has been married or had his or her disabilities removed for general purposes by court order as described in the Texas Family Code, Chapter 31; and

(ii) has not been determined by a court to lack capacity to make decisions with regard to the matter for which consent is being sought;

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

(24) [~~(22)~~] Less restrictive setting--A setting which allows the greatest opportunity for the individual to be integrated into the community.

(25) [~~(23)~~] Local service area--A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local MRA.

(26) [~~(24)~~] Mental retardation--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(27) [~~(25)~~] Minor--An individual under the age of 18.

(28) [~~(26)~~] MRA (mental retardation authority)--An entity to which the Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated. [~~As defined in THSC, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation, and for supervising and ensuring the provision of mental retardation services to persons in one or more local service areas.~~]

(29) [~~(27)~~] Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(30) [~~(28)~~] Ombudsman--Consistent with THSC, §533.039, an employee of DADS [~~in the department's Central Office~~] who is responsible for assisting an individual or LAR if the [~~of an~~] individual is [~~who has been~~] denied a service by DADS [~~the department~~], a DADS [~~department~~] program or facility, or an MRA. The ombudsman must explain and provide information on DADS [~~department~~] and MRA services, facilities, and programs, and the rules, procedures, and guidelines applicable to the individual denied services, and assist the individual in gaining access to an appropriate program or in placing the individual on an appropriate waiting list. [~~The director of the Office of Consumer Services and Rights Protection/Ombudsman is the department's ombudsman and can be contacted by calling 1-800-252-8154.~~]

(31) [~~(29)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(32) [~~(30)~~] Planning team--A group organized by the MRA and composed of:

(A) the individual;

(B) the individual's legally authorized representative (LAR), if any;

(C) actively-involved family members or friends of the individual who has neither the ability to provide legally adequate consent nor an LAR;

(D) other concerned persons whose inclusion is requested by the individual with the ability to provide legally adequate consent or the LAR;

(E) a representative from the designated MRA; and

(F) a representative from the individual's provider.

(33) [~~(31)~~] PMRA--Persons with Mental Retardation Act, Texas Health and Safety Code, Title 7, Subtitle D.

(34) [~~(32)~~] Provider--A public or private entity that delivers community-based residential services and supports for individuals, including, but not limited to, an intermediate care facility for individuals with mental retardation (ICF/MR) or a nursing facility. The term also includes a public or private entity that provides waiver services.

(35) [~~(33)~~] Related services--Services for school eligible individuals as described in 19 TAC §89.1060 (relating to Definitions of Certain Related Services).

(36) [~~(34)~~] Respite admission/discharge agreement--A written agreement between the state MR facility, the individual or LAR, and MRA, sample copies of which are available from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030 [~~, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711~~], that describes:

(A) the purpose of the respite admission including the circumstances that precipitated the need for the admission and the expected outcomes from the admission;

(B) the length of time the individual will receive respite services from the state MR facility; and

(C) the responsibilities of each party regarding the care, treatment, and discharge of the individual.

(37) [~~(35)~~] School eligible--A term describing those individuals between the ages of three and 22 who are eligible for public education services.

(38) [~~(36)~~] Service delivery system--All facility and community-based services and supports operated or contracted for by DADS [~~the department~~].

(39) [~~(37)~~] Services and supports--Programs and assistance for persons with mental retardation that may include a determination of mental retardation, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(40) [~~(38)~~] Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(41) [~~(39)~~] State MH facility (state mental health facility)--A state hospital.

(42) [~~(40)~~] State MR facility (state mental retardation facility)--A state school or a state center with a mental retardation residential component.

(43) [~~(41)~~] THSC--Texas Health and Safety Code.

(44) [~~(42)~~] Waiver services--Home and community-based services provided through a Medicaid waiver program approved by Centers for Medicare and Medicaid Services (CMS)[~~, formerly Health Care Financing Administration (HCFA),~~] as described in §1915(c) of the Social Security Act. [~~Medicaid waiver programs operated by the department include Home and Community-based Services (HCS) Program, Home and Community-based Waiver Services-OBRA (HCS-O) Program, and Mental Retardation Local Authority (MRLA) Program. Other waiver programs for which an individual applying to an MRA for services and supports might be eligible that are operated by other state agencies include Community Living and Support Services (CLASS); the Deaf-Blind Multiple Disability Waiver programs; the Medically Dependent Children Program; and the Community-Based Alternatives Waiver.~~]

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

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602839
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 438-3734

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DIVISION 2. ADMISSION AND COMMITMENT

40 TAC §§2.264 - 2.269

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, Chapter 531, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendments implement Texas Government Code, §§531.0055, 531.1521, and 531.166, and Texas Human Resources Code, §161.021.

§2.264. MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA.

[~~(a)~~] The IDT at an MRA must do the following in making a report of its findings and recommendations as described in §2.255(a)(5) [~~§412.255(a)(5)~~] and (b)(1)(B) of this subchapter [~~title~~] (relating to Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA), §2.256(b)(3)(E) [~~§412.256(b)(3)(E)~~], (c)(3)(E), (e)(3)(E), and (f)(3)(E) of this subchapter [~~title~~] (relating to Criteria for Commitment of an Adult under the Texas Code of Criminal Procedure), and §2.257(a)(5) [~~§412.257(a)(5)~~] of this subchapter [~~title~~] (relating to Criteria for Commitment of a Minor to a State MR Facility Under the PMRA):

(1) in accordance with THSC, §593.013:

(A) interview the individual or the individual's LAR;

(B) review the individual's:

(i) social and medical history;

(ii) medical assessment, which must include an audiological, neurological, and vision screening;

(iii) psychological and social assessment, including the ICAP; and

(iv) determination of adaptive behavior level;

(C) determine the individual's need for additional assessments, including educational and vocational assessments;

(D) obtain any additional assessment(s) necessary to plan services;

(E) identify the individual's or LAR's habilitation and service preferences and the individual's needs;

(F) recommend services to address the individual's needs that consider the individual's or LAR's interests, choices, and goals and, for an [~~the~~] individual under 22 years of age, the individual's [~~include~~] permanency planning [~~as a~~] goal;

(G) encourage the individual and the individual's LAR to participate in IDT meetings;

(H) if desired, use a previous assessment, social history, or other relevant record from a school district, public or private agency, or appropriate professional if the IDT determines that the assessment, social history or record is valid;

(I) prepare a written report of its findings and recommendations that is signed by each IDT member and send a copy of the report within 10 working days to the individual or LAR, as appropriate; and

(J) if the individual is being considered for commitment to the state MR facility, submit the IDT report promptly to the court, as ordered, and to the individual or LAR, as appropriate; and

(2) determine whether:

(A) the individual, because of mental retardation:

(i) represents a substantial risk of physical impairment or injury to self or others; or

(ii) is unable to provide for and is not providing for the individual's most basic personal physical needs;

(B) the individual cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(C) the state MR facility provides habilitative services, care, training and treatment appropriate to the individual's needs.

~~[(b) For the individual under 22 years of age, the MRA will ensure that permanency planning is included as an integral part of service planning, as required in subsection (a)(1)(F) of this section, with an emphasis on identifying:]~~

~~[(1) the family's natural supports and strengths that, supplemented by activities and supports provided or facilitated by the MRA, will enable the individual under 18 years of age to remain in the family home;]~~

~~[(2) a family-based alternative that will secure for an individual under 18 years of age a consistent, nurturing environment that supports a continued relationship with the individual's family to the extent possible and, if necessary, provide an enduring, positive relationship with a specific adult who will be an advocate for the individual; or]~~

~~[(3) the natural supports and strengths of an individual from 18 to 22 years of age that, when supplemented by activities and supports provided or facilitated by the MRA, will result in the individual having a consistent and nurturing environment as defined by the individual and LAR.]~~

~~[(c) The MRA must take the following actions to facilitate permanency planning:]~~

~~[(1) discuss with the individual or LAR the problems or issues that led the individual or LAR to request admission to a state MR facility;]~~

~~[(2) discuss with the family or LAR of an individual under 18 years of age the barriers to having the individual reside in the family home or discuss with an individual 18 to 22 years of age and LAR the barriers to moving to a consistent and nurturing environment as determined by the individual and LAR;]~~

~~[(3) identify natural supports and family strengths that will accomplish permanency planning outcomes; and]~~

~~[(4) identify activities and supports that can be provided by the family, LAR, or MRA that will prepare the individual for a family-based alternative, if the individual and LAR choose that option.]~~

~~[(d) If the individual is under 22 years of age, the MRA must explain to the individual and LAR that:]~~

~~[(1) before the individual is admitted to the state MR facility, the commissioner or designee must approve the admission; and]~~

~~[(2) the individual's residency at a state MR facility will last no longer than six months unless the commissioner or designee approves a six-month extension.]~~

~~[(e) If an individual is under 22 years of age, the MRA must inform the individual and LAR that they may request a volunteer advocate to assist in permanency planning. The individual or LAR may:]~~

~~[(1) select a person who is not employed by or under contract with the MRA or a state MR facility; or]~~

~~[(2) request the MRA to designate a volunteer advocate.]~~

~~[(f) If the individual or LAR requests that the MRA designate a volunteer advocate or the MRA cannot locate the individual's LAR, the MRA must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:]~~

~~[(1) an adult relative who is actively involved with the individual;]~~

~~[(2) a person who:]~~

~~[(A) is part of the individual's natural support network; and]~~

~~[(B) is not employed by or under contract with the MRA or a state MR facility; or]~~

~~[(3) a person or a child advocacy organization representative who:]~~

~~[(A) is knowledgeable about community services and supports;]~~

~~[(B) is familiar with the permanency planning philosophy and processes; and]~~

~~[(C) is not employed by or under contract with the MRA or state MR facility.]~~

~~[(g) If the MRA is unable to locate a volunteer advocate locally, the MRA must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subsection (e)(3) of this section. If the statewide advocacy organization is unable to assist the MRA in identifying a volunteer advocate, the MRA must document all efforts to designate a volunteer advocate in accordance with subsection (f) of this section.]~~

§2.265. MRA Referral of an Applicant to a State MR Facility.

(a) If an individual or LAR requests residential services in a state MR facility, the designated MRA [~~serving the local service area in which the individual lives or, in the case of an interstate transfer, the MRA serving the local service area in which the individual's LAR or family lives or intends to live~~] must provide an oral and written explanation as described in §5.159(c) [~~§415.159(c)~~] of this title (relating to Assessment of Individual's Need for Services and Supports).

(b) If the MRA's IDT determines that an applicant meets the criteria described in §2.255 [~~§412.255~~] of this subchapter [~~title~~] (relating to Criteria for Commitment and Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA) or §2.257 [~~§412.257~~] of this subchapter [~~title~~] (relating to Criteria for Commitment of a Minor to a State MR Facility Under the PMRA), the MRA will:

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

(3) contact the [~~department's~~] interstate compact coordinator at the Health and Human Services Commission, if the applicant is requesting an interstate transfer;

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

(c) If the MRA's IDT determines that the applicant does not meet the criteria for commitment or regular voluntary admission to a state MR facility as described in this subchapter, the MRA will:

(1) notify the applicant or LAR in writing of the determination and explain the procedure for the applicant or LAR to request a review of the IDT's determination by the MRA in accordance with §2.46 [~~§401.464~~] of this chapter [~~title~~] (relating to Notification and Appeals Process); or

(2) if the applicant was requesting an interstate transfer, notify the [~~department's~~] interstate compact coordinator in writing of the determination.

(d) If a review by the MRA of the IDT's determination results in the determination being upheld, the MRA will inform the applicant or LAR in writing that a request for a review by DADS' [~~the department's~~] ombudsman may be made in writing to the Department of Aging and Disability Services, Consumer Rights and Services Division, P.O. Box 149030, Mail Code E-249, Austin, Texas 78714-9030 [~~Consumer Services and Rights Protection, Ombudsman, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas, 78711-2668~~], or by calling 1-800-458-9858 [~~1-800-252-8154~~].

(e) If the applicant or LAR requests a review, DADS' [~~the department's~~] ombudsman will review relevant documentation provided by the applicant and LAR, the IDT, and the MRA, and determine whether the processes described in this subchapter were followed.

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

(f) If the MRA determines that an applicant meets the criteria described in §2.261 [~~§412.261~~] of this subchapter [~~title~~] (relating to Criteria for Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA) or §2.262 [~~§412.262~~] of this subchapter [~~title~~] (relating to Criteria for Admission of an Adult or a Minor to a State MR Facility for Respite Care Under the PMRA), the MRA will:

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

(3) request the applicant's enrollment in the ICF/MR Program as described in §9.244(e) [~~§419.244(e)~~] of this title (relating to Applicant Enrollment in the ICF/MR Program), if appropriate.

(g) A complete application packet, as referenced in subsection (b)(4) of this section, must include:

(1) (No change.)

(2) a completed Application for Admission including signature of the applicant or the applicant's LAR (copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, [~~Office of~~] State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714- 9030 [~~, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668~~]);

(3) a DMR report with statement that the applicant has mental retardation, as described in §5.155(g) [~~§415.155(g)~~] of this title (relating to Determination of Mental Retardation (DMR));

(4) (No change.)

(5) an IDT report completed as described in §2.264 [~~§412.264(a)~~] of this subchapter [~~title~~] (relating to MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA) recommending the commitment or regular voluntary admission of the applicant to a state MR facility;

(6) - (16) (No change.)

(17) for the applicant who is a minor, results of the CRCG staffing held as described in §2.257(c) [~~§412.257(c)~~] of this subchapter [~~title (relating to Criteria for Commitment of a Minor to a State MR Facility Under the PMRA)~~];

(18) for the applicant under 22 years of age, results of the MRA's permanency planning process as described in §2.283(a) of this subchapter (relating to MRA and State MR Facility Responsibilities) [~~§412.264(b) of this title~~]; and

(19) (No change.)

(h) A complete application packet for emergency admission of an individual, as referenced in subsection (f)(2) of this section, must include:

(1) a completed Application for Admission including signature of the applicant or the applicant's LAR (copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, [~~Office of~~] State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714- 9030 [~~, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668~~]);

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

(12) for the applicant who is a minor, the results of the CRCG staffing held as described in §2.257(c) [~~§412.257(c)~~] of this subchapter [~~title~~];

(13) for the applicant under 22 years of age, results of the MRA's permanency planning process as described in §2.283(a) [~~§412.264(b)~~] of this subchapter [~~title~~];

(14) - (15) (No change.)

(16) if requested by DADS [~~the department~~]:

(A) a DMR report with a statement that the applicant has mental retardation, as described in §5.155(g) [~~§415.155(g)~~] of this title, if requested by DADS [~~the department~~]; and

(B) (No change.)

(i) A complete application packet for admission of an individual for respite care, as referenced in subsection (f)(2) of this section, must include:

(1) a completed Application for Admission including signature of the applicant or the applicant's LAR (copies of the Application for Admission are available by contacting the Department of Aging and Disability Services, Provider Services Division, [~~Office of~~] State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714- 9030 [~~, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668~~]);

(2) - (12) (No change.)

(13) if requested by DADS [~~the department~~]:

(A) a DMR report with a statement that the applicant has mental retardation, as described in §5.155(g) [~~§415.155(g)~~] of this title, if requested by DADS [~~the department~~]; and

(B) (No change.)

§2.266. Process for Admission of an Adult or a Minor Who Has Been Committed to a State MR Facility Under the PMRA.

(a) (No change.)

(b) The MRA must retain a copy of the application packet, as described in §2.265(g) [~~§412.265(g)~~] of this subchapter [~~title~~] (relating to MRA Referral of an Applicant to a State MR Facility) and send the original application packet to the admission coordinator of the state MR facility.

(c) DADS [~~The department~~] will determine when a vacancy exists in a state MR facility and which individuals are appropriate to fill the vacancy, based on the information in the application packets.

(d) Upon notification from DADS [~~the department~~] that an appropriate vacancy in a state MR facility is available, the MRA will contact the LAR or family of each individual identified by DADS [~~the department~~] as appropriate to fill the vacancy and will:

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

(e) The state MR facility will offer admission under the commitment order to one of those individuals identified by DADS [~~the department~~] as appropriate to fill the vacancy and who the MRA has determined would accept the proposed admission to the state MR facility.

(f) If the applicant or the applicant's LAR accepts the proposed admission, the MRA must request enrollment of the applicant in the ICF/MR Program as described in §9.244 [~~§419.244~~] of this title (relating to Applicant Enrollment in the ICF/MR Program), if appropriate.

(g) - (i) (No change.)

~~[(j) Within three days of the admission of an individual under 22 years of age, the state MR facility must make the notifications described in §419.222(c) and (d) of this title (relating to Permanency Planning for Individuals Under 22 Years of Age).]~~

§2.267. Process for the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA.

(a) (No change.)

(b) If the MRA IDT recommends that the applicant be admitted to a state MR facility for regular voluntary services, the MRA must retain a copy of the application packet, as described in §2.265(g) [~~§412.265(g)~~] of this subchapter [~~title~~] (relating to MRA referral of an Applicant to a State MR Facility) and send the original application packet to the admission coordinator of the state MR facility.

(c) DADS [~~The department~~] will determine when a vacancy exists in a state MR facility and which individuals are appropriate to fill the vacancy, based on the information in the application packets.

(d) Upon notification from DADS [~~the department~~] that an appropriate vacancy in a state MR facility is available, the MRA will contact each individual identified by DADS [~~the department~~] as appropriate to fill the vacancy and will:

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

(e) The state MR facility will offer admission to one of those individuals identified by DADS [~~the department~~] as appropriate to fill the vacancy and who the MRA has determined would accept the proposed admission to the state MR facility.

(f) If the applicant or the applicant's LAR accepts the proposed admission, the MRA must request enrollment of the applicant in the ICF/MR Program as described in §9.244 [~~§419.244~~] of this title (relating to Applicant Enrollment in the ICF/MR Program), if appropriate.

(g) (No change.)

~~[(h) Within three days of the admission of an individual under 22 years of age, the state MR facility must make the notifications described in §419.222(c) and (d) of this title (relating to Permanency Planning for Individuals Under 22 Years of Age).]~~

§2.268. Process for Placement of a Minor under the Texas Family Code in a State MR Facility.

(a) If DADS [~~the department~~] is notified by a juvenile court that a placement order for a minor has been issued under Texas Family Code, §55.33 or §55.52, DADS [~~the department~~] will notify the appropriate MRA of the placement order.

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

(d) Within 30 calendar days after the minor is admitted to the state MR facility, the state MR facility will schedule an IDT meeting to develop an individual program plan (IPP) [~~IPP~~] for the minor. [~~In accordance with §419.222 of this title (relating to Permanency Planning for Individuals Under 22 Years of Age), the IPP will be developed using permanency planning.~~]

(e) Not later than the 75th calendar day after the date the court issues a placement order under Texas Family Code, §55.33, the state MR facility will submit to the court a report that:

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

(3) if the state MR facility believes the minor is unfit to proceed, states whether the minor meets the commitment criteria described in §2.257 [~~§412.257~~] of this subchapter [~~title~~] (relating to Criteria for Commitment of a Minor to a State MR Facility Under the PMRA).

(f) If the state MR facility believes that the minor is unfit to proceed and meets the commitment criteria described in §2.257 [~~§412.257~~] of this subchapter [~~title~~], the state MR facility will submit an affidavit to the court stating the conclusions reached as a result of the diagnosis.

(g) Not later than the 75th calendar day after the date the court issues a placement order under Texas Family Code, §55.52, the state MR facility will submit to the court a report that:

(1) (No change.)

(2) states whether the state MR facility believes the minor has mental retardation [~~is mentally retarded~~]; and

(3) if the state MR facility believes the minor has mental retardation [~~is mentally retarded~~], states whether the minor meets the commitment criteria described in §2.257 [~~§412.257~~] of this subchapter [~~title~~].

(h) If the state MR facility believes that the minor has mental retardation [~~is mentally retarded~~] and meets the commitment criteria described in §2.257 [~~§412.257~~] of this subchapter [~~title~~], the state MR facility will submit an affidavit to the court stating the conclusions reached as a result of the diagnosis.

~~[(i) Within three days of the admission of the minor, the state MR facility must make the notifications described in §419.222(c) and (d) of this title.]~~

§2.269. Process for the Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA.

(a) (No change.)

(b) If the MRA determines that an individual meets the criteria for emergency admission under §2.261 [~~§412.261~~] of this subchapter [~~title~~] (relating to Criteria for Emergency Admission of an Adult or a Minor to a State MR Facility Under the PMRA), the MRA must retain a copy of the application packet, as described in §2.265(h) [~~§412.265(h)~~]

of this subchapter [title] (relating to MRA Referral of an Applicant to a State MR Facility) and send the original application packet to the admission coordinator of the state MR facility.

(c) DADS [The department] will determine when a vacancy exists in a state MR facility and which individuals are appropriate to fill the vacancy, based on the information in the application packets.

(d) Upon notification from DADS [the department] that an appropriate vacancy in a state MR facility is available, the MRA will contact each individual identified by DADS [the department] as appropriate to fill the vacancy and will:

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

(e) The state MR facility will offer emergency admission to one of those individuals identified by DADS [the department] as appropriate to fill the vacancy and who the MRA has determined would accept the proposed emergency admission to the state MR facility.

(f) Prior to admission of the individual, the MRA must:

(1) (No change.)

(2) send a copy of the completed Emergency Admission/Discharge Agreement to the individual or LAR, the state MR facility, and the Department of Aging and Disability Services, Provider Services Division, [department's Office of] State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030 [, P.O. Box 12668, Austin, Texas 78711-2668]; and

(3) (No change.)

(g) If the individual is under 22 years of age, the Emergency Admission/Discharge Agreement must incorporate elements of the individual's permanency plan, as appropriate, [be developed using permanency planning, as described in §419.222 of this title (relating to Permanency Planning for Individuals Under 22 Years of Age)] and [must] specify that the individual is to be admitted for no longer than six months to receive emergency services in the state MR facility.

(h) - (i) (No change.)

(j) Within 30 calendar days after the individual is admitted, the state MR facility will arrange for:

(1) a DMR to be conducted in accordance with §5.155 [§415.155] of this title (relating to Determination of Mental Retardation (DMR)); and

(2) an IDT at the state MR facility to make findings and recommendations in accordance with the process described [required] for an MRA IDT [as described] in §2.264 [§412.264(a)] of this subchapter [title] (relating to MRA IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA).

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

(m) If DADS [the department] determines that the terms of the Emergency Admission/Discharge Agreement cannot be met, the MRA may initiate commitment proceedings under the PMRA.

[(n) Within three days of the admission of an individual under 22 years of age, the state MR facility must make the notifications described in §419.222(c) and (d) of this title.]

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

Filed with the Office of the Secretary of State on May 19, 2006.

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Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 438-3734

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DIVISION 4. MOVING FROM A STATE MR FACILITY TO AN ALTERNATIVE LIVING ARRANGEMENT

40 TAC §2.274

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, Chapter 531, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendment implements Texas Government Code, §§531.0055, 531.1521, and 531.166, and Texas Human Resources Code, §161.021.

§2.274. Consideration of Living Options for Individuals Residing in State MR Facilities.

(a) A state MR facility must discuss living options with the individual or the individual's LAR using the State MR Facility Living Options instrument at least annually or upon request by an individual or LAR. Copies of the State MR Facility Living Options instrument may be obtained from the Department of Aging and Disability Services, Provider Services Division, State Mental Retardation Facilities Section, P.O. Box 149030, Mail Code W-511, Austin, Texas 78714-9030 [are available on the department's website at www.mhmr.state.tx.us or by contacting the Office of State Mental Retardation Facilities, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711]. At the conclusion of a meeting during which living options have been discussed, the individual's IDT will document the:

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

(5) IDT's conclusions as to whether or not the permanency planning goal [goals] for an individual under 22 years of age has been accomplished [have been met].

[(b) If the review of living options for an individual under 22 years of age results in an IDT conclusion that the individual's permanency planning goals have not been met and that the individual should remain at the state MR facility, the IDT must request approval for the individual's continued residence as described in §419.222(g) of this title (relating to Permanency Planning for Individuals Under 22 Years of Age).]

(b) [~~(c)~~] The state MR facility will ensure that the individual and LAR receive adequate notice of a meeting at which the state MR facility anticipates that living options are likely to be discussed.

(1) The individual with the ability to provide legally adequate consent or the LAR of an individual who does not have the ability to provide legally adequate consent may choose to:

(A) invite other family members, friends, or other interested persons to the meeting; or

(B) exclude any and all family members, friends, or other interested persons from attending the meeting.

(2) The state MR facility must:

(A) encourage the attendance and participation in the meeting by those persons invited by the individual or LAR;

(B) make a reasonable attempt to schedule the meeting at a time that is convenient for the individual's LAR and those family members, friends, or other persons invited by the individual or LAR; and

(C) notify the designated MRA of the meeting at the same time the individual and LAR are notified and request from the MRA the information about alternative living arrangements and community services and supports in the MRA's local service area that the IDT will need before making a recommendation as described in subsection (a)(4) of this section.

~~[(3) If the individual is under 22 years of age, the state MR facility must inform the individual and LAR that they may request a volunteer advocate to assist in permanency planning. The individual or LAR may:]~~

~~[(A) select a person who is not employed by or under contract with the state MR facility; or]~~

~~[(B) request the state MR facility to designate a volunteer advocate.]~~

~~[(4) If the individual or LAR requests that the state MR facility designate a volunteer advocate or the state MR facility cannot locate the individual's LAR, the state MR facility must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:]~~

~~[(A) an adult relative who is actively involved with the individual;]~~

~~[(B) a person who:]~~

~~*[(i)* is part of the individual's natural support network; and]~~

~~*[(ii)* is not employed by or under contract with the state MR facility; or]~~

~~[(C) a person or a child advocacy organization representative who:]~~

~~*[(i)* is knowledgeable about community services and supports;]~~

~~*[(ii)* is familiar with the permanency planning philosophy and processes; and]~~

~~*[(iii)* is not employed by or under contract with the state MR facility.]~~

~~[(5) If the state MR facility is unable to locate a volunteer advocate locally, the state MR facility must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in paragraph (4)(C) of this subsection. If the statewide advocacy organization is unable to assist the state MR facility in identifying a volunteer advocate, the state MR facility must document all efforts to designate a volunteer advocate in accordance with paragraph (4) of this subsection.]~~

~~[(d) If the individual is a minor and:]~~

~~[(1) parental rights have not been terminated, the IDT recommendation regarding living arrangements will be based on the minor's permanency planning needs for services and supports which will:]~~

~~[(A) enable the minor to return to the family home if the LAR chooses to do so; or]~~

~~[(B) secure a family-based alternative that provides a consistent, nurturing environment for the minor and supports a continued relationship with the minor's family to the extent possible and, if necessary, provide an enduring, positive relationship with a specific adult who will be an advocate for the minor; or]~~

~~[(2) parental rights have been terminated, the IDT recommendation will be based on the permanency planning needs for support and services that will enable the minor to move to a family-based alternative living arrangement that will secure a consistent, nurturing environment that supports a continued relationship with the minor's family to the extent possible and an enduring, positive relationship with a specific adult who will be an advocate for that minor.]~~

~~[(e) If the individual is between 18 and 22 years of age, the IDT recommendation regarding living arrangements will be based on the individual's natural supports and strengths that, when supplemented by activities and supports provided or facilitated by a provider or MRA, will result in the individual having a consistent and nurturing alternative living arrangement as defined by the applicant and LAR.]~~

(c) [~~(f)~~] The designated MRA shall ensure that the state MR facility has the information about alternative living arrangements and community services and supports needed to assist the IDT in making a recommendation described in subsection (a)(4) of this section.

(d) [~~(g)~~] Communication devices and techniques (including the use of sign language) will be utilized, as appropriate, to facilitate the involvement of the individual and the LAR during the meeting.

(e) [~~(h)~~] If the individual or the individual's LAR expresses an interest in an alternative living arrangement during a meeting or at any other time, the state MR facility will ensure that the individual or LAR is informed of the range of alternative living arrangements, including community-based ICF/MR programs, waiver services, those services and supports provided or contracted by an MRA, and any other services that may be appropriate.

(f) [~~(i)~~] An individual with the ability to provide legally adequate consent or the LAR may choose for the individual to remain a resident of a state MR facility if the individual has been determined to have mental retardation in accordance with §5.155 [~~§415.155~~] of this title (relating to Determination of Mental Retardation (DMR)).

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

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Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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DIVISION 7. REFERENCES AND DISTRIBUTION

40 TAC §2.283, §2.284

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

Statutory Authority

The repeal is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The repeal implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§2.283. References.

§2.284. Distribution.

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

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DIVISION 7. PERMANENCY PLANNING AND LAR NOTIFICATION REQUIREMENTS FOR AN INDIVIDUAL UNDER 22 YEARS OF AGE

40 TAC §2.283

Statutory Authority

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Government Code, Chapter 531, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The new section implements Texas Government Code, §§531.0055, 531.1521, and 531.166, and Texas Human Resources Code, §161.021.

§2.283. MRA and State MR Facility Responsibilities.

(a) MRA responsibilities.

(1) Except for a request for admission for respite care, when admission to a state MR facility is requested for an individual under 22 years of age, the designated MRA must:

(A) before the individual is admitted to the facility, inform the LAR:

(i) of the benefits of living in a family or community setting;

(ii) that the individual's stay in the facility is considered temporary; and

(iii) that an ongoing permanency planning process is required;

(B) take or ensure that the actions described in §9.244(f) of this title (relating to Applicant Enrollment in the ICF/MR Program) are taken to conduct permanency planning; and

(C) take the actions described in §9.244(g) - (i) of this title regarding a volunteer advocate.

(2) An MRA does not have to comply with paragraph (1)(A) of this subsection if the individual has been committed to a state MR facility under Chapter 46B, Code of Criminal Procedure, or Chapter 55, Family Code.

(3) For an individual under 22 years of age who resides in a state MR facility, the designated MRA must conduct a permanency planning review in accordance with §9.250 of this title (relating to Permanency Planning Reviews).

(b) State MR facility responsibilities.

(1) Upon the admission of an individual under 22 years of age to a state MR facility, a state MR facility:

(A) requests from and encourages the LAR to provide the information described in §9.222(e) of this title (relating to Permanency Planning and LAR Participation for Individuals Under 22 Years of Age);

(B) makes notifications as described in §9.222(c) and (d) of this title; and

(C) incorporates permanency planning as an integral part of the individual's initial individual program plan (IPP) and identifies information in the IPP as described in §9.222(a) of this title.

(2) For an individual under 22 years of age who resides in a state MR facility, a state MR facility:

(A) incorporates permanency planning as an integral part of the individual's IPP and identifies information in the IPP as described in §9.222(a) of this title;

(B) takes the actions described in §9.222(b) of this title to assist the individual's designated MRA in conducting permanency planning;

(C) requests from and encourages the LAR to provide the information described in §9.222(e) of this title;

(D) provides notice to the individual and LAR of a meeting to conduct the annual review of the individual's IPP as described in §9.222(g) of this title;

(E) attempts to notify the LAR of an emergency situation as described in §9.222(h) of this title;

(F) attempts to locate the LAR as described in §9.222(i) of this title, if the LAR does not respond to a notification by the state MR facility; and

(G) notifies DADS as described in §9.222(j) of this title if the LAR cannot be located.

(3) A state MR facility makes reasonable accommodations to promote the participation of the LAR as described in §9.222(f) of this title.

(4) A state MR facility documents compliance with the requirements of this subsection in the individual's record.

(c) DADS referral. If, within one year of the date DADS receives the notification described in subsection (b)(2)(G) of this section, DADS is unable to locate the LAR, DADS refers the case to:

(1) the Child Protective Services Division of the Department of Family and Protective Services if the individual is under 18 years of age; or

(2) the Adult Protective Services Division of the Department of Family and Protective Services if the individual is 18-22 years of age.

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

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CHAPTER 9. MENTAL RETARDATION SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES
SUBCHAPTER E. ICF/MR PROGRAMS--CONTRACTING

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §9.203, concerning definitions, §9.222, concerning permanency planning for individuals under 22 years of age, and §9.244, concerning applicant enrollment; and proposes new §9.250, concerning permanency planning reviews, in Chapter 9, Mental Retardation Services--Medicaid State Operating Agency Responsibilities, Subchapter E, ICF/MR Programs--Contracting.

Background and Purpose

The purpose of the amendments and new section is to implement Senate Bill (SB) 40 and House Bill (HB) 2579, 79th Legislature, Regular Session, 2005, which amended the Texas Government Code, Chapter 531, Subchapter D-1, governing permanency planning for individuals under 22 years of age. For an individual under 22 years of age for whom admission to an institution is sought or who is receiving services in an institution, SB 40 requires DADS to delegate the development of a permanency plan to a mental retardation authority (MRA), to a private entity other than an entity providing long-term institutional care, or to DADS personnel. DADS has chosen to delegate these responsibilities to the MRA for the local service area in which the individual or legally authorized representative (LAR) resides. HB 2579 requires that DADS ensure that an individual's LAR is fully informed of all available community-based services for which the individual may be eligible, the benefits to the individual of living in a family or community setting, that the placement is considered temporary, and that an ongoing permanency planning process is required. HB 2579 also requires DADS to require an LAR to provide detailed contact information and agree to make reasonable efforts to participate in the individual's life and planning activities.

The amendments and new section are also proposed to update and clarify permanency planning requirements. The proposed amendments correct rule cross-references and agency names that were rendered incorrect from the consolidation of several state agencies, including the Texas Department of Human Services and part of the Texas Department of Mental Health and Mental Retardation, to create DADS.

Section-by-Section Summary

The amendment to §9.203 adds definitions for the following terms and acronyms: DADS, emergency situation, and MR/RC Assessment. The amendment also updates other definitions in the section and corrects agency names and rule cross-references.

The amendment to §9.222(a) provides clarification about what must be included in an individual program plan (IPP) regarding the permanency planning goal for an individual under 22 years of age. The amendment to §9.222(b) requires a program provider to assist an MRA in conducting permanency planning for an individual under 22 years of age, as required by SB 40, including participation in permanency planning meetings and encouraging contact between and participation by the LAR and the individual. The program provider must refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another facility or community setting. The amendment to §9.222(e) requires the program provider to request from and encourage the LAR to provide detailed contact information that includes the contact information for a relative or other person that the program provider may contact in an emergency situation, as required by HB 2579. The LAR must notify the program provider of any changes to the contact information and make reasonable efforts to participate in the individual's life. The amendment to §9.222(f) requires the program provider to make reasonable accommodations to promote the LAR's participation in the planning and decision-making regarding the individual's care. The amendment to §9.222(g) - (i) requires the program provider to provide written notice of an IPP review meeting and request the LAR to respond to the notice of the IPP meeting

and, if an emergency situation occurs, respond to the situation. The amendment to §9.222(j) and (k) requires a program provider to request that DADS initiate a search for the LAR if the program provider is unable to locate the LAR and states that DADS will refer the individual's case to the Department of Family and Protective Services if DADS cannot locate the LAR within a year of the program provider's request. The amendment to §9.222(l) requires the program provider to attempt to obtain consent from the LAR to transfer an individual to another facility. The amendment to §9.222(m) requires the program provider to document compliance with the requirements of permanency planning in the individual's record.

The amendment to §9.244(d) requires an MRA to inform an LAR: (1) of the benefits of living in a family or community setting, (2) that the placement is considered temporary, and (3) that the MRA will continue ongoing permanency planning. The MRA must notify the LAR of this information before the placement of the individual in the facility or not later than the 14th working day after notification unless the LAR extends the time period. The amendment to §9.244(f) requires an MRA to convene a permanency planning meeting before an individual is admitted to a facility or not later than the 14th working day after the date the MRA is notified of the admission, and review the applicant's records before the meeting. The meeting must include choosing the applicant's permanency planning goal with discussion and identification of the issues and barriers to accomplishing that goal. The MRA must make reasonable accommodations to promote the participation of the LAR in developing the permanency plan.

New §9.250 requires an MRA to complete a permanency plan every six months after the initial permanency planning meeting. The MRA must notify the LAR no later than 21 days before the meeting date and complete the same steps as required for the initial permanency planning meeting.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, there are foreseeable implications relating to costs or revenues of local governments. There are no foreseeable implications relating to costs or revenues of state government.

The effect on local governments for the first five years the proposed amendments and new section are in effect is an estimated additional cost of $62,182 in fiscal year (FY) 2006; $67,018 in FY 2007; $71,852 in FY 2008; $76,689 in FY 2009; and $81,519 in FY 2010. These costs are based on the requirement that an MRA conduct the permanency planning process, including regularly convening a permanency planning meeting and developing a permanency plan for an individual every six months after the initial plan is developed.

Small Business and Micro-business Impact Analysis

DADS 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 amendments and new section, because the proposal deletes the requirement for a program provider to conduct permanency planning for an individual under 22 years of age.

Public Benefit and Costs

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public benefit expected as a result of enforcing the amendments and new section is that having an MRA conduct the permanency planning process helps ensure that no conflict of interest exists in developing an individual's permanency plan. In addition, the amendments and new section will ensure that the program provider cooperates with the MRA and will encourage the LAR to be involved and participate in the life of the individual residing in the facility.

Ms. Durden anticipates that there will be an economic cost to MRAs as explained in the fiscal note above. The amendments and new section will not affect a local economy.

Takings Impact Assessment

DADS 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 Christy Dees at (512) 438-3162 in the Policy Development and Oversight Unit of DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-013, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DIVISION 1. GENERAL REQUIREMENTS

40 TAC §9.203

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Government Code, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendment affects Texas Government Code, §531.0055, §531.021, §531.1521, and §531.166, and Texas Human Resources Code, §161.021.

§9.203. Definitions.

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

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

(4) Applied income--The portion of an individual's cost of care that the individual is responsible for paying. The amount of an individual's applied income is determined by the policies and procedures

authorized by the Health and Human Services Commission [~~TDHS~~] and depends on the individual's earned and unearned income.

(5) - (8) (No change.)

(9) CARE--DADS' Client Assignment and Registration System, a database with demographic and other data about an individual who is receiving services and supports or on whose behalf services and supports have been requested. [~~The department's Client Assignment and Registration System, an on-line data entry system that provides demographic and other data about individuals served by the department.~~]

(10) - (12) (No change.)

(13) CRCG (Community Resource Coordination Group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm. [~~The role and responsibilities of the involved agencies, including MRAs, school districts, and providers, are described in §411.56 of this title (relating to Memorandum of Understanding (MOU) on Coordinated Services to Children and Youths).~~]

(14) DADS--The Department of Aging and Disability Services.

(15) [~~(14)~~] Day--Calendar day, unless otherwise specified.

(16) [~~(15)~~] Department--[~~The~~ Texas] Department of Aging and Disability Services [~~Mental Health and Mental Retardation~~].

(17) [~~(16)~~] Discharge--The absence, for a full day or more, of an individual from the facility in which the individual resides, if such absence is not during a therapeutic, extended, or special leave, as described in §9.226 [~~§419.226~~] of this subchapter [~~title~~] (relating to Leaves).

(18) [~~(17)~~] DPoC (directed plan of correction)--A plan developed by DADS' [~~the department's~~] sanction team that requires a program provider to take specified actions within specified time frames to correct the program provider's failure to meet one or more federal standards of participation (SoPs) or conditions of participation (CoPs) or lack of compliance with one or more state rules.

(19) Emergency situation--An unexpected situation involving an individual's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) an individual needing emergency medical care;

(B) an individual being removed from his residence by law enforcement;

(C) an individual leaving his residence without notifying staff and not being located; and

(D) an individual being moved from his residence to protect the individual (for example, because of a hurricane, fire, or flood).

(20) [~~(18)~~] Excluded--Temporarily or permanently prohibited by a state or federal authority from participating as a provider in a federal health care program, as defined in 42 USC §1302a-7b(f) [~~42 USC§1302a-7b(f)~~].

(21) [~~(19)~~] Facility--An intermediate care facility for persons with mental retardation or a related condition.

(22) [~~(20)~~] Family-based alternative--A family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.

(23) [~~(21)~~] Full day--A 24-hour period extending from midnight to midnight.

[~~(22) HCFA (Health Care Financing Administration)--The federal agency that administers Medicaid programs.~~]

(24) [~~(23)~~] Hospice--An entity that is primarily engaged in providing care to terminally ill individuals and is approved by DADS [~~TDHS~~] to participate in the Medicaid Hospice Program in accordance with §30.30 of this title (relating to General Contracting Requirements) [~~40 TAC §30.30 (relating to Requirements for Participation as a Medicaid Hospice Provider)~~].

(25) [~~(24)~~] ICAP (Inventory for Client and Agency Planning)--A validated, standardized assessment that measures the level of supervision an individual requires and, thus, the amount and intensity of services and supports an individual needs.

(26) [~~(25)~~] ICF/MR Program--The Intermediate Care Facilities for Persons with Mental Retardation Program, which provides Medicaid-funded residential services to individuals with mental retardation or a related condition.

(27) [~~(26)~~] IDT (interdisciplinary team)--A group of people assembled by the program provider who possess the knowledge, skills, and expertise to assess an individual's needs and make recommendations for the individual's IPP. The group includes the individual, LAR, mental retardation professionals and paraprofessionals and, with approval from the individual or LAR, other concerned persons.

(28) [~~(27)~~] IPP (individual program plan)--A plan developed by an individual's IDT that identifies the individual's training, treatment, and habilitation needs and describes services to meet those needs.

(29) [~~(28)~~] Individual--A person enrolled in the ICF/MR Program.

(30) [~~(29)~~] IQ (intelligence quotient)--A score reflecting the level of an individual's intelligence as determined by the administration of a standardized intelligence test.

(31) [~~(30)~~] LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(32) [~~(31)~~] LOC (level of care)--A determination given by DADS [~~the department~~] to an individual as part of the eligibility process based on data submitted on the MR/RC Assessment.

(33) [~~(32)~~] LON (level of need)--An assignment given by DADS [~~the department~~] to an individual upon which reimbursement for ICF/MR Program [~~program~~] services is based. The LON assignment is derived from the service level score obtained from the administration of the ICAP [~~Inventory for Client and Agency Planning (ICAP)~~] to the individual and from selected items on the MR/RC Assessment.

(34) [~~(33)~~] Long Term Care Plan for People with Mental Retardation and Related Conditions--The plan required by THSC, §533.062, which is developed by DADS [~~the department~~] and specifies, in part, the capacity of the ICF/MR Program in Texas.

(35) [~~(34)~~] MRA (mental retardation authority)--An entity to which the Health and Human Services Commission's authority and responsibility described in THSC, §531.002(11) has been delegated. [~~Consistent with THSC, §533.035, an entity designated by the commissioner to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility for planning, policy development, coordination, and resource allocation, and resource development for and oversight of services and supports in one or more local service areas.~~]

(36) MR/RC Assessment--A form used by DADS for LOC determination and LON assignment.

(37) [~~(35)~~] Mental retardation--Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(38) [~~(36)~~] Natural support network--Those persons, including family members, church members, neighbors, and friends, who assist and sustain an individual with supports that occur naturally within the individual's environment and that are not reimbursed or purposely developed by a person or system.

(39) [~~(37)~~] NHIC--Formerly, this term referred to the National Heritage Insurance Company; it now refers to the Texas Medicaid and Health Partnership.

(40) [~~(38)~~] Non-state operated facility--A facility for which the program provider is an entity other than DADS, [~~the department~~] such as a community MHMR center or private organization.

(41) [~~(39)~~] PDP (person-directed plan)--A plan of services and supports developed under the direction of an individual or LAR with the support of MRA or program provider staff and other people chosen by the individual or LAR.

(42) [~~(40)~~] Permanency planning--A philosophy and planning process that focuses on the outcome of family support for an individual under 22 years of age by facilitating a permanent living arrangement in which the primary feature is an enduring and nurturing parental relationship.

(43) [~~(41)~~] Permanency Planning Review Screen--A screen in CARE that, when completed by an MRA [~~or program provider~~], identifies community supports needed to achieve an individual's permanency planning outcomes and provides information necessary for approval of the individual's initial and continued residence in a facility.

(44) [~~(42)~~] Personal funds--The funds that belong to an individual, including earned income, social security benefits, gifts, and inheritances.

(45) [~~(43)~~] Petty cash fund--Personal funds managed by a program provider that are maintained for individuals' cash expenditures.

(46) [~~(44)~~] Pooled account--A trust fund account containing the personal funds of more than one individual.

(47) [~~(45)~~] Professional--A person who is licensed or certified by the State of Texas in a health or human services occupation or who meets DADS' [~~department~~] criteria to be a case manager, service coordinator, qualified mental retardation professional, or TDMHMR-certified psychologist as defined in §5.161 [~~§415.161~~] of this title (relating to TDMHMR-certified psychologist).

(48) [~~(46)~~] Program provider--An entity with whom DADS [~~the department~~] has a provider agreement.

(49) [~~(47)~~] Provider agreement--A written agreement between DADS [~~the department~~] and a program provider that obligates the program provider to deliver ICF/MR Program services.

(50) [~~(48)~~] Provider applicant--An entity seeking to participate as a program provider.

(51) [~~(49)~~] Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1009, a severe and chronic disability that:

(A) is attributed to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;

(B) is manifested before the individual reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in at least three of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(52) [~~(50)~~] Sales receipt--A written statement issued by the seller that includes:

(A) the date it was created; and

(B) the cost of the item or service.

(53) [~~(51)~~] Sanction team--A group of professionals assembled and employed by DADS [~~the department~~] that is overseen by the Health and Human Services Commission to ensure consistency in its determinations.

(54) [~~(52)~~] Separate account--A trust fund account containing the personal funds of only one individual.

(55) [~~(53)~~] Specially constituted committee--The committee designated by the program provider in accordance with 42 CFR §483.440(f)(3) that consists of staff, LARs, individuals (as appropriate), qualified persons who have experience or training in contemporary practices to change an individual's inappropriate behavior, and persons with no ownership or controlling interest in the facility. The committee is responsible, in part, for reviewing, approving, and monitoring individual programs designed to manage inappropriate behavior and other programs that, in the opinion of the committee, involve risks to individuals' safety and rights.

(56) [~~(54)~~] State-operated facility--A facility for which DADS [~~the department~~] is the program provider.

(57) [~~(55)~~] TAC (Texas Administrative Code)--A compilation of state agency rules published by the Texas Secretary of State in accordance with Texas Government Code, Chapter 2002, Subchapter C.

(58) [~~(56)~~] TDHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns Medicaid eligibility. Medicaid eligibility was formerly the responsibility of TDHS; it now is the responsibility of the Health and Human Services Commission.

(59) [~~(57)~~] THSC (Texas Health and Safety Code)--Texas statutes relating to health and safety.

(60) [~~(58)~~] Trust fund account--An account at a financial institution in the program provider's control that contains personal funds.

(61) [~~(59)~~] Unclaimed personal funds--Personal funds managed by the program provider that have not been transferred to the individual or LAR within 30 days after the individual's discharge.

(62) [~~(60)~~] Unidentified personal funds--Personal funds managed by the program provider for which the program provider cannot identify ownership.

(63) [~~(61)~~] USC (United States Code)--A compilation of statutes enacted by the United States Congress.

(64) [~~(62)~~] Vendor hold--Temporary suspension of ICF/MR payments from DADS [~~the department~~] to a program provider.

(65) [~~(63)~~] Working day--A day when an MRA's administrative offices are open.

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

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602830
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 438-3734

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DIVISION 4. PROVIDER SERVICE REQUIREMENTS

40 TAC §9.222

Statutory Authority

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Government Code, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendment affects Texas Government Code, §531.0055, §531.021, §531.1521, and §531.166, and Texas Human Resources Code, §161.021.

§9.222. Permanency Planning and LAR Participation for Individuals Under 22 Years of Age [~~Children~~].

(a) As required by Texas Government Code, §531.153, a program provider must incorporate permanency planning as an integral part of the IPP for each individual under 22 years of age residing in the facility. In order to accomplish the permanency planning goal in accordance with §9.244(f) of this subchapter (relating to Applicant Enrollment in the ICF/MR Program), the [~~The~~] program provider must [~~will~~] identify in the IPP, as appropriate to the individual's needs:

(1) for [~~the natural supports and strengths of the family of~~] an individual under 18 years of age, the [~~that, when supplemented by~~] activities, [~~and~~] supports, and services that, when provided or facilitated by the program provider or MRA, will enable the individual to live with a family [~~return to the family home~~]; or

[~~(2) a family-based alternative that will secure for an individual under 18 years of age a consistent, nurturing environment that supports a continued relationship with the individual's family to the extent possible and, if necessary, provide an enduring, positive relationship with a specific adult who will be an advocate for the individual; or~~]

(2) [~~(3)~~] for [~~the natural supports and strengths of~~] an individual age 18 to 22 years of age, the [~~that, when supplemented by~~] activities, [~~and~~] supports, and services that, when provided or facilitated by the program provider or MRA, will result in the individual having a consistent and nurturing environment in the least restrictive setting, as defined by the individual and LAR.

(b) A [~~The~~] program provider must take the following actions to assist an MRA in conducting [~~facilitate~~] permanency planning for an individual under 22 years of age:

(1) cooperate with the MRA responsible for conducting permanency planning by:

(A) allowing access to an individual's records or providing other information in a timely manner as requested by the MRA or the Health and Human Services Commission;

(B) participating in meetings to review the individual's permanency plan; and

(C) identifying, in coordination with the individual's MRA, activities, supports, and services that can be provided by the family, LAR, program provider, or the MRA to prepare the individual for an alternative living arrangement;

[~~(1) discuss with the individual or LAR the problems or issues that led to the individual's admission to the program provider's facility;~~]

[~~(2) discuss with the family or LAR of an individual under 18 years of age the barriers to having the individual reside in the family home or discuss with an individual 18 to 22 years of age and LAR the barriers to moving to a consistent and nurturing environment as determined by the individual and LAR;~~]

[~~(3) identify natural supports and family strengths that will accomplish permanency planning outcomes;~~]

[~~(4) identify, in coordination with the individual's MRA, activities and supports that can be provided by the family, LAR, program provider, or the MRA to prepare the individual for an alternative living arrangement;~~]

(2) [~~(5)~~] encourage regular contact between the individual and [~~the individual's~~] LAR and, if desired by the individual and LAR, between the individual and [~~life-long~~] advocates and friends in the community to continue supportive and nurturing relationships;

(3) [~~(6)~~] encourage participation in IDT meetings by the [~~individual's~~] LAR, and, if desired by the individual or LAR, by family members, [~~life-long~~] advocates, and friends in the community; [~~and~~]

(4) [~~(7)~~] provide the IPP summary to the individual's MRA; [~~.~~]

(5) keep a copy of the individual's current permanency plan in the individual's record; and

(6) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the individual to another facility or community setting.

(c) Within three days after [~~of~~] the admission of an individual under 22 years of age, a [~~the~~] program provider must notify the following entities of such admission and provide information in accordance with subsection (d) of this section:

(1) the MRA in whose local service area the facility is located (see www.dads.state.tx.us/contact/mra/index.cfm [~~http://www.mhmr.state.tx.us/CentralOffice/PublicInformationOffice/DirectoryOfServicesWHAT.ht ml~~] for a listing of MRAs by county or city);

(2) the CRCG [~~community resource coordination group (CRCG)~~] for the county in which the LAR [~~applicant's parent or guardian~~] lives (see www.hhsc.state.tx.us/crcg/crcg.htm for a listing of CRCG chairpersons by county); and

(3) the local school district for the area in which the facility is located, if the individual is at least three years of age, or the early childhood intervention (ECI) program for the county in which the facility is located, if the individual is less than three years of age (see www.dars.state.tx.us/ecis/index.shtml [~~www.eci.state.tx.us~~] or call 1-800-250-2246 for a listing of ECI programs by county). [~~;~~]

(d) (No change.)

(e) A program provider must:

(1) request from and encourage an LAR to provide the following information for an individual during the annual IPP meeting and, for an applicant, upon admission:

(A) the LAR's:

(i) name;

(ii) address;

(iii) telephone number;

(iv) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(v) place of employment and the employer's address and telephone number;

(B) the name, address, and telephone number of a relative of the individual or other person whom DADS or the program provider may contact in an emergency situation, a statement indicating the relationship between that person and the individual, and at the LAR's option:

(i) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(ii) the name, address, and telephone number of that person's employer; and

(C) a signed acknowledgement of responsibility stating that the LAR agrees to:

(i) notify the program provider of any changes to the contact information submitted; and

(ii) make reasonable efforts to participate in the individual's life and in planning activities for the individual; and

(2) inform the LAR that if the information described in paragraph (1) of this subsection is not provided or is not accurate and the program provider and DADS are unable to locate the LAR as described in subsections (j) and (k) of this section, DADS refers the case to the Department of Family and Protective Services.

(f) For an individual under 22 years of age, a program provider must:

(1) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the individual's care, including participating in:

(A) the initial development and annual review of the individual's IPP;

(B) decision-making regarding the individual's medical care;

(C) routine IDT meetings; and

(D) decision-making and other activities involving the individual's health and safety; and

(2) ensure that reasonable accommodations include:

(A) conducting a meeting in person or by telephone, as mutually agreed upon by the program provider and the LAR;

(B) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the program provider and the LAR;

(C) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(D) providing a language interpreter, if appropriate.

(g) For an individual under 22 years of age, a program provider must provide written notice to the LAR of a meeting to conduct an annual review of the individual's IPP no later than 21 days before the meeting date and request a response from the LAR.

(h) If an emergency situation occurs, a program provider must attempt to notify the LAR as soon as the emergency situation allows and request a response from the LAR.

(i) If an LAR does not respond to a notice of the individual's IPP review meeting, a request for the LAR's consent, or an emergency situation, the program provider must attempt to locate the LAR by contacting a person identified by the LAR in the contact information described in subsection (e) of this section.

(j) No later than 30 days after the date a program provider determines that it is unable to locate the LAR, the program provider must notify DADS of that determination and request that DADS initiate a search for the LAR.

(k) If, within one year of the date DADS receives the notification described in subsection (j) of this section, DADS is unable to locate the LAR, DADS refers the case to:

(1) the Child Protective Services Division of the Department of Family and Protective Services if the individual is under 18 years of age; or

(2) the Adult Protective Services Division of the Department of Family and Protective Services if the individual is 18-22 years of age.

(l) Before an individual who is under 18 years of age, or who is 18-22 years of age and for whom an LAR has been appointed, is transferred to another facility operated by the transferring program provider, the program provider must attempt to obtain consent for the transfer from the LAR unless the transfer is made because of a serious risk to the health and safety of the individual or another person.

[~~(e) The program provider must inform the individual and LAR that they may request a volunteer advocate to assist in permanency planning. The individual or LAR may:~~]

[~~(1) select a person who is not employed by or under contract with the program provider; or~~]

[~~(2) request the program provider to designate a volunteer advocate.~~]

[~~(f) If an individual or LAR requests that the program provider designate a volunteer advocate or the program provider cannot locate the individual's LAR, the program provider must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:~~]

[~~(1) an adult relative who is actively involved with the individual;~~]

[~~(2) a person who:~~]

[~~(A) is part of the individual's natural support network; and~~]

[~~(B) is not employed by or under contract with the program provider; or~~]

[~~(3) a person or a child advocacy organization representative who:~~]

[~~(A) is knowledgeable about community services and supports;~~]

[~~(B) is familiar with the permanency planning philosophy and processes; and~~]

[~~(C) is not employed by or under contract with program provider.~~]

[~~(g) If the program provider is unable to locate a volunteer advocate locally, the program provider must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subsection (f)(3) of this section. If the statewide advocacy organization is unable to assist the program provider in identifying a volunteer advocate, the program provider must document all efforts to designate a volunteer advocate in accordance with subsection (f) of this section.~~]

[~~(h) For an individual under 22 years of age, the individual's residence in a facility is temporary and must be approved every six months. If the individual's IDT determines that an individual's permanency planning outcomes have not been met, the program provider must:~~]

[~~(1) no later than five months after an individual under 22 years of age is admitted to the facility, submit a Permanency Planning Review to the department and obtain approval for continued residence from the department commissioner or designee; and~~]

[~~(2) every six months thereafter, submit a Permanency Planning Review to the department and obtain approval for continued residence from the commissioner of the Health and Human Services Commission or designee to extend an individual's residence in the facility.~~]

(m) [~~(i)~~] A [~~The~~] program provider must document compliance with the requirements of this section in the individual's record.

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

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602831
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 438-3734

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DIVISION 5. ELIGIBILITY, ENROLLMENT AND REVIEW

40 TAC §9.244, §9.250

Statutory Authority

The amendment and new section are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Government Code, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendment and new section affect Texas Government Code, §531.0055, §531.021, §531.1521, and §531.166, and Texas Human Resources Code, §161.021.

§9.244. Applicant Enrollment in the ICF/MR Program.

(a) Except as provided in subsection (b) of this section, only an MRA may request enrollment of an applicant by DADS [~~the department~~].

(b) A program provider may request enrollment of an applicant by DADS in accordance with subsection (k) of this section [~~the department~~] if the applicant:

(1) has received ICF/MR services from a non-state operated facility during the 180 days before [~~prior to~~] the enrollment request; and

(2) (No change.)

(c) An MRA must request an applicant's enrollment if:

(1) the program provider selected by the applicant or [~~the applicant's~~] LAR notifies the MRA in writing that admission to the program provider's facility has been offered to the applicant; and

(2) the applicant or LAR notifies the MRA that the applicant or LAR chooses to accept the admission offered by the program provider.

(d) If an MRA receives the notifications described in subsection (c) of this section, the MRA must comply with §5.159(c) [~~§415.159(c)~~] of this title (relating to Assessment of Individual's Need for Services and Supports) including providing an explanation to the applicant or LAR of the services and supports for which the applicant may be eligible. For an applicant under 22 years of age, an MRA must also comply with the following requirements:

(1) Except as provided in paragraphs (2) and (3) of this subsection, before placement of an applicant in a facility, the MRA must inform the LAR:

(A) of the benefits of living in a family or community setting;

(B) that the placement of the applicant is considered temporary; and

(C) that an ongoing permanency planning process is required.

(2) If an MRA is notified of a request for enrollment after the applicant is admitted to the facility, the MRA must provide the information described in paragraph (1) of this subsection to the LAR not later than the 14th working day after the date the MRA is notified of the request for the enrollment, unless this time period is extended by the LAR.

(3) An MRA does not have to comply with paragraph (1) or (2) of this subsection if the applicant has been committed to a facility under Chapter 46B, Code of Criminal Procedure, or Chapter 55, Family Code.

(e) To request an applicant's enrollment, an MRA must, within 15 working days after the MRA receives both notifications described in subsection (c) of this section:

(1) (No change.)

(2) obtain an ICAP score for the applicant by:

(A) (No change.)

(B) administering the ICAP if an ICAP score for the applicant does not exist, is not available, or is not endorsed by the MRA; and

(3) request or review an LOC determination and LON for the applicant by:

(A) (No change.)

(B) reviewing the existing MR/RC Assessment for the applicant if the applicant has a current LOC determination and:

(i) (No change.)

(ii) if the MRA endorses the existing MR/RC Assessment, notifying the selected program provider in writing that no changes to the current LOC or LON are recommended. [~~; and~~]

[~~(4) if the applicant is under 22 years of age, complete a Permanency Planning Review Screen and electronically submit the information from that screen to the department.~~]

(f) Upon notification of a request for enrollment of an applicant under 22 years of age, an MRA must take or ensure that the following actions are taken to conduct permanency planning:

(1) The MRA must convene a permanency planning meeting with the LAR and, if possible, the applicant before admission or, if notified of a request for enrollment after the applicant's admission, not later than the 14th working day after the date the MRA is notified of the request.

(2) Before the permanency planning meeting, the MRA staff must review the applicant's records and, if possible, meet the applicant.

(3) During the permanency planning meeting, the meeting participants must discuss and choose one of the following goals:

(A) for an applicant under 18 years of age:

(i) to live in the applicant's family home where the natural supports and strengths of the applicant's family are supplemented, as needed, by activities and supports provided or facilitated by the MRA or program provider; or

(ii) to live in a family-based alternative in which a family other than the applicant's family:

(I) has received specialized training in the provision of support and in-home care for an individual under 18 years of age with mental retardation;

(II) will provide a consistent and nurturing environment in a family home that supports a continued relationship with the applicant's family to the extent possible; and

(III) if necessary, will provide an enduring, positive relationship with a specific adult who will be an advocate for the applicant; or

(B) for an applicant 18-22 years of age, to live in a setting chosen by the applicant or LAR in which the applicant's natural supports and strengths are supplemented by activities and supports provided or facilitated by the MRA or program provider, and to achieve a consistent and nurturing environment in the least restrictive setting, as defined by the applicant and LAR.

(4) To accomplish the goal chosen in accordance with paragraph (3) of this subsection, the meeting participants must discuss and identify:

(A) the problems or issues that led the applicant or LAR to request admission to a facility;

(B) the applicant's daily support needs;

(C) for an applicant under 18 years of age:

(i) barriers to having the applicant reside in the family home;

(ii) supports that would be necessary for the applicant to remain in the family home; and

(iii) actions that must be taken to overcome the barriers and provide the necessary supports;

(D) for an applicant 18-22 years of age, the barriers to the applicant moving to a consistent and nurturing environment as defined by the applicant and LAR;

(E) the importance for the applicant to live in a long-term nurturing relationship with a family;

(F) alternatives to the applicant living in an institutional setting;

(G) the applicant's and LAR's need for information and preferences regarding those alternatives;

(H) how, after admission to the facility, to facilitate regular contact between the applicant and the applicant's family, and, if desired by the applicant and family, between the applicant and advocates and friends in the community to continue supportive and nurturing relationships;

(I) natural supports and family strengths that will assist in accomplishing the identified permanency planning goal;

(J) activities and supports that can be provided by the family, MRA, or program provider to achieve the permanency planning goal;

(K) assistance needed by the applicant's family:

(i) in maintaining a nurturing relationship with the applicant; and

(ii) preparing the family for the applicant's eventual return to the family home or move to a family-based alternative; and

(L) action steps, both immediate and long term, for achieving the permanency plan goal.

(5) The MRA must make reasonable accommodations to promote the participation of the LAR in a permanency planning meeting, including:

(A) conducting a meeting in person or by telephone, as mutually agreed upon by the MRA and LAR;

(B) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the MRA and LAR;

(C) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(D) providing a language interpreter, if appropriate.

(6) The MRA must develop a permanency plan using, as appropriate:

(A) the Permanency Planning Instrument for Children Under 18 Years of Age; or

(B) the Permanency Planning Instrument for Individuals 18-22 Years of Age.

(7) The MRA must:

(A) complete the Permanency Planning Review Screen in CARE before an applicant is admitted to a facility unless the MRA is not given prior notice of the admission;

(B) keep a copy of the Permanency Planning Review Approval Status View Screen from CARE in the applicant's record; and

(C) provide a copy of the permanency plan to the program provider, the applicant, and the LAR.

[~~(f) The MRA must incorporate permanency planning as an integral part of the initial plan for services and supports developed in accordance with §415.159(b) of this title (relating to Assessment of Individual's Need for Services and Supports) for the applicant under 22 years of age. The MRA will identify in the initial plan for services and supports, as appropriate to the individual's needs:~~]

[~~(1) the natural supports and strengths of the family of an individual under 18 years of age that, when supplemented by activities and supports provided or facilitated by the MRA, will enable the individual to return to the family home;~~]

[~~(2) a family-based alternative that will secure for an applicant under 18 years of age a consistent, nurturing environment that supports a continued relationship with the applicant's family to the extent possible and, if necessary, provide an enduring, positive relationship with a specific adult who will be an advocate for the individual; or~~]

[~~(3) the natural supports and strengths of an applicant from 18 to 22 years of age that, when supplemented by activities and supports provided or facilitated by the MRA, will result in the applicant having a consistent and nurturing environment, as defined by the applicant and LAR.~~]

[~~(g) The MRA must take the following actions to facilitate permanency planning:~~]

[~~(1) discuss with the applicant or LAR the problems or issues that led applicant or LAR to request enrollment in the ICF/MR Program;~~]

[~~(2) discuss with the family or LAR of an applicant under 18 years of age the barriers to having the applicant reside in the family home or discuss with an applicant 18 to 22 years of age and LAR the barriers to moving to a consistent and nurturing environment as determined by the applicant and LAR;~~]

[~~(3) in the case of an individual's imminent move from the family home, encourage regular contact between the individual and the individual's LAR, and, if desired by the individual and LAR, between the individual and life-long advocates and friends in the community to continue supportive and nurturing relationships;~~]

[~~(4) identify natural supports and family strengths that will accomplish permanency planning outcomes; and~~]

[~~(5) identify activities and supports that can be provided by the family, LAR, or MRA that will prepare the applicant for a family-based alternative, if the applicant and LAR choose that option.~~]

(g) [~~(h)~~] If an applicant is under 22 years of age, the MRA must inform the applicant and LAR that they may request a volunteer advocate to assist in permanency planning. The applicant or LAR may:

(1) select a person who is not employed by or under contract with the MRA or a program provider; or

(2) request the MRA to designate a volunteer advocate.

(h) [~~(i)~~] If an [~~the~~] applicant or LAR requests that the MRA designate a volunteer advocate or the MRA cannot locate the [~~applicant's~~] LAR, the MRA must attempt to designate a volunteer advocate to assist in permanency planning who is, in order of preference:

(1) an adult relative who is actively involved with the applicant;

(2) a person who:

(A) is part of the applicant's natural support network; and

(B) is not employed by or under contract with the MRA or a program provider; or

(3) a person or a child advocacy organization representative who:

(A) is knowledgeable about community services and supports;

(B) is familiar with the permanency planning philosophy and processes; and

(C) is not employed by or under contract with the MRA or a program provider.

(i) [~~(j)~~] If the MRA is unable to locate a volunteer advocate locally, the MRA must request assistance from a statewide advocacy organization in identifying an available volunteer advocate who meets the requirements described in subsection (h) [~~(g)(3)~~] of this section. If the statewide advocacy organization is unable to assist the MRA in identifying a volunteer advocate, the MRA must document all efforts to designate a volunteer advocate in accordance with subsection (h) [~~(g)~~] of this section.

(j) [~~(k)~~] If DADS [~~the department~~] notifies an MRA that it has authorized an applicant's LOC, the MRA must immediately notify the applicant or LAR of such authorization and provide the selected program provider with copies of all enrollment documentation and associated supporting documentation including relevant assessment results and recommendations and the applicant's ICAP booklet and, if available, the applicant's service plan.

(k) [~~(l)~~] To request an applicant's enrollment as permitted by subsection (b) of this section, a program provider must ensure that the applicant has a current LOC [~~determination and, if the applicant is under 22 years of age, complete and electronically submit a Permanency Planning Review to the department~~].

(1) If an applicant does not have a current LOC [~~determination~~], the program provider must complete and electronically submit an MR/RC Assessment to DADS [~~the department~~].

(2) If the program provider submits an MR/RC Assessment, DADS notifies [~~the department will notify~~] the program provider electronically if the LOC is authorized or sends [~~send~~] written notification to the program provider and the applicant or LAR if the LOC is denied.

(l) [~~(m)~~] An applicant's enrollment is complete if:

(1) DADS [~~the department~~] has authorized an LOC for the applicant;

(2) the Social Security Administration has determined that the applicant is eligible for SSI or the Health and Human Services Commission [~~TDHS~~] determines the applicant is financially eligible for Medicaid;

(3) the program provider has electronically submitted a completed Client Movement Form to DADS [~~the department~~]; and

(4) admission to the facility has been approved by the DADS [~~department~~] commissioner or designee for the applicant who is under 22 years of age, based on information submitted as described in subsection (f) [~~(e)(4)~~] of this section.

(m) [~~(n)~~] A program provider must maintain a paper copy of the completed MR/RC Assessment with all the necessary signatures and documentation supporting the recommended LOC and LON [~~and the Permanency Planning Review Screen in the applicant's record~~].

§9.250. Permanency Planning Reviews.

An MRA must, within six months after the initial permanency planning meeting and every six months thereafter until an individual either turns 22 years of age or leaves the facility to live in a family setting:

(1) provide written notice to the LAR of a meeting to conduct a review of the individual's permanency plan no later than 21 days before the meeting date and include a request for a response from the LAR;

(2) convene a meeting to review the individual's permanency plan in accordance with §9.244(f)(2) - (5) of this subchapter (relating to Applicant Enrollment in the ICF/MR Program), with an emphasis on changes or additional information gathered since the last permanency plan was developed;

(3) develop a permanency plan in accordance with §9.244(f)(6) of this subchapter;

(4) perform actions regarding a volunteer advocate as described in §9.244(g) - (i) of this subchapter;

(5) complete the Permanency Planning Review Screen in CARE within 10 days after the meeting;

(6) ensure that approval for the individual to continue to reside in the facility is obtained every six months from the DADS commissioner and the Health and Human Services Commission executive commissioner;

(7) keep a copy of the Permanency Planning Review Approval Status View Screen from CARE in the individual's record; and

(8) provide a copy of the permanency plan to the program provider, the individual, and the LAR.

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

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Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 17. PILOT PROGRAM FOR MONITORING CERTAIN UNLICENSED LONG-TERM CARE FACILITIES

40 TAC §§17.101, 17.103, 17.105

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new Chapter 17, consisting of §§17.101, 17.103, and 17.105, Pilot Program for Monitoring Certain Unlicensed Long-Term Care Facilities.

Background and Purpose

The purpose of the new chapter is to establish rules governing a pilot program to use local task forces to identify and monitor certain long-term care facilities. Section 2.20 of Senate Bill (SB) 6, 79th Legislature, Regular Session, 2005, required the executive commissioner of HHSC to adopt rules that develop and implement a pilot program to monitor certain unlicensed long-term care facilities. The pilot program uses local task forces composed of health care providers, representatives from governmental entities, and local government officials to (1) identify and report to DADS or local law enforcement agencies a long-term care facility that is not providing disclosures required by state law or that is operating without a license, and (2) assist a long-term care facility, whenever possible, to obtain the appropriate license or make the appropriate disclosure.

DADS asks local government officials to participate in the pilot program. Local officials who choose to participate in the pilot program create the local task force. DADS Regulatory Services administers the pilot program. DADS designates staff to work with each local task force.

DADS provides no funding to the local task force.

Section-by-Section Summary

Proposed new §17.101 defines "long-term care facility" as a nursing facility, an assisted living facility, or an intermediate care facility for persons with mental retardation as defined by Texas Health and Safety Code, §531.002.

Proposed new §17.103 defines a local task force, describes how DADS administers the pilot program, and states that DADS provides no funding to the local task force.

Proposed new §17.105 describes how local officials who choose to participate in the pilot program create the local task force, who makes up the local task force, and the roles and responsibilities of the local task force.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed new chapter is in effect, enforcing or administering the new chapter does not have foreseeable implications relating to costs or revenues of state or local governments.

Small Business and Micro-business Impact Analysis

DADS 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 new chapter, because the pilot program will identify and assist people and facilities who are currently unlicensed or otherwise in violation of applicable state or local law to obtain the appropriate licenses and comply with applicable regulatory requirements.

Public Benefit and Costs

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the new chapter is in effect, the public benefit expected as a result of enforcing the new chapter is the taking of proactive measures to ensure that a long-term care facility providing personal care, health-related services, or other care to elderly or disabled persons complies with required state licensing rules for operating a long term-care facility.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the new chapter. The new chapter will not affect a local economy.

Takings Impact Assessment

DADS 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 Jennifer Clay at (512) 438-3529 in DADS' Regulatory Services section. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-018, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new chapter is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new chapter implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§17.101. Purpose.

This chapter establishes a pilot program to use local task forces to identify and monitor certain long-term care facilities. In this chapter "long-term care facility" means:

(1) a nursing facility as defined in Texas Health and Safety Code, Chapter 242;

(2) an assisted living facility as defined in Texas Health and Safety Code, §247.002; or

(3) an intermediate care facility for persons with mental retardation as defined by Texas Health and Safety Code, §531.002.

§17.103. Department of Aging and Disability Services Responsibilities.

(a) The Department of Aging and Disability Services (DADS) administers the pilot program through an existing program that works with local officials to create task forces. The pilot program ends on September 1, 2007, unless extended by law. When the pilot program ends, DADS may choose to continue a local task force.

(b) DADS Regulatory Services administers the pilot program. All coordination with DADS is through the state office or regional DADS Regulatory Services staff. DADS designates staff to work with each local task force. DADS asks local government officials to participate in the pilot program.

(c) DADS provides no funding to the local task force.

§17.105. Local Officials and Task Force Responsibilities.

(a) Local officials who choose to participate in the pilot program create a local task force. To the extent possible, local officials include health care providers, representatives from governmental entities, and local government officials. The local task force designates contact persons to work with Department of Aging and Disability (DADS) Regulatory Services.

(b) The local task force coordinates efforts and resources to:

(1) identify and report to DADS or local law enforcement agencies:

(A) a long-term facility operating without a license; or

(B) a long-term care facility that is not providing disclosures required by state law; and

(2) assist a long-term care facility, whenever possible, to obtain the appropriate license or make the appropriate disclosure.

(c) The local task force cooperates with DADS to provide any information necessary for reports required by the Texas Health and Human Services Commission.

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

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Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

SUBCHAPTER I. RESIDENT ASSESSMENT

40 TAC §19.802, §19.805

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §19.802, concerning comprehensive care plans, and §19.805, concerning permanency planning for a resident under 22 years of age, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification.

Background and Purpose

The purpose of the amendments is to implement Senate Bill (SB) 40 and House Bill (HB) 2579, 79th Legislature, Regular Session, 2005, which amended the Texas Government Code, Chapter 531, Subchapter D-1, governing permanency planning for children under 22 years of age. For a child under 22 years of age for whom admission to an institution is sought or who is receiving services in an institution, SB 40 requires DADS to determine the entity that will develop the permanency plan for a child and requires a nursing facility (facility) to cooperate with the entity responsible for developing the permanency plan. The facility must provide access to the child's records, participate in meetings to review permanency plans, and refrain from providing the child's legally authorized representative (LAR) with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting. HB 2579 requires that DADS ensure that a child's LAR is fully informed of all available community-based services for which the child may be eligible, the benefits to the child of living in a family or community setting, that the placement is considered temporary, and that an ongoing permanency planning process is required. HB 2579 requires a rule that a facility annually request a written reauthorization of the plan of care from the LAR. The facility is required to cooperate in permanency planning, make reasonable accommodations, and attempt to notify the LAR about the annual care plan meeting and in an emergency situation. HB 2579 also requires DADS to require an LAR to provide detailed contact information and agree to make reasonable efforts to participate in the child's life and planning activities.

The amendments are also proposed to update and clarify permanency planning requirements, update agency names, and correct rule cross-references.

Section-by-Section Summary

The amendment to §19.802(b) requires the facility and LAR to annually review the comprehensive care plan for a resident under 22 years of age, including a review of the LAR's contact information and the resident's comprehensive assessment, educational status, and permanency plan. The amendment to §19.802(c) provides clarification about what must be included in a comprehensive care plan for a resident under 22 years of age. The amendment to §19.802(e) requires the facility to provide written notice to the LAR no later than 21 days before the annual review meeting date of the resident's comprehensive care plan and request a response from the LAR.

The amendment to §19.805(a) adds or updates definitions for the following terms and acronyms: CRCG, emergency situation, LAR, and permanency planner. The definitions reflect the new permanency planning procedures for a child who resides in a facility. The amendment to §19.805(b)(5)(A) - (C) requires a facility to cooperate with the permanency planner by allowing access to the child's records, participating in the permanency planning meetings, and identifying supports and activities to prepare a child for an alternate living arrangement, to encourage participation in plan meetings by the LAR and the child, and to encourage contact between the LAR and child. The amendment to §19.805(b)(5)(D) and (E) requires a facility to make reasonable accommodations to promote the LAR's participation in the planning and decision-making regarding the child's care. The amendment to §19.805(b)(5)(F) requires a facility to request from and encourage the LAR to provide detailed contact information that includes the contact information for a relative or other person that the facility may contact in an emergency situation, as required by HB 2579. The facility must request the LAR sign an acknowledgement agreeing to notify the facility of any changes to the contact information and to make reasonable efforts to participate in the child's life. The amendment to §19.805(b)(5)(G) requires a facility to refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting. The amendment to §19.805(b)(5)(H) and (I) requires a facility to attempt to notify the LAR in an emergency situation and to attempt to locate an LAR who does not respond to a notice of an annual care meeting, request for consent, or emergency situation. The amendment to §19.805(b)(5)(J) requires a facility to request that DADS initiate a search for the LAR if the facility is unable to locate the LAR. The amendment to §19.805(b)(5)(K) requires a facility to attempt to obtain consent from the LAR to transfer a child to another facility. The amendment to §19.805(b)(5)(L) requires a facility to document compliance with the requirements of permanency planning in the child's record. The amendment to §19.805(c) states that DADS will refer the child's case to the Department of Family and Protective Services if DADS cannot locate the LAR within a year of the facility's request.

Fiscal Note

Gordon Taylor, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments are in effect, enforcing or administering the amendments does not have foreseeable implications relating to costs or revenues of state or local governments. The potential cost related to HB 2579 due to DADS personnel conducting permanency planning for residents under 22 years of age would not be significant and could be absorbed within existing resources.

Small Business and Micro-business Impact Analysis

DADS 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 amendments, because the proposal places no new requirements on businesses that would have a significant cost to businesses.

Public Benefit and Costs

Veronda Durden, DADS Assistant Commissioner for Regulatory Services, 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 having DADS personnel conduct the permanency planning process helps ensure that no conflict of interest exists in developing the child's permanency plan. The amendments will ensure that the facility cooperates with DADS personnel and encourage the LAR to be involved and participate in the life of the child residing in the facility.

Ms. Durden anticipates that there will not be an economic cost to persons who are required to comply with the amendments. The amendments will not affect a local economy.

Takings Impact Assessment

DADS 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 Christy Dees at (512) 438-3162 in the Policy Development and Oversight Unit of DADS' Center for Policy and Innovation. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-012, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Statutory Authority

The amendments are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities; and Texas Government Code, Chapter 531, Subchapter D-1, which provides that the HHSC executive commissioner shall adopt rules for implementation of a process by which DADS informs legally authorized representatives of all community-based services before persons are admitted to an institution and rules regarding the transfer of persons from an institution in an emergency situation.

The amendments implement Texas Government Code, §§531.0055, 531.1521, and 531.166, Texas Human Resources Code, §161.021, and Texas Health and Safety Code, §242.0373.

§19.802. Comprehensive Care Plans.

(a) A [~~The~~] facility must develop a comprehensive care plan for each resident that includes measurable short-term and long-term objectives and timetables to meet a resident's medical, nursing, [~~and~~] mental, and psychosocial needs that are identified in the comprehensive assessment. If a child is [~~children are~~] admitted to the facility, the comprehensive care plan must be based on the [~~each~~] child's individual needs. The comprehensive care plan must describe the following:

(1) (No change.)

(2) any services that would otherwise be required under §19.901 of this title but are not provided due to the resident's exercise of rights, including the right to refuse treatment under §19.402(g) of this title (relating to Exercise of Rights).

(b) The comprehensive care plan must be:

(1) (No change.)

(2) prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, with the participation of the resident, the resident's family or legal representative; [~~and~~]

(3) periodically reviewed and revised by a team of qualified persons after each assessment; and [~~.~~]

(4) for a resident under 22 years of age, annually reviewed at a comprehensive care plan meeting between the facility and the resident's LAR as defined in §19.805(a)(5) of this title (relating to Permanency Planning for a Resident Under 22 Years of Age), which includes a review of:

(A) the LAR's contact information as required by §19.805(b)(5)(F) of this title;

(B) the resident's comprehensive assessment;

(C) the resident's educational status; and

(D) the resident's permanency plan.

(c) A comprehensive care plan must include:

(1) for a resident under 18 years of age, the activities, supports, and services that, when provided or facilitated by the facility, will enable the resident to live with a family; or

(2) for a resident 18-22 years of age, the activities, supports, and services that, when provided or facilitated by the facility, will result in the resident having a consistent and nurturing environment in the least restrictive setting, as defined by the resident and LAR as defined in §19.805(a)(5) of this title.

(d) [~~(c)~~] A comprehensive care plan may include a palliative plan of care. This plan may be developed only at the request of the resident, surrogate decision maker or legal representative for residents with terminal conditions, end stage diseases or other conditions for which curative medical interventions are not appropriate. The plan of care must have goals that focus on maintaining a safe, comfortable and supportive environment in providing care to a resident at the end of life.

(e) For a resident under 22 years of age, the facility must provide written notice to the LAR, as defined in §19.805(a)(5) of this title, of a meeting to conduct an annual review of the resident's comprehensive care plan no later than 21 days before the meeting date and request a response from the LAR.

(f) [~~(d)~~] The services provided or arranged by the facility must:

(1) meet professional standards of quality; and

(2) be provided by qualified persons in accordance with each resident's written plan of care.

(g) [~~(e)~~] The comprehensive care plan must be made available to all direct care staff.

§19.805. Permanency Planning for a Resident Under 22 Years of Age [~~Pediatric Residents~~].

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

(1) (No change.)

(2) Child--A person with a developmental disability who is under [~~younger than~~] 22 years of age.

(3) CRCG (Community resource coordination group)--A local interagency group composed of public and private agencies that develops service plans for individuals whose needs can be met only through interagency coordination and cooperation. The group's role and responsibilities are described in the Memorandum of Understanding on Coordinated Services to Persons Needing Services from More Than One Agency, available on the Health and Human Services Commission website at www.hhsc.state.tx.us/crcg/crcg.htm.

(4) Emergency situation--An unexpected situation involving a child's health, safety, or welfare, of which a person of ordinary prudence would determine that the LAR should be informed, such as:

(A) a child needing emergency medical care;

(B) a child being removed from his residence by law enforcement;

(C) a child leaving his residence without notifying staff and not being located; and

(D) a child being moved from his residence to protect the child (for example, because of a hurricane, fire, or flood).

(5) LAR (legally authorized representative)--A person authorized by law to act on behalf of a resident with regard to a matter described in this subchapter, which may include a parent, guardian, managing conservator of a minor individual, a guardian of an adult individual, or legal representative of a deceased individual.

(6) Permanency planner--A person assigned by DADS to conduct permanency planning activities for a child who resides in a facility.

[~~(3) Community resource coordination group (CRCG)--A coordination group established under the memorandum of understanding adopted under the Family Code, §264.003.~~]

(b) Facility responsibilities regarding permanency planning.

(1) A facility must request a Preadmission Screening and Resident Review (PASARR) [~~must be requested~~] on every child who is a potential admission to a [~~nursing~~] facility, as well as on all children currently residing in a [~~nursing~~] facility who have not had a previous PASARR completed. Documentation regarding the request for or completion of a PASARR must be kept in the chart.

(2) A facility must notify the following entities of the child's admission not later than the third day after a child is initially placed in a facility:

(A) the DADS [~~DHS~~] pediatric nurse specialist via fax. Information must include the child's full name, date of birth, date of admission, social security number, Medicaid number (if available), the facility name and address, and the name, address, and telephone number of the child's LAR [~~parent or guardian~~];

(B) the CRCG in the county where the LAR [~~parent or guardian~~] resides (see www.hhsc.state.tx.us/crcg/crcg.htm for a listing of CRCG chairpersons by county); and

(C) the local office of the Early Childhood Intervention (ECI) Program, if a child is less than three years of age (see www.dars.state.tx.us/ecis/index.shtml or call 1-800-250-2246 for a listing of ECI programs by county), or the local school district, if a child is at least three years of age [~~for children from birth to age three~~], with which the facility must coordinate educational opportunities (See §19.1934 of this title (relating to Educational Requirements for Persons under Age 22)). [~~; and~~]

[~~(D) the local school district for children from ages three to younger than 22 years of age, with which the facility must coordinate educational opportunities. See §19.1934 of this title (relating to Educational Requirements for Persons Under 22).~~]

(3) A [~~The~~] facility must notify the DADS [~~DHS~~] pediatric nurse specialist within 14 days if there is a significant change of condition in a child residing in the facility.

(4) A [~~The~~] facility must keep documentation regarding [~~all~~] the [~~above~~] notifications required in paragraphs (2) and (3) of this subsection and a copy of the [~~most~~] current permanency plan [~~documentation~~] in a separate section in the front of each child's records.

(5) A [~~Each~~] facility [~~in which a child resides~~] must:

(A) cooperate with the permanency planner by:

(i) allowing access to a child's records or providing other information in a timely manner as requested by the permanency planner or the Health and Human Services Commission;

(ii) participating in meetings to review the child's permanency plan; and

(iii) identifying, in coordination with the permanency planner, activities, supports, and services that can be provided by the family, LAR, facility, or the permanency planner to prepare the child for an alternative living arrangement;

(B) encourage regular contact between the child and LAR and, if desired by the child and LAR, between the child and advocates and friends in the community to continue supportive and nurturing relationships;

(C) encourage participation in the comprehensive care plan meetings by the LAR, and, if desired by the child or LAR, by family members, advocates, and friends in the community;

(D) make reasonable accommodations to promote the participation of the LAR in all planning and decision-making regarding the child's care, including participating in:

(i) the initial development and annual review of the child's comprehensive care plan;

(ii) decision-making regarding the child's medical care;

(iii) routine interdisciplinary team meetings; and

(iv) decision-making and other activities involving the child's health and safety;

(E) ensure that reasonable accommodations include:

(i) conducting a meeting in person or by telephone, as mutually agreed upon by the facility and the LAR;

(ii) conducting a meeting at a time and, if the meeting is in person, at a location that is mutually agreed upon by the facility and the LAR;

(iii) if the LAR has a disability, providing reasonable accommodations in accordance with the Americans with Disabilities Act, including providing an accessible meeting location or a sign language interpreter, if appropriate; and

(iv) providing a language interpreter, if appropriate;

(F) upon admission and annually thereafter:

(i) request from and encourage an LAR to provide the following information for a child during the annual comprehensive care plan meeting and, for an applicant, upon admission:

(I) the LAR's:

(-a-) name;

(-b-) address;

(-c-) telephone number;

(-d-) driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(-e-) place of employment and the employer's address and telephone number;

(II) the name, address, and telephone number of a relative of the child or other person whom DADS or the facility may contact in an emergency situation, a statement indicating the relation between that person and the child, and at the LAR's option:

(-a-) that person's driver license number and state of issuance or personal identification card number issued by the Department of Public Safety; and

(-b-) the name, address, and telephone number of that person's employer; and

(III) a signed acknowledgement of responsibility stating that the LAR agrees to:

(-a-) notify the facility of any changes to the contact information submitted; and

(-b-) make reasonable efforts to participate in the child's life and in planning activities for the child; and

(ii) inform the LAR that if the information described in clause (i) of this subparagraph is not provided or is not accurate and the facility and DADS are unable to locate the LAR as described in subparagraph (J) of this paragraph, DADS refers the case to the Department of Family and Protective Services, in accordance with subsection (c) of this section;

(G) refrain from providing the LAR with inaccurate or misleading information regarding the risks of moving the child to another facility or community setting;

(H) if an emergency situation occurs, attempt to notify the LAR as soon as the emergency situation allows and request a response from the LAR;

(I) if an LAR does not respond to a notice of the child's annual comprehensive care plan meeting, a request for the LAR's consent, or an emergency situation, attempt to locate the LAR by contacting a person identified by the LAR in the contact information described in subparagraph (F) if this paragraph;

(J) no later than 30 days after the date the facility determines that it is unable to locate the LAR, notify DADS of that determination and request that DADS initiate a search for the LAR;

(K) before a child who is under 18 years of age, or who is 18-22 years of age and for whom an LAR has been appointed, is transferred to another facility operated by the transferring facility, attempt to obtain consent for the transfer from the LAR, unless the transfer is made because of a serious risk to the health and safety of the child or another person; and

(L) document compliance with the requirements of this paragraph in the child's records.

~~[(A) allow appropriate health and human services agencies and the individuals designated by DHS access to the child's records; and]~~

~~[(B) add the permanency planning goal to the care plan.]~~

(6) (No change.)

(7) Paragraphs (3) - (6) of this subsection do not apply to short-stay care of less than 14 days; however, the facility must notify the DADS [~~DHS~~] pediatric nurse specialist, the CRCG, and ECI or the local school district as required in paragraph (2)(A) - (C) [~~(2)(A) - (D)~~] of this subsection.

(c) If, within one year of the date DADS receives the notification described in subsection (b)(5)(J) of this section, DADS is unable to locate the LAR, DADS refers the case to:

(1) the Child Protective Services Division of the Department of Family and Protective Services if the child is under 18 years of age; or

(2) the Adult Protective Services Division of the Department of Family and Protective Services if the child is 18-22 years of age.

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

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602825
Marianne Reat
Interim General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: July 2, 2006
For further information, please call: (512) 438-3734

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS--STANDARDS

1 TAC §251.6

The Commission on State Emergency Communications (CSEC) adopts an amendment to §251.6, concerning guidelines for regional planning commissions to use when developing regional strategic plans, with changes to the proposed text as published in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3136). The non-substantive change is to delete the phrase "for state appropriations years 2004-2005" from renumbered subsection (c).

Section 251.6 establishes a framework to be used in developing regional strategic plans for provisioning 9-1-1 service. The rule also provides instructions on the allocation of revenue and parameters on funding for ancillary equipment such as voice recorders and pagers, and emergency power equipment, including generators. The language to be deleted from the published rule is outdated as it covers appropriation years 2004-2005.

No comments were received regarding adoption of amendment to §251.6.

The amendment is adopted pursuant to the Texas Health and Safety Code, Chapter 771, §§771.051, 771.071, 771.0711, 771.072, and 771.075; and Texas Administrative Code, Title 1, Part 12, Chapter 251, Regional Plan Standards, which provide the Commission on State Emergency Communications with the authority to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service.

§251.6. Guidelines for Strategic Plans, Amendments, and Revenue Allocation.

(a) Purpose. The Commission on State Emergency Communications (Commission) establishes this rule to provide guidelines for a regional planning commission (RPC) to follow in developing or amending its regional plan and in describing how money allocated by the Commission is to be allocated in the region.

(b) Definitions. Unless the context clearly indicates otherwise, terms contained in this rule are defined as shown in Commission Rule 251.14, General Provisions and Definitions.

(c) Regional Plan Budgets. Regional plans shall be consistent with the Administration, Equipment, and Program Budgets approved by the Commission. The Program Budget includes the following four major strategic plan levels (in order of priority):

(1) Level I: The equipment, network, and database equipment and/or services that provide the essential elements of 9-1-1 service, including the maintenance and replacement of equipment.

(A) Network;

(B) Wireless;

(C) Database;

(D) Equipment Lease;

(E) Language Line; and

(F) Equipment Maintenance.

(2) Level II: The activities, equipment, and/or services that directly support and enhance 9-1-1 call delivery and data maintenance for the level of service provided to the region.

(A) Database Maintenance;

(B) MIS;

(C) Mapped ALI;

(D) PSAP Room Prep;

(E) PSAP Training; and

(F) Public Education.

(3) Level III: The activities, equipment, and/or services that provide auxiliary enhancements to the delivery of 9-1-1 calls and the level of service provided to the region.

(A) Network Diversity;

(B) PSAP Supplies; and

(C) Ancillary Maintenance & Repair.

(4) Level IV: Use of Revenue in Certain Counties. The activities, equipment, and/or services that provide necessary auxiliary enhancements to the 9-1-1 system of a county eligible under Health and Safety Code section 771.0751 because it has a population over 700,000 or is the county that has the highest population within an RPC participating in the Commission program .

(d) Regional Plans. Regional plans developed in compliance with Chapter 771 and Commission Rule 251.1 shall include projected financial operating information for at least the two state fiscal years following submission of the plan; and strategic planning information for at least the five state fiscal years following submission of the plan.

(1) The Commission shall establish the format of regional plans for the sake of identifying overall statewide requirements in its implementation.

(2) Regional plans shall be consistent with the four major implementation priority levels identified above and with all applicable Commission policies and rules.

(3) An RPC shall submit financial reports at least quarterly on a schedule to be established by the Commission. The financial report shall identify actual implementation costs by county, regional plan priority level and component.

(4) An RPC shall submit performance reports at least quarterly on a schedule to be established by the Commission. The performance report shall reflect the progress of implementing the RPC's regional plan, including the status of equipment, services and program deliverables, in a format to be determined by the Commission.

(e) Amendments to Regional Plans.

(1) An RPC may make changes to its approved regional plan to accommodate unanticipated requirements and/or to prevent disruption of its implementation schedule, contingent upon compliance with all Commission policies and procedures.

(2) Requests for amendments to the regional plan shall be submitted in writing to the Commission. The documentation required for changes will be submitted according to Commission policy. The Commission shall take action, no fewer than four times annually, on any regional plan amendment request submitted for approval.

(3) Emergency situations requiring amendments to regional plans that require additional funding may be presented to the Commission for review and consideration contingent upon the availability of such funds within the Program Budget level priorities in subsection (c) of this section.

(f) Allocation of Revenue.

(1) Service Fee allocation--Consistent with Health and Safety Code sections 771.056(d) and 771.078, the Commission shall allocate, by contract, service fee revenue to an RPC contingent on the availability of appropriated funds.

(2) Equalization Surcharge Funds

(A) Within the context of Health and Safety Code section 771.056(d), the Commission shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(B) Consistent with this rule, the Commission shall allocate, by agreement, equalization surcharge funds and service fees to RPCs based upon the Commission's statewide strategic plan and contingent upon the availability of appropriated funds over a two-year period.

(C) The Commission may allocate equalization surcharge to an emergency communication district (District) based on District requests and availability of appropriated funds.

(D) Equalization surcharge funds shall be allocated first to recipients requiring such funds for administrative budgetary purposes, followed by the Program Budget level priorities in subsection (c) of this section.

(E) If sufficient equalization surcharge funds are not available to fund all RPC regional plan and District requests, funds shall be allocated to provide a consistent level of 9-1-1 service throughout the State of Texas in accordance with the Program Budget level priorities in subsection (c) of this section. Allocation methods may include, but are not limited to, the following:

(i) In reverse order of priority, reducing the number of priority level components supported with equalization surcharge funds; and/or

(ii) In order of priority, proportionally allocating available funds among requesting agencies.

(F) The Commission may elect to hold a balance of equalization surcharge funds in reserve for emergencies and other contingencies.

(g) Funding Parameters for Ancillary Equipment. Ancillary Equipment includes the following when the equipment supports 9-1-1 call delivery: surge protection devices, emergency power equipment, voice recorders, and paging systems. An RPC shall refer to the strategic planning guidelines for instructions as to the appropriate budget line item to which the costs for purchase and maintenance of these items should be assigned.

(1) Paging Systems. Funding for the paging systems may be approved when such systems are the most effective means of 9-1-1 call delivery. Funding for pagers (receivers) will be limited to necessary core responders. The Commission will fund the actual cost of the pagers not to exceed $450 per pager.

(2) Voice Recording Equipment. Voice loggers may be approved when the primary use of the equipment is in support of the 9-1-1 call-taking and call-delivery function. Extra capacity on such systems may be used for other public safety functions (such as dispatch).

(A) The Commission will normally fund voice recording capability in a PSAP to record the conversation on 9-1-1 lines and administrative or 10-digit emergency lines in order to also accommodate wireless, telematics, and Voice over IP 9-1-1 emergency calls.

(B) The Commission will normally fund recording capability to record the transfer of an emergency call from the PSAP first answering the call to the agency that is responsible for providing the required emergency services.

(C) The funding of recording devices to transfer information from another recorder will be approved only upon specific justification of need.

(D) The following guidelines will apply to determine the amount to be funded by the Commission:

(i) For a 2 position PSAP, the Commission will fund the actual cost of the recording system not to exceed $15,000; or

(ii) For PSAPs with 3 positions or more, the Commission will fund the actual cost of the recording system not to exceed $25,000.

(E) The Commission will consider funding of recording capabilities greater than those suggested by the guidelines when sufficient justification is provided as part of a regional plan.

(3) Emergency Power Equipment. Each PSAP location should be evaluated by the RPC to determine if the emergency power system needs to be updated to insure the ability to answer 9-1-1 calls in the event that commercial power is interrupted. Emergency power equipment should be evaluated and tested on a regular schedule. Other considerations include:

(A) An uninterrupted power source (UPS) should be considered as basic emergency power equipment. A UPS should provide continuous power to keep essential 9-1-1 system components functioning for a short period of time until generator or other emergency power equipment become operable, if necessary. A UPS primarily functions continuously to maintain a clean source of commercial power.

(B) Generators should be considered as auxiliary emergency power equipment and should directly support an existing (or planned) 9-1-1 system. A generator should provide continuous power to keep 9-1-1 equipment specific to the PSAP functioning.

(C) The following guidelines will apply to determine the amount of generator costs to be funded by the Commission:

(i) For a 2 position PSAP, the Commission will fund the actual cost of the generator not to exceed $25,000.

(ii) For PSAPs with 3 positions or more, the Commission will fund the actual cost of the generator not to exceed $40,000.

(4) Funding may be approved by the Commission for surge protection devices when they are used for protection of 9-1-1 specific electronic equipment. A complete evaluation of grounding at 9-1-1 PSAPs may be funded by the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602848
Paul Mallett
Executive Director
Commission on State Emergency Communications
Effective date: June 11, 2006
Proposal publication date: April 14, 2006
For further information, please call: (512) 305-6933

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

The Texas Residential Construction Commission (commission) adopts amendments to 10 TAC §§305.1, 305.2, 305.4, 305.5, 305.21 - 305.23, 305.26, 305.28, 305.30 - 305.32, and 305.40 of Chapter 305, regarding the procedures for hearings and disciplinary actions with no changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2344). The commission also adopts the amendments to §305.41 with no changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2960).

The amendments eliminate superfluous language and redundancies and restate procedures to more clearly describe the commission practices.

The commission received no comments on the amendments.

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §§305.1, 305.2, 305.4, 305.5

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

Cross Reference to Statutes: Title 16, Property Code §§408.001, 416.008, 430.008, Chapters 418 and 419 and Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602833
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 8, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

10 TAC §§305.21 - 305.23, 305.26, 305.28

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

Cross Reference to Statutes: Title 16, Property Code §§408.001, 416.008, 430.008, Chapters 418 and 419 and Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602834
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 8, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER C. PROCEEDINGS AT SOAH

10 TAC §§305.30 - 305.32

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Ad-

ministrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

Cross Reference to Statutes: Title 16, Property Code §§408.001, 416.008, 430.008, Chapters 418 and 419 and Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200602835
Susan K. Durso
General Counsel
Texas Residential Construction Commission
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Proposal publication date: March 24, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER D. POST-SETTLEMENT AND POST-HEARING MATTERS

10 TAC §305.40

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

Cross Reference to Statutes: Title 16, Property Code §§408.001, 416.008, 430.008, Chapters 418 and 419 and Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200602836
Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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10 TAC §305.41

The amendments are adopted pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act and the Administrative Procedures Act, Texas Government Code Chapter 2001; Property Code §416.008, regarding denial of a certificate of registration; Property Code §430.008, regarding registration of third-party warranty companies; Property Code Chapter 418, regarding the commission's authority to undertake disciplinary actions; and Chapter 419, regarding the commission's authority to impose administrative penalties.

Cross Reference to Statutes: Title 16, Property Code §§408.001, 416.008, 430.008, Chapters 418 and 419 and Texas Government Code Chapter 2001.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602837
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: June 8, 2006
Proposal publication date: April 7, 2006
For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

The Railroad Commission of Texas adopts amendments to §§13.2 - 13.4, 13.25, 13.35, 13.36, 13.38, 13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.92 - 13.94, 13.102, 13.141, and 13.183, relating to Retroactivity; Definitions; CNG Report Forms; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; Removal from CNG Service; Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualifications as Self-Insured; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Other Fees for Employee Transfer; Franchise Tax Certification and Assumed Name Certificate; System Component Qualification; General; Location of Installations; Installation of Electrical Equipment; System Testing; and System Component Qualifications. The Commission also adopts the repeal of §13.80, relating to CNG Continuing Education Requirements, and new §13.80, relating to Requests for CNG Classes, without changes to the versions published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1847).

The Commission adopts the amendments in part as a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005). HB 1162 amended Texas Natural Resources Code, §116.034 to provide that the Commission may adopt rules establishing train-

ing and seminar attendance requirements for persons required or who wish to be licensed or registered to perform compressed natural gas (CNG) activities, but is not required to do so. Additional amendments to these rules are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The specific rule affected by HB 1162 is §13.80, relating to CNG Continuing Education Requirements, which the Commission has repealed and replaced with new §13.80, Requests for CNG Classes. Previously, §13.80 provided for continuing education requirements for persons holding a CNG license and their representatives. In general, licensees and their representatives were to attend a continuing education class once every four years. Due to budget and staff limitations, the Commission has no CNG continuing education classes, and because as of January 2006 there are only 33 CNG licensees and about 85 CNG individual certificate holders, the Commission finds that its training and continuing education resources are more efficiently and effectively employed elsewhere.

The Commission offers training courses on CNG activities under the Commission's jurisdiction through the Alternative Fuels Research and Education Division (AFRED). Under the wording in new §13.80, requests for Commission staff to conduct a CNG class should be submitted to AFRED, which may schedule and conduct the class at its discretion. The non-refundable fee is $250 for a class where no overnight expenses are incurred by AFRED staff, or $500 if overnight expenses are incurred. AFRED may waive the fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

The Commission adopts amendments to §13.70, relating to Examination Requirements and Renewals, to make the rule and procedures consistent with the same procedures for the Commission's liquefied petroleum gas (LP-gas) certification requirements. In addition, some of the amendments clarify that AFRED is the Commission division that offers the examinations, as shown in subsection (a)(4). In amendments to subsection (a)(5), AFRED will notify individuals of their examination results within 15 days, rather than 30 days of the date of the examination. The only change in the Table in §13.70 is the correction of the annual renewal fee amount, which is $25; the fee was changed in a previous rulemaking and the change make the table match the wording in subsection (d)(2). Other amendments in §13.70 correct references to AFRED and to the License and Permit Section of the Gas Services Division.

The Commission adopts other amendments that are non-substantive and result in no changes to current requirements or procedures. In §13.2, the Commission deletes a reference to the former LP-Gas Section. In §13.3, relating to Definitions, the Commission adopts a new definition for "AFRED." The Commission deletes definitions for "auxiliary engine" and "filled by pressure" because those terms are not used in Chapter 13. The Commission adds the definition of "Company representative"; the wording matches the definition of the same term in the liquefied natural gas (LNG) rules. The Commission changes the definition of "dispensing station" to "dispensing area or dispensing installation," which are the terms actually used in the chapter. The Commission deletes the definition of "Division" because CNG activities are divided among the AFRED, Gas Services, and Safety Divisions; in each substantive rule that refers to "a division," the specific division is noted. The Commission adds a definition of "pressure filled" to replace the definition for "filled by pressure," which the Commission deletes. The remaining amendments adopted in this rule renumber the unchanged definitions as necessary.

Amendments in §13.4, relating to CNG Report Forms, delete an outdated reference to a Commission section.

The Commission adopts amendments in §§13.25, 13.35, 13.36, 13.38, 13.61 - 13.63, 13.67 - 13.69, 13.75, 13.92 - 13.94, 13.102, 13.141, and 13.183 to correct citations to other rules, chapters, or agencies; correct the Commission division or office; make the rule wording consistent with the Commission's LP-gas or LNG rules; and update the Tables to the current formats used by the Commission in other rules. The Commission adopts minor changes in the table in §13.62, such as a revised title, correction of the name of the Texas Workforce Commission, deletion of some obsolete references, and the combination of the text in subsections (k) and (l) into a single subsection (k) and the deletion of subsection (l) to eliminate redundant wording. In §13.63, the Commission deletes one table because it duplicates a table in §13.62 and is unnecessary; and combines the text of subsections (g)and (h) into a single subsection (g) and deletes subsection (h)to eliminate redundant wording. The Commission adopts changes in the tables in §§13.93, 13.94, and 13.102 to change the titles, make some minor formatting changes, and correct spelling.

In §13.73, relating to Other Fees for Employee Transfers, the Commission corrects the title of the rule and adds a reference to AFRED and deletes the requirement that the CNG Form 1016A be received by the Commission within a specific time.

The Commission received no comments on the proposal.

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §§13.2 - 13.4

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. GENERAL RULES FOR COMPRESSED NATURAL GAS (CNG) EQUIPMENT QUALIFICATIONS

16 TAC §§13.25, 13.35, 13.36, 13.38

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER C. CLASSIFICATION, REGISTRATION, AND EXAMINATION

16 TAC §§13.61 - 13.63, 13.67 - 13.70, 13.73, 13.75, 13.80

The Commission adopts the amendments and new section under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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16 TAC §13.80

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER D. CNG COMPRESSION, STORAGE, AND DISPENSING SYSTEMS

16 TAC §§13.92 - 13.94, 13.102

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER E. ENGINE FUEL SYSTEMS

16 TAC §13.141

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER F. RESIDENTIAL FUELING FACILITIES

16 TAC §13.183

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §116.012 and §116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

The Railroad Commission of Texas adopts amendments to §§14.2007, 14.2010, 14.2019, 14.2020, 14.2034, 14.2043, 14.2049, 14.2052, and 14.2310, relating to Definitions; LNG Report Forms; Certification Requirements; Employee Transfers; Self-Insurance Requirements; Temporary Installations; Report of LNG Incident/Accident; Application for an Exception to a Safety Rule; and Emergency Refueling. The Commission also adopts the repeal of §14.2021, relating to LNG Continuing Education Requirements, and new §14.2021, relating to Requests for LNG Classes, without changes to the versions published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1858).

The Commission adopts the amendments in part as a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005). HB 1162 amended Texas Natural Resources Code, §116.034, to provide that the Commission may adopt rules establishing training and seminar attendance requirements for persons required or who wish to be licensed or registered to perform liquefied natural gas (LNG) activities, but is not required to do so. Additional amendments to these rules are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The specific rule affected by HB 1162 is §14.2021, relating to LNG Continuing Education Requirements, which the Commission has repealed and replaced with new §14.2021, Requests for LNG Classes. Previously, §14.2021 provided for continuing education requirements for persons holding an LNG license or their representatives. In general, licensees and their representatives were to attend a continuing education class once every four years. Due to budget and staff limitations, the Commission has no LNG continuing education classes, and because as of January 2006 there are only nine LNG licensees and about 41 individual LNG certificate holders, the Commission finds that its training and continuing education resources are more efficiently and effectively employed elsewhere. In addition, most LNG licensees are large companies with highly trained staff, as required by the technology used in LNG installations.

The Commission offers training courses on LNG activities under the Commission's jurisdiction through the Alternative Fuels Research and Education Division (AFRED). Under the wording in new §14.2021, requests for Commission staff to conduct an LNG class should be submitted to AFRED, which may schedule and conduct the class at its discretion. The non-refundable fee is $250 for a class where no overnight expenses are incurred by AFRED staff, or $500 if overnight expenses are incurred. AFRED may waive the fee in cases where the Commission recovers the cost of the class from another source, such as a grant.

The Commission adopts amendments to §14.2019, relating to Certification Requirements, to make the rule and procedures consistent with the same procedures for the Commission's liq-

uefied petroleum gas (LP-gas) certification requirements. In addition, some of the amendments clarify that AFRED is the Commission division that offers the examinations, as indicated by the amendments in subsection (a)(4). In subsection (a)(5), AFRED will notify individuals of their examination results within 15 days, rather than 30 days of the date of the examination. The only change in the Table in §14.2019 is the deletion of the row referring to the Category 35 course of instruction, which is no longer offered.

The Commission adopts other amendments that are non-substantive and result in no changes to current requirements or procedures. In §14.2007, relating to Definitions, the Commission adopts a new definition for "AFRED." The Commission deletes the definitions for "Administrative Procedure Act," "primary component," "PSF," "PSI," "PSIA," "right-of-way," and "TEMA" because those terms are not used in Chapter 14. The Commission amends the definition of "company representative" to delete the reference to "courses" because there are no required LNG courses. The Commission deletes the definition of "division" because LNG activities are divided among AFRED, the Gas Services Division, and the Safety Division; in each substantive rule that refers to "a division," the specific division is noted. The Commission amends the definition of "final approval" to replace the reference to "the Commission" with "a division." The Commission amends the definitions for "licensed," "licensee," and "tentative approval" to change "the Commission" to "the Gas Services Division" to be more specific. The remaining amendments in this rule renumber the unchanged definitions as necessary.

Amendments in §14.2010, relating to LNG Report Forms, change the order of two forms so that the form numbers are in numerical order.

In §14.2020, relating to Employee Transfers, the Commission adds a reference to AFRED and deletes the requirement that the LNG Form 2016A be received by the Commission within a specific time.

The Commission amends §14.2034(g) to update and correct the citation to the Texas Workers' Compensation Act.

In §14.2043, relating to Temporary Installations, in subsections (b), (c), and (g), the Commission adopts amendments to identify the pertinent division, rather than referring generally to "the Commission." In subsection (h), "Pipeline Safety Section" is now "Safety Division."

Amendments in §§14.2049, 14.2052, and 14.2310, relating to Report of LNG Incident/Accident; Application for an Exception to a Safety Rule; and Emergency Refueling, respectively, provide specific references to the Safety and Gas Services Divisions for clarity.

The Commission received no comments on the proposal.

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §§14.2007, 14.2010, 14.2019 - 14.2021, 14.2034, 14.2043, 14.2049, 14.2052

The Commission adopts the amendments, repeal, and new section under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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16 TAC §14.2021

The Commission adopts the repeal under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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SUBCHAPTER D. GENERAL RULES FOR LNG FUELING FACILITIES

16 TAC §14.2310

The Commission adopts the amendments under Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public; and §116.034, as amended by HB 1162, 79th Legislature, Regular Session (2005).

Statutory authority: Texas Natural Resources Code, §§116.012 and 116.034.

Cross-reference to statute: Texas Natural Resources Code, Chapter 116.

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 28. SUBSTANTIVE RULES APPLICABLE TO CABLE AND VIDEO SERVICE PROVIDERS

SUBCHAPTER B. PROVISIONS RELATING TO APPLICATION FOR A STATE-ISSUED CERTIFICATE OF FRANCHISE AUTHORITY

16 TAC §28.6

The Public Utility Commission of Texas (commission) adopts new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-Issued Certificate of Franchise Authority (CFA) Certification Criteria with changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2353). This rule is necessary to implement the provisions of the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001 - 66.004. The proposed new §28.6 establishes the certification criteria for a state-issued CFA to provide cable and/or video services in the state and sets forth certain reporting requirements of CFA holders as well. Sections 28.1 - 28.5 will be proposed at a later date. This new section is adopted under Project Number 32171.

The commission received comments on the proposed new rule from the Texas Cable and Telecommunications Association (TCTA), AT&T Texas (AT&T), and Verizon Southwest (Verizon).

Description of the Service Area Footprint

TCTA stated that that in order to give effect to the legislature's intent to prohibit discrimination by a provider of cable or video services, the service area description submitted by a CFA applicant should be sufficiently detailed so that the anti-discrimination prohibition in the statute can be properly interpreted and enforced. TCTA suggested that the "Description of the Service Area Footprint to be served" as proposed in §28.6 be revised to specifically require a map of the proposed service area footprint, which it suggests will be a more precise description of a service area.

Commission response

The commission notes that the rule as proposed requires that the description of the franchise area be clear and complete, which may include a map. However, the commission does not agree with TCTA's suggestion that only maps will make the description of a service area footprint sufficiently clear and complete. Such a requirement could unintentionally limit the service area footprint. While the maps provide a description of a city boundary as a snapshot at the time of the application, any future expansion of the city boundary might not be covered in the certification. However, if an applicant requests the city limits of a certain city in the description of its service area, any expansion to the city limits would also be included.

The commission concludes that requiring maps as the only means for a clear and complete description of the franchise area may in fact result in a limitation of service coverage in those instances where a city expands its boundary at a future date. Therefore, the commission declines to adopt TCTA's suggestion to modify the proposed subsection of the rule and adopts the subsection as published.

Records Requirement

AT&T and Verizon contended that subsection (i), which requires records retention for 24 months may conflict with the retention periods mandated by federal law in 47 CFR §76.1703, and §76.1713, both of which require a retention period of one year. Both parties also objected that the proposed 10-day turnaround time for the production of records requested by staff could be unreasonably short. Verizon contended that that the commission lacks the authority under PURA Chapter 66 to establish such requirement. It stated that if the intention of this subsection is to help ensure the Companies' compliance with laws governing cable and video service, that courts of competent jurisdiction rather than the commission enforce the rules under PURA. Both parties requested that subsection (i) be omitted.

Commission response

The commission in part concurs but in part disagrees with both AT&T and Verizon. The commission agrees that two years for record retention purposes and 10 business days for records production are not necessary in the circumstances presented here for the reasons described below. The two-year record retention requirement has been changed to 12 months, consistent with federal regulations. The 10-day production requirement has been changed to 21 days, consistent with other commission record production rules. However, the commission does not agree that subsection (i) be omitted, as requested by AT&T and Verizon.

The commission is charged with certain enforcement responsibilities in Chapter 66 of PURA (*e.g.*, §66.014) and could well find it necessary to make a request of a service provider for various records. Moreover, the commission, in §66.017, has been directed to conduct a joint interim study with the telecommunications competitiveness legislative oversight committee regarding, *inter alia*, "the transition from local franchise authority to state-issued authority, including methods to maintain current municipal revenue streams, including franchise fees and in-kind contributions; continuation of public, educational, and government access channels; and build-out requirements; and . . . other relevant issues." (§66.017(a)(3),(4).) The commission, again, might

well find it necessary to make a request of service providers for assorted records. Another factor militating in favor of retaining subsection (i) is the requirement that applicants for a CFA provide an affidavit affirming various elements set forth in 66.003. The commission might be constrained to request records of the applicant in certain circumstances. For these reasons, the commission has not deleted subsection (i) from the rule as adopted.

All comments, including any not specifically referenced herein, were fully considered by the commission. In adopting this section, the commission makes other minor modifications for the purpose of clarifying its intent.

This new Chapter 28, Substantive Rules Applicable to Cable and Video Service Providers and new §28.6 relating to State-issued Certificate of Franchise Authority Certification Criteria is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and specifically, PURA Chapter 66, §§66.001 - 66.004 which requires that the commission establish the criteria for granting the state-issued Certificate of Franchise Authority to an entity to provide cable and/or video services in the state of Texas.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, §14.052, and Chapter 66, §§66.001 - 66.004.

§28.6. State-Issued Certificate of Franchise Authority (CFA) Certification Criteria.

(a) Scope and purpose. This section applies to the commission's certification of persons and entities to provide cable and/or video service as holders of a state-issued certificate of franchise authority (CFA), as established in the Public Utility Regulatory Act (PURA), Chapter 66, §§66.001 - 66.004.

(b) Application for CFA. An entity or person seeking to provide cable and/or video service in this state shall file an application for a CFA with the commission as provided in subsection (e) of this section.

(c) Eligibility to file application.

(1) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service is not eligible to seek a CFA to provide service in that municipality until the expiration date of the existing franchise agreement for such municipality.

(2) A cable service provider or a video service provider that currently has or had previously received a municipal franchise to provide cable service or video service may file an application for a CFA to provide service in such municipality no earlier than 17 business days before the expiration of the municipal franchise provided that the application requests issuance of the CFA after the expiration of the municipal franchise.

(3) For purposes of this subsection a cable service provider or video service provider will be deemed to have or have had a franchise to provide cable service or video service in a specific municipality if any affiliates or successor entity of the cable or video provider has or had a franchise agreement granted by that specific municipality. The terms "affiliates or successor entity" in this subsection include but are not limited to any entity receiving, obtaining, or operating under a municipal cable or video franchise through merger, sale, assignment, restructuring, or any other type of transaction.

(d) Procedure for reviewing CFA applications.

(1) The commission shall notify an applicant for CFA whether the application is complete before the 15th business day after the application was submitted.

(2) The commission shall issue a CFA before the 17th business day after the application, including the requisite affidavit, has been filed if the commission finds the application to be complete and sufficient.

(e) Standards for granting franchise authority to CFA applicants. An applicant for a CFA shall submit a completed Application for State Issued Certificate of Franchise Authority, which shall include the following items:

(1) An affidavit signed by an officer or general partner of the applicant affirming the following:

(A) the applicant has filed or will timely file with the Federal Communications Commissions (FCC) all forms that the FCC requires from entities seeking to provide cable or video services in Texas;

(B) the applicant agrees to comply with all applicable federal and state statutes and regulations;

(C) the applicant agrees to comply with all applicable municipal regulations regarding the use and occupation of public rights-of-way in the delivery of the cable and/or video service, including the police powers of the municipalities in which the service is delivered;

(D) all statements made in the Application for State Issued Certificate of Franchise Authority are true and correct.

(2) A description of the service area footprint to be served. Service areas may be an entire municipality or a portion thereof and may include incorporated areas as well as unincorporated areas. Acceptable service area descriptions include properly labeled maps that clearly define the service area using city/municipality limits, county boundaries, metes and bounds, subdivisions, and/or other geographic areas with distinct boundaries.

(3) The street address and telephone number of the applicant's principal place of business.

(4) The name, addresses, and telephone numbers of an authorized representative, a regulatory contact, and an emergency contact.

(5) The names of the applicant's principal executive officers.

(f) Name(s) on CFA.

(1) All cable and/or video services provided under a CFA shall be provided in the name under which certification was granted by the commission. The requested name(s) must be registered with the proper authorities to conduct business in Texas (*i.e.*, the Texas Secretary of State with the exception of sole proprietorships that are registered with the county in the requested service area), and may not be deceptive, misleading, vague, inappropriate, or duplicative of an existing CFA holder.

(2) The holder of the CFA may request commission approval to add, delete or change the name(s) on the franchise authority in accordance with subsection (g)(4) of this section.

(g) Amendments, terminations and transfers of a CFA.

(1) Termination of CFA. A CFA may be terminated by the certificate holder by submitting written notice to the commission. The

CFA Termination Notice shall be filed with the commission in the project number established by staff for that purpose.

(2) Transfer of ownership/control. A CFA is fully transferable to any successor in interest to the entity to which the CFA was originally granted. The successor in interest shall file a written notice of transfer with the commission and the relevant municipality within 14 business days of the completion of such transfer. The notice to the commission shall be in the form of an application to amend the existing CFA and shall contain the information described in subsection (e) of this section.

(3) Expansion of service area footprint. Changes to the description of the existing service area footprint shall be accomplished by filing an application to amend the existing CFA with the commission prior to any such change.

(4) Name changes. The holder of the CFA may request commission approval to add, delete, or change the name(s) on the CFA by filing with the commission an application to amend its CFA.

(h) Reporting requirements.

(1) All CFA holders shall notify the commission of changes in company contact information within 14 business days of any such change.

(2) Every CFA holder shall file with this commission a copy of any order or ruling issued by a court of competent jurisdiction that either modifies or revokes its CFA or makes it ineligible to hold a CFA within 14 business days of the issuance of such order or ruling.

(i) Records requirements. A franchise holder shall maintain a copy of records required by applicable federal or state laws and regulations for a period of not less than 12 months. Upon commission staff request, the franchise holder shall provide an accurate and complete copy of any such records no later than 21 business days after the date of such request.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2006.

TRD-200602761
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: June 5, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL DIPLOMAS FOR CERTAIN VETERANS

19 TAC §61.1061

The Texas Education Agency (TEA) adopts an amendment to §61.1061, concerning high school diplomas for certain veterans.

The amendment is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 956) and will not be republished. The adopted amendment implements the requirements of the Texas Education Code (TEC), Chapter 28, Courses of Study; Advancement, Subchapter B, Advancement, Placement, Credit, and Academic Achievement Record, §28.0251. TEC, §28.0251(c), specifies that the commissioner by rule shall adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and shall specify acceptable evidence of eligibility of a diploma.

TEC, Chapter 28, Subchapter B, was amended by Senate Bill 387 of the 77th Texas Legislature, 2001, to add §28.0251. This section allows a school district to issue a high school diploma to a person who: (a) is an honorably discharged member of the armed forces of the United States; (b) was scheduled to graduate from high school after 1940 and before 1951; and (c) left high school before graduation to serve in World War II. A school district may issue a diploma to an eligible veteran notwithstanding the fact that the person holds a high school equivalency certificate or is deceased. TEC, §28.0251(c), requires the commissioner by rule to adopt a form for a diploma application to be used by certain veterans (or a person acting on behalf of a deceased veteran) to obtain a high school diploma. TEC, §28.0251(c), also requires the commissioner to specify acceptable evidence of eligibility of such a diploma. 19 TAC §61.1061 was adopted to be effective August 12, 2001, in accordance with statute.

TEC, §28.0251, was amended by House Bill 1058 of the 79th Texas Legislature, 2005. The revision extended eligibility to those scheduled to graduate from high school between 1940 and 1975 and included veterans of the Korean and Vietnam wars. The adopted amendment to 19 TAC §61.1061 updates the rule to reflect the extended eligibility date and the additional specified wars. The application form provided as part of the rule is also updated accordingly.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Texas Education Code, §28.0251, which authorizes the commissioner of education to adopt by rule a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased veteran and to specify acceptable evidence of eligibility of a diploma.

The amendment implements the Texas Education Code, §28.0251.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602862
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: June 11, 2006
Proposal publication date: February 17, 2006
For further information, please call: (512) 475-1497

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CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING PILOT PROGRAMS

19 TAC §102.1051

The Texas Education Agency (TEA) adopts new §102.1051, concerning the financial literacy pilot program. The new section is adopted without changes to the proposed text as published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 957) and will not be republished. The adopted new rule implements the requirements of the Texas Education Code (TEC), Chapter 29, Educational Programs, Subchapter Z, Miscellaneous Programs, §29.915, Financial Literacy Pilot Program. TEC, §29.915, as added by Senate Bill (SB) 851, 79th Texas Legislature, 2005, requires the agency by rule to establish and implement a financial literacy pilot program.

SB 851, 79th Texas Legislature, 2005, added TEC, §29.915, that establishes a financial literacy pilot program. The legislation requires the agency to collaborate with the Office of Consumer Credit Commissioner and the State Securities Board to develop the curriculum and instructional materials for the program. The TEA is required to select no more than 25 school districts to participate in the program. Statute allows the TEA to solicit and accept a gift, grant, or donation from any source for the implementation of the program. The program may be implemented only if sufficient funds are available for that purpose.

The adopted new 19 TAC §102.1051 establishes, in rule, the purpose of the financial literacy pilot program; the application process for districts interested in participating in the program, including the criteria that would be used to select districts to participate; and specific provisions relating to notification, implementation, evaluation, and funding. The TEA is required to provide each member of the legislature with a report relating to the implementation and effectiveness of the program no later than January 1, 2007. Participating districts will be required to report specified information to the TEA in accordance with requirements specified by the commissioner.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Texas Education Code, §29.915, which authorizes the TEA to establish and implement a financial literacy pilot program by rule to provide students in participating districts with the knowledge and skills necessary as self-supporting adults to make critical decisions relating to personal financial matters.

The new section implements the Texas Education Code, §29.915.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602863
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: June 11, 2006
Proposal publication date: February 17, 2006
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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 71. APPLICATIONS AND APPLICANTS

22 TAC §71.3

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §71.3, relating to admission requirements for each student admitted to study chiropractic, as required by H.B. 972, the Board's Sunset legislation. The amendment is adopted without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 366) and will not be republished.

Section 21 of H.B. 972, 79th Legislature, Regular Session, amended the chiropractic Act, Texas Occupations Code §201.303, to clarify the educational requirements for chiropractic applicants. This amendment to §71.3 specifies the educational requirements as set forth by the Council on Chiropractic Education in its Standards for Doctor of Chiropractic Programs and Requirements for Institutional Students Status, III. F, p. 20-21 (January 2005).

The Board received no comments on the proposed rule, and the rule is adopted without changes.

The amendment is adopted under the Texas Occupations Code, §201.152, relating to rules, and §201.303, relating to educational requirements. Section 201.152 authorizes the board to adopt rules necessary to regulate the practice of chiropractic. Section 201.303 establishes educational requirements for undergraduate study and for the study of chiropractic.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602845
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: June 11, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 305-6709

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CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §74.2

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §74.2(h), relating to Facility Registration Requirements, to delete the exemption for chiropractic colleges. The amendment is adopted without changes to the proposed text as published in the January 20, 2006, issue of the *Texas Register* (31 TexReg 368) and will not be republished. The Board is adopting this amendment in order to regulate the practice of chiropractic by students at chiropractic colleges.

The Board received no comments on the proposed amendment, and the amendment is adopted without changes.

The amendment is adopted under Texas Occupation Code §201.152, relating to Rules; §201.302, relating to License Required; and §201.312, relating to Registration of Facilities. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.302 provides that a person may not practice chiropractic without a license issued by the Board. Section 201.312 authorizes the Board to adopt requirements for registering chiropractic facilities as necessary to protect the public health, safety, and welfare.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602846
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
Effective date: June 11, 2006
Proposal publication date: January 20, 2006
For further information, please call: (512) 305-6709

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.17

The Texas Board of Chiropractic Examiners (Board) adopts new §75.17, relating to scope of practice, with changes to the proposed text as published in the December 16, 2005, issue of the *Texas Register* (30 TexReg 8383). The text of the rule will be republished. Section 8 of the Board's recent Sunset Act, H.B. 972, 79th Legislature, Regular Session (2005), enacted two new sections of the Texas Chiropractic Act (Act), Texas Occupation Code §201.1525 and §201.1526, requiring this rulemaking. Section 201.1525 requires the Board to adopt rules clarifying what activities are included within the scope of practice of chiropractic and what activities are outside of that scope. The rules must also clearly specify the procedures that chiropractors may perform, specify any equipment and the use of that equipment that is prohibited, and may require a license holder to obtain additional training or certification to perform certain procedures or use certain equipment.

Section 201.1526 requires that the Board establish methods under which the Board, to the extent appropriate, will seek input early in the rule development process from the public and from persons who will most be affected by the proposed rule. The methods must include identifying persons who will be most affected and soliciting, at a minimum, the advice and opinions of those persons.

DEVELOPMENT OF RULES REGARDING SCOPE OF PRACTICE

The Board met on June 2, 2005, to consider the rulemakings required under HB 972. The Board's Rules Committee met again on August 1, 2005, to discuss the scope of practice rules, to establish a process and schedule for developing a scope of practice rules to identify persons and entities who will be most affected, and to discuss methods for contacting and involving such persons and entities. The Rules Committee identified the following groups as key persons and entities who will be most affected, for this rulemaking: Texas Chiropractic Association (TCA), the chiropractic colleges, the insurance industry, Consumers Union, Citizens Against Lawsuit Abuse, the Texas Trial Lawyers Association, and defense lawyers. Later, in response to a request from Ms. Bonnie Bruce, the office of Representative Solomons, the Texas Medical Association, and Ms. Bruce were added as interested parties. At the August 1st meeting, the Texas Chiropractic Association offered draft language for a scope of practice rule. The Rules Committee invited others to submit comments on what should be included in scope of practice rules by August 18, 2005. No comments were received regarding further contents for the scope of practice rules.

The Rules Committee and Board met again on August 25, 2005, to review and discuss the draft rules. The Rules Committee met next on September 30, 2005, and authorized release of the draft scope of practice rules for public comment in advance of the Board's meeting in November 2005. The draft rules were made available on the Board's web site. TCA attended the meeting and participated in the discussion. Written comments on the draft scope of practice rules were received from Parker Chiropractic College, Texas Chiropractic College, and TCA. The Board and Rules Committee met again on November 3, 2005, to consider comments received on the draft rule. The Board revised the rule and approved it for publication. TCA attended the meeting and participated in the discussion.

In response to several requests from the public, the Board's Rules Committee held a public hearing on the proposed rule as part of its meeting on February 1, 2006. Persons testifying at the public hearing included representatives from Blue Cross Blue Shield of Texas; NCMIC Insurance Company; Parker Chiropractic College; Michael Stelzer, D.C.; Texas Association of Acupuncture & Oriental Medicine; Texas Chiropractic Association; Texas Chiropractic College; Texas Dietetic Association; Texas Medical Board; Texas Mutual Insurance Company; Texas Neurological Society; Texas Physical Therapists Association; Texas State Board of Acupuncture Examiners; Harold Tonderra, D.C.; and Cynthia Vaughn, D.C. The Rules Committee also considered the written comments previously submitted.

The Board and the Rules Committee next met on February 23, 2006, to consider revisions to the proposed rule in response to comments and adoption of the final rule. TCA attended the meetings and participated in the discussion. The Rules Committee met again on April 10, 2006, to review the response to comments, revisions to the proposed rule, and to recommend the rule for adoption. Representatives from Progressive Insurance, TCA, and the Governor's Office attended the meeting.

The Board and the Rules Committee met on May 11, 2006, to consider adopting the proposed rule.

SCOPE OF PRACTICE

The practice of chiropractic is governed by the Texas Chiropractic Act, Texas Occupations Code Chapter 201 (the Act), and the scope of practice is addressed under §201.002, relating to practice of chiropractic, and §201.003, relating to applications and exemptions. The key aspects of chiropractic, as described under §201.002(b), are set forth under subsection (a) of the proposed rule. Section 201.002(c) describes procedures that are not included within the practice of chiropractic.

In developing this scope of practice rule, the Board has striven to cover activities currently practiced by chiropractors in Texas without drawing the rule so narrowly as to exclude new practices, therapies, and technologies that may be developed in the future that are consistent with the scope of practice as described under the Chiropractic Act and this rule. This rule does not broaden the

scope of practice of chiropractic in Texas. The Board recognizes that the scope of practice described under this rule is narrower than the scope of chiropractic taught in Texas schools and in other schools around the nation. The narrower scope of practice is described by the Chiropractic Act with which this rule must be consistent.

The rule is divided into six subsections: aspects of practice; definitions; examination and evaluation; analysis, opinion, and diagnosis; treatment procedures and services; and questions regarding scope of practice.

Subsection (a), aspects of practice, describes the fundamental aspects as provided under the Act and the use of needles. Subsection (b) provides definitions for terms used in this section.

Subsection (c) describes examination and evaluation services related to the bio-mechanical condition of the spine and musculoskeletal system of the human body, the existence of subluxation complexes, treatment procedures, and differentiation of patients. Additional training or certification requirements for electro-diagnostic testing and performance of radiologic procedures are described under subsection (c)(3). Examination and evaluation services that are outside the scope of chiropractic, and the equipment used for such services, are described under subsection (c)(4).

Subsection (d) describes the types of analysis, diagnosis, or other opinions regarding the findings of examinations and evaluations that a chiropractor may render. Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic are described under subsection (d)(2).

Subsection (e) describes treatment procedures and services that are within the scope of practice of chiropractic. The objectives of therapeutic chiropractic treatment procedures are described under subsection (e)(1). Specifically authorized treatment procedures and services are listed under subsection (e)(2). Treatment procedures and services that are outside the scope of practice of chiropractic are described under subsection (e)(3).

Subsection (f) describes the procedure for submitting further questions regarding the scope of practice as well as questions regarding interpretation of this rule.

There have been four issues of particular concern regarding this rulemaking: surgical procedures, needle electromyography, manipulation under anesthesia, and acupuncture.

Surgical Procedures

One of the key aspects of practice is that the practice of chiropractic does not include incisive or surgical procedures. §201.002(c)(1). The Act defines "incisive or surgical procedure" as "include(ing) making an incision into any tissue, cavity, or organ by any person or implement;" however, "the term does not include the use of a needle for the purpose of drawing blood for diagnostic testing." §201.002(a)(3). The Act defines "surgical procedure" as "include(ing) a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (CMS)." CMS has adopted the American Medical Association's (AMA's) Current Procedural Terminology (CPT) Codebook, a numeric coding system consisting of descriptive terms and identifying codes that are used primarily to identify medical services and procedures furnished by physicians and other health care professionals. Health care professionals use the CPT Codebook to identify services and procedures for which they bill public or private health insurance programs. Decisions regarding the addition, deletion, or revision of CPT codes are made by the AMA. The CPT Codebook is republished and updated annually by the AMA. Also note that the CPT Codebook includes the following disclaimer: "It is important to recognize that the listing of a service or procedure and its code number in a specific section of this book does not restrict its use to a specific specialty group. Any procedure or service in any section of this book may be used to designate the services rendered by any qualified physician or other qualified health care professional" (p. xiii). Additional information on the common procedure coding system is available at www.cms.hhs.gov/medicare/hcpcs/codpayproc.asp.

Needle EMG

This rule provides that needle electromyography (needle EMG) is within the scope of practice of chiropractic in Texas. Needle EMG is a type of electro-neuro diagnostic testing. Needle EMG does not involve the injection of any substances or the removal of any tissue. Under this rule, the Board has established criteria for what constitutes incisive and surgical use of needles. Pursuant to this criteria, needle EMG is a nonincisive procedure. The CPT Codebook identifies needle EMG as medicine, not surgery (Code 95860 - 95872). Accordingly, the Board finds that needle EMG is a nonincisive and nonsurgical procedure.

Although needle EMG has been practiced by chiropractors in Texas for more than 25 years, there has been an ongoing dispute as to whether needle EMG is within the scope of practice of chiropractic. Previous opinions from the Office of the Attorney General (AG) have questioned the use of needles and needle EMG by chiropractors (DM-415, regarding whether the practice of acupuncture is within the scope of practice for a licensed Texas chiropractor and related questions (Sept 23, 1996); DM-443, regarding the authority of a physical therapist to perform needle electromyography testing (July 8, 1997); and DM-472, regarding the use of injectable substances by licensed chiropractors, and related questions (Mar. 30, 1998).

These AG opinions, however, were based on prior versions of the Chiropractic Act and include technical assumptions that conflict with the Board's findings regarding needle EMG. In 1997 in response to DM-415, the Legislature amended the Acupuncture Act to allow chiropractors to practice acupuncture, defining acupuncture as the non-incisive, non-surgical use of needles (*See* Tex. Occ. Code §205.003). In 2004, a Sunset Commission staff report recommended that the Board abide by these AG opinions and "larify that chiropractors may not perform the procedure" and that "(t)he Board should seek additional clarification from the Attorney General about whether chiropractors can interpret such a procedure" (SUNSET STAFF REPORT, TEXAS BOARD OF CHIROPRACTIC EXAMINERS, p. 5 (Feb. 2004)).

However, the Board's 2005 Sunset legislation, H.B. 972, was silent on the subject of needle EMG. The legislation did make two significant changes to the Chiropractic Act. First, a definition of "surgical procedure" was added to the Act which identified as surgical the surgical procedures described in the surgery section of the CPT Codebook. Tex. Occ. Code §201.002(a)(4). As noted above, needle EMG is in the medicine section of the CPT Codebook. Second, the Legislature specifically mandated that the Board promulgate this rule regarding scope of practice and a process through which the Board might receive input early in the rule development process from the public and from persons who will be most affected by the proposed rule (§201.1525 and

§201.1526). Through this rulemaking process, the Board has found that there has been no history of complaints or malpractice insurance claims against chiropractors relating to the practice of needle EMG. This lack of complaints and malpractice claims indicates that the practice of needle EMG by chiropractors has not presented any concerns regarding public health and safety. However, uncertainty regarding whether needle EMG is within the scope of practice of chiropractic has lead insurers to question and delay payments for the procedure.

Therefore, the Board finds, based upon (a) its technical review of the practice of needle EMG; (b) its legal authority under the Chiropractic Act as amended by H.B. 972; (c) the need to resolve this issue; and (d) the *absence* of any concern for public health and safety for more than 25 years regarding the practice of needle EMG by chiropractors that needle EMG is within the scope of practice of chiropractic in Texas. The Board has set forth training requirements and standards for electro-neuro diagnostic testing, including needle EMG, at §75.17(c)(3)(A).

Manipulation Under Anesthesia

Manipulation under anesthesia (MUA) has been part of the practice of chiropractic in Texas for more than 25 years. The Board has not received any complaints regarding the practice of MUA, and the principal malpractice insurance carrier for chiropractors in Texas has likewise not received any claims. However, MUA is listed under the surgical codes of the CPT Codebook. Consequently, the Board is still reviewing several issues regarding MUA and whether it is within the scope of practice of chiropractic in Texas as described under the Chiropractic Act. In the absence of any evidence of a risk to the public health, the Board has elected to not disturb the status quo until it has reached a final conclusion on whether MUA remains within the scope of practice in Texas.

Acupuncture

Acupuncture has long been part of the practice of chiropractic, and the practice of acupuncture by chiropractors has been authorized since the Legislature amended the Acupuncture Act in 1997 to allow chiropractors and other health care practitioners to practice acupuncture when they are acting within the scope of their licenses (*See* Texas Occupations Code §205.003). Post-graduate training in acupuncture is offered by the chiropractic colleges, and the National Board of Chiropractic Examiners offers a national standardized certification examination in acupuncture. Consequently, the Board finds that acupuncture is within the scope of practice of chiropractic in Texas.

FURTHER RULEMAKING

As a result of the public comments received on the proposed rule, the Board has decided that further rulemaking is required to develop definitions to more clearly describe the scope of practice of chiropractic. Because the proposed definitions were not included in the proposed rule and because the Board believes that these definitions would benefit from the deliberation provided by public review and comment, the definitions will be set out as proposed amendments to this rule following the conclusion of this rulemaking. In addition, the Board anticipates that additional rulemaking will be required in the future in response to questions regarding the scope of practice of chiropractic and as the Board's experience with implementation of this rule will likely illuminate the need to further clarify and delineate the scope of practice of chiropractic.

COMMENTS ON THE PROPOSED RULE

The following entities either submitted written comment on the proposed rule or oral testimony at the public hearing on February 1, 2006: Blue Cross Blue Shield of Texas; Walter T. Brzozowske, D.C.; Michele M. Doone, D.C.; NCMIC Insurance Company; Parker Chiropractic College; Chester Y. Smith, D.C.; Michael Stelzer, D.C.; Texas Association of Acupuncture & Oriental Medicine; Texas Chiropractic Association; Texas Chiropractic College; Texas Dietetic Association; Texas Medical Association; Texas Medical Board; Texas Mutual Insurance Company; Texas Orthopaedic Association, Texas Neurological Society; Texas Physical Therapy Association; Texas State Board of Acupuncture Examiners; Harold Tondera, D.C.; and Cynthia Vaughn, D.C.

General Comments

One entity commented that the proposed rule did not satisfy the legislative mandate because it did not clarify what activities are included within the scope of practice and what activities are outside the scope of practice. The entity stressed that describing an act as not within the scope of chiropractic if it is "inconsistent with the practice of chiropractic" did not clarify what activities are proscribed. It merely substitutes one generality for another. The Board disagrees. This scope of practice rule includes six subsections. Three of the subsections set out specific aspects of practice relating to examination and evaluation; analysis, opinion, and diagnosis; and treatment procedures and services. The last paragraph of each of these subsections describes aspects of practice outside of the scope of practice, including other aspects that are inconsistent with the aspects described in each subsection. For example, if a treatment procedure and service, such as using a cold or low-level light laser for cosmetic purposes, is inconsistent with the practice of chiropractic and the treatment procedures and services described under Subsection (e) of this rule, then the treatment procedure and service is outside of the scope of practice. No change was made in response to this comment.

One entity said that while the Board proposed detailed expansions of the scope of practice of chiropractic, it only reiterated the statutory limitations on the scope of practice. The entity saw that the mandate of the Legislature through Sunset Review required an equal amount of consideration and exposition on the limitations of chiropractic. The commenter has misinterpreted the Board's intent and objectives as well as the structure of this rule. The scope of practice rule was developed to clarify what activities are within the scope of practice. The rule does not expand the scope of practice but only clarifies the existing and traditional practice of chiropractic as authorized under the Chiropractic Act. In order to be within the scope of practice, any activity must relate to the practices described under Texas Occupations Code §201.002(b), also set forth at §75.17(a)(1), and must not include any of the activities proscribed under §201.002(c) of the Act and as set forth under §75.17(a)(2) and (3) and should be consistent with the activities described under §75.17(c)(1) and (2), (d)(1), and (e)(1) and (2). No change was made in response to this comment.

One commenter criticized the omission of the specialties in the practice of chiropractic and requested that the scope of practice under these specialties should be listed and expanded to support these specialties. The Board is considering whether to recognize chiropractic specialties. While such specialties may be the subject of a future rulemaking, the Board does not plan

to include further rules regarding the specialties at this time. No change was made in response to this comment.

Two commenters noted that there is a considerable difference in Diplomate Specialty status and certifications which needs to be addressed separately and succinctly. A third commenter pointed out that the proposed rule did not include the Board's prior recognition of Orthopedic Diplomates and Radiology, Neurology, and Nutritional Diplomates as chiropractic specialties held to a higher standard of care. The Board agrees that the differences between Diplomate specialties and certifications need to be addressed separately and distinctly, but the Board is not acting on this issue at this time. No change was made in response to this comment.

A commenter argued that because the proposed rule failed to specify the procedures that chiropractors may perform, it did not satisfy the legislative mandate. Specific procedures are described under subsections (c)(1) and (2), relating to the evaluation and examination of individual patients or patient populations, (d)(1), relating to analysis, diagnosis, and other opinions, and (e)(1) and (2), relating to treatment procedures and services. No change was made in response to this comment.

A commenter said that the scope of practice is limited to subluxation of the spine by statute. "Subluxation of the spine" is not used in the Chiropractic Act. Section 201.002(b)(2) does refer to "improve the subluxation complex or the biomechanics of the musculoskeletal system." No change was made in response to this comment.

A commenter suggested that the use of the phrases "inconsistent with the practice of chiropractic" as identification for something that is outside the scope of practice and "consistent with the practice of chiropractic" be eliminated throughout the rule because the phrases incorrectly imply a lack of clear practice boundaries. The Board disagrees. Under "Aspects of Practice," subsection (a), the rule sets forth the basic scope of practice and what is not included within the scope. Subsections (c), (d), and (e) each set forth with more specificity individual aspects of practice. Practices that are inconsistent with the aspects of practice described under these subsections are inconsistent with the scope of practice. In delineating the boundaries of practice, the Board wanted to ensure that the rule was not drafted so narrowly that new practices, treatments, and techniques that are consistent with the aspects of practice would be inadvertently excluded by the rule. The Board will monitor implementation of the rule and look to see if the practice boundaries need to be more clearly defined. The further definitions that the Board is proposing be included in this rule should provide additional clarity. No change was made in response to this comment.

A commenter said that the proposed rule was far too general and omitted a number of procedures reviewed by the Board in the past. The commenter noted that the Board's website included a number of prior opinions regarding the scope of chiropractic as it relates to specific procedures and that most of the procedures were not addressed in the proposed rule. The procedures discussed in prior Board opinions included, among others: hypnotherapy, magnetic devices, pulmonary function tests, videoflouroscopy, herbal enemas, barium contrasts, intersegmental traction, nasal specific technique, nasal lavage, bone scans, and school physicals. The Board considered describing a lengthy list of activities that are within the scope of practice. However, the Board did not want to limit the ability of doctors to provide services within the scope of practice which might not be enumerated. The Board concluded that it was in the best interest of the public health and safety not to include such a list. In addition, the Board contacted other states that had adopted such detailed lists and learned that such lists provided little to no additional clarity regarding the scope of practice. Those states still received numerous questions regarding scope of practice. Furthermore, some of the activities listed by the commenter are already included in the activities listed under §75.17(c)(2) and (e)(2), such as school physicals which are a type of physical examination. No change was made in response to this comment.

One Commenter said that the Board failed to address two of the more controversial procedures: needle electromyography (EMG) and manipulations under anesthesia (MUA). Needle EMG is within the scope of practice and is a type of electro-diagnostic testing as identified under §75.17(c). The amendment of the Chiropractic Act by H.B. 972 clearly placed needle EMG within the scope of practice. Needle EMG is identified by the CPT Codebook as medicine (codes 95860 - 95904). Consequently, needle EMG is clearly not a surgical procedure. Furthermore, under §75.17(a)(3), the Board has clarified that use of a needle is incisive, and outside the scope of practice, only if the procedure results in the removal of tissue other than for the purpose of drawing blood. Regarding MUA, the Board is still reviewing several issues relating to this procedure. At this time, the Board is taking no position on whether MUA is or is not within the scope of practice. MUA has been considered part of the practice of chiropractic in Texas for at least 25 years, and the Board has received no complaints relating to the practice of MUA. In the absence of any evidence of a risk to the public health, the Board will not disrupt the status quo until it has reached a final conclusion on whether MUA remains within the scope of practice in Texas. No change was made in response to this comment.

A commenter said that H.B. 972 excludes surgical procedures, including manipulation under anesthesia. While MUA is listed under the surgical codes of the CPT Codebook, the Board is still reviewing several issues relating to this procedure. At this time, the Board is taking no position on whether MUA is or is not within the scope of practice. MUA has been considered part of the practice of chiropractic in Texas for at least 25 years, and the Board has received no complaints relating to the practice of MUA. In the absence of any evidence of a risk to the public health, the Board will not disrupt the status quo until it has reached a final conclusion on whether MUA remains within the scope of practice in Texas. No change was made in response to this comment.

Two commenters said that "neuromusculoskeltal" should be used in place of "musculoskeletal." "Musculoskeletal system" is the term used in the Chiropractic Act. *See, e.g.*, Tex. Occ. Code §201.002(b). The medical definitions of "musculoskeletal" and "subluxation complexes" often include associated neurology. As mentioned, the Board is considering a further rulemaking to define these and other terms. This comment would best be addressed through that rulemaking. No change was made in response to this comment.

A commenter noted that throughout the proposed rule, the term "system" was used multiple times and suggested that it would be more correct to refer to systems. The context in which "system" is used throughout the text makes it clear that it refers to the musculoskeletal system. No change was made in response to this comment.

A commenter noted that the list of persons who participated in development of the proposed rule and the persons determined to be most affected and invited to participate in development of the

proposed rule did not include individual practitioners, some of the persons who will be affected most. Individual practitioners have a standing invitation to participate in the Board's meetings and rulemakings. Information on the Sunset Review of the Board and this rulemaking has been provided through the Board's newsletter and web site since the first quarter of 2004. It is up to the individual practitioners, however, to express their interest in a particular issue. No change was made in response to this comment.

Several commentors requested that the proposed rules be withdrawn in their entirety. The Board believes that the revisions made in response to comments have addressed any concerns regarding the rule as a whole. In addition, the Legislature has mandated that the Board adopt this scope of practice rule. None the less, the Board recognizes that the implementation of the scope of practice rule will be an ongoing process, particularly during the initial implementation and as new treatments become available. The Board welcomes additional comments on how this rule may be improved in the future. No change was made in response to this comment.

One commenter said that the proposed rule did not address the Board's purposes of protecting the public from unscrupulous practices and ensuring that practitioners are practicing appropriately. The Board has additional rules under this title that address appropriate and unscrupulous practice, such as §74.5, relating to rules of conduct for chiropractic facilities, §74.9, relating to disciplinary actions for chiropractic facilities, §75.1, relating to grossly unprofessional conduct, §75.2, relating to proper diligence and efficient practice of chiropractic, §75.3, relating to individuals with criminal convictions, §75.10, relating to disciplinary guidelines, §77.2, relating to publicity, §80.5, relating to maintenance of chiropractic records, and the current rulemaking for proposed §80.9, relating to rules to prevent fraud. No change was made in response to this comment.

Several commenters noted that the proposed scope of practice is narrower than the training chiropractors receive and requested a broader scope of practice. The scope of practice of chiropractic in Texas is limited to what is authorized under the Chiropractic Act. Because the chiropractic colleges teach a national curriculum, chiropractors are trained in a broader scope of practice than is allowed under the Texas Chiropractic Act. No change was made in response to this comment.

Preamble Comments

The Texas State Board of Acupuncture (TSBA) asserted that it should have been included in the drafting of the proposed rule as an entity most affected. The Board disagrees that TSBA will be affected by this rule. This rule relates to the scope of chiropractic under the Chiropractic Act. The Acupuncture Act specifically provides that it "does not apply to a health care professional licensed under another statute of this state and acting within the scope of the license." Texas Occupations Code §205.003(a). Acupuncture has long been part of the practice of chiropractic, and the Board has not received complaints relating to the practice of acupuncture by chiropractors. In addition, the Texas Medical Board, which serves as staff to TSBA, was sent an invitation to participate in the rulemaking when it began in April 2005. No change was made in response to this comment.

The Texas Association of Acupuncture and Oriental Medicine (TAAOM) objected to being specifically excluded from development of the proposed rule. The Board disagrees. No one was specifically excluded from development of this rule. The Board held several public meetings over most of 2005 where the scope of practice rule was discussed. TAAOM would have been welcome to participate in any of these meetings, or the Board and its staff would have been happy to discuss the rule with TAAOM or its representatives at any time. TAAOM did participate in the public hearing on February 1, 2006. No change was made in response to this comment.

The Texas Medical Association (TMA) commented that it did not receive notice of the rulemaking. In April of 2005, at the outset of this rulemaking, the Board's executive director contacted TMA to inform them of this rulemaking. No change was made in response to this comment.

Several commenters stated that a concise statement of the principal reason for and against adoption of the proposed rule is required by Government Code §2001.030. As required, a concise statement of the principal reason for and against adoption of the rule was sent to the commenters on May 9th, prior to the Board's meeting to consider the rule for adoption on May 11, 2006.

Specific Comments

One commenter said that §75.17(a) should include the statement that "surgical procedure" includes a procedure described in the surgery section of the common procedure coding system as adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services. The Chiropractic Act includes a definition for "surgical procedure." Texas Occupations Code §201.002(a)(4). The statutory definition applies, and there is no need to restate the statutory definition in this rule. No change was made in response to this comment.

One commenter suggested that, since the Chiropractic Act is clearly the statutory limit and cannot be increased by rule or interpretation, to include in the rule under "Aspects of Practice," §75.17(a), that "The practice of chiropractic is limited to the biomechanical condition of the spine and musculoskeletal system of the human body." This rule was adopted in compliance with the scope of practice described under §201.002 and §201.003 of the Chiropractic Act. Limitations on the practice of chiropractic are included under the rule at (c)(4), (d)(2), and (e)(3). No change was made in response to this comment.

One commenter recommended adding to §75.17(a) that "chiropractic practice does not include any procedure that is listed in the surgical section of the CPT Codebook" and suggested that total dependence on the CPT Codebook for definition of surgical procedures may present some unintended consequences. The Board agrees that it is awkward to rely upon the CPT Codebook for the definition of "surgical procedure." However, that is what is required by statute. No change was made in response to this comment.

One commenter said that under §75.17(a)(1) other healthcare professionals who evaluate, analyze or examine a person's back or musculoskeletal system or administer specified care will be characterized as practicing chiropractic. Section 2001.003 of the Chiropractic Act specifically refers to other health care licensees. The practice of chiropractic includes activities, technologies, and procedures that are within the scope of practice for other health care professionals. In response to this comment, the Board has included subsection (a)(4) which clarifies that the rule does not apply to other licensed health care professionals.

One commenter said that in §75.17(a)(2) the board mentions what practice of chiropractic does not include four (4) times and

noted that in proposed section (a)(2), the statutory definition is repeated without adding anything else. Under 75.17(c)(4), (d)(2), and (e)(3), the Board has indicated that other activities that are inconsistent with the activities described under each of those subsections are outside of the scope of practice. No change was made in response to this comment.

One commenter said that under "Aspects of Practice," §75.17(a)(2)(C), the statutory language is again followed and "the use of x-ray therapy or therapy that exposes the body to radioactive materials" is not included. It is recommended to add a definition that clearly states what is and what is not therapy. Therapeutic care is described under subsection (e). No change was made in response to this comment.

One commenter said that the Board's statement in §75.17(a)(3) that the use of a needle is surgical if the procedure is listed in the surgical section of the CPT Codebook is contrary to statute. The use of a needle as described in the surgery section of the CPT Codebook is only a sub-category of all of the surgical procedures identified. The Chiropractic Act establishes that surgical procedures, as identified in the CPT Codebook, are outside of the scope of practice. Under 75.17(a)(3)(A), the Board has clarified that the use of a needle is incisive, and prohibited under the Chiropractic Act, only if it results in the removal of tissue other than for the purpose of drawing blood. No change was made in response to this comment.

One commenter said that the Board does not have the authority to narrow the definition of "incisive" as proposed in §75.17(a)(3). To the contrary, "incisive" is not defined under the Chiropractic Act. The Board does have the authority to define terms not defined by statute as necessary to clarify the scope of practice and other matters addressed by the Chiropractic Act. The Board's description of what constitutes an incisive use of needles is consistent with the Chiropractic Act. No change was made in response to this comment.

One commenter suggested to include under §75.17(a)(3) the statutory definitions of "incisive or surgical procedure" and "surgical procedure" since the limitations are dependent on these definitions. All rules must comply with their authorizing statute, and it is customary to not repeat statutory definitions except where needed. Clearly, the statutory terms of "incisive or surgical procedure" and "surgical procedure" apply to this rule. No change was made in response to this comment.

One commenter recommended that the Board consider revisions to §75.17(a)(3) to provide clear direction on what is allowed and what is not allowed concerning the use of needles in diagnostic testing. Subsection (a)(3) clearly defines when procedures with needles are incisive or surgical and, therefore, outside of the scope of practice. Diagnostic testing is addressed under subsection (c). No change was made in response to this comment.

One commenter said that the definition of "incisive" in §75.17(a)(3)(A) is inconsistent with the statutory definition in the Occupations Code and therefore is beyond the Board's authority. The term "incisive" was not defined under the proposed rule. The rules does clarify, under §75.17(a)(3)(A), that the use of a needle is incisive, and prohibited, if it results in the removal of tissue other than for the purpose of drawing blood. The Board carefully drafted this clarification after lengthy discussion and in consideration of the exclusion of incisive or surgical procedures under §201.002(c) of the Chiropractic Act. No change was made in response to this comment.

One commenter asked whether the definition of incisive in §75.17(a)(3)(A) disallows the use of any incisive needle for other diagnostic tests in which the needle enters tissue. The Chiropractic Act prohibits all incisive procedures other than "the use of a needle for the purpose of drawing blood for diagnostic testing" (Tex. Occ. Code §201.002(3)). Other incisive uses of needles are prohibited. However, as described under this rule, not all uses of needles are incisive. The additional definitions that the Board has proposed adding to this rule should provide further clarification. No change was made in response to this comment.

One commenter stated that §75.17(b) lacks definitions concerning several key terms used in §75.17(e)(2). What is the definition of acupuncture as used in this rule? The Board agrees that additional definitions are needed for acupuncture and other terms. However, due to the substantive nature of any new definitions and due to the Legislative mandate to adopt this scope of practice rule, the Board has determined that any new definitions would best be addressed through a new rulemaking amending this rule. That rulemaking will be initiated following adoption of this rule. No change was made in response to this comment.

One commenter asked for the definition in §75.17(b) of therapeutic care? Therapeutic care under the practice of chiropractic is described under §75.17(e)(1). No change was made in response to this comment.

One commenter recommended removing "(2004)" CPT Code Book from §75.17(b) and replacing it with "(most current year)." The Board is required to cite to the 2004 CPT Codebook as it is the most current at the time of this rulemaking. No change was made in response to this comment.

One commenter asked for clarification of the definitions in §75.17(b)(3) and the basis for this particular provision. The Board already has in place a rule regarding when a chiropractor may allow or direct a person who is not licensed by the Board to perform procedures or tasks that are within the scope of chiropractic. See §80.1 of this title, relating to Delegation of Authority. It is also important to note how "on-site" is used under Subsection (c)(3)(A)(ii) of this rule. No change was made in response to this comment.

Two commenters suggested that "On-sight" in §75.17(b)(3) should be amended to read "On-site." The paragraph has been revised to read "on-site." Additional minor changes have been made to correct grammatical and stylistic errors.

Two commenters requested that §75.17(c)(1)(A) be clarified to reflect that the rule strictly relates to the spine and musculoskeletal system of the human body and not to other organ systems such as the heart, lungs, liver, kidneys, gastrointestinal system, etc and that medical issues relating to such systems be referred to other professionals. Section 75.17(c)(1)(A) establishes that the discussion under that subsection is of the spine and musculoskeletal system and applies to the use "system" in the following subordinate clauses. No change was made in response to this comment.

One commenter asked if, under §75.17(c)(2), the scope of practice includes the taking of x-rays for evaluation purposes. An x-ray is a subtype of diagnostic imaging. The Chiropractic Act authorizes the use of subjective and objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body. An x-ray can be an important tool for analyzing, examining, or evaluat-

ing a patient's health. No change was made in response to this comment.

One commenter asked what is the difference under §75.17(c)(2) between diagnostic imaging and x-ray insofar as the terms are used in the rule and what is the source of authority to perform diagnostic testing and sonogram. An x-ray is a subtype of diagnostic imaging. The Chiropractic Act authorizes the use of subjective and objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body. An x-ray can be an important tool for analyzing, examining, or evaluating a patient's health. No change was made in response to this comment.

One commenter asked what is the difference under §75.17(c)(2) between diagnostic imaging and x-ray. Diagnostic imaging refers to imaging systems other than x-ray images. No change was made in response to this comment.

One commenter asked what is the authority to perform diagnostic testing and sonograms as described under §75.17(c)(2). Section 201.002(b)(1) of the Chiropractic Act authorizes the use of "objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body." Chiropractors receive training in the interpretation of diagnostic images as part of their basic education. No change was made in response to this comment.

One commenter said that the Board's inclusion of electro diagnostic testing under §75.17(c)(2)(D) indicates that the Board continues to believe that it may place "surgical" or "incisive" procedures within the scope of chiropractic so long as they can be classified as means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body. The CPT Codebook identifies needle EMG as medicine under codes 95860 - 95904. Consequently, needle EMG is not a surgical procedure. Furthermore, the Board has determined that needle EMG does not involve the incisive use of a needle to remove tissue. No change was made in response to this comment.

One commenter said that, regarding §75.17(c)(3)(A), chiropractors are not trained in the diagnosis of diseases of the nervous system, they are not trained in the treatment of those diseases, and they do not have the basic medical knowledge to do EMG/NCS safely or accurately. The commenter noted that chiropractors, by their own rules of practice, treat disorders of the musculoskeletal system and that chiropractic practice should not include EMG or nerve conduction studies (NCS). The Board disagrees. Regardless of post graduate specialty training, the traditional chiropractic education has multiple classes that discuss the differential diagnosis of the nervous system in depth. These include classes on anatomy of the peripheral and central nervous system, physiology and function of the nervous system and clinical conditions related to the nervous system and other systems governed by the nervous system, which includes the musculoskeletal system. Traditional chiropractic training, regardless of specialization, also includes specific classes related to clinical neurology, physical examination techniques, differential diagnosis, and, in some cases, management of various conditions that affect the neuraxis. Specifically, there is training in the diagnosis and recognition of disorders that relate to the human cortex, brainstem, cerebellum, spinal cord, peripheral nerve, motor neuron, neuromuscular junction, muscle as well as infectious disease, vascular lesions and systemic diseases that can alter or create neurological illness and or cause changes in normal physiologic function. It is well understood that the musculoskeletal system is not a stand-alone system and that its function is a direct reflection of the nervous system and that it can be altered in function as the result of changes in the nervous system. As a result, traditional chiropractic education, without taking into account post graduate study, includes education on the nervous system so that both the nervous system and the related musculoskeletal system can be understood, examined, and diagnosed if a condition presents. There are also academic discussions and training as it relates to various forms of treatment or the need for various forms or diagnostic testing or the need for referral to other healthcare practitioners of different specialties if appropriate or necessary. Outside of the traditional chiropractic training, there are post graduate studies that go significantly beyond the training discussed above. This can include specific training in neurology and specialization in the field of electro-diagnosis. Testing and certification procedures include written as well as practical testing. This testing involves demonstration of actual technique and performance as well as comprehensive testing of neurological disease at every level of the nervous system. After evaluation of the majority of specialty studies in medicine that relate to the nervous system, it appears that the chiropractic specialty programs in electro-diagnosis that meet the National Chiropractic Board of Examiners criteria are equal, if not beyond, the medical specialty training. In many instances, the medical training in neurology only offers electro-diagnosis as an elective or only minimal time is spent in electrodiagnostic training. The chiropractic specialty education in electro-diagnosis lasts typically over a year and takes place under close supervision and includes case study requirements, hands-on experience, and comprehensive examinations that involve all aspects of training. In medical neurology training, there are typically other areas of interest that fill the time of a resident. As a result, the Board finds that the training of a chiropractic specialist is comparable to that of a neurology resident. No change was made in response to this request.

One commenter said that, regarding §75.17(c)(3)(A), H.B. 972 did not change prior AG opinions or decisions of the State Office of Administrative Hearings and that the Board's definition of "surgical procedure" is not consistent with the statutory language. To the contrary, H.B. 972 by providing a definition for "surgical procedure" changed the underlying law upon which those AG opinions were based. In addition, the Legislature did not address needle EMG in H.B. 972, but the Legislature did direct the Board to develop this rule regarding scope of practice. No change was made in response to this comment.

One commenter said that §75.17(c)(3)(A) includes authorization for electro-diagnostic testing and requires extra training in the amount of 120 hours for this type of testing. The commenter noted that this is a public safety issue that requires further review and consideration by experts in the field before it should be included in the proposed rule. The commenter requested that the proposed rule be revised at this time to delete any authority for chiropractors to perform electro-diagnostic testing that involves needles in the muscle. The Board disagrees. Testimony received at the February 1, 2006, public hearing indicated that there is no statute or rule that stipulates the mandatory level of education, didactic or otherwise, for a physician to complete and be proficient in before performing electromyography. The testimony submitted revealed that only properly trained physicians should be authorized to perform electro-diagnostic testing, but the Medical Board has not listed the criteria or provided a definition for what constitutes proper training. Understandably, the Medical Board has not done so because there are significant

variations between each medical residency or specialty program relating to electro-diagnosis. The Board has developed these specific rules and training and education requirements in consultation with experts. The minimal proficiency standards under this rule will protect the public health. No change was made in response to this comment.

One commenter stated that, regarding §75.17(c)(3)(A), EMG and NCS are expensive tests (averaging $350-700 per test) and that the validity of the test rests entirely on the physician doing the test. The commenter disputed the proposed training requirements. The Board disagrees. Certain series of x-rays and magnetic resonance imaging (MRI) tests can be much more expensive than a needle EMG. X-rays and MRIs are ordered and performed much more frequently than needle EMGs. The medical definition of "musculoskeletal" includes the study of the nervous system, and this is included as part of the basic chiropractic education. In a letter to the Board, Rand Swenson, DC, MD, PhD, and Associate Professor of Medicine (Neurology) and Anatomy, and Acting Chairman of Anatomy at Dartmouth Medical School, stated that needle EMG is within the scope of practice for chiropractors. In addition, at the public hearing on February 1, 2006, Dr. Brandon Brock, Diplomate of the American Chiropractic Neurology Board, submitted literature indicating the time some medical neurology residencies spend on needle EMG: The University of Texas Medical Branch at Galveston requires only one month, needle EMG is an elective and not a requirement at Baylor College of Medicine and Loma Linda University Medical Center, the Mayo Clinic College of Medicine and the Southwestern Medical Center have a two-month requirement. The Board finds that it is in the best interest of public health and safety to establish for chiropractors minimum competency standards for performing electromyography. No change was made in response to this comment.

One commenter said that, regarding §75.17(c)(3)(A), chiropractors are limited to diagnosis and treatment of disorders of the musculoskeletal system and spine. The commenter admitted that, while chiropractors do sometimes treat compression of the nerve roots caused by herniated discs in the spine, that condition (a radiculopathy) can be diagnosed by an EMG but rarely by a nerve conduction study. The Board disagrees. The medical definition of "musculoskeletal system" includes the nervous system, and the training for chiropractors and specialists in the field of electro-diagnosis have been discussed above. Since needle EMG is examiner dependent, the pain associated with each test will depend on the examiner. A needle EMG can be less expensive than certain series of x-rays and MRIs that are ordered and performed more frequently than needle EMG. Furthermore, in the event that imaging is negative, and EMG/NCS is appropriate and can provide a chiropractor with a diagnostic picture to treat a patient within the scope of practice of chiropractic. No change was made in response to this comment.

One commenter said that, regarding §75.17(c)(3)(A), EMG requires the use of a long, sharp needle in close proximity to the chest and abdominal cavity and that it certainly qualifies as "incisive" if a body organ is "incised" with this needle, which is a known complication. The Board has determined that needle EMG does not involve the incisive use of needles. The proper use of needle EMG avoids the insertion into undesired tissues or organ systems. Consequently, needle EMG is not an incisive or surgical technique. Thorough training in the use of needle EMG does include testing muscles proximal to the chest and abdominal cavity. The Board's rules establish that a lack of proper diligence or the gross inefficient practice of chiropractic can occur if a chiropractor performs or attempts to perform a procedure for which they are untrained by education or experience or if a chiropractor causes, permits, or allows physical injury to a patient (§75.2 of this title, relating to proper diligence and efficient practice of chiropractic). The risks associated with the use of needle EMG are taught as part of all certification programs. No change was made in response to this comment.

One commenter asked, regarding §75.17(c)(3)(A), why are chiropractors still performing "paraspinal surface EMG" and argued that the procedure has no medical validity. The Board disagrees. Studies have shown that surface electromyography can be an acceptable tool for kinesiologic analysis of movement disorders and for evaluating gait and posture displacements. While surface EMG is not used to diagnosis muscle or nerve disease, it may be used dynamically as a way to evaluate various biomechanical aspects of muscle activation and firing patterns that relate human function. Consequently, surface EMG has significant limitations when used as a way to diagnose diseases that relate to muscle or nerve, but can evaluate some forms of movement patterns relating to gait and biomechanics. No change was made in response to this comment.

One commenter noted that §75.17(c)(3)(A)(ii) should be revised to read "on-site." The clause has been revised to read "on-site."

Several commenters stated that "diagnosis" as used under §75.17(d) is not authorized under the Chiropractic Act and that the term should be deleted from the rule and the rule should conform to the definition used in the Occupations Code relating to the definition of chiropractic. Webster's Dictionary defines "diagnosis" as meaning "(1)(a): the art or act of identifying a disease from its signs and symptoms (b): the decision reached by diagnosis (2): a concise technical description of a taxon (3)(a): investigation or analysis of the cause or nature of a condition, situation, or problem (engine trouble) (b): a statement or conclusion from such an analysis." Thus, the plain meaning of "diagnosis" includes "using objective or subjective means to analyze, examine, or evaluate." For decades, chiropractors have also been required by insurance carriers, Medicare, Medicaid, and the workman's compensation system to provide a diagnosis. No change was made in response to this comment.

One commenter suggested that in §75.17(d)(1) the phrase "may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations" should be replaced with "must render an analysis, diagnosis" to ensure that, as first contact health care providers, chiropractors must render an analysis and/or diagnosis. The requirement for rendering an analysis is addressed under §75.2(a)(1)(A) of this chapter, relating to proper diligence and efficient practice of chiropractic, which requires that a chiropractor assess and evaluate a patient's status as part of the minimal acceptable standards of chiropractic. No change was made in response to this comment.

One commenter said that simply stating under §75.17(e)(2) that acupuncture is within the chiropractic scope of practice in this rule proposal does not make it so. Acupuncture has long been part of the practice of chiropractic. Post-graduate training in acupuncture is offered by the chiropractic colleges, and the National Board of Chiropractic Examiners offers a national standardized certification examination in acupuncture. In 1997, the Acupuncture Act was amended to clearly allow the practice of acupuncture by chiropractors and other licensed health care practitioners. *See* Tex. Occ. Code §205.003. No change was made in response to this comment.

One commenter said that the Board has no legal authority to authorize chiropractors to use "acupuncture" as proposed under §75.17(e)(2). The Acupuncture act specifically does not apply to other health care professionals licensed under other statutes, such as the Chiropractic Act. Tex. Occ. Code §205.003(a). Acupuncture has long been part of the practice of chiropractic, and the use of acupuncture by a chiropractor is limited to the purposes within the scope of practice. No change was made in response to this comment.

One commenter asked if acupuncture, as described under §75.17(e)(2), is limited to the biomedical condition of the spine or musculoskeletal system. The practice of acupuncture by a chiropractor is limited by the Chiropractic Act. See Texas Occupations Code §201.002(b). No change was made in response to this comment.

One commenter asked if different acupuncture procedures under §75.17(e)(2) require different training. The Board's existing rule regarding proper diligence and efficient practice of chiropractic, §75.2 of this title, requires that a chiropractor not perform or attempt to perform procedures in which the chiropractor is untrained by education or experience. At this time, the Board is not considering specific training requirements for the use of acupuncture, but it may do so in the future. No change was made in response to this comment.

One commenter asked if there must be demonstrated competency before acupuncture is used as described under §75.17(e)(2). Another commenter asked if chiropractors should be required to demonstrate competency in acupuncture commensurate with their training. The Board is the entity authorized to determine the competency for all aspects of the practice of chiropractic in Texas. Chiropractors in Texas have included acupuncture as part of their practice for decades without complaint. Acupuncture is part of the curriculum at the chiropractic colleges. In addition, the National Board of Chiropractic Examiners offers a national, standardized certification examination in acupuncture and Texas Chiropractic College offers a post-graduate 300-hour diplomate approved course in acupuncture, in addition to the 4,500 didactic and clinical hours required for licensure. The Board has not received complaints regarding the practice of acupuncture by a chiropractor, and at the February 1, 2006, the Board heard testimony that no malpractice claims had been made relating to the practice of acupuncture by a chiropractor in Texas. The Board's existing rule regarding proper diligence and efficient practice of chiropractic, §75.2 of this title, prohibits a chiropractor from "performing or attempting to perform procedures in which the chiropractor is untrained by education or experience." No change was made in response to this comment.

One commenter asked if the educational requirements for the practice of acupuncture should be specific and included under §75.17(e)(2). Testimony at the public hearing on February 1, 2006, indicated that the Medical Board and Physical Therapy Board do not require additional education before their licenses may use acupuncture in their practices. Chiropractors have performed acupuncture techniques on patients for decades. The Board's existing rule regarding proper diligence and efficient practice of chiropractic, §75.2 of this title, requires that a chiropractor not perform or attempt to perform procedures in which the chiropractor is untrained by education or experience. The Board has not received complaints regarding the practice of acupuncture by a chiropractor, and at the public hearing, the Board heard testimony that no malpractice claims have been made relating to the practice of acupuncture by a Texas chiropractor. No change was made in response to this comment.

Two commenters said that the use of a laser is not provided within the scope of chiropractic and the scope of chiropractic should not be expanded under §75.17(e)(2)(K) to include the use of lasers. The Department of State Health Services has specified that chiropractors may use lasers. Specifically, under §289.226(b)(11) of Title 25, relating to registration of radiation machine use and service, chiropractors are identified as among the practitioners of the healing arts. No change was made in response to this comment.

One commenter said that there is no additional training or certification required under §75.17(e)(3) for acupuncture procedures and that the Acupuncture Board noted there was a requirement relating to acupuncture in a prior draft of the rule. The Board is contemplating a future rulemaking that would establish additional training or certification for acupuncture. Acupuncture is used by chiropractors in a number of ways, ranging from a simple application to more sophisticated techniques. The Board is not proceeding with that rulemaking at this time because it desires to carefully consider and deliberate on the appropriate training requirements. No change was made in response to this comment.

One commenter said that the invitation under §75.17(f) for persons to continue to submit questions regarding scope to the Board ensures that the scope of practice will continue to be defined by Board opinions contrary to Legislative intent. The commenter apparently misinterprets the intent and purpose of this Subsection (f). The Board recognizes that questions regarding the scope of practice will continue to arise, particularly as this rule is implemented and as new treatments are developed. The purpose of Subsection (f) is to assist the Board in responding to whatever questions may arise and to assist the Board in determining whether a question may be resolved under this rule or whether the rule should be amended to address the question. No change was made in response to this comment.

One commenter said that the Board erred in requesting under proposed §75.17(f)(3) that persons with questions regarding whether a service or procedure is within the scope of practice submit, among other things, an explanation of how the service or procedure is consistent with either using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body or performing nonsurgical, nonincisive procedures. Such an explanation is intended only to provide the Board with information to aid in evaluating whether a question may be resolved under this rule or whether the rule should be amended to address the question. No change was made in response to this comment.

AUTHORITY

The new rule is adopted under Texas Occupations Code §§201.152, relating to rules, and 201.1525, relating to rules clarifying scope of chiropractic, and 201.1526, relating to development of proposed rules regarding scope of practice of chiropractic. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 1525 mandates that the Board adopt rules clarifying what activities are included within the scope of the practice of chiropractic and what activities are outside the scope. Section 1526 requires that the Board establish methods for seeking input from persons who will be most affected by the proposed rule.

§75.17. Scope of Practice.

(a) Aspects of Practice.

(1) A person practices chiropractic if they

(A) use objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) perform nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

(2) The practice of chiropractic does not include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription; or

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials.

(3) Needles may be used in the practice of chiropractic under standards set forth by the Board but may not be used for procedures that are incisive or surgical.

(A) The use of a needle for a procedure is incisive if the procedure results in the removal of tissue other than for the purpose of drawing blood.

(B) The use of a needle for a procedure is surgical if the procedure is listed in the surgical section of the CPT Codebook.

(4) This section does not apply to:

(A) a health care professional licensed under another statute of this state and acting within the scope of their license; or

(B) any other activity not regulated by state or federal law.

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

(1) Board--the Texas Board of Chiropractic Examiners.

(2) CPT Codebook--the American Medical Association's annual Current Procedural Terminology Codebook (2004). The CPT Codebook has been adopted by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services as Level I of the common procedure coding system.

(3) On-site--the presence of a licensed chiropractor in the clinic, but not necessarily in the room, while a patient is undergoing an examination or treatment procedure or service.

(4) Practice of chiropractic--the description and terms set forth under Texas Occupations Code §201.002, relating to the practice of chiropractic.

(c) Examination and Evaluation

(1) In the practice of Chiropractic, licensees of this board provide necessary examination and evaluation services to:

(A) Determine the bio-mechanical condition of the spine and musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of the structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) Determine the existence of subluxation complexes of the spine and musculoskeletal system of the human body and to evaluate their condition including, but not limited to:

(i) The nature, severity, complicating factors and effects of said subluxation complexes;

(ii) the etiology of said subluxation complexes; and

(iii) The effect of said subluxation complexes on the health of an individual patient or population of patients;

(C) Determine the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) Determine the treatment procedures that are contraindicated in the therapeutic care of a patient or condition; and

(E) Differentiate a patient or condition for which chiropractic treatment is appropriate from a patient or condition that is in need of care from a medical or other class of provider.

(2) To evaluate and examine individual patients or patient populations, licensees of this board are authorized to use:

(A) physical examinations;

(B) diagnostic imaging;

(C) laboratory examination;

(D) electro-diagnostic testing;

(E) sonography; and

(F) other forms of testing and measurement.

(3) Examination and evaluation services which require a license holder to obtain additional training or certification, in addition to the requirements of a basic chiropractic license, include:

(A) Electro-neuro Diagnostic Testing training requirements and standards (paraspinal surface electromyography excluded) include:

(i) Board approved training consisting of one hundred and twenty (120) hours of initial clinical and didactic training in the technical and professional components of the procedures or completion of a neurology diplomate program with sixty (60) hours of certification training in the technical and professional components of the procedures (these hours may be applied to a doctor's annual continuing education requirement);

(ii) The professional component of these procedures may not be delegated to a technician and must be directly performed by a qualified and licensed doctor of chiropractic who must be on-site during the technical component of the procedures;

(iii) The technical component of these procedures may be delegated to a technician if, said technician meets the train-

ing requirements of this section and is a licensed health care provider authorized to provide those services under Texas law;

(iv) The technical component of surface (non-needle) procedures may be delegated to a technician that has successfully completed Board approved training consisting of sixty (60) hours of initial clinical and didactic training in the technical component of the procedures; and

(v) Procedures must be performed in a manner consistent with generally accepted parameters, including clean needle techniques, standards of the Center for Communicable Disease, and meet safe and professional standards.

(B) Performance of radiologic procedures, which are authorized under the Texas Chiropractic Act, Texas Occupations Code, Chapter 201, may be delegated to an assistant who meets the training requirements set forth under §78.1 of this title (relating to Registration of Chiropractic Radiologic Technologists).

(4) Examination and evaluation services, and the equipment used for such services, which are outside the scope of chiropractic practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other examination and evaluation services that are inconsistent with the practice of chiropractic and with the examination and evaluation services described under this subsection.

(d) Analysis, Diagnosis, and Other Opinions

(1) In the practice of chiropractic, licensees may render an analysis, diagnosis, or other opinion regarding the findings of examinations and evaluations. Such opinions could include, but are not limited to, the following:

(A) An analysis, diagnosis or other opinion regarding the biomechanical condition of the spine or musculoskeletal system including, but not limited to, the following:

(i) the health and integrity of the structures of the system;

(ii) the coordination, balance, efficiency, strength, conditioning and functional health and integrity of the system;

(iii) the existence of structural pathology, functional pathology or other abnormality of the system;

(iv) the nature, severity, complicating factors and effects of said structural pathology, functional pathology, or other abnormality of the system;

(v) the etiology of said structural pathology, functional pathology or other abnormality of the system; and

(vi) the effect of said structural pathology, functional pathology or other abnormality of the system on the health of an individual patient or population of patients;

(B) An analysis, diagnosis or other opinion regarding a subluxation complex of the spine or musculoskeletal system including, but not limited to, the following:

(i) the nature, severity, complicating factors and effects of said subluxation complex;

(ii) the etiology of said subluxation complex; and

(iii) the effect of said subluxation complex on the health of an individual patient or population of patients;

(C) An opinion regarding the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(D) An opinion regarding the likelihood of recovery of a patient or condition under an indicated course of treatment;

(E) An opinion regarding the risks associated with the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(F) An opinion regarding the risks associated with not receiving the treatment procedures that are indicated in the therapeutic care of a patient or condition;

(G) An opinion regarding the treatment procedures that are contraindicated in the therapeutic care of a patient or condition;

(H) An opinion that a patient or condition is in need of care from a medical or other class of provider;

(I) An opinion regarding an individual's ability to perform normal job functions and activities of daily living, and the assessment of any disability or impairment;

(J) An opinion regarding the biomechanical risks to a patient, or patient population from various occupations, job duties or functions, activities of daily living, sports or athletics, or from the ergonomics of a given environment; and

(K) Other necessary or appropriate opinions consistent with the practice of chiropractic.

(2) Analysis, diagnosis, and other opinions regarding the findings of examinations and evaluations which are outside the scope of chiropractic include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other analysis, diagnosis, and other opinions that are inconsistent with the practice of chiropractic and with the analysis, diagnosis, and other opinions described under this subsection.

(e) Treatment Procedures and Services

(1) In the practice of chiropractic, licensees recommend, perform or oversee the performance of the treatment procedures that are indicated in the therapeutic care of a patient or patient population in order to:

(A) Improve, correct, or optimize the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the health and integrity of the structures of the musculoskeletal system; and

(ii) the coordination, balance, efficiency, strength, conditioning, and functional health and integrity of the musculoskeletal system;

(B) Promote the healing of, recovery from, or prevent the development or deterioration of abnormalities of the biomechanical condition of the spine or musculoskeletal system of the human body including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of the musculoskeletal system on the health of an individual patient or population of patients; and

(C) Promote the healing of, recovery from, or prevent the development or deterioration of a subluxation complex of the spine or musculoskeletal system, including, but not limited to, the following:

(i) the structural pathology, functional pathology, or other abnormality of a subluxation complex;

(ii) the effects and complicating factors of any structural pathology, functional pathology, or other abnormality of a subluxation complex;

(iii) the etiology of any structural pathology, functional pathology, or other abnormality of a subluxation complex; and

(iv) the effect of any structural pathology, functional pathology, or other abnormality of a subluxation complex on the health of an individual patient or population of patients.

(2) In order to provide therapeutic care for a patient or patient population, licensees are authorized to use:

(A) osseous and soft tissue adjustment and manipulative techniques;

(B) physical and rehabilitative procedures and modalities;

(C) acupuncture and other reflex techniques;

(D) exercise therapy;

(E) patient education;

(F) advice and counsel;

(G) diet and weight control;

(H) immobilization;

(I) splinting;

(J) bracing;

(K) cold or low-level light laser;

(L) durable medical goods and devices;

(M) homeopathic and botanical medicines, including vitamins, minerals; phytonutrients, antioxidants, enzymes, neutraceuticals, and glandular extracts;

(N) non-prescription drugs;

(O) referral of patients to other doctors and health care providers; and

(P) other treatment procedures and services consistent with the practice of chiropractic.

(3) The treatment procedures and services provided by a licensee which are outside of the scope of practice include:

(A) incisive or surgical procedures;

(B) the prescription of controlled substances, dangerous drugs, or any other drug that requires a prescription;

(C) the use of x-ray therapy or therapy that exposes the body to radioactive materials; or

(D) other treatment procedures and services that are inconsistent with the practice of chiropractic and with the treatment procedures and services described under this subsection.

(f) Questions Regarding Scope of Practice. Further questions regarding whether a service or procedure is within the scope of practice and this rule may be submitted in writing to the Board and should contain the following information:

(1) a detailed description of the service or procedure that will provide the Board with sufficient background information and detail to make an informed decision;

(2) information on the use of the service or procedure by chiropractors in Texas or in other jurisdictions; and

(3) an explanation of how the service or procedure is consistent with either:

(A) using subjective or objective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body; or

(B) performing nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602847
Glenn Parker
Executive Director
Texas Board of Chiropractic Examiners
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Proposal publication date: December 16, 2005
For further information, please call: (512) 305-6709

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §§153.1, 153.9, 153.13, 153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts the amendments to §§153.1, 153.9, 153.13, and 153.18, concerning Rules Relating to Provisions of the Texas Appraiser Licensing and Certification Act. Sections 153.13 and 153.18 are adopted with changes to the proposed text as published in the March 24, 2006, issue of the *Texas Register* (31 TexReg 2365). Sections 153.1 and §153.9 are adopted without change to the proposed text as published.

The adopted amendment to §153.1 amends the definition of a fundamental real estate course to tie it specifically to the courses recognized by the Appraiser Qualifications Board (AQB) as qualifying education. Section 153.9 adopts an amendment to the legal question on all applications relating to civil judgments rendered. Section 153.13 adopts amendments that clarify that fundamental or qualifying education courses must be approved by the Appraiser Qualifications or offered by an accredited college or university. It also simplifies the process for obtaining TALCB course approval and makes the period for which a course is approved the same as the AQB approval period. The proposed language to §153.13(j) was adopted with changes to make it consistent with the AQB criteria. The adopted amendments to §153.18 provide that the Appraiser Continuing Education (ACE) classroom courses must either have AQB approval or be approved by another state appraiser licensing and certification board. ACE distance courses must be approved by the AQB or be offered by an accredited college or university.

One comment was received from Ben Henson, Executive Director of the Appraisal Subcommittee suggesting that the Board not adopt the proposed amendment to §153.18(c) until the Appraiser Qualifications Board has finalized its interpretation. The Board tabled adoption of this amendment.

The amendments are adopted under the Texas Appraiser Licensing and Certification Act, Subchapter D, Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, Rules Relating to Certification and Licenses.

§153.13. Educational Requirements.

(a) General Real Estate Appraiser Certification.

(1) Applicants for General Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 180 classroom hours in courses approved by the board which meet the requirements as set out in subsections (e) - (o) of this section. Of these 180 classroom hours, at least 90 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.

(2) Applicants for General Real Estate Appraiser Certification whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(b) Residential Real Estate Appraiser Certification.

(1) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 120 classroom hours in courses approved by the board which meet the requirements as set out in subsections (e) - (o) of this section. Of these 120 classroom hours, at least 60 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(c) Real Estate Appraiser License or Provisional License.

(1) Applicants for a Real Estate Appraiser License or Provisional License whose application is received by the board prior to November 1, 2007 must have successfully completed 90 classroom hours in courses approved by the board which meet the requirements as set out in subsections (e) - (o) of this section. Of these 90 classroom hours, at least 40 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board, and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) Applicants for Real Estate Appraiser License or Provisional License whose application is received by the board after October 31, 2007 shall meet all educational requirements set forth by the Appraiser Qualifications Board.

(d) Appraiser Trainee. Effective with all applications received by the board after February 28, 2006, an applicant for an authorization as an Appraiser Trainee must meet all educational requirements set forth in the guidelines recommended by the Appraiser Qualifications Board.

(e) The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(f) The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, 7(a)(1) and (2) shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, or the course was approved by the Appraiser Qualifications Board under its course approval process as a qualifying education course;

(3) the applicant obtained credit received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit except as specified in subsection (k) of this section (relating to distance education); and

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course.

(g) The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

(h) Course providers may obtain prior approval of a course by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process. Such prior approval of courses will remain in effect for a period commensurate with the period of the approval granted by the Appraiser Qualifications Board.

(i) The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom

hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(j) Instructors who are also certified or licensed appraisers may receive continuing education credit consistent with the criteria adopted by the Appraiser Qualifications Board. Credit for instructing any given course or seminar can only be awarded once during a continuing education cycle.

(k) Distance education courses may be acceptable to meet the classroom hour requirement, or its equivalent, provided that the course is approved by the board and meets one of the following conditions listed in paragraphs (1) - (3) of this subsection.

(1) the course must have been presented by an accredited college or university that offers distance education programs in other disciplines; and

(A) the person has successfully completed a written examination administered to the positively identified person at a location and proctored by an official approved by the college or university; and

(B) the content and length of the course must meet the requirements for real estate appraisal related courses established by this chapter and by the requirements for qualifying education established by the Appraiser Qualifications Board of the Appraisal Foundation and is equivalent to a minimum of 15 classroom hours.

(2) The course has received the approval for college credit or has been approved under the AQB Course Approval program; and

(A) the person successfully completes a written examination proctored by an official approved by the presenting entity;

(B) the course meets the requirements for qualifying education established by the Appraiser Qualifications Board and is equivalent to the minimum of 15 classroom hours.

(3) A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(l) "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(m) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:

(1) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) utilize the "National Uniform Standards of Professional Appraisal Practice (USPAP) Course" promulgated by the Appraisal Foundation, including the Student Manual and Instructor Manual or an equivalent USPAP course as determined by the AQB.

(n) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation, provided that the educational provider has notified the board of the AQB approval.

(o) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

§153.18. Appraiser Continuing Education.

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 28 classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. Renewals shall include a minimum of seven classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP). The courses must comply with the requirements set out in subsection (d) of this section.

(b) Renewing an Appraiser Trainee Approval.

(1) For a trainee Whose Application Was Accepted by the Board Prior to March 1, 2006. As a condition for renewing an appraiser trainee authorization, a trainee must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with the fundamental education requirements for application for licensing and certification as set out in §153.13(f) - (o) of this title (relating to Educational Requirements):

(A) For the first annual renewal and every other annual renewal thereafter (third, firth, seventh, etc) a total of 45 classroom hours which shall include a minimum of 30 classroom hours of fundamental real estate appraisal courses and 15 classroom hours in a course devoted to the USPAP. The courses must specifically be approved by the board and shall include successful completion of an examination; and

(B) For the second annual renewal and every other annual renewal thereafter (fourth, sixth, etc.), a minimum of 30 classroom hours of fundamental real estate appraisal courses specifically approved by the board, which shall include the successful completion of an examination.

(2) For a Trainee Whose Application Was Accepted by the Board After February 28, 2006. As a condition for renewing an appraiser trainee authorization, a trainee shall be required to successfully complete 14 classroom hours of appraiser continuing education courses with each annual renewal. The renewal requirement includes successful completion of a 7 hour national USPAP update course, or the equivalent, every two years.

(c) The appraiser continuing education requirement as set forth in §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(d) In approving ACE courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings that may be accepted for meeting the ACE requirements are listed in subparagraphs (A) - (H) of this paragraph:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education offering that has been approved by the Appraiser Qualifications Board course approval process or by another state appraiser licensing and certification board. Course providers may obtain prior approval of continuing education offerings by filing forms prescribed by the board and submitting a letter indicating that the course has been approved by the Appraiser Qualifications Board under its course approval process or by another state appraiser licensing and certification board.

(C) Distance education courses, provided that the course is approved by the board and the course either has been presented by an accredited college or university that offers distance education programs in other disciplines, or has been approved the Appraiser Qualifications Board under its course approval process and the student successfully completed a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation. A minimum time equal to the number of hours of credit must elapse from the date of course enrollment until its completion.

(D) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(E) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) be the National USPAP Update Course or National USPAP Course or its equivalent as determined by the AQB;

(ii) use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; additionally,

(iv) providers may include up to one additional hour of supplemental Texas specific information. This may include such topics as the TALCB Act, TALCB Rules, processes and procedures, enforcement issues, or other topics deemed to be appropriate by the board.

(F) As part of the 28 classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction devoted to the USPAP before each renewal.

(G) Appraiser continuing education credits may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

(H) Neither current members of the Texas Appraiser Licensing and Certification Board nor those board staff engaged in the approval of courses or educational qualifications of applicants, certificate holders or licensees shall be eligible to teach or guest lecture as part of an approved appraiser qualifying or continuing education course.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 2006.

TRD-200602800
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Effective date: June 6, 2006
Proposal publication date: March 24, 2006
For further information, please call: (512) 465-3950

PART 14. TEXAS OPTOMETRY BOARD

CHAPTER 279. INTERPRETATIONS

22 TAC §279.6

The Texas Optometry Board adopts the repeal of Chapter 279, §279.6, concerning Interpretation of Requirements of Federal Contact Lens Prescription Law, without changes to the proposal as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1871).

The text of the repealed rule is now contained in §279.2, under the authority of House Bill 1025, 79th Legislature, Regular Session.

No comments were received regarding repeal.

The repeal is adopted under the Texas Optometry Act, Texas Occupations Code, §351.151, and the Contact Lens Prescription Act, Texas Occupations Code, §§353.002, 353.005, 353.1015, 353.101, 353.104, 353.152, 353.156, 353.158 and 353.204 as amended or added by House Bill 1025, 79th Legislature, Regular Session, and federal law, 15 U.S.C. §§7601 - 7610.

The Texas Optometry Board interprets §351.151 as authorizing the adoption of procedural and substantive rules for the regulation of the optometric profession. The Board interprets House Bill 1025 to require licensees to issue contact lens prescriptions at the completion of a contact lens exam and to verify prescriptions when requested by a dispenser authorized by the patient to obtain the verification, and requires the agency to adopt rules. Section 353.204 authorizes the agency to discipline optometrists and therapeutic optometrists for violations of the Contact Lens Prescription Act. The agency interprets the requirements of 15 U.S.C. §§7601 - 7610 to be similar to the requirements of House Bill 1025.

No other sections are affected by this repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 2006.

TRD-200602798
Chris Kloeris
Executive Director
Texas Optometry Board
Effective date: June 6, 2006
Proposal publication date: March 17, 2006
For further information, please call: (512) 305-8502

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PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §§283.2, 283.4, 283.6, 283.8, 283.9

The Texas State Board of Pharmacy adopts §283.2, concerning Definitions, §283.4, concerning Internship Requirements, §283.6 concerning Preceptor Requirements, §283.8 concerning Reciprocity Requirements, and §283.9 concerning Fee Requirements for licensure by Examination, Score Transfer, and Reciprocity. The amendments are adopted without change to the proposed text of §§283.2, 283.4, 283.6, and 283.8, as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2810). The amendment to §283.9 is adopted with changes to proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2810). The change is based on staff recommendation to clarify the timeframe for an individual to notify the board of an emergency prior to taking an examination.

The amendments to §§283.2, 283.4, and 283.6, define a healthcare professional and specify the requirements for a healthcare professional to serve as a preceptor in accordance with S.B. 410. The amendments to §283.8, allow a pharmacist to reciprocate to Texas with a current license in another state. The amendments to §283.9, allow the Board to refund half of the examination fee (which is currently $50) paid by an applicant if the applicant provides advance notice to the Board if the applicant is unable to take the examination due to an emergency.

No comments were received.

The amendments are adopted under §§551.002, 554.051, 558.057, 558.059 and 558.101, of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.057 as authorizing the agency to adopt rules regarding the requirements of a preceptor. The Board interprets §558.059 as authorizing the agency to provide examination fee refunds under conditions. The Board interprets §558.101 as authorizing the agency to adopt rules regarding the qualifications to reciprocate a pharmacist license to Texas.

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

§283.9. Fee Requirements for Licensure by Examination, Score Transfer and Reciprocity.

(a) The fees for licensure by examination, score transfer, and reciprocity shall include one exam administration. The fees are as follows:

(1) Examination Fee. The fee to submit an application for licensure by examination will include:

(A) An examination processing fee of $52, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) NAPLEX administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(2) Reciprocity Fee. The fee to submit an application for licensure by reciprocity will include.

(A) A reciprocity fee of $255, which is to be paid to the Texas State Board of Pharmacy.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A license verification fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(3) Score Transfer Fee. The fees to transfer a score to Texas, using the NAPLEX Score Transfer system will include:

(A) An examination processing fee of $52, which is to be paid to the Texas State Board of Pharmacy and includes the processing of the Texas application.

(B) MPJE administrative and examination fees as determined by NABP, which are to be paid to NABP in accordance with NABP policy.

(C) A score transfer fee as determined by NABP, which is to be paid to NABP in accordance with NABP policy.

(b) If an applicant fails an examination or is required to take an examination by the Board, the fees for one examination are as stated in subsection (a) of this section.

(c) Rescheduling or canceling an examination appointment.

(1) Refunds for fees charged by NABP for the administration of the NAPLEX and MPJE are in accordance with NABP policy. Rescheduling of an examination appointment shall be in accordance with NABP policy

(2) The Board may refund fifty percent of an examination fee paid to the Board by an applicant if the applicant:

(A) provides advance notice of their inability to take the examination prior to the board providing authorization to take the examination; or

(B) is unable to take the examination due to an emergency situation including but not limited to a manmade or natural disaster, documented serious medical illness, or other circumstance deemed an emergency by the Executive Director of the Board.

(d) A person who takes NAPLEX and/or the Texas Pharmacy Jurisprudence Examination will be notified of the results of the examination(s) within two weeks of receipt of the results of the examination(s) from the testing service. If both NAPLEX and the Texas Pharmacy Jurisprudence Examination are taken, the applicant will not be notified until the results of both examinations have been received. Such notification will be made within two weeks after receipt of the results of both examinations.

(e) Once an applicant has successfully completed all requirements of licensure, the applicant will be notified of licensure as a pharmacist and of his or her pharmacist license number and the following is applicable.

(1) The notice letter shall serve as authorization for the person to practice pharmacy in Texas for a period of 30 days from the date of the notice letter.

(2) The applicant shall complete a pharmacist license application and pay one pharmacist licensee fee as specified in §295.5 of this title (relating to Pharmacist License or Renewal Fees).

(3) The provisions of §295.7 of this title (relating to Pharmacist License Renewal) apply to the timely receipt of an application and licensure fee.

(4) If application and payment of the pharmacist license fee are not received by the board within 30 days from the date of the notice letter, the person's license to practice pharmacy shall expire. A person may not practice pharmacy with an expired license. The license may be renewed according to the following schedule.

(A) If the notice letter has been expired for 90 days or less, the person may become licensed by making application and paying to the board one license fee and a fee that is one-half of the examination fee for the license.

(B) If the notice letter has been expired for more than 90 days but less than one year, the person may become licensed by making application and paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(C) If the notice letter has been expired for one year or more, the person shall apply for a new license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602853
Gay Dodson, R. Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 11, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 305-8028

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CHAPTER 291. PHARMACIES
SUBCHAPTER B. COMMUNITY PHARMACY (CLASS A)

22 TAC §291.33

The Texas State Board of Pharmacy adopts amendments to §291.33 concerning Operational Standards. The amendments are adopted with changes to proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2816).

The amendments clarify the alternative labeling requirements for drugs dispensed or administered to a patient who is in a nursing home.

Written comments were received from the Coalition for Nurses in Advanced Practice (CNAP). CNAP suggested that the alternative labeling requirements be clarified to require the pharmacist include the name of the advanced practice nurse or physician assistant if the prescription drug order was signed by either of those types of practitioners. The Board agreed with the comments and clarified the rule to require the name of advanced practice nurses or physician assistants on the label when applicable.

The amendments are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code) and §483.042 of the Texas Dangerous Drug Act (Health and Safety Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §483.042 as authorizing the agency to adopt rules for the labeling of drugs dispensed or administered to a patient who is institutionalized.

The statutes affected by this rule: Texas Pharmacy Act, Chapters 551 - 566 and 568 - 569, Texas Occupations Code; Texas Dangerous Drug Act, Chapter 483, Health and Safety Code.

§291.33. Operational Standards.

(a) Licensing requirements.

(1) A Class A pharmacy shall register annually or biennially with the board on a pharmacy license application provided by the board, following the procedures specified in §291.1 of this title (relating to Pharmacy License Application).

(2) A Class A pharmacy which changes ownership shall notify the board within ten days of the change of ownership and apply for a new and separate license as specified in §291.4 of this title (relating to Change of Ownership).

(3) A Class A pharmacy which changes location and/or name shall notify the board within ten days of the change and file for an amended license as specified in §291.2 of this title (relating to Change of Location and/or Name).

(4) A Class A pharmacy owned by a partnership or corporation which changes managing officers shall notify the board in writing of the names of the new managing officers within ten days of the change, following the procedures in §291.3 of this title (relating to Change of Managing Officers).

(5) A Class A pharmacy shall notify the board in writing within ten days of closing, following the procedures in §291.5 of this title (relating to Closed Pharmacies).

(6) A separate license is required for each principal place of business and only one pharmacy license may be issued to a specific location.

(7) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be charged for the issuance and renewal of a license and the issuance of an amended license.

(8) A Class A pharmacy, licensed under the provisions of the Act, §560.051(a)(1), which also operates another type of pharmacy which would otherwise be required to be licensed under the Act,

§560.051(a)(2) concerning Nuclear Pharmacy (Class B), is not required to secure a license for such other type of pharmacy; provided, however, such licensee is required to comply with the provisions of §291.51 of this title (relating to Purpose), §291.52 of this title (relating to Definitions), §291.53 of this title (relating to Personnel), §291.54 of this title (relating to Operational Standards), and §291.55 of this title (relating to Records), contained in Nuclear Pharmacy (Class B), to the extent such sections are applicable to the operation of the pharmacy.

(9) A Class A (community) pharmacy engaged in the compounding of non-sterile pharmaceuticals shall comply with the provisions of §291.25 of this title (relating to Pharmacies Compounding Non-sterile Pharmaceuticals).

(10) A Class A (community) pharmacy engaged in the compounding of sterile pharmaceuticals shall comply with the provisions of §291.26 of this title (relating to Pharmacies Compounding Sterile Pharmaceuticals).

(11) A Class A (Community) pharmacy engaged in the provision of remote pharmacy services, including storage and dispensing of prescription drugs, shall comply with the provisions of §291.20 of this title (relating to Remote Pharmacy Services).

(12) Class A (Community) pharmacy engaged in centralized prescription dispensing and/or prescription drug or medication order processing shall comply with the provisions of §291.37 of this title (relating to Centralized Prescription Dispensing) and/or §291.38 of this title (relating to Centralized Prescription Drug or Medication Order Processing).

(b) Environment.

(1) General requirements.

(A) The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be clean and in good operating condition.

(B) A Class A pharmacy shall have a sink with hot and cold running water within the pharmacy, exclusive of restroom facilities, available to all pharmacy personnel and maintained in a sanitary condition.

(C) A Class A pharmacy which serves the general public shall contain an area which is suitable for confidential patient counseling.

(i) Such counseling area shall:

(I) be easily accessible to both patient and pharmacists and not allow patient access to prescription drugs;

(II) be designed to maintain the confidentiality and privacy of the pharmacist/patient communication.

(ii) In determining whether the area is suitable for confidential patient counseling and designed to maintain the confidentiality and privacy of the pharmacist/patient communication, the board may consider factors such as the following:

(I) the proximity of the counseling area to the check-out or cash register area;

(II) the volume of pedestrian traffic in and around the counseling area;

(III) the presence of walls or other barriers between the counseling area and other areas of the pharmacy; and

(IV) any evidence of confidential information being overheard by persons other than the patient or patient's agent or the pharmacist or agents of the pharmacist.

(D) The pharmacy shall be properly lighted and ventilated.

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

(F) Animals, including birds and reptiles, shall not be kept within the pharmacy and in immediately adjacent areas under the control of the pharmacy. This provision does not apply to fish in aquariums, guide dogs accompanying disabled persons, or animals for sale to the general public in a separate area that is inspected by local health jurisdictions.

(2) Security.

(A) Each pharmacist while on duty shall be responsible for the security of the prescription department, including provisions for effective control against theft or diversion of prescription drugs, and records for such drugs.

(B) The prescription department shall be locked by key or combination so as to prevent access when a pharmacist is not on-site. However, the pharmacist-in-charge may designate persons who may enter the pharmacy to perform functions designated by the pharmacist-in-charge (e.g., janitorial services).

(3) Temporary absence of pharmacist.

(A) If a pharmacy is staffed by a single pharmacist, the pharmacist may leave the prescription department for breaks and meal periods without closing the prescription department and removing pharmacy technicians and other pharmacy personnel from the prescription department provided the following conditions are met:

(i) at least one registered pharmacy technician remains in the prescription department;

(ii) the pharmacist remains on-site at the licensed location of the pharmacy and available for an emergency;

(iii) the absence does not exceed 30 minutes at a time and a total of one hour in a 12 hour period;

(iv) the pharmacist reasonably believes that the security of the prescription department will be maintained in his or her absence. If in the professional judgment of the pharmacist, the pharmacist determines that the prescription department should close during his or her absence, then the pharmacist shall close the prescription department and remove the pharmacy technicians or other pharmacy personnel from the prescription department during his or her absence; and

(v) a notice is posted which includes the following information:

(I) the fact that pharmacist is on a break and the time the pharmacist will return; and

(II) the fact that pharmacy technicians may begin the processing of prescription drug orders or refills brought in during the pharmacist absence but the prescription or refill may not be delivered to the patient or the patient's agent until the pharmacist returns and verifies the accuracy of the prescription.

(B) During the time a pharmacist is absent from the prescription department, only pharmacy technicians who have completed the pharmacy's training program may perform the following duties, provided a pharmacist verifies the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent:

(i) initiating and receiving refill authorization requests;

(ii) entering prescription data into a data processing system;

(iii) taking a stock bottle from the shelf for a prescription;

(iv) preparing and packaging prescription drug orders (i.e., counting tablets/capsules, measuring liquids and placing them in the prescription container);

(v) affixing prescription labels and auxiliary labels to the prescription container provided the pharmacy technician:

(I) has completed the training requirements outlined in §297.6 of this title (relating to Pharmacy Technician Training); and

(II) is registered as a pharmacy technician within the provisions of §297.3 of this title (relating to Registration Requirements); and

(vi) prepackaging and labeling prepackaged drugs.

(C) Upon return to the prescription department, the pharmacist shall:

(i) conduct a drug regimen review as specified in subsection (c)(2) of this section; and

(ii) verify the accuracy of all acts, tasks, and functions performed by the pharmacy technicians prior to delivery of the prescription to the patient or the patient's agent.

(D) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent provided a record of the delivery is maintained containing the following information:

(i) date of the delivery;

(ii) unique identification number of the prescription drug order;

(iii) patient's name;

(iv) patient's phone number or the phone number of the person picking up the prescription; and

(v) signature of the person picking up the prescription.

(E) Any prescription delivered to a patient when a pharmacist is not in the prescription department must meet the requirements for a prescription delivered to a patient as described in subsection (c)(1)(F) of this section.

(F) During the times a pharmacist is absent from the prescription department a pharmacist intern shall be considered a registered pharmacy technician and may perform only the duties of a registered pharmacy technician.

(G) In pharmacies with two or more pharmacists on duty, the pharmacists shall stagger their breaks and meal periods so that the prescription department is not left without a pharmacist on duty.

(c) Prescription dispensing and delivery.

(1) Patient counseling and provision of drug information.

(A) To optimize drug therapy, a pharmacist shall communicate to the patient or the patient's agent, information about the prescription drug or device which in the exercise of the pharmacist's professional judgment the pharmacist deems significant, such as the following:

(i) the name and description of the drug or device;

(ii) dosage form, dosage, route of administration, and duration of drug therapy;

(iii) special directions and precautions for preparation, administration, and use by the patient;

(iv) common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;

(v) techniques for self monitoring of drug therapy;

(vi) proper storage;

(vii) refill information; and

(viii) action to be taken in the event of a missed dose.

(B) Such communication:

(i) shall be provided with each new prescription drug order;

(ii) shall be provided for any prescription drug order dispensed by the pharmacy on the request of the patient or patient's agent;

(iii) shall be communicated orally in person unless the patient or patient's agent is not at the pharmacy or a specific communication barrier prohibits such oral communication; and

(iv) shall be reinforced with written information. The following is applicable concerning this written information.

(I) Written information designed for the consumer such as the USP DI patient information leaflets shall be provided.

(II) When a compounded product is dispensed, information shall be provided for the major active ingredient(s), if available.

(III) For new drug entities, if no written information is initially available, the pharmacist is not required to provide information until such information is available, provided:

(-a-) the pharmacist informs the patient or the patient's agent that the product is a new drug entity and written information is not available;

(-b-) the pharmacist documents the fact that no written information was provided; and

(-c-) if the prescription is refilled after written information is available, such information is provided to the patient or patient's agent.

(C) Only a pharmacist may verbally provide drug information to a patient or patient's agent and answer questions concerning prescription drugs. Non-pharmacist personnel may not ask questions of a patient or patient's agent which are intended to screen and/or limit interaction with the pharmacist.

(D) Nothing in this subparagraph shall be construed as requiring a pharmacist to provide consultation when a patient or patient's agent refuses such consultation. The pharmacist shall document such refusal for consultation.

(E) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient at the pharmacy, the following is applicable.

(i) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy, except as provided in subsection (b)(3) of this section or clause (ii) of this subparagraph.

(ii) An agent of the pharmacist may deliver a prescription drug order to the patient or his or her agent during short periods of time when a pharmacist is absent from the pharmacy, provided the short periods of time do not exceed two hours in a 24 hour period, and provided a record of the delivery is maintained containing the following information:

(I) date of the delivery;

(II) unique identification number of the prescription drug order;

(III) patient's name;

(IV) patient's phone number or the phone number of the person picking up the prescription; and

(V) signature of the person picking up the prescription.

(iii) Any prescription delivered to a patient when a pharmacist is not in the pharmacy must meet the requirements described in subparagraph (F) of this paragraph.

(iv) A Class A pharmacy shall make available for use by the public a current or updated edition of the United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient), or another source of such information designed for the consumer.

(F) In addition to the requirements of subparagraphs (A) - (D) of this paragraph, if a prescription drug order is delivered to the patient or his or her agent at the patient's residence or other designated location, the following is applicable.

(i) The information specified in subparagraph (A) of this paragraph shall be delivered with the dispensed prescription in writing.

(ii) If prescriptions are routinely delivered outside the area covered by the pharmacy's local telephone service, the pharmacy shall provide a toll-free telephone line which is answered during normal business hours to enable communication between the patient and a pharmacist.

(iii) The pharmacist shall place on the prescription container or on a separate sheet delivered with the prescription container in both English and Spanish the local and if applicable, toll-free telephone number of the pharmacy and the statement: "Written information about this prescription has been provided for you. Please read this information before you take the medication. If you have questions concerning this prescription, a pharmacist is available during normal business hours to answer these questions at (insert the pharmacy's local and toll-free telephone numbers)."

(iv) The pharmacy shall maintain and use adequate storage or shipment containers and use shipping processes to ensure drug stability and potency. Such shipping processes shall include the use of appropriate packaging material and/or devices to ensure that the drug is maintained at an appropriate temperature range to maintain the integrity of the medication throughout the delivery process.

(v) The pharmacy shall use a delivery system which is designed to assure that the drugs are delivered to the appropriate patient.

(G) Except as specified in subparagraph (B) of this paragraph, in the best interest of the public health and to optimize drug therapy, upon delivery of a refill prescription, a pharmacist shall ensure that the patient or patient's agent is offered information about the refilled prescription. Either a pharmacist or other pharmacy personnel shall inform the patient or patient's agent that a pharmacist is available to discuss the patient's prescription and provide information.

(H) A pharmacy shall post a sign no smaller than 8.5 inches by 11 inches in clear public view at all locations in the pharmacy where a patient may pick up prescriptions. The sign shall contain the following statement in a font that is easily readable: "Do you have questions about your prescription? Ask the pharmacist." Such notification shall be in both English and Spanish.

(I) The provisions of this paragraph do not apply to patients in facilities where drugs are administered to patients by a person required to do so by the laws of the state (i.e., nursing homes).

(2) Pharmaceutical care services.

(A) Drug regimen review.

(i) For the purpose of promoting therapeutic appropriateness, a pharmacist shall, prior to or at the time of dispensing a prescription drug order, review the patient's medication record. Such review shall at a minimum identify clinically significant:

(I) known allergies;

(II) rational therapy-contraindications;

(III) reasonable dose and route of administration;

(IV) reasonable directions for use;

(V) duplication of therapy;

(VI) drug-drug interactions;

(VII) drug-food interactions;

(VIII) drug-disease interactions;

(IX) adverse drug reactions; and

(X) proper utilization, including overutilization or underutilization.

(ii) Upon identifying any clinically significant conditions, situations, or items listed in clause (i) of this subparagraph, the pharmacist shall take appropriate steps to avoid or resolve the problem including consultation with the prescribing practitioner. The pharmacist shall document such occurrences.

(iii) The drug regimen review may be conducted by remotely accessing the pharmacy's electronic data base from outside the pharmacy by an individual Texas licensed pharmacist employee of the pharmacy, provided the pharmacy establishes controls to protect the privacy of the patient and the security of confidential records.

(B) Other pharmaceutical care services which may be provided by pharmacists include, but are not limited to, the following:

(i) managing drug therapy as delegated by a practitioner as allowed under the provisions of the Medical Practices;

(ii) administering immunizations and vaccinations under written protocol of a physician;

(iii) managing patient compliance programs;

(iv) providing preventative health care services; and

(v) providing case management of patients who are being treated with high-risk or high-cost drugs, or who are considered "high risk" due to their age, medical condition, family history, or related concern.

(3) Generic Substitution.

(A) General requirements.

(i) In accordance with Chapter 562 of the Act, a pharmacist may dispense a generically equivalent drug product if:

(I) the generic product costs the patient less than the prescribed drug product;

(II) the patient does not refuse the substitution; and

(III) the practitioner does not certify on the prescription form that a specific prescribed brand is medically necessary as specified in a dispensing directive described in subparagraph (C) of this paragraph.

(ii) If the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph, a pharmacist shall not substitute a generically equivalent drug product unless the pharmacist obtains verbal or written authorization from the practitioner and notes such authorization on the original prescription drug order.

(B) Prescription format for written prescription drug orders.

(i) A written prescription drug order issued in Texas may:

(I) be on a form containing a single signature line for the practitioner; and

(II) contain the following reminder statement on the face of the prescription: "A generically equivalent drug product may be dispensed unless the practitioner hand writes the words 'Brand Necessary' or 'Brand Medically Necessary' on the face of the prescription."

(ii) A pharmacist may dispense a prescription that is not issued on the form specified in clause (i) of this subparagraph, however, the pharmacist may dispense a generically equivalent drug product unless the practitioner has prohibited substitution through a dispensing directive in compliance with subparagraph (C)(i) of this paragraph.

(iii) The prescription format specified in clause (i) of this subparagraph does not apply to the following types of prescription drug orders:

(I) prescription drug orders issued by a practitioner in a state other than Texas;

(II) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(III) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(iv) In the event of multiple prescription orders appearing on one prescription form, the practitioner shall clearly identify to which prescription(s) the dispensing directive(s) apply. If the practitioner does not clearly indicate to which prescription(s) the dispensing directive(s) apply, the pharmacist may substitute on all prescriptions on the form.

(C) Dispensing directive.

(i) Written prescriptions.

(I) A practitioner may prohibit the substitution of a generically equivalent drug product for a brand name drug product by writing across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary."

(II) The dispensing directive shall:

(-a-) be in a format that protects confidentiality as required by the Health Insurance Portability and Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.) and its subsequent amendments; and

(-b-) comply with federal and state law, including rules, with regard to formatting and security requirements.

(III) The dispensing directive specified in this paragraph may not be preprinted, rubber stamped, or otherwise reproduced on the prescription form.

(IV) After, June 1, 2002, a practitioner may prohibit substitution on a written prescription only by following the dispensing directive specified in this paragraph. Two-line prescription forms, check boxes, or other notations on an original prescription drug order which indicate "substitution instructions" are not valid methods to prohibit substitution, and a pharmacist may substitute on these types of written prescriptions.

(V) A written prescription drug order issued prior to June 1, 2002, but presented for dispensing on or after June 1, 2002, shall follow the substitution instructions on the prescription.

(ii) Verbal Prescriptions.

(I) If a prescription drug order is transmitted to a pharmacist orally, the practitioner or practitioner's agent shall prohibit substitution by specifying "brand necessary" or "brand medically necessary." The pharmacists shall note any substitution instructions by the practitioner or practitioner's agent, on the file copy of the prescription drug order. Such file copy may follow the one-line format indicated in subparagraph (B)(i) of this paragraph, or any other format that clearly indicates the substitution instructions.

(II) If the practitioner's or practitioner's agent does not clearly indicate that the brand name is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on a verbal prescription reimbursed through the medical assistance program specified in 42 C.F.R., §447.331:

(-a-) the practitioner or the practitioner's agent shall verbally indicate that the brand is medically necessary; and

(-b-) the practitioner shall mail or fax a written prescription to the pharmacy which complies with the dispensing directive for written prescriptions specified in clause (i) of this subparagraph within 30 days.

(iii) Electronic prescription drug orders.

(I) To prohibit substitution, the practitioner or practitioner's agent shall note "brand necessary" or "brand medically necessary" on the electronic prescription drug order.

(II) If the practitioner or practitioner's agent does not clearly indicate on the electronic prescription drug order that the brand is medically necessary, the pharmacist may substitute a generically equivalent drug product.

(III) To prohibit substitution on an electronic prescription drug order reimbursed through the medical assistance program specified in 42 C.F.R., §447.331, the practitioner shall fax a copy of the original prescription drug order which complies with the

requirements of a written prescription drug order specified in clause (i) of this subparagraph within 30 days.

(iv) Prescriptions issued by out-of-state, Mexican, Canadian, or federal facility practitioners.

(I) The dispensing directive specified in this subsection does not apply to the following types of prescription drug orders:

(-a-) prescription drug orders issued by a practitioner in a state other than Texas;

(-b-) prescriptions for dangerous drugs issued by a practitioner in the United Mexican States or the Dominion of Canada; or

(-c-) prescription drug orders issued by practitioners practicing in a federal facility provided they are acting in the scope of their employment.

(II) A pharmacist may not substitute on prescription drug orders identified in subclause (I) of this clause unless the practitioner has authorized substitution on the prescription drug order. If the practitioner has not authorized substitution on the written prescription drug order, a pharmacist shall not substitute a generically equivalent drug product unless:

(-a-) the pharmacist obtains verbal or written authorization from the practitioner (such authorization shall be noted on the original prescription drug order); or

(-b-) the pharmacist obtains written documentation regarding substitution requirements from the State Board of Pharmacy in the state, other than Texas, in which the prescription drug order was issued. The following is applicable concerning this documentation.

(-1-) The documentation shall state that a pharmacist may substitute on a prescription drug order issued in such other state unless the practitioner prohibits substitution on the original prescription drug order.

(-2-) The pharmacist shall note on the original prescription drug order the fact that documentation from such other state board of pharmacy is on file.

(-3-) Such documentation shall be updated yearly.

(D) Refills.

(i) Original substitution instructions. All refills, including prescriptions issued prior to June 1, 2001, shall follow the original substitution instructions or dispensing directive, unless otherwise indicated by the practitioner or practitioner's agent.

(ii) Narrow therapeutic index drugs.

(I) The board, in consultation with the Texas State Board of Medical Examiners, has determined that no drugs shall be included on a list of narrow therapeutic index drugs as defined in §562.013, Occupations Code.

(-a-) The board has specified in §309.7 of this title (relating to dispensing responsibilities) that for drugs listed in the publication, pharmacists shall use as a basis for determining generic equivalency, Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements published by the Federal Food and Drug Administration, within the limitations stipulated in that publication. Pharmacists may only substitute products that are rated therapeutically equivalent in the Approved Drug Products with Therapeutic Equivalence Evaluations and current supplements.

(-b-) Practitioners may prohibit substitution through a dispensing directive in compliance with subparagraph (C) of this paragraph.

(II) The board shall reconsider the contents of the list if the Federal Food and Drug Administration determines a new equivalence classification which indicates that certain drug products are equivalent but special notification to the patient and practitioner is required when substituting these products.

(4) Substitution of dosage form.

(A) As specified in §562.002 of the Act, a pharmacist may dispense a dosage form of a drug product different from that prescribed, such as a tablet instead of a capsule or liquid instead of tablets, provided:

(i) the patient consents to the dosage form substitution;

(ii) the pharmacist notifies the practitioner of the dosage form substitution; and

(iii) the dosage form so dispensed:

(I) contains the identical amount of the active ingredients as the dosage prescribed for the patient;

(II) is not an enteric-coated or time release product;

(III) does not alter desired clinical outcomes;

(B) Substitution of dosage form may not include the substitution of a product that has been compounded by the pharmacist unless the pharmacist contacts the practitioner prior to dispensing and obtains permission to dispense the compounded product.

(5) Therapeutic Drug Interchange. A switch to a drug providing a similar therapeutic response to the one prescribed shall not be made without prior approval of the prescribing practitioner. This paragraph does not apply to generic substitution. For generic substitution, see the requirements of paragraph (3) of this subsection.

(A) The patient shall be notified of the therapeutic drug interchange prior to, or upon delivery, of the dispensed prescription to the patient. Such notification shall include:

(i) a description of the change;

(ii) the reason for the change;

(iii) whom to notify with questions concerning the change; and

(iv) instructions for return of the drug if not wanted by the patient.

(B) The pharmacy shall maintain documentation of patient notification of therapeutic drug interchange which shall include:

(i) the date of the notification;

(ii) the method of notification;

(iii) a description of the change; and

(iv) the reason for the change.

(6) Prescription containers.

(A) A drug dispensed pursuant to a prescription drug order shall be dispensed in a child-resistant container unless:

(i) the patient or the practitioner requests the prescription not be dispensed in a child-resistant container; or

(ii) the product is exempted from requirements of the Poison Prevention Packaging Act of 1970.

(B) A drug dispensed pursuant to a prescription drug order shall be dispensed in an appropriate container as specified on the manufacturer's container.

(C) Prescription containers or closures shall not be re-used.

(7) Labeling.

(A) At the time of delivery of the drug, the dispensing container shall bear a label with at least the following information:

(i) name, address and phone number of the pharmacy;

(ii) unique identification number of the prescription;

(iii) date the prescription is dispensed;

(iv) initials or an identification code of the dispensing pharmacist;

(v) name of the prescribing practitioner;

(vi) name of the patient or if such drug was prescribed for an animal, the species of the animal and the name of the owner;

(vii) instructions for use;

(viii) quantity dispensed;

(ix) appropriate ancillary instructions such as storage instructions or cautionary statements such as warnings of potential harmful effects of combining the drug product with any product containing alcohol;

(x) if the prescription is for a Schedules II - IV controlled substance, the statement "Caution: Federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed";

(xi) if the pharmacist has selected a generically equivalent drug pursuant to the provisions of the Act, Chapters 562 and 563, the statement "Substituted for Brand Prescribed" or "Substituted for 'Brand Name'" where "Brand Name" is the actual name of the brand name product prescribed;

(xii) the name of the advanced practice nurse or physician assistant, if the prescription is carried out or signed by an advanced practice nurse or physician assistant in compliance with Subtitle B, Chapter 157, Occupations Code; and

(xiii) the name and strength of the actual drug product dispensed, unless otherwise directed by the prescribing practitioner.

(I) The name shall be either:

(-a-) the brand name; or

(-b-) if no brand name, then the generic name and name of the manufacturer or distributor of such generic drug. (The name of the manufacturer or distributor may be reduced to an abbreviation or initials, provided the abbreviation or initials are sufficient to identify the manufacturer or distributor. For combination drug products or non-sterile compounded drug products having no brand name, the principal active ingredients shall be indicated on the label.)

(II) Except as provided in clause (xi) of this subparagraph, the brand name of the prescribed drug shall not appear on the prescription container label unless it is the drug product actually dispensed.

(B) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the dispensing container bears a label that adequately:

(I) identifies the:

(-a-) pharmacy by name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength of the drug dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner and, if applicable, the name of the advanced practice nurse or physician assistant who signed the prescription drug order; and

(II) sets forth the directions for use and cautionary statements, if any, contained on the prescription drug order or required by law.

(d) Equipment and supplies. Class A pharmacies dispensing prescription drug orders shall have the following equipment and supplies:

(1) typewriter or comparable equipment;

(2) refrigerator;

(3) adequate supply of child-resistant, light-resistant, tight, and if applicable, glass containers;

(4) adequate supply of prescription, poison, and other applicable labels;

(5) appropriate equipment necessary for the proper preparation of prescription drug orders; and

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

(e) Library. A reference library shall be maintained which includes the following in hard-copy or electronic format:

(1) current copies of the following:

(A) Texas Pharmacy Act and rules;

(B) Texas Dangerous Drug Act and rules;

(C) Texas Controlled Substances Act and rules; and

(D) Federal Controlled Substances Act and rules (or official publication describing the requirements of the Federal Controlled Substances Act and rules);

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

(A) patient information:

(i) United States Pharmacopeia Dispensing Information, Volume II (Advice to the Patient); or

(ii) a reference text or information leaflets which provide patient information;

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

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

(i) Facts and Comparisons with current supplements;

(ii) United States Pharmacopeia Dispensing Information Volume I (Drug Information for the Healthcare Provider);

(iii) Clinical Pharmacology;

(iv) American Hospital Formulary Service with current supplements; or

(v) Remington's Pharmaceutical Sciences; and

(3) basic antidote information and the telephone number of the nearest Regional Poison Control Center.

(f) Drugs.

(1) Procurement and storage.

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

(B) Prescription drugs and devices and nonprescription Schedule V controlled substances shall be stored within the prescription department or a locked storage area.

(C) All drugs shall be stored at the proper temperature, as defined by the following terms:

(i) controlled room temperature--temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

(ii) cool--temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit) which may, alternatively, be stored in a refrigerator unless otherwise specified on the labeling;

(iii) refrigerate--temperature maintained thermostatically between 2 degrees and 8 degrees Celsius (36 degrees and 46 degrees Fahrenheit); and

(iv) freeze--temperature maintained thermostatically between -20 degrees and -10 degrees Celsius (-4 degrees and 14 degrees Fahrenheit).

(2) Out-of-date drugs or devices.

(A) Any drug or device bearing an expiration date shall not be dispensed beyond the expiration date of the drug or device.

(B) Outdated drugs or devices shall be removed from dispensing stock and shall be quarantined together until such drugs or devices are disposed of properly.

(3) Nonprescription Schedule V controlled substances.

(A) Schedule V controlled substances containing codeine, dihydrocodeine, or any of the salts of codeine or dihydrocodeine may not be distributed without a prescription drug order from a practitioner.

(B) A pharmacist may distribute nonprescription Schedule V controlled substances which contain no more than 15 milligrams of opium per 29.5729 ml or per 28.35 Gm provided:

(i) such distribution is made only by a pharmacist; a nonpharmacist employee may not distribute a nonprescription Schedule V controlled substance even if under the supervision of a pharmacist; however, after the pharmacist has fulfilled professional and legal responsibilities, the actual cash, credit transaction, or delivery may be completed by a nonpharmacist:

(ii) not more than 240 ml (eight fluid ounces), or not more than 48 solid dosage units of any substance containing opium, may be distributed to the same purchaser in any given 48-hour period without a prescription drug order;

(iii) the purchaser is at least 18 years of age; and

(iv) the pharmacist requires every purchaser not known to the pharmacist to furnish suitable identification (including proof of age where appropriate).

(C) A record of such distribution shall be maintained by the pharmacy in a bound record book. The record shall contain the following information:

(i) true name of the purchaser;

(ii) current address of the purchaser;

(iii) name and quantity of controlled substance purchased;

(iv) date of each purchase; and

(v) signature or written initials of the distributing pharmacist.

(4) Class A Pharmacies may not sell, purchase, trade or possess prescription drug samples, unless the pharmacy meets all of the following conditions:

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

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

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

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

(g) Prepackaging of drugs.

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

(2) The label of a prepackaged unit shall indicate:

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

(B) facility's lot number;

(C) expiration date; and

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

(3) Records of prepackaging shall be maintained to show:

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

(B) facility's lot number;

(C) manufacturer or distributor;

(D) manufacturer's lot number;

(E) expiration date;

(F) quantity per prepackaged unit;

(G) number of prepackaged units;

(H) date packaged;

(I) name, initials, or electronic signature of the prepacker; and

(J) signature, or electronic signature of the responsible pharmacist.

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

(h) Customized patient medication packages.

(1) Purpose. In lieu of dispensing two or more prescribed drug products in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, or the prescriber, provide a customized patient medication package (patient med-pak).

(2) Definition. A patient med-pak is a package prepared by a pharmacist for a specific patient comprising a series of containers and containing two or more prescribed solid oral dosage forms. The patient med-pak is so designed or each container is so labeled as to indicate the day and time, or period of time, that the contents within each container are to be taken.

(3) Label.

(A) The patient med-pak shall bear a label stating:

(i) the name of the patient;

(ii) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(iii) the name, strength, physical description or identification, and total quantity of each drug product contained therein;

(iv) the directions for use and cautionary statements, if any, contained in the prescription drug order for each drug product contained therein;

(v) if applicable, a warning of the potential harmful effect of combining any form of alcoholic beverage with any drug product contained therein;

(vi) any storage instructions or cautionary statements required by the official compendia;

(vii) the name of the prescriber of each drug product;

(viii) the date of preparation of the patient med-pak and the beyond-use date assigned to the patient med-pak (which such beyond-use date shall not be later than 60 days from the date of preparation);

(ix) the name, address, and telephone number of the pharmacy;

(x) the initials or an identification code of the dispensing pharmacist; and

(xi) any other information, statements, or warnings required for any of the drug products contained therein.

(B) If the patient med-pak allows for the removal or separation of the intact containers therefrom, each individual container shall bear a label identifying each of the drug product contained therein.

(C) The dispensing container is not required to bear the label specified in subparagraph (A) of this paragraph if:

(i) the drug is prescribed for administration to an ultimate user who is institutionalized in a licensed health care institution (e.g., nursing home, hospice, hospital);

(ii) no more than a 34-day supply or 100 dosage units, whichever is less, is dispensed at one time;

(iii) the drug is not in the possession of the ultimate user prior to administration;

(iv) the pharmacist-in-charge has determined that the institution:

(I) maintains medication administration records which include adequate directions for use for the drug(s) prescribed;

(II) maintains records of ordering, receipt, and administration of the drug(s); and

(III) provides for appropriate safeguards for the control and storage of the drug(s); and

(v) the system employed by the pharmacy in dispensing the prescription drug order adequately:

(I) identifies the:

(-a-) pharmacy name and address;

(-b-) unique identification number of the prescription;

(-c-) name and strength each drug product dispensed;

(-d-) name of the patient;

(-e-) name of the prescribing practitioner of each drug product; and

(II) for each drug product sets forth the directions for use and cautionary statements, if any contained on the prescription drug order or required by law.

(4) Labeling. The patient med-pak shall be accompanied by a patient package insert, in the event that any drug contained therein is required to be dispensed with such insert as accompanying labeling. Alternatively, such required information may be incorporated into a single, overall educational insert provided by the pharmacist for the total patient med-pak.

(5) Packaging. In the absence of more stringent packaging requirements for any of the drug products contained therein, each container of the patient med-pak shall comply with official packaging standards. Each container shall be either not reclosable or so designed as to show evidence of having been opened.

(6) Guidelines. It is the responsibility of the dispensing pharmacist when preparing a patient med-pak, to take into account any applicable compendial requirements or guidelines and the physical and chemical compatibility of the dosage forms placed within each container, as well as any therapeutic incompatibilities that may attend the simultaneous administration of the drugs.

(7) Recordkeeping. In addition to any individual prescription filing requirements, a record of each patient med-pak shall be made and filed. Each record shall contain, as a minimum:

(A) the name and address of the patient;

(B) the unique identification number for the patient med-pak itself and a separate unique identification number for each of the prescription drug orders for each of the drug products contained therein;

(C) the name of the manufacturer or distributor and lot number for each drug product contained therein;

(D) information identifying or describing the design, characteristics, or specifications of the patient med-pak sufficient to allow subsequent preparation of an identical patient med-pak for the patient;

(E) the date of preparation of the patient med-pak and the beyond-use date that was assigned;

(F) any special labeling instructions; and

(G) the initials or an identification code of the dispensing pharmacist.

(i) Automated devices and systems.

(1) Automated compounding or counting devices. If a pharmacy uses automated compounding or counting devices:

(A) the pharmacy shall have a method to calibrate and verify the accuracy of the automated compounding or counting device and document the calibration and verification on a routine basis;

(B) the devices may be loaded with bulk or unlabeled drugs only by a pharmacist or by pharmacy technicians under the direction and direct supervision of a pharmacist;

(C) the label of an automated compounding or counting device container shall indicate the brand name and strength of the drug; or if no brand name, then the generic name, strength, and name of the manufacturer or distributor;

(D) records of loading bulk or unlabeled drugs into an automated compounding or counting device shall be maintained to show:

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

(ii) manufacturer or distributor;

(iii) manufacturer's lot number;

(iv) expiration date;

(v) date of loading;

(vi) name, initials, or electronic signature of the person loading the automated compounding or counting device; and

(vii) signature or electronic signature of the responsible pharmacist; and

(E) the automated compounding or counting device shall not be used until a pharmacist verifies that the system is properly loaded and affixes his or her signature to the record specified in subparagraph (D) of this paragraph.

(2) Automated pharmacy dispensing systems. This paragraph becomes effective September 1, 2000.

(A) Authority to use automated pharmacy dispensing systems. A pharmacy may use an automated pharmacy dispensing system to fill prescription drug orders provided that:

(i) the pharmacist-in-charge is responsible for the supervision of the operation of the system;

(ii) the automated pharmacy dispensing system has been tested by the pharmacy and found to dispense accurately. The pharmacy shall make the results of such testing available to the Board upon request; and

(iii) the pharmacy will make the automated pharmacy dispensing system available for inspection by the board for the purpose of validating the accuracy of the system.

(B) Quality assurance program. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall operate according to a written program for quality assurance of the automated pharmacy dispensing system which:

(i) requires continuous monitoring of the automated pharmacy dispensing system; and

(ii) establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every six months and whenever any upgrade or change is made to the system and documents each such activity.

(C) Policies and procedures of operation.

(i) When an automated pharmacy dispensing system is used to fill prescription drug orders, it shall be operated according to written policies and procedures of operation. The policies and procedures of operation shall establish requirements for operation of the automated pharmacy dispensing system and shall describe policies and procedures that:

(I) include a description of the policies and procedures of operation;

(II) provide for a pharmacist's review, approval, and accountability for the transmission of each original or new prescription drug order to the automated pharmacy dispensing system before the transmission is made;

(III) provide for access to the automated pharmacy dispensing system for stocking and retrieval of medications which is limited to licensed healthcare professionals or pharmacy technicians acting under the supervision of a pharmacist;

(IV) require prior to use, that a pharmacist checks, verifies, and documents that the automated pharmacy dispensing system has been accurately filled each time the system is stocked;

(V) provide for an accountability record to be maintained which documents all transactions relative to stocking and removing medications from the automated pharmacy dispensing system;

(VI) require a prospective drug regimen review is conducted as specified in subsection (c)(2) of this section; and

(VII) establish and make provisions for documentation of a preventative maintenance program for the automated pharmacy dispensing system.

(ii) A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall, at least annually, review its written policies and procedures, revise them if necessary, and document the review.

(D) Recovery Plan. A pharmacy which uses an automated pharmacy dispensing system to fill prescription drug orders shall maintain a written plan for recovery from a disaster or any other situation which interrupts the ability of the automated pharmacy dispensing system to provide services necessary for the operation of the pharmacy. The written plan for recovery shall include:

(i) planning and preparation for maintaining pharmacy services when an automated pharmacy dispensing system is experiencing downtime;

(ii) procedures for response when an automated pharmacy dispensing system is experiencing downtime;

(iii) procedures for the maintenance and testing of the written plan for recovery; and

(iv) procedures for notification of the Board, each patient of the pharmacy, and other appropriate agencies whenever an automated pharmacy dispensing system experiences downtime for more than two days of operation or a period of time which significantly limits the pharmacy's ability to provide pharmacy services.

(3) Final check of prescriptions dispensed using an automated pharmacy dispensing system. For the purpose of §291.32(b)(2) of this title, a pharmacist must perform the final check of all prescriptions prior to delivery to the patient to ensure that the prescription is dispensed accurately as prescribed.

(A) This final check shall be considered accomplished if:

(i) a check of the final product is conducted by a pharmacist after the automated system has completed the prescription and prior to delivery to the patient; or

(ii) the following checks are conducted by a pharmacist:

(I) if the automated pharmacy dispensing system contains bulk stock drugs, a pharmacist verifies that those drugs have been accurately stocked as specified in paragraph (2)(C)(i)(IV) of this subsection; and

(II) a pharmacist checks the accuracy of the data entry of each original or new prescription drug order entered into the automated pharmacy dispensing system.

(B) If the final check is accomplished as specified in subparagraph (A)(ii) of this paragraph, the following additional requirements must be met.

(i) The dispensing process must be fully automated from the time the pharmacist releases the prescription to the automated system until a completed, labeled prescription ready for delivery to the patient is produced.

(ii) The pharmacy has conducted initial testing and has a continuous quality assurance program which documents that the automated pharmacy dispensing system dispenses accurately as specified in paragraph (2)(A) and (B) of this subsection.

(iii) The automated pharmacy dispensing system documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (A)(ii) of this paragraph; and

(II) the name(s), initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who performs any other portion of the dispensing process.

(iv) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated pharmacy dispensing system at least every month rather than every six months as specified in paragraph (2)(B) of this subsection.

(4) Automated checking device.

(A) For the purpose of this subsection, an automated checking device is a fully automated device which confirms, after dispensing but prior to delivery to the patient, that the correct drug and strength has been labeled with the correct label for the correct patient.

(B) For the purpose of §291.32(b)(2) of this title, the final check of a dispensed prescription shall be considered accomplished using an automated checking device provided:

(i) a check of the final product is conducted by a pharmacist prior to delivery to the patient or the following checks are performed by a pharmacist:

(I) the prepackaged drug used to fill the order is checked by a pharmacist who verifies that the drug is labeled and packaged accurately; and

(II) a pharmacist checks the accuracy of each original or new prescription drug order.

(ii) the prescription is dispensed, labeled, and made ready for delivery to the patient in compliance with Class A (Community) Pharmacy rules; and

(iii) prior to delivery to the patient:

(I) the automated checking device confirms that the correct drug and strength has been labeled with the correct label for the correct patient; and

(II) a pharmacist performs all other duties required to ensure that the prescription has been dispensed safely and accurately as prescribed.

(C) If the final check is accomplished as specified in subparagraph (B) of this paragraph, the following additional requirements must be met.

(i) The pharmacy has conducted initial testing of the automated checking device and has a continuous quality assurance program which documents that the automated checking device accurately confirms that the correct drug and strength has been labeled with the correct label for the correct patient.

(ii) The pharmacy documents and maintains:

(I) the name(s), initials, or identification code(s) of each pharmacist responsible for the checks outlined in subparagraph (B)(i) of this paragraph; and

(II) the name(s) initials, or identification code(s) and specific activity(ies) of each pharmacist or pharmacy technician who perform any other portion of the dispensing process.

(iii) The pharmacy establishes mechanisms and procedures to test the accuracy of the automated checking device at least monthly.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §§297.1 - 297.9

The Texas State Board of Pharmacy adopts amendments to Chapter 297, §297.1 - 297.9, concerning the registration of pharmacy technician trainees. The amendments to §297.8 are adopted with changes to proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2817). The amendments to §§297.1 - 297.7 and §297.9 are adopted without changes to the proposed text and will not be republished.

The amendments require individuals to register with the Board before beginning work in a pharmacy as a pharmacy technician trainee and outline the procedures and requirements for individuals to register as pharmacy technician trainees, implementing provisions of SB 410. The amendments also require pharmacy technician applicants and pharmacy technician trainee applicants to submit fingerprint information in order for the Board to access criminal history information.

Comments were received from the Texas Pharmacy Association (TPA), the Texas Society of Health-System Pharmacists (TSHP), and the Texas Federation of Drug Stores (TFDS).

TPA commented that the Texas Pharmacy Act (Act) does not give the Board the authority to require pharmacy technicians and pharmacy technician trainees to notify the board of a change of name, address, and place of employment. The Board disagrees with this comment because §554.051(a) of the Act specifies that "the board shall adopt rules consistent with the Act for the administration and enforcement of this Act." Chapter 568 of the Act requires pharmacy technicians and pharmacy technician trainees to be registered with the Board and allows the Board to discipline these registrants for violations of the Act. To administer this requirement, the Board needs to know where the registrant is located so that violations can be investigated and the registrant can be notified of possible disciplinary action as required in the Administrative Procedures Act.

TPA, TSHP, and TFDS oppose the requirements relating to the fingerprinting requirements for pharmacy technicians and pharmacy technician trainees. TSHP commented that the requirement is unnecessarily costly for individuals with generally the lowest pay within the pharmacy industry and the highest turnover rate. TFDS commented that the requirement is overly burdensome and inappropriate for entry level pharmacy employees. TSHP and TFDS recommended that the pharmacy students/interns would be a more appropriate group for the fingerprinting requirements. The Board disagrees with the comments and believes that in order to best protect the public, fingerprint background checks are necessary for pharmacy technicians and pharmacy technician trainees in order to identify all individuals with criminal records that would provide grounds for denial of the registrations. The Board believes that the earlier it identifies these individuals the better the protection of the public and the less likelihood of further problems with individuals with serious criminal histories. The Board will propose the fingerprint background checks for all licensees on a "phase-in" basis. The Board does not believe the cost of the fingerprinting is overly burdensome in that the cost is less than $50 which far outweighs the need for full disclosure of criminal history in all states as well as federal criminal histories. In addition, the fingerprint check provides more accurate information. The Board believes an increase in accountability will decrease turnover rates and unnecessary costs.

TSHP suggested including a "designated staff development educator" as an individual who would be able to sign off on a pharmacy technician's or pharmacy technician trainee's training. The Board disagrees with this comment and believes that the pharmacist-in-charge must be held accountable for the training of the pharmacy technicians and pharmacy technician trainees.

TSHP and TFDS pointed out duplicate language in §297.8(b)(2) and (3). The Board agrees with this comment and the duplication was deleted from the rule.

The amendments are adopted under §§551.002, 554.051, and 568.007 of the Texas Pharmacy Act (Chapters 551 - 566 and 568 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §568.007 as authorizing the agency to register pharmacy technician trainees.

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

§297.8. Continuing Education Requirements.

(a) Pharmacy Technician Trainees. Pharmacy technician trainees are not required to complete continuing education.

(b) Pharmacy Technicians.

(1) All pharmacy technicians shall be exempt from the continuing education requirements during their initial registration period.

(2) All pharmacy technicians must complete 20 contact hours of approved continuing education per renewal period in pharmacy related subjects in order to renew their registration as a pharmacy technician. No more than 10 of the 20 hours may be earned at the pharmacy technician's workplace through in-service education and training under the direct supervision of the pharmacist(s).

(3) One hour specified in subsection (a) of this section shall be related to pharmacy law.

(4) Pharmacy technicians are required to maintain records of completion of continuing education for three years from the date of reporting the hours on a renewal application. The records must contain at least the following information:

(A) name of participant;

(B) title and date of program;

(C) program sponsor or provider (the organization);

(D) number of hours awarded; and

(E) dated signature of sponsor representative.

(5) The board shall audit the records of pharmacy technicians for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacy technician shall provide to the board copies of the record required to be maintained in paragraph (4) of this subsection or certificates of completion for all continuing education contact hours reported during a specified registration period. Failure to provide all requested records by the specified deadline constitutes prima facie evidence of a violation of this rule.

(B) Credit for continuing education contact hours shall only be allowed for programs for which the pharmacy technician submits copies of records reflecting that the hours were completed during the specified registration period(s). Any other reported hours shall be disallowed.

(C) A pharmacy technician shall not submit false or fraudulent records to the board.

(6) Pharmacy technicians who are certified by the Pharmacy Technician Certification Board and maintain this certification shall be considered as having met the continuing education requirements of this section and shall not be subject to audit by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602855
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Effective date: June 11, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 305-8028

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CHAPTER 305. EDUCATIONAL REQUIREMENTS

22 TAC §305.1, §305.2

The Texas State Board of Pharmacy adopts amendments to §305.1 and §305.2, concerning Pharmacy Education Requirements and Pharmacy Technician Training Programs. The amendments to §305.1 are adopted without changes to proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2822). The amendments to §305.2 are adopted with changes to proposed text as published. Section 305.2(e) was inadvertently omitted from the proposal. The section is adopted with changes to include the text of subsection (e).

The amendments update the rules to be consistent with other sections in the rules.

No comments were received regarding the amendments.

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

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

§305.2. Pharmacy Technician Training Programs.

(a) Purpose. The purpose of this section is to set standards for Board approval of pharmacy technician training programs to ensure that graduates of the programs have the basic knowledge and experience in general pharmacy to practice in most pharmacy settings. Pharmacy technician training programs are not required to be approved by the Board. However, the Board maintains a list of Board-approved pharmacy technician training programs that meet the standards established in this section.

(b) Board-approved pharmacy technician training programs.

(1) The approval by the Board of pharmacy technician training programs do not change any requirements for on-site training required of all pharmacy technicians as outlined in the rules for each class of pharmacy.

(2) The standard for Board-approved pharmacy technician training programs shall be the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs.

(3) The Board may approve pharmacy technician training programs which are currently accredited by the American Society of Health-System Pharmacists, and maintain such accreditation.

(4) The Board may approve pharmacy technician training programs not accredited by the American Society of Health-System Pharmacists provided:

(A) the program meets the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs, modified as follows:

(i) entities providing the pharmacy technician training programs are not required to be health care organizations or academic institutions;

(ii) entities that offer or participate in offering pharmacy technician training programs are not required to be accredited by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association, or the National Committee on Quality Assurance; and

(iii) students enrolled in pharmacy technician training programs must have a high school or equivalent diploma, e.g., GED, or they may be currently enrolled in a program which awards such a diploma;

(B) the program:

(i) makes application to the Board;

(ii) provides all information requested by the Board, necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph;

(iii) assists with any inspections requested by the Board of the facilities, records, and/or programs guidelines necessary to confirm that the program meets the requirements outlined in subparagraph (A) of this paragraph; and

(iv) pays an application processing fee to the Board of $100.00;

(C) the program director provides written status reports upon request of the Board and at least every three years to assist in evaluation of continued compliance with the requirements; and

(D) the program is subject to an on-site inspection at least every six years.

(5) The Board may require an outside entity to conduct any evaluations and/or inspections of a pharmacy technician training program as outlined in paragraph (4) of this subsection. This outside entity shall report to the Board whether a pharmacy technician training program meets the American Society of Health-System Pharmacists' Accreditation Standards for Pharmacy Technician Training Programs as modified. Cost of these evaluations shall be the responsibility of the pharmacy technician training program.

(c) Students enrolled in a Board-approved pharmacy technician training programs. A student enrolled in a Board-approved pharmacy technician training program may be a pharmacy technician trainee for the duration of their enrollment when working in a pharmacy as part of the experiential component of the Board-approved pharmacy technician training program.

(d) Review of accreditation standards. The Board shall review the American Society of Health-System Pharmacists' Accreditation Standard for Pharmacy Technician Training Programs periodically and whenever the Standard is revised.

(e) Listing of Board-approved Pharmacy Technician Training Programs. The Board shall maintain a list of the pharmacy technician training programs approved by the Board and periodically publish this list in the minutes of the Board. If the Board determines that a training program does not meet or no longer meets any of the requirements set forth in this section, the training program will not be listed as a Board-approved pharmacy technician training program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 501. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER E. RESPONSIBILITIES TO THE BOARD/PROFESSION

22 TAC §501.90

The Texas State Board of Public Accountancy adopts an amendment to §501.90 concerning Discreditable Acts with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 638). The Board deleted the word "or" in two places in paragraph (5) of this rule. The non-substantive changes were made to clarify the Board's intent to require a final conviction in connection with all criminal prosecutions.

The amendment to §501.90 will include criminal prosecution for a crime involving physical harm or threat of physical harm to a person as a discreditable act, as well as change a reference from §519.16 to §519.17.

The amendment clearly states that crimes involving physical harm or threat of physical harm will be investigated and prosecuted as discreditable acts.

One comment was received regarding adoption of the rule. The commenter stated that the Board has overstepped its bounds by imposing an impossible standard of perfection. The commenter believes that the Board should not punish license holders for making "minor mistakes". In response to the comment the Board states that crimes involving physical harm or threats of physical harm committed by a licensee to another person are not minor mistakes and do reflect poorly upon the profession, especially since licensees often deal with members of the public under stressful circumstances.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§501.90. Discreditable Acts.

A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of Subchapter J or §901.458 of the Act applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication or community supervision in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication or community supervision in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States, a criminal prosecution for a crime of moral turpitude, a criminal prosecution involving alcohol abuse or controlled substances, or a criminal prosecution for a crime involving physical harm or the threat of physical harm to a person;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(9) fiscal dishonesty or breach of fiduciary responsibility of any type;

(10) failure to comply with a final order of any state or federal court;

(11) repeated failure to respond to a client's inquiry within a reasonable time without good cause;

(12) misrepresenting facts or making a misleading or deceitful statement to a client;

(13) false swearing or perjury in any communication to the board or any other federal or state regulatory or licensing authority;

(14) threats of bodily harm or retribution to a client;

(15) public allegations of a lack of mental capacity of a client which cannot be supported in fact;

(16) causing a breach in the security of the CPA examination;

(17) voluntarily disclosing information communicated to the certificate holder by an employer, past or present, or through the certificate holder's employment in connection with accounting services rendered to the employer, except:

(A) by permission of the employer;

(B) pursuant to the Government Code, Chapter 554 (commonly referred to as the "Whistle Blowers Act");

(C) pursuant to a subpoena or other compulsory process;

(D) in an investigation or proceeding by the board under the Public Accountancy Act; or

(E) in an ethical investigation conducted by a professional organization of certified public accountants; and

(18) breaching the terms of an agreed consent order entered by the Board or violating any Board Order.

(19) Interpretive Comment: The board has found in §519.7 of this title (relating to Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board) and §525.1 of this title (relating to Applications for the Uniform CPA Examination, Issuance of the CPA Certificate, a License, or Renewal of a License for Individuals with Criminal Backgrounds) that any crime of moral turpitude directly relates to the practice of public accountancy. A crime of moral turpitude is defined in this chapter as a crime involving grave infringement of the moral sentiment of the community. The board has found in §519.7 of this title that any crime involving alcohol abuse or controlled substances directly relates to the practice of public accountancy.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 18, 2006.

TRD-200602810
Andrea Carter
Staff Attorney
Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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CHAPTER 505. THE BOARD

22 TAC §505.10

The Texas State Board of Public Accountancy adopts an amendment to §505.10 concerning Board Committees without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2982). The text of the rule will not be republished.

The amendment to §505.10 will eliminate the Major Case Committee and replace it with a second Technical Standards Review Committee.

The amendment increases the speed in which complaints regarding violations of technical standards are processed and resolved.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §505.11

The Texas State Board of Public Accountancy adopts an amendment to §505.11 concerning Texas State Board of Public Accountancy Policy Statement of the Peer Assistance Oversight Committee without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2985). The text of the rule will not be republished.

The amendment to §505.11 will broaden the rule to include all CPA candidates. As the rule is currently written CPA candidates who have completed the CPA examination are excluded.

The amendment encourages a larger number of potential license holders to seek help should they need it.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 511. CERTIFICATION AS A CPA
SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58 concerning Definitions of Related Business Subjects without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2986). The text of the rule will not be republished.

The amendment to §511.58 will define ethical reasoning, integrity, objectivity and independence as core values for the ethics course requirement.

The amendment will provide greater clarification regarding the ethics courses the Board requires potential CPAs to take.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 515. LICENSES

22 TAC §515.1

The Texas State Board of Public Accountancy adopts an amendment to §515.1 concerning License without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2987). The text of the rule will not be republished.

The amendment to §515.1 will stagger firm license renewal every twelve month period, rather then at the beginning of the year.

The amendment clarifies the Board's firm license renewal procedure.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §515.3

The Texas State Board of Public Accountancy adopts an amendment to §515.3 concerning License Renewal for Individuals and Firm Offices without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2987). The text of the rule will not be republished.

The amendment to §515.3 will change the expiration date of a firm license from December 31st of each year to the last day of the month of the firm's registration.

The amendment creates a more efficient method of processing firm license renewals.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 517. TEMPORARY PRACTICE IN TEXAS

22 TAC §517.2

The Texas State Board of Public Accountancy adopts an amendment to §517.2 concerning Application for Temporary Permit without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2988). The text of the rule will not be republished.

The amendment to §517.2 will clarify that firms practicing public accountancy under a Temporary Practice Permit are subject to the same terms and conditions of practice as firms that hold a Texas Firm License. In addition, Temporary Practice Permits can be renewed annually.

The amendment subjects out-of-state firms to the Board's jurisdiction even if they operate with temporary licenses and allows out-of-state firms to renew their Temporary Practice Permits annually.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Andrea Carter
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Texas State Board of Public Accountancy
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CHAPTER 519. PRACTICE AND PROCEDURE
SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy adopts an amendment to §519.2 concerning Definitions with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 639). The Board inserted the word "Direct" in paragraph (8), formerly paragraph (2), of this rule to be consistent with TEX. OCC. CODE §901.501(a)(9). The Board also renumbered paragraphs (2) through (8) in this rule so that the definitions remain in alphabetical order. The non-substantive changes were made to clarify the Board's definition of "direct administrative costs" as stated in TEX. OCC. CODE §901.501(a)(9).

The amendment to §519.2 will define "direct administrative costs" as found in Tex. OCC. Code §901.501(a)(9).

The amendment increases the recovery of the Board's expenses that are incurred in prosecuting cases against licensees.

One comment was received by the Board. The Texas Society of Certified Public Accountants commented that it supported the new §501.86; however, it expressed concern over the controversy regarding the Board's ability to collect staff salaries, including Board and attorney salaries, as a direct administrative cost under proposed §519.2. The Society points out that the State Office of Administrative Hearings do not allow recovery of these fees and that as a general rule, Texas courts require express statutory authority to collect attorney fees. The Society asks the Board to seek an Attorney General opinion on the matter.

In response to the TSCPA's comment, the Board believes that an exception to the general rule disallowing the recovery of attorney's fees applies to this rule. However, the Board will consider submitting the question to the Attorney General's Office. The Board will make its decision concerning an Attorney General's opinion after adopting the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

§519.2. Definitions.

In this chapter:

(1) "Address of record" means the last address provided to the board by a certificate or registration holder pursuant to board rule 501.93 of this title (relating to Responses);

(2) "ALJ" means administrative law judge;

(3) "APA" means the Texas Administrative Procedure Act, chapter 2001 of the Texas Government Code;

(4) "Board staff" means the employees or independent contractors of the board;

(5) "Committee" means an enforcement committee of the board which are the Behavioral Enforcement Committee, the Technical Standards Review Committee and the Major Case Enforcement Committee;

(6) "Complaint" means information available to or provided to the board indicating that a certificate or registration holder may have violated the Act, board rules, or order of the board;

(7) "Complainant" means the person or entity who initiates a complaint with board against a certificate or registration holder;

(8) "Direct Administrative costs" means those costs actually incurred by the board through payment to outside vendors and the resources expended by the board in the investigation and prosecution of a matter within the board's jurisdiction, including but not limited to, staff salary, payroll taxes and benefits and other non-salary related expenses, expert fees and expenses, witness fees and expenses, fees and expenses paid to the Office of the Attorney General, filing fees, SOAH utilization fees, court reporting fees, copying fees, delivery fees, case management fees, costs of exhibit creation, technical fees, travel costs and any other cost or fee that can reasonably be attributed to the matter;

(9) "PFD" means the proposal for decision prepared by an administrative law judge;

(10) "Respondent" means a certificate or registration holder against whom a complaint has been filed; and

(11) "SOAH" means the State Office of Administrative Hearings.

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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Andrea Carter
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Texas State Board of Public Accountancy
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For further information, please call: (512) 305-7842

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22 TAC §519.7

The Texas State Board of Public Accountancy adopts an amendment to §519.7 concerning Misdemeanors that Subject a Certificate or Registration Holder to Discipline by the Board without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 640). The text of the rule will not be republished.

The amendment to §519.7 will include additional misdemeanors that effect the practice of public accountancy; namely, those misdemeanors involving assault.

The amendment provides greater protection to the public by the Board from license holders who commit assault or related crimes.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Andrea Carter
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For further information, please call: (512) 305-7842

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22 TAC §519.9

The Texas State Board of Public Accountancy adopts an amendment to §519.9 concerning Administrative Penalty Guidelines without changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 642). The text of the rule will not be republished.

The amendment to §519.9 will make a change to the Administrative Penalty Guideline chart only. The change is in #21 of Figure 22 TAC §519.9(a) where the sentence "moral turpitude; abuse of alcohol or controlled substances; or physical injury or threats of physical injury to a person" has been added to the end of that section.

The amendment provides greater clarity regarding the amount of administrative penalty that may be imposed by the Board upon persons convicted of crimes or subject to deferred adjudication involving physical harm or threat of physical harm.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Andrea Carter
Staff Attorney
Texas State Board of Public Accountancy
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CHAPTER 523. CONTINUING PROFESSIONAL EDUCATION

SUBCHAPTER D. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION PROGRAMS AND RULES FOR SPONSORS

22 TAC §523.144

The Texas State Board of Public Accountancy adopts an amendment to §523.144 concerning Board Registered CPE Sponsors after January 1, 2005 without changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 2989). The text of the rule will not be republished.

The amendment to §523.144 will make a change to Figure 22 TAC §523.144(c) chart only. The amendment to the chart changes the total annual registration fee for 1-4 course titles offered from $750 down to $600.

The amendment brings sponsor review program revenues more in line with costs.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which provides the agency with the authority to amend, adopt and repeal rules deemed necessary or advisable to effectuate the Act.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 38. TEXAS MIDWIFERY BOARD

CHAPTER 831. MIDWIFERY

The Texas Midwifery Board (board), with the approval of the Executive Commissioner of the Health and Human Services Commission (executive commissioner), adopts amendments to §§831.1 - 831.3, 831.7, 831.121, and 831.131, repeal of §§831.11, 831.31, and 831.161, and new §§831.4, 831.11 - 831.17, 831.20 - 831.23, 831.31 - 831.37, 831.40, and 831.161 - 831.173, concerning the licensing and regulation of midwives without changes to the proposed text as published in the December 2, 2005, issue of the *Texas Register* (30 TexReg 7977) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The Texas Legislature passed House Bill (HB) 1535, 79th Legislature, Regular Session (2005), Sunset legislation, relating to the continuation and functions of the board; and the licensing and regulation of midwives. A new jurisprudence examination will be administered starting September 1, 2006, for all new applicants for licensure; and once every four years for renewal applicants. A jurisprudence examination fee of $35 will be collected by the contracted agency that is approved by the department. The rules also implement HB 2680, 79th Legislature, Regular Session (2005), relating to reduced fees and continuing education requirements for retired health professionals, including licensed midwives, engaged in the provision of voluntary charity care. Additionally, new language related to emergency suspension was added by Acts 2003, 78th Legislature, Chapter 326, §1.

SECTION-BY-SECTION SUMMARY

Repeal of §831.11 (relating to documentation), §831.31 (relating to education), and §831.61 (relating to complaint review) is being proposed in order to establish new sections which reflect the changes required by recent legislation, agency and reorganization.

New sections in Subchapters A, B, C, D and E are proposed to incorporate existing rule language from the sections being repealed which is still required, and to implement recent legislation.

Amendments to §§831.1 - 831.3, 831.7, 831.121, and 831.131 reflect changes to the Texas Occupations Code, Chapter 203, relating to the changes in the composition of the board, change in terminology from "documentation" to "licensure", and the transfer of the functions of the abolished Board of Health variously to the department, the Commissioner of the Department of State Health Services (commissioner), and the executive commissioner.

Amendments to §831.1 reflect new section names.

Amendments to §831.2 reflect changes required by the abolishment of the "Board of Health"; deletion of "documentation"; and the addition of "Executive Commissioner." The section has been renumbered to reflect deletions and insertions.

Amendments to §831.3 reflect changes required by the abolishment of the Board of Health. The amendments also include changes required by Sunset legislation, including the authority of Commissioner to appoint members to the board and the board chair, and the deletion of the $50 per diem payment to board members in addition to travel reimbursement. Also, the term "chairperson" is shortened to "chair."

New §831.4 reflects the new Sunset legislation requirement for board member training.

Amendments to §831.7 reflect the name change from the Texas Department of Health to the Department of State Health Services.

An amendment to the name of Subchapter B reflects Sunset legislation in the change from "Documentation" to "Licensure."

New §831.11 includes the same rule language related to the requirement for a license previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure.

New §831.12 includes the same rule language related to fees previously included in the section proposed for repeal. The obsolete language related to a one-year term for renewal has been deleted. The section also includes the change in the structure of late fees required by Sunset legislation, the new reduced fee for renewal for a retired midwife providing voluntary charity care required by HB 2680 of $275 for each two year renewal, the new jurisprudence examination fee of $35, and an increase in the site visit fee for approved midwifery courses from $400 to $500 every three years, in order to cover increased travel reimbursement costs associated with conducting the site visit.

New §831.13 and §831.14 include the same rule language related to application for a license and renewal of a license previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and the new requirement for a jurisprudence examination.

New §831.15 includes the same rule language related to late renewal of a license previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," the new requirement for a jurisprudence examination, and the new one-year limit on late renewal.

New §831.16 establishes the standards for renewal of a license with reduced renewal fees and continuing education requirements for a retired midwife providing voluntary charity care as required by HB 2680. This section defines "retired midwife" and "voluntary charity care," and establishes renewal requirements, late renewal requirements, and requirements for returning a license which was renewed under this section to active status.

New §831.17 includes the same rule language related to state roster previously included in the section proposed for repeal.

New §831.20 includes the same rule language related to grounds for denial of application or disciplinary action previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and the new authority of the board to refuse to renew a license for non-payment of an administrative penalty imposed by the board.

New §831.21 includes the same rule language related to application or renewal with criminal conviction previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and the new requirement for rules specifying the types of criminal convictions that would constitute grounds for board to take action against an individual under Texas Occupations Code, Chapter 53.

New §831.22 includes the same rule language related to surrender of license previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure."

New §831.23 includes the same rule language related to reissuance of license after revocation, suspension or surrender previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure."

An amendment to the name of Subchapter C reflects the new sections covering both education and examination.

New §831.31 includes the same rule language related to the education committee previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and a change in composition due to the new requirement that all committee members be members of the board. The term "chairperson" is shortened to "chair," and the term of appointment for committee members is changed from one year to two years.

New §831.32 includes the same rule language related to basic midwifery education previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and includes revised language allowing a physician licensed in the United States who is actively engaged in the practice of obstetrics to serve as a clinical preceptor for a midwifery student enrolled in an approved course.

New §831.33 includes the same rule language related to education course approval previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure." The term "chairperson" is shortened to "chair."

New §831.34 includes the same rule language related to education course denial or revocation of approval previously included in the section proposed for repeal. The term "chairperson" is shortened to "chair."

New §831.35 includes the same rule language related to exam approval, denial or revocation of approval previously included in the section proposed for repeal. The term "chairperson" is shortened to "chair."

New §831.36 includes the same rule language related to complaints concerning education courses and comprehensive exams previously included in the section proposed for repeal. The term "chairperson" is shortened to "chair."

New §831.37 establishes the standards for the new jurisprudence examination as required by Sunset legislation.

New §831.40 includes the same rule language related to continuing education previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure." It includes language permitting an approved basic midwifery education course to offer continuing education credits to licensed midwives.

Amendments to §831.121 reflect the change from "documentation" to "licensure," as well as corrections to a citation from Texas Revised Civil Statutes to the Texas Occupations Code.

Amendments to §831.131 reflect the change from "documentation" to "licensure."

New §831.161 includes the same rule language related to the complaint review committee previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and a change in composition due to the new requirement that all committee members be members of the board. The term "chairperson" is shortened to "chair," and the term of appointment for committee members is revised from one year to two years.

New §831.162 includes the same rule language related to reporting violations and/or complaints previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure."

New §831.163 includes the same rule language related to records of complaints previously included in the section proposed for repeal.

New §831.164 includes the same rule language related to complaint categories previously included in the section proposed for repeal.

New §831.165 includes the same rule language related to disciplinary action and guidelines previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and in the increase of the maximum administrative penalty from $1,000 to $5,000.

New §831.166 includes the same rule language related to complaint investigation previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure."

New §831.167 includes the same rule language related to informal settlement conferences previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure." The term "chairperson" is shortened to "chair."

New §831.168 includes the same rule language related to hearings previously included in the section proposed for repeal.

New §831.169 includes the same rule language related to disciplinary action previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure," and in the increase in the maximum administrative penalty of up to $5,000 per violation. It includes language authorizing the board to impose either a written warning or a reprimand as a disciplinary action.

New §831.170 includes the same rule language related to complaint disposition and appeals previously included in the section proposed for repeal. It reflects Sunset legislation in the change from "documentation" to "licensure."

New §831.171 reflects Sunset legislation authorizing the board to enter into an agreed order with a midwife, which provides for a refund to the client.

New §831.172 reflects Sunset legislation authorizing the board to issue a cease and desist order, and establishing that a violation of that order is grounds for imposition of an administrative penalty.

New §831.173 implements changes to the Act effective September 1, 2003, related to emergency suspension, including establishing members of the complaint review committee selected the board chair as the three-member committee designated to temporarily suspend a license.

COMMENTS

The board did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER A. THE BOARD

22 TAC §§831.1 - 831.4, 831.7

STATUTORY AUTHORITY

The final amendments and new rule are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 2006.

TRD-200602790
Brent Baylor
Chair
Texas Midwifery Board
Effective date: June 6, 2006
Proposal publication date: December 2, 2005
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER B. DOCUMENTATION

22 TAC §831.11

STATUTORY AUTHORITY

The final repeal is authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. LICENSURE

22 TAC §§831.11 - 831.17, 831.20 - 831.23

STATUTORY AUTHORITY

The new rules are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EDUCATION

22 TAC §831.31

STATUTORY AUTHORITY

The final repeal is authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. EDUCATION AND EXAMINATION

22 TAC §§831.31 - 831.37, 831.40

STATUTORY AUTHORITY

The final new rules are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. PRACTICE OF MIDWIFERY

22 TAC §831.121, §831.131

STATUTORY AUTHORITY

The final amendments are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. COMPLAINT REVIEW

22 TAC §831.161

STATUTORY AUTHORITY

The final repeal is authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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22 TAC §§831.161 - 831.173

STATUTORY AUTHORITY

The final new rules are authorized by the Texas Occupations Code, §203.151, which provides that, subject to the approval of the Executive Commissioner of the Health and Human Services Commission, the Midwifery Board shall adopt substantive and procedural rules for the licensing of midwives and minimum standards for the practice of midwifery, including educational requirements, complaint and disciplinary procedures, reciprocity of licensing with other states, and such other duties as may be imposed by the Texas Occupations Code, Chapter 203.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER A. VISIBLE EMISSIONS AND PARTICULATE MATTER

DIVISION 5. EMISSIONS LIMITS ON NONAGRICULTURAL PROCESSES

30 TAC §111.155

The Texas Commission on Environmental Quality (TCEQ or commission) adopts the repeal of §111.155 *without change* as published in the November 25, 2005, issue of the *Texas Register* (30 TexReg 7821).

Since the original submission of §111.155 as a revision to the state implementation plan (SIP) is still pending before United States Environmental Protection Agency (EPA), the commission requests that EPA remove from consideration the pending request for inclusion of §111.155 as a revision to the SIP.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL

The Texas Air Control Board (TACB) first developed and adopted ambient air standards for particulate matter (PM) in 1967. These standards were described in Regulation I, Board Order 67-1. The impetus for the standards was the results from field sampling surveys conducted in several regions of the state that suggested that PM control was necessary. At the time, the sampling method typically used for ambient PM was high-volume sampling. High-volume samplers collected the PM size fraction generally referred to as total suspended particulate matter (TSP). TSP does not have a clearly defined upper PM size cutoff, but is commonly recognized as PM that is 25 - 40 micrometers in diameter and smaller. It is important to note that in 1967 there were no national ambient air quality standards (NAAQS) for PM.

In 1971, primary (human health-based) and secondary (welfare-based) NAAQS were promulgated for PM, with TSP serving as the PM indicator. Following the establishment of the PM NAAQS, the TACB significantly revised the state ambient air standards for PM in 1972. The revised standards established net ground-level concentrations in ambient air for PM of 100, 200, and 400 micrograms per cubic meter ($\mu g/m^3$) (averaged over any five-, three-, and one-hour periods). Though not explicitly stated, the PM indicator for the standards was TSP, given the existing sampling technology at that time.

The 1972 Texas PM standards were reviewed and slightly modified in 1989, with the five-hour standard removed and the one- and three-hour standards readopted, resulting in the current PM standards listed in §111.155. Section 111.155 establishes net ground-level concentrations in ambient air for PM of 200 and 400 $\mu g/m^3$, averaged over any three- and one- hour periods, respectively. The PM indicator for §111.155 effectively remained TSP. On the national level, the 1971 PM NAAQS were modified in 1987, with particulate matter ten micrometers or smaller in diameter (PM_{10}) replacing TSP as the PM indicator and new primary and secondary NAAQS established. The rationale for replacing TSP with PM_{10} relates to the significant amount of scientific progress made since the promulgation on the 1971 PM NAAQS. This progress occurred in numerous facets of PM research, ranging from monitoring technology (sampling and analysis), atmospheric chemistry, emissions sources, and health effects.

The PM NAAQS were revised again in 1997, with the retention of PM_{10} serving as an indicator for coarse PM, and the establishment of a new, additional PM indicator, particulate matter 2.5 micrometers or smaller in diameter ($PM_{2.5}$). This new indicator was selected to address fine PM based on the emerging science that PM smaller than PM_{10} was more strongly associated with premature mortality and severe morbidity. Current PM NAAQS (PM_{10} and $PM_{2.5}$ NAAQS established in 1997) are under review and may be revised again by EPA.

The ground-level concentrations found in §111.155 were originally included in the Texas SIP adopted in 1972 and in subsequent revisions adopted in 1973, 1974, 1975, and 1976 under predecessor rules, Regulation I and Rule 105.2. All areas of the state were required to comply with all sections of the prior rules by December 31, 1973. Subsequent SIP revisions in 1979 and 1980 required implementation of revised sections of Chapter 111 in individual areas not meeting the PM NAAQS. Following the PM NAAQS change from TSP to PM_{10}, in 1987, new PM SIP revisions were adopted. PM_{10} SIP revisions were adopted in 1988, 1989, and 1991 that cited Chapter 111 as a control strategy for El Paso County, the one area in Texas not meeting the PM_{10} NAAQS.

On May 14, 2004, Baker Botts L.L.P. (Baker Botts) submitted a petition for rulemaking to repeal §111.155. Baker Botts requested that the rule be repealed because the rule is inconsistent with the direction of modern air quality regulation, results in unnecessarily long delays in air permit issuance, imposes PM controls without evidence of nuisance conditions, and reflects a burdensome and unnecessary regulatory tool to address PM. On July 28, 2004, the commission initiated rulemaking for §111.155 in response to the petition filed by Baker Botts. The commission stated that rulemaking would include an evaluation of §111.155, with stakeholder involvement, to determine if the current rule is adequate, needs to be amended, or repealed. As part of this evaluation, a stakeholder meeting was held on April 5, 2005, at commission headquarters in Austin, Texas, to receive formal stakeholder comments.

Section 111.155 is primarily used in the air permitting, field operations, and enforcement divisions to address nuisance PM. The technical details for establishing the specific net PM concentrations listed in §111.155 are not known. Little documentation exists that describes the rationale or the science used in selecting these concentrations. The background information that does exist comes from Dr. Herbert McKee, former TACB chairman, during the establishment of the 1967 and 1972 PM standards. Based on published literature he authored as well as his written comments to the commission, the 1972 PM standards were based primarily on the professional judgment of air quality regulators at the time. Dr. McKee emphasized that the 1972 PM standards were established to address nuisance PM, not health concerns. According to Dr. McKee, the TACB deferred to the PM NAAQS to address health issues.

In terms of health effects of PM, research overwhelmingly supports respirable PM (PM that can enter the lungs, generally regarded as ten micrometers or smaller in diameter) as the primary causative agent of PM-related health effects, particularly premature mortality and severe morbidity. PM fractions larger than ten micrometers, which are often the dominant PM size fractions, on a per mass basis, collected in TSP samples, are poor indicators of potential health effects. Therefore, the current PM NAAQS using PM_{10} and $PM_{2.5}$ as indicators are better suited to address health concerns than standards based on TSP, such as §111.155 or its predecessor, Rule 105.2. Additionally, the commission has developed effects screening levels (ESLs) to address health and welfare concerns for specific air pollutants occurring as PM (e.g., arsenic, chromium, silica, carbon black). ESLs are used to evaluate air concentrations for air permits and ambient air monitoring data, as well as set remediation clean-up levels. ESLs, in addition to the PM NAAQS, provide a means to assess health concerns from ambient PM and ultimately a basis for taking regulatory action when deemed necessary.

The use of §111.155 as a tool to address nuisance PM has historically occurred in the areas of enforcement, through the use of ambient air monitoring to determine net PM source contributions, and air permitting, generally with the use of air dispersion modeling. The PM standard is used infrequently as an enforcement tool for nuisance PM, due to the monitoring requirements to determine compliance. On the few occasions when monitoring is conducted, complexities such as accessibility of monitoring locations, weather, wind patterns, confounding PM sources (e.g., traffic on unpaved roads), facility operations, etc. can make meaningful sampling results difficult to obtain and interpret. Other enforcement tools available to address nuisance PM include, but are not limited to, tape lifts, still photographs, videotape, field observations by commission staff, the opacity limits described in §111.111 and §111.113, and the general nuisance rule in 30 TAC §101.4. In terms of air permitting, modeled ambient levels of TSP can be compared to the concentrations listed in §111.155 to evaluate the potential for nuisance PM. In addition to comparing modeled TSP levels to the standards, the commission can incorporate preventative measures against nuisance PM such as best available control technology (BACT) and special permit conditions. The inherent complexities and uncertainties of modeling emissions from PM sources that generate TSP have raised concern about the accuracy of these modeled estimates. Inaccurate modeled estimates may result in imposing PM controls without evidence of nuisance conditions (aside from modeling results) and can delay issuance of air permits. BACT and special permit conditions may serve as more reliable preventative tools for air permitting to address nuisance PM without being unduly burdensome to the regulated community.

To obtain a perspective of other state approaches to PM, specifically nuisance PM, the commission surveyed all 50 states. Based on this survey, the commission determined that §111.155 is generally inconsistent with approaches used by the vast majority of states, with 40 out of 50 states not having ambient standards for nuisance PM. In lieu of ambient air standards, the states generally use other rules and procedures such as opacity standards, best management practices to address nuisance PM (i.e., BACT), and comparison of modeled PM concentrations to the PM NAAQS. Many of these rules and procedures are currently available and used by the commission. As discussed previously, examples of tools and procedures used by the commission include BACT, special permit conditions, the opacity limits in §111.113 and §111.111, and the general nuisance rule in §101.4.

As previously stated, the science underlying the basis of §111.155 and its predecessor, Rule 105.2, is largely unknown due to the lack of documentation. However, the evidence that is available points to professional judgment and policy playing a significant role in the derivation of the standards listed in the rule. In addition, the rule was intended to address nuisance PM rather than health concerns. The PM NAAQS addresses health issues related to PM. In addition, the commission has ESLs that address the health concerns of specific PM constituents (e.g., metals, carbon compounds, silica). The size fraction that §111.155 has historically addressed is TSP. Regulation of TSP was prominent at both the state and federal levels during, and immediately following, the promulgation of 111.155. However, the federal and majority of state regulatory authorities have since replaced TSP ambient standards with PM standards of a smaller PM size (i.e., PM_{10}, $PM_{2.5}$). These changes were dictated by advances in the science of PM that highlighted the importance of PM size fractions smaller than TSP. TSP has since been relegated to nuisance PM concerns. It is generally understood that determining nuisance is highly subjective and is dependent on the PM size, composition, and concentration, as well as the tolerance of individuals for PM depending on the use of their property. This subjectivity prevents the establishment of technically- defensible ambient standards to address nuisance PM. Tools and procedures already available to the commission, and consistent with other state environmental regulatory agencies, are used to address nuisance PM.

Repealing §111.155 will not weaken the Texas SIP because EPA has not taken final action to approve it into the SIP. EPA is currently reviewing a pending action related to the reorganization of Regulation I, Board Order 67-1, which includes a proposal to include §111.155 in the Texas SIP. The commission requests that EPA remove from consideration in the pending request §111.155 for inclusion into the SIP. As discussed previously, there are other rules in place that the commission will still implement to assure compliance with the PM NAAQS.

Based on the commission's evaluation, as well as stakeholder input, the commission adopts the repeal of §111.155 given that it is not current or necessary based on good science. The commission determined that it has sufficient tools and procedures currently available to address nuisance PM.

DEMONSTRATING NONINTERFERENCE UNDER FEDERAL CLEAN AIR ACT, SECTION 110(l)

Issue

The commission provides the following information to clarify why the repeal of §111.155, Control of Air Pollution from Visible Emissions and Particulate Matter, (previously Rule 105.2) from TAC and the Texas SIP will not negatively impact the attainment status of the state's PM attainment areas.

The requirement for reasonable notice and public hearing is satisfied through the hearing held on December 15, 2005, and the public comment period, which was held from November 25, 2005, to January 13, 2006. EPA also issued draft guidance on June 8, 2005, "Demonstrating noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan." The guidance states (page 6) that ". . .areas have two options available to demonstrate noninterference for the affected pollutant(s)." This document provides detail of the identified existing measures in the rule preamble to show

compliance with option (1) of EPA's guidance: Substitution of one measure by another with equivalent or greater emissions reduction/air quality benefits.

Background

TCEQ's predecessor agency, the Texas Air Control Board (TACB), adopted Rule 105.2 on January 26, 1972, by Board Order 72-2. On May 31, 1972, EPA approved Rule 105.2 with the original Texas SIP. In 1975, the agency switched to a ten-digit numbering system, and Rule 105.2 was renumbered as Rule 131.03.05.002. In October 1980, Rule 131.03.05.002 was renumbered as §111.52 to become part of Chapter 111 of 31 TAC. Section 111.52 was repealed on July 4, 1989, along with the rest of Chapter 111. An entirely new Chapter 111 along with §111.155, was adopted on July 4, 1989, in a concurrent action as the repeal of §111.52. On August 21, 1989, TACB submitted a SIP revision to EPA to remove Rule 105.2 from the SIP and replace it with §111.155, which is in place today. EPA is currently reviewing a pending action related to the reorganization of Regulation I, Board Order 72-2, which includes a proposal to include §111.155 in the Texas SIP. Since the commission is considering the repeal of §111.155, the agency is asking EPA not to continue with the inclusion of §111.155 into the Texas SIP, and to continue with the removal of Rule 105.2 from the SIP.

TSP in the 1970s was replaced by PM standards in the 1980s. In terms of health and welfare effects of PM, research overwhelmingly supports respirable PM (PM that can enter the lungs, generally regarded as ten micrometers or smaller in diameter) as the primary causative agent of PM- related health effects. The primary (health) and secondary (welfare) standards for PM are identical. Therefore, the current PM NAAQS using PM_{10} and $PM_{2.5}$ as indicators are better suited to address health concerns than standards based on general PM, such as §111.155 or its predecessor, Rule 105.2. The state does not rely on §111.155 in attainment demonstration SIPs as a control strategy. For the one PM nonattainment area, there are specific rules in place, such as §§111.111(c)(1), 111.141, 111.143, 111.145, 111.147, and 111.149.

In 2004, TCEQ received a petition to repeal §111.155 from the TAC. The regulatory history does not provide any explanation for how the limits in §111.155 were established. It is clear, however, that the limits were intended to address nuisance conditions, not health effects. The TACB's TSP standard was established to eliminate nuisance conditions while the PM_{10} standard was designed to protect health.

Since the promulgation of the original rule, the federal national ambient air quality standards for total suspended particulates has been repealed, in favor of the more meaningful particulate matter (PM_{10}) standard. Section 111.155 is an artifact that is no longer consistent with the direction in which modern air quality regulation is headed, which is based on science. There are sufficient tools and procedures described in the following section that are currently available to address nuisance PM, in addition to health and welfare.

Description of current regulations and requirements

Other rules such as §§101.4, 101.20, 101.21, 111.111, 111.113, 111.141, 111.143, 111.145, 111.147, and 111.149 make the general PM rule superfluous and redundant. The current rule has been one of the tools used in the permitting process to help determine an appropriate ambient concentration, but not to establish control strategies that protect the NAAQS. The other rules help establish the limits that ensure the NAAQS will not be violated. The same rules and permit conditions contained in the permit are relied upon by the field operations staff in determining compliance with the standards.

a) 30 TAC §101.21, The National Primary and Secondary Air Quality Standards

1) The TSP standard established in the 1970s was based on research done in the 1960s. At that point in time it wasn't known what type of particulate matter actually caused health effects. PM was based on what could be measured at the time, which was TSP, specifically, particles 50 microns and less. Since that time, it was discovered that the smaller particles actually cause negative health effects. Since then, the focus has been primarily on PM_{10}, particles 10 microns and smaller because those are the particles that can actually pass the upper respiratory system into the lungs. The PM_{10} NAAQS regulations were passed to regulate this particle size fraction. Additional scientific research prompted EPA to further revise the particulate matter standard to focus on particles less than 2.5 µgm in diameter, ($PM_{2.5}$) in addition to the PM_{10} standard to provide the most effective protection from potential adverse health effects.

2) There are mechanisms in the agency's permitting program to address particulate matter emissions. Where the potential exists for emissions of particulate matter for a point source, the permit conditions will require BACT for the control of the emissions. Furthermore, there is a health effects review conducted, which will review the expected emissions against the NAAQS for PM_{10} and the specific compounds, which make up the particulate matter, will be reviewed to ensure that off-site receptors are not adversely affected. To limit the potential for a nuisance condition from particulate matter, permit language does require continuous compliance with all rules and regulations passed by the TCEQ. This includes the agency's rules prohibiting nuisance conditions and excess visible emissions. Best Management Practices are also placed into the permits, required as part of a Permit by Rule, and also required in the agency's Standard Permits. These practices could include watering of roads within the plant site, covering or watering of stock piles, limiting the size and location of the piles, and covering and/or watering of transfer point on conveyor belts, all which will help in the control of fugitive particulate matter emissions. Finally, due to the differing types of particulate matter and the properties that each one has, it is not technically feasible to determine a nuisance condition based on a single TSP standard. For example, when determining if a nuisance condition has occurred, a pound of carbon black, which has a greater rate of coverage, is not the same as a pound of limestone dust.

b) Enforcement of the current rule for compliance purposes consisted of 17 notices of violation and five notices of enforcement issued from 1998 2005.

One explanation for the seemingly low use in enforcement today is that other controls, such as special permit conditions and Best Management Practices, now serve the same purpose.

c) In addition to specific permitting and compliance policies, the following rules are in place:

1) 30 TAC §101.4, General Nuisance Rule, 40 Code of Federal Regulations (CFR) §52.2299(c)(7)

Provides for case by case determination of whether an air contaminant release is a nuisance;

2) 30 TAC §111.111, Requirements for Specified Sources, 40 CFR §52.2299(c)(94)

Restricts visible emissions and opacity levels for stationary sources and, in some instances, requires the use of continuous emissions monitoring;

3) 30 TAC §111.113, Alternative Opacity Limitations, 40 CFR §52.2299(c)(94)

Requires alternative opacity limitation requests to go through the public hearing process and the applicant must submit a "preponderance of evidence" to show no exceedance will occur;

4) 30 TAC §101.20, Compliance with Environmental Protection Agency Standards, 23 CFR §52.2299(c)(10)

Requires applicants to comply with all applicable federal permitting requirements;

5) 30 TAC §111.141, Geographic Areas of Application and Date of Compliance, 40 CFR §52.2299(c)(79); 30 TAC §111.143, Materials Handling, 40 CFR §52.2299(c)(79); 30 TAC §111.145, Construction and Demolition, 40 CFR §2299(c)(79); 30 TAC §111.147, Roads, Streets, and Alleys, 40 CFR §52.2299(c)(79); 30 TAC §111.149, Parking Lots, 40 CFR §52.2299(c)(79).

These rules are specific to activities such as materials handling; construction and demolition; roads, streets, and alleys; and parking lots.

d) Regulations specific to El Paso, the state's only nonattainment area for PM.

1) §111.111(c)(1) includes operating restrictions for solid fuel heating devices during stagnation periods.

2) §§111.141, 111.143, 111.145, 111.147, and 111.149 prescribe certain types of controls to be applied to the identified categories.

All of the rules identified previously are approved as part of the Texas SIP.

Conclusion

The commission determined that there are sufficient rules and procedures in place to assure compliance with the PM NAAQS and to address nuisance PM.

SECTION DISCUSSION

Section 111.155 establishes one-hour and three-hour ground level concentration levels for particulate matter. The commission adopts the repeal of §111.155.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the adopted repeal does not meet the definition of a "major environmental rule" as defined in the statute. Therefore, Texas Government Code, §2001.0225 does not apply to this rulemaking. "Major environmental rule" is defined in Texas Government Code, §2001.0225(g)(3), as a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific purpose of the adopted repeal is to delete a rule that is no longer necessary, effective, current, or based on good science, as described in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED REPEAL section of this preamble. This adopted repeal will not have an adverse material impact because the commission determined that the currently existing NAAQS for PM adequately protects human health and welfare, and the remaining prohibition against nuisance conditions remains in effect.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this adopted rulemaking and performed a preliminary assessment of whether this action would constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of this proposed repeal would be neither a statutory nor a constitutional taking of private real property. The adopted repeal of §111.155 does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of a government action. Consequently, this adoption does not meet the definition of a taking under Texas Government Code, §2007.002(5). This rulemaking is adopted to repeal §111.155, since the commission determined that the currently existing NAAQS for PM adequately protects human health and welfare, and the remaining prohibition against nuisance conditions remains in effect. Therefore, this adopted repeal will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq*.), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with Texas Coastal Management Program. As required by §281.45(a)(3), Actions Subject to Consistency with the Goals and Policies of the Texas Coastal Management Program (CMP), and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Because §111.155 is an applicable requirement under 30 TAC Chapter 122, Federal Operating Permits Program, owners or operators subject to the Federal Operating Permit Program must, consistent with the revision process in Chapter 122, revise their operating permit to delete requirements relating to §111.155.

PUBLIC COMMENT

A public hearing for this rulemaking was held on December 15, 2005, in Austin, and the comment period closed on January 13, 2006. The commission received comments from Baker Botts L.L.P., Southern Crushed Concrete, Inc. (SCC), Temple-Inland Forest Products Corp. (Temple- Inland), Texas Pipeline Association (TPA), The Association of Electric Companies of Texas (AECT), City of Houston Bureau of Air Quality Control (BAQC), Environmental Defense, Harris County Public Health & Environmental Services Pollution Control & Environmental Health Division (HCPHESPCEHD), Houston Regional Group of the Sierra Club (HSC), Lowerre & Frederick, and the U.S. Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

Baker Botts L.L.P., Southern Crushed Concrete, Inc. (SCC), Temple-Inland Forest Products Corp. (Temple-Inland), Texas Pipeline Association (TPA), and The Association of Electric Companies of Texas (AECT) supported the proposed repeal of 30 TAC §111.155.

The commission appreciates this support.

BAQC and HCPHESPCEHD commented on the key role of §111.155 in predicting nuisance impacts of particulate matter (PM) during the permitting process and believe that other available enforcement tools are inadequate to assess potential PM nuisance. Additionally, these groups do not believe that the current rule is overly burdensome on the regulated community. Environmental Defense supported these comments.

The commission disagrees with the comment because some significant sources of particulate matter, such as roads, are difficult, if not impossible, to accurately model during the permitting process. These emissions are hard to accurately quantify through emission factors and the sources are hard to accurately characterize. Consequently, §111.155 does not accurately predict potential nuisance impacts. While the agency agrees that the modeling process itself is not burdensome to the regulated community, the inability to adequately model some sources does present an unnecessary burden on the regulated community to comply with §111.155. Instead of quantifying these emissions, permit provisions, such as road watering, are added to reduce and control these emissions. In addition, opacity limits set by §111.111 and §111.113 and the general nuisance rule in §101.4 are utilized and result in issuance of Notices of Violations. The agency therefore asserts that these enforcement tools, in addition to secondary PM_{10} and $PM_{2.5}$ standards required by the National Ambient Air Quality Standards (NAAQS), are adequate to address PM nuisance concerns.

Environmental Defense further provided scientific documentation of adverse health effects from short-term exposure to PM and commented that §111.155 provides protection against short-term exposures to respirable fractions of PM that the 24-hour and annual PM NAAQS do not. HSC is also concerned that TSP contains a range of particles that can cause welfare and health effects. In addition, one of the provided studies suggested that particle composition may differentially affect toxicity.

The agency agrees that TSP contains a fraction of respirable PM less than 10 µgm in diameter. However, as Environmental Defense mentioned, the exact proportion of the respirable fraction varies from source to source. More importantly, there is no scientific basis for the established one-hour value of 400 $\mu g/m^3$ and three-hour value of 200 $\mu g/m^3$ and no evidence that these values provide health protection. In addition, the net measurement used to determine these values can result in underestimation of actual particle concentrations. For example, if concentrations both upwind and downwind of a facility are high, the net concentration may be well below the one- or three-hour TSP values but may not be protective of health and/or nuisance conditions. Therefore, the agency disagrees that §111.155 provides short-term health protection not afforded by the PM NAAQS.

Regarding the toxicity of individual particle components, the agency agrees that the toxicity of PM can be influenced by the particle composition. Therefore, Effects Screening Levels (ESLs) have been established for particles, such as metals. These ESLs are used during the permitting and enforcement processes to assess potential adverse health effects and provide health protection not afforded by §111.155 or its predecessor, Rule 105.2.

HSC commented that TSP High-Volume Air Sampling is simple and straightforward to perform and more scientifically precise than field operations.

The agency disagrees with this comment, due to the difficulty to access sample collection areas precisely upwind and downwind of a facility and potential underestimation of the net measurement mentioned previously. It is possible that conditions clearly presenting a nuisance to field operations personnel may not violate the net standard. Furthermore, as stated previously, no documentation exists for a scientific basis for the levels set by §111.155 or its predecessor, Rule 105.2. While sample analysis may be performed quickly, sample collection is often restricted by road access and obstructions at the property line. For these reasons, the agency does not agree that High-Volume Air Sampling is straightforward and more scientifically precise than field operations.

HSC also commented that use of the term "ambient air" is inappropriate in describing property- line samples.

The agency disagrees with this comment. Section 101.1(4) defines "ambient air" as "That portion of the atmosphere, external to buildings, to which the general public has access." The property line includes an area outside of the company's property and an area where the general public could potentially have legal access. The term "source" is also defined in §101.1 as: "(97) Source--A point of origin of air contaminants, whether privately or publicly owned or operated. . .." Therefore, under commission definitions the property line of a site would not be considered a source since it is not the point of origin of an air contaminant.

HSC recommended the addition of standards for particulate matter 10 µgm and 2.5 µgm in diameter. HSC also commented that information on pollutants other than nuisance dust can be gained from property-line TSP monitoring.

The agency agrees that particles 10 µgm (PM_{10}) and 2.5 µgm ($PM_{2.5}$) in diameter should be monitored. Section 101.21 allows primary and secondary national ambient air quality standards to be enforced throughout all parts of Texas. This provision allows fence-line monitoring of PM_{10} and $PM_{2.5}$ that is more stringent than net property line measurements. In addition, speciation of fence-line PM_{10} can provide important information on respirable air pollutants.

Lowerre & Frederick commented that during the 1989 amendment process the agency stated that "the standards have proven to be effective enforcement tools during the 15 years they have been used." Lowerre & Frederick then referenced three specific enforcement cases using §111.155. In addition, the commenters noted the previous agency statement that "Removal of

the ground level standards would leave no particulate controls in place, which would aggravate nuisance conditions." Finally, Lowerre and Frederick commented that the property line standard provides a quantitative measure for anticipating nuisance conditions.

Although this statement was applicable at the time, the agency disagrees that the rule continues to be an effective enforcement tool today. Between 1998 and 2005, property line monitoring for total suspended particles occurred 45 times. Of these, only 11 Notices of Violation and five Notices of Enforcement were issued to a total of nine separate entities. The reason this rule is rarely used in enforcement today is that controls, such as special permit conditions requiring Best Management Practices, now serve the same purpose. Enforcement of these permit conditions, including requirements to water roads and facilities, eliminates the need for TSP modeling and monitoring while preventing nuisance conditions. Therefore, the agency disagrees that the repeal of §111.155 would leave no particulate controls in place or would aggravate nuisance conditions. Finally, although the property line standard does provide a numerical value, the net measurement may not provide evidence of nuisance conditions, and the standards against which these values are compared are not scientifically based.

EPA commented that §111.155 is currently not in the Texas SIP.

The commission's predecessor agency, the Texas Air Control Board, submitted a SIP revision to replace Rule 105.2 with §111.155 on August 21, 1989. EPA is currently reviewing a pending action related to the reorganization of Regulation I, Board Order 67-1, which includes a proposal to include §111.155 in the Texas SIP. The commission requests that EPA remove §111.155 from consideration in the pending request at EPA for inclusion into the SIP.

STATUTORY AUTHORITY

The repeal is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repeal is also adopted under THSC, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; and THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The adopted repeal implements THSC, §§382.002, 382.011, 382.012, 382.016, and 382.017.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 22, 2006.

TRD-200602856

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Effective date: June 11, 2006
Proposal publication date: November 25, 2005
For further information, please call: (512) 239-5017

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 59. PARKS

SUBCHAPTER H. SEA RIM STATE PARK HUNTING, FISHING, AND TRAPPING PROCLAMATION

31 TAC §§59.201 - 59.215

The Texas Parks and Wildlife Commission adopts the repeal of §§59.201 - 59.215, concerning the Sea Rim State Park Hunting, Fishing, and Trapping Proclamation, without changes to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1191).

Under Parks and Wildlife Code, §62.0631, the Texas Parks and Wildlife Commission (the Commission) may provide an open season for recreational hunting in Sea Rim State Park that is not inconsistent with sound biological management practices normally exercised to protect or utilize the wildlife resources occurring therein. In 1976, the Commission promulgated the Sea Rim State Park Hunting, Fishing, and Trapping Proclamation. The department has determined that the rules are no longer necessary, because Sea Rim State Park is a unit of public hunting lands. All hunting, fishing, and trapping activity within the park is regulated under the provisions of 31 TAC Chapter 65, Subchapter H, which governs hunting on lands owned, leased, or administered by the department. The proposed repeals are necessary to eliminate unnecessary and superfluous regulations.

The repeals will function by eliminating unnecessary rules.

The department received one comment opposing adoption of the proposed repeals. The commenter stated that Sea Rim State Park was not part of the public hunting system and that hunting in the park was not covered under either the Statewide Hunting and Fishing Proclamation or the Public Hunting Lands Proclamation. The department agrees that hunting on Sea Rim State Park is not governed by the Statewide Hunting and Fishing Proclamation; however, the department disagrees that Sea Rim State Park is not a part of the public hunting system and responds that under the provisions of Parks and Wildlife Code, §62.063, the commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site. Each year the commission approves the specific hunting opportunities that are to take place each year on those state parks where hunting opportunity is offered, including the prescribing of the number, size, kind, and sex of wildlife to be taken and the means and methods of take.

No other comments were received by the department concerning adoption of the proposed repeals.

The repeals are adopted under Parks and Wildlife Code, §62.0631, which authorizes the commission to provide an open season for recreational hunting in Sea Rim State Park that is not inconsistent with sound biological management practices normally exercised to protect or utilize the wildlife resources occurring therein.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 16, 2006.

TRD-200602746
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: June 5, 2006
Proposal publication date: February 24, 2006
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER E. CLAIMS PROCESSING--PURCHASE VOUCHERS

34 TAC §5.54

The Comptroller of Public Accounts adopts amendments to §5.54, concerning consulting services contracts, without changes to the proposed text as published in the March 31, 2006, issue of the *Texas Register* (31 TexReg 2827).

The primary purpose of the amendments is to conform §5.54 to the changes made to the consulting services statutes during recent legislative sessions.

During the 75th Legislature, 1997, Senate Bill 645 raised the threshold for determining whether a consulting services contract is a "major consulting services contract."

During the 76th Legislature, 1999, Senate Bill 176 amended the consulting services statutes to require a state agency to notify the Legislative Budget Board in writing after the agency contracts for consulting services if the amount of the contract, including any amendment, modification, renewal, or extension, exceeds $14,000. Any failure to comply with this requirement renders the contract void.

During the 76th Legislature, 1999, House Bill 3211 extended to twenty days the deadline for a state agency's filing of certain information with the secretary of state after the agency renews, amends, or extends a major consulting services contract. The bill also deleted the authorization for a state agency to make payments under a consulting services contract that violated certain procedural requirements of the consulting services statutes after the agency cured the violation.

During the 78th Legislature, 2003, Senate Bill 1652 amended the consulting services statutes so that an institution of higher education's consulting services contract is categorized as a "major consulting services contract" only if the value of the contract exceeds $25,000. The bill also exempted an institution's major consulting services contract from the requirement to obtain a finding of fact from the governor's Budget and Planning Office if the institution includes in its invitation for offers both a finding of necessity by the institution's chief executive officer and an explanation of that finding.

The second purpose of the amendments is to require a state agency to provide the comptroller upon request with a reference to the pages in the Texas Register that demonstrate the agency's compliance with certain publication requirements concerning consulting services contracts.

The third purpose of the amendments is to delete provisions that merely repeat the consulting services statutes.

The fourth purpose of the amendments is to change the supporting documentation requirements that apply when a payment is made under a consulting services contract.

The final purpose of the amendments is to make several nonsubstantive or technical improvements to §5.54.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Government Code, §2254.039(a), which requires the comptroller to adopt rules to implement and administer Government Code, Chapter 2254, Subchapter B.

The amendments implement Government Code, Chapter 2254, Subchapter B.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 17, 2006.

TRD-200602774
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: June 6, 2006
Proposal publication date: March 31, 2006
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 1. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER D. PUBLIC INFORMATION POLICIES

37 TAC §1.60

The Texas Department of Public Safety adopts new §1.60, concerning Public Information Policies, without changes to the proposed text as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1907).

Department of Public Safety officers are occasionally called upon to conduct investigations of possible child abuse which nearly always involve allegations against someone who is not a parent or guardian of the alleged victim. Chapter 261 of the Family Code makes investigations of alleged child abuse or neglect confidential and prohibits the release of both the investigation report and any evidence developed during the investigation to any person if the agency conducting the investigation has not adopted a rule governing release of its report and investigation materials. Thus, in some instances, DPS has been prohibited from releasing the results of an investigation to the parent(s) of a child who was allegedly abused by a third person. Adoption of the new section is necessary in order to permit DPS to provide investigation reports and other materials to parents when doing so would not jeopardize the child or any pending criminal case.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Family Code, §261.201(a).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602826
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 8, 2006
Proposal publication date: March 17, 2006
For further information, please call: (512) 424-2135

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CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER C. COMMERCIAL VEHICLE REGISTRATION AND INSPECTION ENFORCEMENT

37 TAC §4.36

The Texas Department of Public Safety adopts amendments to Chapter 4, Subchapter C, §4.36, concerning Commercial Motor Vehicle Compulsory Inspection Program, without changes to the proposed text as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1908).

Adoption of the amendments to §4.36 delete current subsection (g)(6) and are necessary in order to require that certain commercial vehicles transporting passengers and registered in this state must pass an annual inspection of all safety equipment in accordance with recent changes to the Federal Motor Carrier Safety Regulations.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the compulsory inspection of vehicles.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602827
Thomas A. Davis, Jr.
Director
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Effective date: June 8, 2006
Proposal publication date: March 17, 2006
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CHAPTER 5. CRIMINAL LAW ENFORCEMENT

SUBCHAPTER D. MULTICOUNTY DRUG TASK FORCES

37 TAC §§5.51 - 5.70

The Texas Department of Public Safety (DPS) adopts new Subchapter D, §§5.51 - 5.70, relating to the implementation of multicounty drug task forces, without changes to the proposed text as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1909).

Adoption of the new sections is necessary in order to promulgate the policies and procedures of DPS governing the statewide coordination of multicounty drug task forces. The new sections are necessary as a result of the passage of Texas H.B. 1239, Acts 2005, 79th Leg., R.S., ch. 556, §§1 - 4.

No timely comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to Texas Government Code, §411.0097, which requires the department to establish policies and procedures for multicounty drug task forces, provides the authority to ensure compliance, and the authority to evaluate each multicounty drug force with respect to whether the task force complies with state and federal requirements including policies and procedures established by the department and demonstrates effective performance outcomes; and Texas Local Government Code, §362.004, which provides that the department confirm the strategic need for the task force and the composition of the task force and that the force comply with the policies and procedures established for the operation of the multicounty drug task force.

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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Thomas A. Davis, Jr.
Director
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Effective date: June 8, 2006
Proposal publication date: March 17, 2006
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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER D. DRIVER IMPROVEMENT

37 TAC §15.89

The Texas Department of Public Safety adopts amendments to §15.89, concerning Driver Improvement, without changes to the proposed text as published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 1912).

Adoption of the amendments to §15.89 are necessary in order to clarify that all endorsement violations, including a Commercial Driver License (CDL) endorsement violation, will be assessed a specific surcharge and not assessed points under the Driver Responsibility Program. Additionally, adoption of the amendments will remove superfluous language from the list that makes reference to four non-traffic violations. Finally, adoption of the amendments is necessary in light of the passage of House Bill 183 during the 79th Legislature, Regular Session. House Bill 183 amended Texas Transportation Code, §708.052 to make an offense under §545.412, relating to child safety seats, a moving violation of traffic law and subject to a surcharge.

Chapter 708 of the Transportation Code grants the department the authority to adopt rules to implement the Driver Responsibility Program (DRP). This program was initially created during the 78th Legislative Session (2003) and requires the department to assess fees based on an individual's driver history. DRP has two major components, a point system and a conviction surcharge system. The point system is based on the accumulation of Class C traffic offenses. An individual receives two points for each traffic conviction and three points if the offense resulted in a crash. The conviction surcharge system is based on a one-time conviction of certain more serious traffic offenses. The program requires the individual to pay the fee, ranging from $100 to $2000 every year for three years.

No comments were received regarding adoption of the amendments.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; and Texas Transportation Code, §708.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 19, 2006.

TRD-200602829
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: June 8, 2006
Proposal publication date: March 17, 2006
For further information, please call: (512) 424-2135

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) is conducting its annual review of Rule 255.4, concerning the definition of a local exchange access line and an equivalent local exchange access line. The review is required by Health and Safety Code §771.063(c). CSEC seeks comment on whether Rule 255.4 should be amended. At present, CSEC does not have any proposed amendments to the rule.

Comments on amending Rule 255.4 must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to: Paul Mallett, Executive Director, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942. Review of Rule 255.4 is proposed pursuant to the Health and Safety Code, Chapter 771, §§771.051, 771.063, 771.071, and 771.0711.

Other statutes, articles or codes affected by the proposed amendment are Health and Safety code, Chapter 772, §§772.114, 772.214, 772.314, and 772.403.

§255.4. Definition of a Local Exchange Access Line or An Equivalent Local Exchange Access Line.

TRD-200602849
Paul Mallett
Executive Director
Commission on State Emergency Communications
Filed: May 22, 2006

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 49 concerning Procedures for Formal Hearings by the Board. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§49.5. Schedule of Hearings.

§49.10. Timely Acceptance of Evidence.

§49.15. Formal Statement of Position.

§49.20. Request for Cancellation.

§49.25. Delay or Postponement of Hearing.

§49.30. Filing of Medical Bills.

§49.35. Filing of Medical Reports and Records.

§49.40. Carrier Attendance.

§49.45. Contents of Formal Statement of Position.

§49.50. Sanctions.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006, and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602889
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 49 concerning Procedures for Formal Hearings by the Board. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Section 9 - 10, 76th Legislature; and Texas Government Code, §2001.039 as added by SB 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

§49.105. Procedures.

§49.110. Commencement of Hearings.

§49.115. Notice.

§49.120. Special Statutory Notice.

§49.125. Notice of a Special Formal Hearing.

§49.130. Personal Appearance Hearings in Austin.

§49.131. Withdrawal of Attorney.

§49.135. Use of Court Reporters.

§49.140. Continuance.

§49.145. Recess.

§49.150. Complaint Specifications.

§49.155. Documentary Evidence.

§49.160. Filing of Formal Statement of Position.

§49.165. Subpoenas and Subpoena Duces Tecum.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602890
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 55 concerning Lump Sum Payments. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§55.3. Request for Advance Payment of Compensation.

§55.5. Lump Sum Payments.

§55.10. Settlements Final When Approved.

§55.15. Compromise Settlement Agreements.

§55.20. Execution of Compromise Settlement Agreement.

§55.25. Loss of an Eye.

§55.30. Hearing Impairment.

§55.35. Stipulation of Medical Payments.

§55.40. Attorney's Signature.

§55.45. Percent of Medical Impairment.

§55.50. Attorneys Fees and Expenses.

§55.55. Compromise Settlement Agreement To Set Aside Award.

§55.60. Consent Withdrawn.

§55.65. Withdrawal of Consent by Death.

§55.75. Tender Payment Time Period.

§55.80. Waiving of Approval Appearance.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602891
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

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The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 56 concerning Structured Compromise Settlement Agreements. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§56.5. Definitions.

§56.10. Form.

§56.15. Execution.

§56.20. Personal Appearance by Claimant.

§56.25. Medical Benefits.

§56.30. Consent of Parties--Withdrawal.

§56.35. Attorney's Signature.

§56.40. Attorney's Fees and Expenses.

§56.45. Tender Payment Time Period.

§56.50. Final When Approved.

§56.55. Annuity Company.

§56.60. Payments Guaranteed.

§56.65. Cost of Annuity.

§56.70. Structured Settlement Agreement To Set Aside Award.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602892
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation, files this notice of intention to review the rules contained in Chapter 57 concerning Request for Case Folders and Certifications of Actions of the Board. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature; the General Appropriations Act, Section 9 - 10, 76th Legislature; and Texas Government Code, §2001.039 as added by SB 178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist, and it proposes to readopt these rules:

§57.5. Request for Copies or Statistical Information.

§57.10. Written Request for Public Information.

§57.15. Telephone Request for Public Information.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602893
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

♦ ♦ ♦

The Texas Department of Insurance, Division of Workers' Compensation files this notice of intention to review the rules contained in Chapter 59 concerning Notices of Intention to Appeal. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9 - 10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The Division's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§59.5. Filing of Notice.

§59.10. Receipt of Notice.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on July 2, 2006 and submitted to Kristi Dowding, Legal Services, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200602894
Norma Garcia
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: May 23, 2006

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Texas Water Development Board

Title 31, Part 10

The Texas Water Development Board (Board) files this notice of intent to review 31 Texas Administrative Code (TAC), Part 10, Chapter 368, Flood Mitigation Assistance Program, in accordance with the Texas Government Code, §2001.039. The Board finds that the reason for adopting the chapter continues to exist because it governs the Board's responsibilities for administering the program. The Board concurrently proposes amendments to §§368.1, 368.5, and 368.10. The amendments are proposed for clarification consistent with directives from the Federal Emergency Management Agency.

As required by §2001.039 of the Texas Government Code, the Board will accept comments and make a final assessment regarding whether the reason for adopting the rules in 31 TAC Chapter 368 continues to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this rule review may be submitted to Srin Surapanani, Attorney, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to srin.surapanani@twdb.state.tx.us or by fax at (512) 463-5580.

TRD-200602809
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: May 18, 2006

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Adopted Rule Review

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas (Commission) files this notice of completion of review and re-adoption of 16 Texas Administrative Code (TAC) Chapter 13, relating to Regulations for Compressed Natural Gas (CNG), in accordance with Texas Government Code, §2001.039. The Commission's reasons for adopting these rules continue to exist; however, in a separate, concurrent rulemaking, the Commission has adopted amendments to §§13.2-13.4, 13.25, 13.35, 13.36, 13.38, 13.61-13.63, 13.67-13.70, 13.73, 13.75, 13.92-13.94, 13.102, 13.141, and 13.183, relating to Retroactivity; Definitions; CNG Report Forms; Filings Required for Stationary CNG Installations; Application for an Exception to a Safety Rule; Report of CNG Incident/Accident; Removal from CNG Service; Licenses, Related Fees, and Licensing Requirements; Insurance Requirements; Qualifications as Self-Insured; Changes in Ownership and/or Form of Dealership; Dealership Name Change; Registration and Transfer of CNG Transports and CNG Form 1004 Decal or Letter of Authority; Examination Requirements and Renewals; Other Fees for Employee Transfer; Franchise Tax Certification and Assumed Name Certificate; System Component Qualification; General; Location of Installations; Installation of Electrical Equipment; System Testing; and System Component Qualifications; the repeal of §13.80, relating to CNG Continuing Education Requirements, and new §13.80, relating to Requests for CNG Classes.

The concurrent adoption is, in part, a result of House Bill (HB) 1162, 79th Legislature, Regular Session (2005), which amended Texas Natural Resources Code, §116.034, to provide that the Commission may adopt rules establishing training and seminar attendance requirements for persons required or who wish to be licensed or registered to perform compressed natural gas (CNG) activities, but is not required to do so. Additional adopted amendments are non-substantive and include changes in wording, punctuation, or organization to provide clarity and accuracy.

The notice of intent to review the rules in Chapter 13 was published in the March 17, 2006, issue of the *Texas Register* (31 TexReg 2205); the Commission received no comments. This concludes the review of all rules in Chapter 13. The adopted amendments, repeal, and new section will be filed with the *Texas Register* concurrently with this notice.

Issued in Austin, Texas, on May 16, 2006.

TRD-200602802
Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Filed: May 18, 2006

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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 §4.221(d)

Engineering and Environmental Standards for Recyclable Product to be Used as Road Base		
PARAMETER	LIMITATION	METHOD
Arsenic	Less than 0.500 mg/l	EPA Method 1312, Synthetic Leaching Procedure (SPLP)
Barium	Less than 100.00 mg/l	
Cadmium	Less than 1.00 mg/l	
Chromium (total)	Less than 5.00 mg/l	
Lead	Less than 5.00 mg/l	
Mercury	Less than 0.20 mg/l	
Selenium	Less than 1.00 mg/l	
Silver	Less than 5.00 mg/l	
Benzene	Less than 0.50 mg/l	
Chlorides	Less than 500.00 mg/l	LDNR leachate test method 1:4 Solid Solution
TPH	Less than 100 mg/l	
pH	6 to 12 Standard Units	
Minimum compressive strength	35 psi	TxDOT Method Tex-126-E

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.

Office of the Attorney General

Texas Water Code Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under Chapter 7 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: United States of America and State of Texas v. City of Dallas, Texas, Civil Action Number 3-06CV0845-B, in the U. S. District Court, Northern District of Texas.

Nature of Defendant's Operations: Defendant City of Dallas has been issued a National Pollutant Discharge Elimination System ("NPDES") storm water management permit for the City's municipal storm sewer system under the federal Clean Water Act by the Environmental Protection Agency. The permit required Dallas to have a comprehensive system of maintenance and inspections to insure proper operation of the storm sewer system. Plaintiff United States in its Complaint alleged that Dallas has failed to comply with the NPDES permit and sought injunctive relief and civil penalties. The State of Texas was a necessary party to this Clean Water Act enforcement suit against the City of Dallas pursuant to 33 U.S.C. §1319(e). A state claim under Texas Water Code Chapter 26 (Water Quality Control) was included in the Complaint.

Proposed Agreed Judgment: The proposed Consent Decree awards an $800,000 civil penalty to the United States in settlement of the violations alleged in the United States' Complaint. The Consent Decree further requires Dallas to operate a comprehensive program to prevent discharges of pollutants into storm water. As part of the program the City is ordered to: (i) hire and keep on staff specified numbers and kinds of employees to implement the City's storm water program, (ii) carry out inspections of industrial facilities, construction sites, and storm water outfalls at specified intervals, and (iii) implement an environmental management system at twelve facilities. In addition, Dallas is ordered to spend $1.2 million to create two artificial wetland drainage ponds to filter and treat storm water runoff before it reaches the Trinity River.

For a complete description of the proposed settlement, the complete proposed Amended Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-200602803

Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: May 17, 2006

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Brazos Valley Council of Governments

Public Notice - Request for Quotes

The Workforce Solutions of the Brazos Valley Board (WSBVB) is soliciting quotes for MIP Accounting, Training and Report Development through competitive Request for Quote (RFQ) process. The Request for Quotes (RFQ) can be downloaded at: www.bvcog.org or by request to John Jackson, (979) 595-2800, extension 2208, by E-mail at jjackson@bvcog.org, or by fax at (979) 595-2817, or in writing to P.O. Box 4128, Bryan, TX 77805, Attention: Request for MIP Training and Technical Assistance RFQ.

The Workforce Solutions Brazos Valley Board (WSBVB) is soliciting quotes for: MIP Accounting Software Customized Program Manager and Payroll Reports; MIP Customized training; 2-4 Additional MIP Seats.

This RFQ provides a uniform method for the procurement of the MIP Software upgrade. It contains the necessary background, requirements, instructions, and information for responding to this request for quote.

The deadline for proposals is Friday, June 9, 2006, 4:00 P.M. Please direct questions via e-mail to:

jjackson@bvcog.org

Deadline for questions is Friday, May 26, 2006, 4:00 PM CST.

TRD-200602824
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: May 18, 2006

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of May 12, 2006, through May 18, 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 Coor-

dination Council web site. The notice was published on the web site on May 24, 2006. The public comment period for these projects will close at 5:00 p.m. on June 23, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: City of Corpus Christi; Location: The project is located from Marker 62 on Mustang Island and extends southwest to Marker 253 on Padre Island (approximately 3 miles south of the Kleberg County Line), in Nueces and Kleberg Counties, Texas. The project can be located on the U.S.G.S. quadrangle maps entitled: Crane Islands NW, Crane Islands SW, and Port Aransas, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; North end, Easting: 690,534; Northing: 3,078,100, and South end, Easting: 673,581; Northing: 3,047,077. Project Description: The applicant proposes to provide beach maintenance by: (a) relocating seaweed and sand from the driving lanes to other areas above the mean high tide (April through November), and (b) repositioning sand from between the dunes and the high tide line across the beach, stopping short of the MTL. This is to maintain clear driving lanes along the beach for public access. The area covered is over 21 miles of beach, from the Port Aransas City Limit to a point approximately 3 miles south of the Kleberg County Line, not including the area of beach within the Mustang Island State Park boundary. CCC Project No.: 06-0283-F1; Type of Application: U.S.A.C.E. permit application #24192 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Applicant: Pelpro LLC; Location: The project is located north of Farm-to-Market Road 2925, immediately west of Arroyo City Boulevard, and west of Arroyo City, in Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: La Leona, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 653000; Northing: 2913000. Project Description: The applicant proposes to amend their permit to construct a phased project with only some canals excavated as part of the initial phase of the construction of a residential canal subdivision. Additional canals would be excavated as the housing market allows. All canals in the initial phase (Phase 1) would be excavated in the dry and once complete the two openings into the Arroyo Colorado would be mechanically dredged. Following the excavation of the initial canal system, later canals would be excavated as follows. Plugs would remain in place where each phase ties into a previously excavated adjacent canal, until the new canal is excavated. Once excavation of the new canal is complete, the plug would be removed. Prior to and during removal of the plugs, turbidity curtains would be placed around the openings where newly constructed canals connect to the previously excavated canals. The applicant has stated that they intend to complete the mitigation based on the success criteria outlined in the mitigation plan of the permit. All construction of mitigation, including planting will be completed within 18 months after start of construction within jurisdictional wetland areas. The dissolved oxygen monitoring plan would be modified to initiate monitoring once construction of the canals in Phase 1 is complete. CCC Project No.: 06-0287-F1; Type of Application: U.S.A.C.E. permit application #22870(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200602897
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: May 24, 2006

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and §403.301 and §403.3011, Texas Government Code; §5.102, Property Tax Code; and Chapter 271, Local Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #176a) from qualified, independent firms to provide pooled consulting services to the Comptroller. The successful respondent(s) will assist the Comptroller in conducting Appraisal Standards Reviews (ASR) of up to twenty-six (26) county appraisal districts throughout the state, as well as follow-up reviews on an as-needed, as requested basis. the Comptroller reserves the right to select multiple contractors to participate in conducting the ASRs on a "pooled" basis, as set forth in the RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, on or about August 1, 2006, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact William Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774 (Issuing Office), telephone number: (512) 305-8673, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, June 2, 2006, after 10:00 a.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller also made the complete RFP available electronically on the Electronic State Business Daily at: http://esbd.tbpc.state.tx.us after 10:00 a.m. (CZT) on Friday, June 2, 2006.

Non-Mandatory Letters of Intent and Questions: All Non-Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, June 16, 2006. Official responses to questions received by the foregoing deadline will be posted electronically on the Electronic State Business Daily no later than Tuesday, June 20, 2006, or as soon thereafter as practical. Non-Mandatory Letters of Intent or Questions received after the deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Non-Mandatory Letters of Intent and Questions in the Issuing Office.

Closing Date: Proposals must be received in the Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2:00 p.m. (CZT), on Tuesday, June 27, 2006. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit proposals by the foregoing deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals in the Issuing Office.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision regarding the award of master contracts for assignments from the pool selected, if any. The Comptroller reserves the right to award one or more contracts under this RFP. The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. The Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - June 2, 2006, after 10:00 a.m. CZT; Non-Mandatory Letters of Intent and Questions Due - June 16, 2006, 2:00 p.m. CZT; Official Responses to Questions Posted - June 20, 2006, or as soon thereafter as practical; Proposals Due - June 27, 2006, 2:00 p.m. CZT; Contract Execution - August 1, 2006, or as soon thereafter as practical; Commencement of Project Activities - August 1, 2006, or as soon thereafter as practical.

TRD-200602895
William Clay Harris
Assistant General Counsel
Comptroller of Public Accounts
Filed: May 24, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/29/06 - 06/04/06 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/29/06 - 06/04/06 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200602880
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 23, 2006

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East Texas Council of Governments

Request for Proposals for TANF Basic Education and Literacy Services

This Request for Proposals to interested entities is filed under Government Code 2254.

The East Texas Council of Governments (ETCOG), as administrative unit for the East Texas Workforce Development Board, is soliciting proposals for subcontractors to provide, in the East Texas Workforce Development Area (WDA), Basic Education and Literacy Services for Temporary Assistance for Needy Families (TANF) program participants, former TANF Program participants and/or individuals who are at-risk of becoming TANF participants.

The contract period would begin October 1, 2006 and run through September 30, 2007 with the availability of two one year options for renewal. It is anticipated that the funding available will be similar to the current fiscal year which is $206,215.

Counties that comprise the East Texas WDA are Anderson, Camp, Cherokee, Gregg, Harrison, Henderson, Marion, Panola, Rains, Rusk, Smith, Upshur, Van Zandt, and Wood.

Requests for Proposals will not be released prior to May 22, 2006. The anticipated deadline for receipt of proposals will be July 6, 2006.

Persons or organizations wanting to receive a Request for Proposals (RFP) package should request by letter, E-mail or by fax. Request letters should be addressed to Gary Allen, Section Chief- Planning/Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or E-mail to gary.allen@twc.state.tx.us or fax at (903) 983-1440, Attention: Gary Allen.

Questions concerning the RFP process should be addressed by E-mail or fax to Gary Allen, Section Chief, Planning and Board Support at gary.allen@twc.state.tx.us or fax at (903) 983-1440.

TRD-200602838
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: May 19, 2006

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Texas Commission on Environmental Quality

Agreed 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 **June 26, 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 June 26, 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: Akzo Nobel Polymer Chemicals L.L.C.; DOCKET NUMBER: 2006-0212-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN104262704; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 21865, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $600; ENFORCEMENT COORDINATOR: Scott Barnett, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: American OGD Corporation dba Galloway Food Mart; DOCKET NUMBER: 2006-0491-PST-E; IDENTIFIER: RN102255510; LOCATION: Mesquite, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(1)(B), by failing to provide release detection and by failing to implement inventory control methods; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Auxiliary of Sierra Medical Center; DOCKET NUMBER: 2006-0134-PST-E; IDENTIFIER: RN100641729; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: hospital; RULE VIOLATED: 30 TAC §334.8(c)(5)(B)(ii) and (C), by failing to timely renew a previously issued delivery certificate and by failing to ensure that a legible tag, label, or marking with the tank number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point on the fill tube; PENALTY: $1,040; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(4) COMPANY: BMB Wood Recycling, Limited; DOCKET NUMBER: 2006-0148-AIR-E; IDENTIFIER: RN104408497; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: wood recycling; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent wood dust from the pallet grinding operation from migrating onto adjacent property and creating a nuisance situation; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Border Steel, Inc.; DOCKET NUMBER: 2006-0140-AIR-E; IDENTIFIER: RN100213941; LOCATION: Vinton, El Paso County, Texas; TYPE OF FACILITY: steel works; RULE VIOLATED: 30 TAC §122.144(2)(C) and §122.126(2), Federal Operating Permit Number O-01456, and THSC, §382.085(b), by failing to submit semiannual deviation reports and annual compliance certifications; PENALTY: $3,210; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(6) COMPANY: BP Products North America, Inc.; DOCKET NUMBER: 2006-0099-AIR-E; IDENTIFIER: RN102535077; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by allowing unauthorized emissions; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Chevron Phillips Chemical Company L.P.; DOCKET NUMBER: 2006-0189-AIR-E; IDENTIFIER: RN102320850; LOCATION: Borger, Hutchinson County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.110(a) and THSC, §382.085(b), by failing to prevent the unauthorized release of air contaminants into the atmosphere; PENALTY: $10,740; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(8) COMPANY: D & J Enterprise; DOCKET NUMBER: 2006-0375-AIR-E; IDENTIFIER: RN104806666; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: general contracting business; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(b), by failing to prevent the occurrence of a nuisance condition at nearby residences; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Dallas; DOCKET NUMBER: 2006-0126-AIR-E; IDENTIFIER: RN100752146; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: landfill; RULE VIOLATED: 30 TAC §122.146(2), Federal Operating Permit Number O-02062, and THSC, §382.085(b), by failing to submit a compliance certification; PENALTY: $1,940; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: City of Iredell; DOCKET NUMBER: 2006-0223-MWD-E; IDENTIFIER: RN101607752; LOCATION: Iredell, Bosque County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (4), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ11565001, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations and by failing to prevent the discharge and accumulation of sludge in the receiving stream; PENALTY: $3,528; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(11) COMPANY: City of Lawn; DOCKET NUMBER: 2006-0164-PWS-E; IDENTIFIER: RN101406916; LOCATION: Lawn, Taylor County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(B), (e)(6)(A), and (m), by failing to provide a chlorine residual of 0.5 milligrams per liter (mg/L) in the distribution system, by failing to employ a licensed class B or higher surface water operator and provide a licensed class C operator during operating hours, and by failing to maintain good maintenance and housekeeping practices; 30 TAC §290.44(d)(1) and (h)(1)(A), by failing to provide a minimum pressure of 35 pounds per square inch (psia) throughout the distribution system and by failing to install backflow prevention assemblies or air gaps at all establishments where a potential contamination hazard exists; and 30 TAC §290.43(c)(6), by failing to have a water storage tank thoroughly tight against leakage; PENALTY: $3,520; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(12) COMPANY: LBC Houston, L.P.; DOCKET NUMBER: 2006-0309-AIR-E; IDENTIFIER: RN101041598; LOCATION: Seabrook, Harris County, Texas; TYPE OF FACILITY: bulk chemical storage tank farm; RULE VIOLATED: 30 TAC §116.115(c), Permit Number 462, and THSC, §382.085(b), by failing to prevent an avoidable emissions event; PENALTY: $8,000; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: City of Lott; DOCKET NUMBER: 2006-0194-PWS-E; IDENTIFIER: RN102697786; LOCATION: Lott, Falls County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(f)(4) and (5), by failing to provide an adequate production capacity and by failing to provide an adequate

service pump capacity; 30 TAC §290.44(h)(1)(A) and (4), by failing to install backflow prevention assemblies or an air gap at all residences or establishments where an actual or potential contamination hazard exists and by failing to have backflow prevention assemblies tested and certified to be operating within specifications; 30 TAC §290.42(e)(4)(A) and (l) and §290.121(a), by failing to provide a bottle of fresh ammonia solution outside the chlorination room and by failing to keep on file and make available for commission review a plant operations manual and an up-to-date chemical and microbiological monitoring plan; 30 TAC §290.43(c)(4), by failing to provide a proper water level indicator for all water storage tanks; and 30 TAC §290.46(m)(1), by failing to conduct an annual inspection of the pressure tank; PENALTY: $1,554; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(14) COMPANY: Lucky Lady Oil Company; DOCKET NUMBER: 2006-0163-PST-E; IDENTIFIER: RN104809553 and RN103939690; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.22(a) and the Code, §5.702, by failing to pay underground storage tank (UST) fees; PENALTY: $15,200; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Chris Hanks dba Moss Lake Community Store; DOCKET NUMBER: 2006-0155-PWS-E; IDENTIFIER: RN101279982; LOCATION: Gainesville, Cooke County, Texas; TYPE OF FACILITY: restaurant with public water supply; RULE VIOLATED: 30 TAC §290.46(d)(1) and (2)(A), (m)(1), and (n)(2), and §290.121(a), by failing to operate the disinfection equipment to maintain a minimum free chlorine residual of 0.2 mg/L throughout the distribution system, by failing to keep on file and make available for commission review an up-to-date chemical and microbiological monitoring plan and map of the distribution system, and by failing to conduct an annual inspection of the pressure tanks; 30 TAC §290.42(e)(5) and (l), by failing to provide a housed and locked enclosure for the hypochlorinator solution containers and pumps and by failing to keep on file and make available for commission review a plant operations manual; 30 TAC §290.41(c)(1)(F) and (3)(J) and (K), by failing to keep on file and make available for commission review a sanitary control easement for well number one and by failing to provide the well with a concrete sealing block extending at least three feet from the exterior well casing in all directions and by failing to provide the well with a screened casing vent; 30 TAC §290.45(c)(1)(A)(ii) and THSC, §341.0315(c), by failing to provide a minimum pressure tank capacity of ten gallons per connection with a minimum of 220 gallons; and 30 TAC §290.51(a)(3) and the Code, §5.702, by failing to pay the public health service fee; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Mrs. Frank (Ann) Vaughn dba Pete's Brake and Alignment; DOCKET NUMBER: 2006-0510-PST-E; IDENTIFIER: RN104896436; LOCATION: Wichita Falls, Wichita County, Texas; TYPE OF FACILITY: automotive repair; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; and 30 TAC §334.49(a)(1), by failing to provide corrosion protection; PENALTY: $3,500; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(17) COMPANY: Site Concrete, Inc.; DOCKET NUMBER: 2006-0238-WQ-E; IDENTIFIER: RN104888425; LOCATION: Kennedale, Tarrant County, Texas; TYPE OF FACILITY: concrete batch plant; 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 an industrial activity; and the Code, §26.121(a), by failing to prevent the unauthorized discharge of wastewater containing concrete waste material; PENALTY: $2,400; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: S.J.G. Corporation dba Salt Lick Bar B Q; DOCKET NUMBER: 2006-0352-PWS-E; IDENTIFIER: RN101280873; LOCATION: Driftwood, Hays County, Texas; TYPE OF FACILITY: restaurant with public water supply; RULE VIOLATED: 30 TAC §290.109(c)(3)(A)(ii) and (f)(3), §290.122(b)(2)(B) and (c)(2)(B), and THSC, §341.031(a), by failing to collect and submit repeat water samples for bacteriological analysis and by exceeding the maximum contaminant level (MCL) for total coliform bacteria; PENALTY: $1,438; ENFORCEMENT COORDINATOR: Kent Heath, (512) 239-4575; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(19) COMPANY: Southwest Recycled Materials, L.P.; DOCKET NUMBER: 2006-0146-AIR-E; IDENTIFIER: RN10253790; LOCATION: Forney, Kaufman County, Texas; TYPE OF FACILITY: portable concrete crusher; RULE VIOLATED: 30 TAC §116.115(b) and (c), New Source Review Air Permit Number 48523, and THSC, §382.085(b), by failing to maintain records at the site and by failing to request relocation or change of location authorization and obtain written approval prior to moving ExtecCrusher to a new site; PENALTY: $4,000; ENFORCEMENT COORDINATOR: Terry Murphy, (512) 239-5025; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Sunoco Pipeline L.P.; DOCKET NUMBER: 2006-0251-AIR-E; IDENTIFIER: RN100214972; LOCATION: Orange, Orange County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §122.146(1) and THSC, §382.085(b), by failing to submit a complete compliance certification; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Texas A&M University; DOCKET NUMBER: 2006-0296-AIR-E; IDENTIFIER: RN100216274, RN102974839, RN102181302, RN102061165, and RN102077849; LOCATION: College Station, Brazos County, Texas; TYPE OF FACILITY: university with generators for supplementary electrical power and boilers for steam, hot water, and heating; RULE VIOLATED: 30 TAC §122.146(2) and THSC, §382.085(b), by failing to timely submit annual compliance certifications; PENALTY: $17,820; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(22) COMPANY: Texas Aero Engine Services, L.L.C.; DOCKET NUMBER: 2006-0230-AIR-E; IDENTIFIER: RN100216225; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: aircraft engine building plant; RULE VIOLATED: 30 TAC §115.412(2)(F)(ii) and THSC, §382.085(b), by failing to keep the cover on the vapor degreaser closed at all times except whenever parts are being handled in the cleaner; and 30 TAC §116.115(c), Permit By Rule §106.261 and §106.262, Registration Number 52797, and THSC, §382.085(b), by exceeding the maximum annual usage rates of aluminum and polyester resin; PENALTY: $3,840; ENFORCEMENT

COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Texas Star Investments, Inc. dba Texas Star 169; DOCKET NUMBER: 2006-0156-PST-E; IDENTIFIER: RN102356201; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.72(2), by failing to report to the agency a suspected release within 24 hours; and 30 TAC §334.74, by failing to immediately investigate and confirm a suspected release within 30 days; PENALTY: $11,600; ENFORCEMENT COORDINATOR: Joseph Daley, (817) 588-5800; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(24) COMPANY: Dee Sims dba Three Rivers Flying Service; DOCKET NUMBER: 2006-0489-PST-E; IDENTIFIER: RN100672690; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: aviation and fuel services; RULE VIOLATED: 30 TAC §334.50(b)(1)(A), by failing to provide release detection; 30 TAC §334.49(a)(1), by failing to provide corrosion protection; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid delivery certificate prior to receiving fuel; PENALTY: $4,375; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(25) COMPANY: TM Chemicals Limited Partnership; DOCKET NUMBER: 2006-0266-AIR-E; IDENTIFIER: RN102844271; LOCATION: Deer Park, Harris County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §§111.111(a)(4)(A)(ii), 115.412(1)(A), and 122.143(4), Operating Permit Number O-01603, and THSC, §382.085(b), by failing to maintain records of quarterly visible emissions, record visible emission observations, and maintain records of monthly inspections for the cold solvent degreaser; and 30 TAC §122.145(2) and THSC, §382.085(b), by failing to timely submit the semiannual deviation report; PENALTY: $7,600; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Town of Windom; DOCKET NUMBER: 2005-0501-MWD-E; IDENTIFIER: TPDES Permit Number 10666001, RN103014619; LOCATION: Windom, Fannin County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10666001, and the Code, §26.121(a), by failing to comply with the effluent limitations for total suspended solids, dissolved oxygen, and biochemical oxygen demand and by failing to provide monitoring results at the intervals specified in the permit; PENALTY: $5,778; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(27) COMPANY: David Medina dba Whitis Dairy; DOCKET NUMBER: 2005-2028-AGR-E; IDENTIFIER: RN102169059; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.47(c)(1), (e)(6), (f)(11), (h)(1)(A), and (i), by failing to locate, construct, and manage the control facility in a manner that will protect surface and groundwater quality, by failing to maintain a permanent pond marker in the retention control structure, by failing to conduct an annual analysis of at least one representative sample of irrigation wastewater and one representative sample of manure/litter for total nitrogen, total phosphorus, and total potassium, by failing to cease applying waste or wastewater to the land management unit, and by failing to maintain on site all required records; PENALTY: $5,460; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Danny Wilde; DOCKET NUMBER: 2006-0180-MSW-E; IDENTIFIER: RN103670071; LOCATION: San Angelo, Tom Green County, Texas; TYPE OF FACILITY: composting; RULE VIOLATED: 30 TAC §328.5(b), by failing to submit a notice of intent to operate a composting facility for source-separated recylable material; and 30 TAC §37.921 and §328.5(d), by failing to establish financial assurance for closure of a municipal solid waste recycling facility that is storing combustible material; PENALTY: $1,632; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(29) COMPANY: Zaval-Tex Construction Company; DOCKET NUMBER: 2005-1380-PST-E; IDENTIFIER: RN102778651; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: fleet dispensing; RULE VIOLATED: 30 TAC §115.221 and THSC, §382.085(b), by failing to install an appropriate Stage I vapor recovery system (VRS); 30 TAC §115.248(1) and THSC, §382.085(b), by failing to ensure that at least one facility representative received training and instruction in the operation and maintenance of the Stage II VRS; 30 TAC §115.244(1) and THSC, §382.085(b), by failing to conduct daily and monthly inspections of the Stage II VRS; 30 TAC §115.246(1) and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resource Board Executive Order for the Stage II VRS and any related components installed at the station; 30 TAC §334.127(c), by failing to register with the commission, a new or replacement aboveground storage tank (AST); and 30 TAC §334.126(a)(1)(A), by failing to provide the executive director with written notification at least 30 days prior to initiating the installation of an AST; PENALTY: $4,320; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200602875
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 23, 2006

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Commission's Response to Public Comments on General Permit Number WQG600000

This general permit is proposed under the authority found in Texas Water Code (TWC), §26.040. General Permit Number WQG600000 would authorize the operation of industrial solid waste facilities which receive waste for treatment or storage on a commercial basis for discharge to publicly owned treatment works.

Prior to issuing a general permit, the Texas Commission on Environmental Quality (commission or TCEQ) must comply with TWC, §26.040(d) and 30 TAC §205.3(e). Both provisions require the commission to respond to all timely public comments and issue a response to comments (RTC) at the same time the general permit is issued or denied.

The Commission's Response to Comments

The Office of the Chief Clerk received timely letters from the following entities: Hance, Scarborough, Wright, Woodward & Weisbart on behalf of Newpark Resources, Inc., Liquid Environmental Solutions, and Texas Molecular.

Comments and Responses

Comment Number 1: Newpark Resources, Texas Molecular, and Liquid Environmental Solutions commented that the 30 TAC §335.2(n) rule revisions provide an opportunity for a commercial industrial solid waste facility in operation prior to June 1, 2006, to apply for coverage under a general permit so that it may continue operations until the individual permit can be obtained in accordance with Senate Bill (SB) 1281. They also acknowledge that §335.2(n) of the adopted rules and the proposed general permit specifically limit the amount of time a facility can operate pursuant to the general permit, which is 15 months or until a final decision is made on the application for an individual permit.

Newpark Resources and Texas Molecular continued by stating that the five-year permit term does not satisfy legislative intent, which is to require existing commercial industrial waste facilities to obtain an individual permit as soon as possible.

All commenters stated that even though the authorization to operate under the general permit for a period not to exceed 15 months is included in Permit Provision II.B.1., the five-year term of the general permit itself, included on the coversheet and in Permit Provision II.F.1. of the general permit, could be confusing to potential applicants.

Liquid Environmental Solutions expressed concerns that businesses may not understand that they will need to get a Chapter 335 permit, even though there is a provision within the general permit that limits an authorization to 15 months. They comment that they understand the purpose of the five-year term is to allow for the potential for extensions authorized by the executive director (ED), but are unaware of any contested hearings lasting more than a year to final decision (except in extremely rare circumstances). They further stated that if all facilities have their permit within 15 months, a rule that applies to no one will be on the books.

The commenters requested that the general permit term should be revised from five years to 15 months and should be extended using appropriate procedures, or reissued for another year at the discretion of the ED in accordance with 30 TAC §335.2(n), if any entity operating under the general permit requests and is granted an extension.

Response Number 1: The commission agrees that the issue pertaining to the general permit term should be clarified and has revised the general permit term to 27 months.

The maximum 15 month coverage under the general permit is based on the typical processing time of an individual permit application issued under Texas Health and Safety Code, Chapter 361 and is authorized by 30 TAC Chapter 335. Fifteen months will allow the time needed to conduct an administrative and technical review of the application, to request additional information from the applicant if needed, to allow a 30-day public notice period, to respond to comments, and to fulfill any other requirements that must be met in order to issue an individual permit. This 15 month time frame does not include the contested case hearing process, or other processes such as potential litigation.

An extension request will only be granted beyond 15 months by the ED if the request is based on a contested case hearing or any other event which can be justified by the applicant, such as litigation. A request by an applicant to extend the 15 month coverage will not be automatic but, as stated in 30 TAC §335.2(n), must be approved at the discretion of the ED. To request an extension of coverage beyond the 15 month term, the applicant must submit a written request to the Waste Permits Division (MC 130). The contents of the written request shall include, at a minimum, the general permit authorization number, application information for the individual permit, and a justification of why an extension is necessary. An extension is granted when written approval is sent by the ED.

Therefore, in response to this comment and the adoption of 30 TAC §335.2(n), changes have been made to the general permit to clarify that although the general permit term is 27 months, facility coverage under this general permit ends 15 months after submittal of a notice of intent (NOI), unless an extension is requested by the applicant and approved by the ED. The changes are as follows:

The last paragraph on page 1 has been changed to read: This general permit and the authorization contained herein shall expire at midnight 27 months after the date of issuance (see Part II.B.1.).

Part II.B. now reads in its entirety:

1. An existing facility covered by this general permit must submit an application for an individual permit under Chapter 361 of the Health and Safety Code by September 1, 2006, as required by 30 TAC §335.2(n).

2. Coverage under this general permit shall expire 15 months from the date of NOI submission.

3. An extension beyond the 15 month term may be approved by the ED on an individual basis for an additional 12 months. The request for extension must be justified by the applicant and based on events (such as contested case hearings) that will delay the issuance of the individual permit. Extensions to the 15 month term will not be automatic but, as stated in 30 TAC Section 335.2(n), will be at the discretion of the ED.

To request an extension to the 15 month term, the applicant must submit a written request to the Waste Permit Division (MC-130). The contents of the written request shall include, at a minimum, the general permit authorization number, application information for the individual permit, and a justification of why an extension is necessary. An extension is granted when written approval is sent by the Executive Director.

4. No facilities commencing operations after June 1, 2006, shall be covered under this general permit. All new facilities commencing operations after June 1, 2006, are required to obtain coverage under Chapter 361 of the Health and Safety Code.

5. Operations shall not be authorized by this general permit where prohibited by any other state rule or law.

6. The Executive Director may deny an application for authorization under this permit, and may require that the applicant apply for an individual permit, for any of the reasons described in 30 Texas Administrative Code (TAC) §205.4.

7. The Executive Director may deny a Notice of Intent (NOI) or revoke authorization under this general permit if the applicant submits any false information in an NOI. Additionally, the executive director may cancel, revoke, or suspend authorization to operate under this general permit based on a finding of historical and significant noncompliance. Denial of authorization to operate under this general permit or suspension of a permittee's authorization under this general permit will be done according to commission rules in 30 TAC, Chapter 205 (relating to General Permits for Waste Discharges).

8. Should authorization to discharge to a POTW be required, it is the obligation of the permittee to obtain such authorization.

Permit provision II.F.1. has been revised and now reads in its entirety: This general permit is effective for 27 months from the date of issuance. This general permit may be amended, revoked, or canceled by the commission. An authorization to operate under this general permit shall expire when a final decision has been reached on an application submitted for individual permit coverage under Chapter 361, of the Texas Health and Safety Code, as required by 30 TAC §335.2(n).

TRD-200602886

Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 23, 2006

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Notice of Comment Period and Hearing on Draft Oil and Gas General Operating Permits

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing (hearing) on the draft revisions to Oil and Gas General Operating Permit (GOP) Numbers 511 - 514. The draft GOPs contain revisions to codified applicable requirements, the codification of permits by rule and standard permits as applicable requirements, the exclusion of sites with case-by-case New Source Review permits, and the addition of compliance assurance monitoring and periodic monitoring.

The draft GOPs are subject to a 30-day comment period. During the comment period, any person may submit written comments on the draft GOPs. A hearing will be held in Austin on July 6, 2006, at 1:30 p.m. in Room 131E of TCEQ, Building C, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TCEQ staff member will be available to discuss the draft GOPs 30 minutes prior to the hearing and will also be available to answer questions after the hearing.

Copies of the draft GOPs may be obtained from the TCEQ Web site at *http://www.tceq.state.tx.us/permitting/air/nav/air_genoppermits.html* or by contacting the TCEQ Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1250. Written comments may be mailed to Ms. Beryl Thatcher, Texas Commission on Environmental Quality, Office of Permitting, Remediation and Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1070. All comments should reference the draft Oil and Gas GOPs. Comments must be received by 5:00 p.m., July 10, 2006. For further information, contact Ms. Thatcher at (512) 239-5374.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact the TCEQ at (512) 239-4000. Requests should be made as far in advance as possible.

TRD-200602878
Stephanie Bergeron Perdue
Acting Deputy Director, Office of Legal Services
Texas Commission on Environmental Quality
Filed: May 23, 2006

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Department of Family and Protective Services

Correction of Error

The Department of Family and Protective Services proposed revisions to Title 40, Chapter 745 which were published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4175). On page 4192, first column, a proposed new rule was misnumbered as §749.9097. The correct rule number and title are "§745.9097. What information must the post-placement adoptive report include?"

TRD-200602903

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Department of State Health Services

Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Osteopathic Medical Center of Texas, Fort Worth, M00500, May 12, 2006; Preston Forest Animal Clinic, Dallas, R11978, May 12, 2006; Transitional Hospitals Corporation Inc., Arlington, R20324, May 12, 2006; Jonathan W. Reeder, D.M.D., Sweeny, R21344, May 12, 2006; Martin Evans, Americus, Georgia, R23864, May 12, 2006; Valley Orthopedic Associates Inc., Brownsville, R24431, May 12, 2006; Network Cancer Care, LP, Denton, R25653, May 12, 2006; Byroad Chiropractic, Frisco, R26128, May 12, 2006; Texas Family Medical Association, Austin, R26695, May 12, 2006; Joseph Edward Mechanik, D.P.M., Houston, R26744, May 12, 2006; Texas State Healthcare Systems, LLC, Garland, R28109, May 12, 2006; Southwest Health and Rehab, LLC, Carrollton, R28417, May 12, 2006; CHCA Mainland, LP, Texas City, Z00287, May 12, 2006; Laserwurx, LLC, Nashville, Tennessee, Z01739, May 12, 2006.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday - Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200602901
Cathy Campbell
General Counsel
Department of State Health Services
Filed: May 24, 2006

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Texas Health and Human Services Commission

Notice of Hearing on Proposed Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on the proposed payment rate for Medicaid services delivered by physician assistants (PAs). The effective date of the proposed payment rate is July 1, 2006. The hearing will be held in compliance with Chapter 32 of the Human Resources Code, §32.0282, which requires public hearings on proposed payment rates for medical assistance programs.

The public hearing will be held on June 29, 2006, at 1:00 p.m. in the Big Bend Conference Room of the Braker Center, Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Entry is through Security at the entrance of 11209 Metric Boulevard.

Written comments regarding the proposed payment rate may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Irene Cantu, HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200 or by e-mail to irene.cantu@hhsc.state.tx.us. Express mail can be sent, or written comments can be hand delivered, to Ms. Cantu, HHSC Rate Analysis, MC H-400, Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021. Alternatively, written comments may be sent via facsimile to Ms. Cantu at (512) 491-1998.

Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rate by contacting Ms. Cantu at (512) 491-1358 or at HHSC Rate Analysis, MC H-400, P.O. Box 85200, Austin, Texas 78708-5200. Briefing packages also will be available at the hearing.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Cantu by June 26, 2006, so that appropriate arrangements can be made.

Methodology and justification. The proposed rate was determined in accordance with the proposed reimbursement methodology for PAs under Purchased Health Services at 1 TAC Chapter 355, Subchapter J, §355.8093 (relating to Physician Assistants). The proposed reimbursement methodology rules were published for the required 30-day public comment period in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3338-3339).

TRD-200602904
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 24, 2006

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Public Notice

The Health and Human Services Commission received approval on May 15, 2006, from the Centers for Medicare and Medicaid Services to amend the Texas State Child Health Plan under Title 21 of the Social Security Act. The state plan amendment is made in conjunction with proposed rule changes that were published in the October 14, 2005, issue of the *Texas Register* (30 TexReg 6538). The effective date of this amendment is January 1, 2006.

This amendment modifies the cost-sharing requirement for certain families to enroll in the Children's Health Insurance Program (CHIP). The amendment replaces the current CHIP monthly premium with an enrollment fee. This provides for a single payment at each certification, rather than multiple monthly payments over the period of eligibility.

Enrollees at or below 133 percent of the federal poverty level (FPL), Native Americans, and Alaskan Natives are exempt from the enrollment fee. The state has submitted a waiver to CMS to charge $25 for those families that have income above 133 percent FPL up to and including 150 percent FPL. For families that have income above 150 percent FPL up to and including 185 percent FPL, the enrollment fee is $35, and above 185 percent FPL up to and including 200 percent FPL, the enrollment fee is $50.

For additional information, please contact Kyna Belcher, Policy Development Support with the Medicaid/CHIP Division, by telephone at (512) 491-1884 or by E-mail at kyna.belcher@hhsc.state.tx.us.

TRD-200602872
Steve Aragón
Chief Counsel
Texas Health and Human Services Commission
Filed: May 23, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Mulitfamily Housing Revenue Bonds (Center Ridge Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Hastings Elementary School, 602 West Center Street, Duncanville, Dallas County, Texas 75116, at 6:00 p.m. on June 21, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $8,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Summit Center Ridge Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 224-unit multifamily residential rental development located at 700 West Center Street, Dallas County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602899
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 24, 2006

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Notice of Public Hearing

Multifamily Housing Revenue Bonds (Hillcrest Apartments) Series 2006

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at Tisinger Elementary School, 1701 Hillcrest Street, Mesquite, Dallas County, Texas 75149, at 6:00 p.m. on June 22, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $12,700,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Summit Hillcrest Apartments, Ltd., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, rehabilitating, and equipping a multifamily housing development (the "Development") described as follows: 352-unit multifamily residential rental development located at 2019 Hillcrest Street, Dallas County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Teresa Morales at the Texas Department of Housing and

Community Affairs, P.O. Box 13941, Austin, TX 78711-3941; (512) 475-3344; and/or teresa.morales@tdhca.state.tx.us.

Persons who intend to appear at the hearing and express their views are invited to contact Teresa Morales in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Teresa Morales prior to the date scheduled for the hearing. Individuals who require a language interpreter for the hearing should contact Teresa Morales at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

TRD-200602898
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 24, 2006

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Texas Department of Insurance

Company Licensing

Application to change the name of G.U.I.C. INSURANCE COMPANY to AMERICAN MODERN SELECT INSURANCE COMPANY, a fire and/or casualty company. The home office is in Amelia, Ohio.

Application to change the name of ALLMERICA FINANCIAL LIFE INSURANCE AND ANNUITY COMPANY to COMMONWEALTH ANNUITY AND LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Worcester, Massachusetts.

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-200602902
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: May 24, 2006

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Texas Lottery Commission

Instant Game Number 654 "Texas Gold Rush"

1.0 Name and Style of Game.

A. The name of Instant Game No. 654 is "TEXAS GOLD RUSH". The play style for game BEAT THE DEALER is "beat score". The play style for game FAST $50 is "is match up". The play style for game LUCKY 7's is "three in a line". The play style for game DOUBLE UP is "key symbol match". The play style for game MATCH UP is "match up with prize legend".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 654 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 654.

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: $5.00, $10.00, $20.00, $30.00, $50.00, $100, $300, $1,000, $10,000, $250,000, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, J, Q, K, A, GOLD PAN SYMBOL, POT OF GOLD SYMBOL, DIAMOND SYMBOL, COIN SYMBOL, SPUR SYMBOL, MAP SYMBOL, CART SYMBOL, DOUBLE SYMBOL, SINGLE SYMBOL, STAR SYMBOL, HORSESHOE SYMBOL, COWBOY HAT SYMBOL, COWBOY BOOT SYMBOL, LASSO SYMBOL, SADDLE SYMBOL and GOLD NUGGET 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. 654 - 1.2D

PLAY SYMBOL	CAPTION
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUN
$300	THR HUN
$1,000	ONE THOU
$10,000	10 THOU
$250,000	250 THOU
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
J	JCK
Q	QUN
K	KNG
A	ACE
GOLD PAN SYMBOL	PAN
POT OF GOLD SYMBOL	PTGOLD
DIAMOND SYMBOL	DIAMND
COIN SYMBOL	COIN
SPUR SYMBOL	SPUR
MAP SYMBOL	MAP
CART SYMBOL	CART
1	
2	
3	
4	
5	
6	
7	
8	
9	
DOUBLE SYMBOL	2X PRIZE
SINGLE SYMBOL	1X PRIZE
STAR SYMBOL	STAR
HORSESHOE SYMBOL	HSHOE
COWBOY HAT SYMBOL	HAT
COWBOY BOOT SYMBOL	BOOT
LASSO SYMBOL	LASSO
SADDLE SYMBOL	SADDLE
GOLD NUGGET SYMBOL	GOLD

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. 654 - 1.2E

CODE	PRIZE
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100 or $300.

I. High-Tier Prize - A prize of $1,000, $10,000 or $250,000.

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 (654), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 050 within each pack. The format will be: 654-0000001-001.

L. Pack - A pack of "TEXAS GOLD RUSH" Instant Game tickets contains 50 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 050 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be: the back of ticket 001 will be shown on the front of the pack and the front of ticket 050 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS GOLD RUSH" Instant Game No. 654 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 "TEXAS GOLD RUSH" Instant Game is determined once the latex on the ticket is scratched off to expose 37 (thirty-seven) Play Symbols. In the game BEAT THE DEALER, if a player's YOUR card play symbol beats the DEALER'S card play symbol within a hand, the player wins the PRIZE shown for that HAND. In the game FAST $50, if a player reveals two matching play symbols, the player wins $50.00. In the game LUCKY 7'S, if a player reveals three "7" play symbols in any row, column or diagonal, the player wins the PRIZE shown. In the game MATCH UP, if a player reveals three matching symbols in the same GAME, the player wins the prize shown in the PRIZE LEGEND. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 37 (thirty-seven) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 37 (thirty-seven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 37 (thirty-seven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 37 (thirty-seven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets within a book will not have identical patterns.

B. Game BEAT THE DEALER: Players can win up to four (4) times in this play area.

C. Game BEAT THE DEALER: The "2" card symbol will never appear as a YOUR CARD.

D. Game BEAT THE DEALER: The "Ace" symbol is considered high.

E. Game BEAT THE DEALER: There will be no ties between the YOUR CARD symbol and the DEALER'S CARD symbol in a game.

F. Game BEAT THE DEALER: There will be no duplicate non-winning prize symbols.

G. Game BEAT THE DEALER: There will be no duplicate YOUR CARDS appearing on a ticket.

H. Game BEAT THE DEALER: There will be no duplicate DEALER'S CARD on a ticket.

I. Game BEAT THE DEALER: The "Ace" card symbol will never appear as a DEALER'S CARD.

J. Game BEAT THE DEALER: The same two cards will not appear together, in any order in more than one HAND.

K. Game FAST $50: Players can win once in this play area.

L. Game FAST $50: Non-winning tickets will not contain two (2) like symbols.

M. Game FAST $50: Tickets winning in this play area will win as per the prize structure.

N. Game LUCKY 7'S: Players can win once in this play area.

O. Game LUCKY 7'S: No ticket will contain three (3) or more matching symbols other than the "7" symbol.

P. Game LUCKY 7'S: Tickets winning in this play area can only win by getting three (3) "7" symbols in the same row, column or diagonal.

Q. Game LUCKY 7'S: There will never be four (4) "7's" in all four (4) corners.

R. Game DOUBLE UP: On winning tickets, the "DOUBLE" will only show as per the prize structure. All other winning tickets will show the symbol "SINGLE".

S. Game MATCH UP: Players can win up to four (4) times in this area.

T. Game MATCH UP: There will be no duplicate non-winning GAMES in any order on a ticket.

U. Game MATCH UP: Non-winning tickets will never contain more than two (2) of the same PLAY SYMBOLS over the entire game play area.

V. Game MATCH UP: Consecutive non-winning tickets will not have identical GAMES (e.g. If the first ticket shows Star, Horseshoe, and Nugget in any game then the next ticket may not contain Star, Horseshoe, and Nugget in that exact order in any game.).

W. Game MATCH UP: Winning tickets will win according to the prize legend on the front of the ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS GOLD RUSH" Instant Game prize of $10.00, $20.00, $30.00, $50.00, $100 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $100 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS GOLD RUSH" Instant Game prize of $1,000, $10,000 or $250,000, 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 "TEXAS GOLD RUSH" 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.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "TEXAS GOLD RUSH" 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 "TEXAS GOLD RUSH" 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 2,040,000 tickets in the Instant Game No. 654. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 654 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$10	285,600	7.14
$20	183,600	11.11
$30	57,800	35.29
$50	43,520	46.88
$100	32,810	62.18
$300	75	27,200.00
$1,000	8	255,000.00
$10,000	3	680,000.00
$250,000	2	1,020,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 3.38. 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. 654 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. 654, 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-200602896
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: May 24, 2006

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Public Utility Commission of Texas

Notice of Application for Amendment to Certificated Service Area Boundary

Notice is given to the public of an application filed on May 16, 2006, with the Public Utility Commission of Texas, for an amendment to a certificated service area boundary in Bell County, Texas.

Docket Style and Number: Application of AT&T Texas to Amend Certificate of Convenience and Necessity to Modify the Service Area Boundaries between the Belton and Temple Exchanges. Docket Number 32718.

The Application: The minor boundary amendment is being filed to realign the boundary between AT&T's Temple and Belton exchanges. The proposed boundary amendment will transfer a small portion of serving area from the Belton exchange to the Temple exchange to accurately reflect the way service is currently being provisioned to existing customers in the area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by June 9, 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 32718.

TRD-200602864
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2006

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On May 17, 2006, TelCove Operations, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60219. Applicant intends to reflect a change in ownership/control.

The Application: Application of TelCove Operations, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 32721.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 7, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32721.

TRD-200602865

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2006

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Notice of Application for Designation as an Eligible Telecommunications Provider and Eligible Telecommunications Carrier

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 17, 2006, for designation as an eligible telecommunications provider (ETP) and eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.417 and §26.418, respectively.

Docket Title and Number: Application of Vycera Communications, Inc., formerly known as Genesis Communications International, Inc., for Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417 and Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 32723.

The Application: Vycera Communications, Inc. is requesting ETP/ETC designations in the exchanges of non-rural incumbent local exchange carriers Southwestern Bell Telephone Company, doing business as AT&T Texas, and Verizon TXG and Verizon TXC, as indicated in the list of rate centers attached to its instant application. Vycera holds Service Provider Certificate of Operating Authority Number 60365.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 22, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32723.

TRD-200602866
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 22, 2006

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Notice of Petition for Rulemaking

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition for rulemaking filed on May 19, 2006.

Docket Style and Number: Petition of Level 3 Communications, LLC for Rulemaking to Amend P.U.C. Substantive Rule §26.113, Relating to Transfer of Control Applications; Project Number 32730.

Summary: Level 3 Communications, LLC (Level 3) petitioned the commission to amend P.U.C. Substantive Rule §26.113 relating to Amendments to Certificate of Operating Authority (COA) and Service Provider Certificate of Operating Authority (SPCOA). Specifically, Level 3 proposes to amend §26.113 by adding a new subsection (f) and renumbering existing subsections (f)- (i). New subsection (f) will apply to parties filing applications with the Federal Communications Commission (FCC) for domestic Section 214 license transfers pursuant to 47 C.F.R. §63.03 and if necessary, any Hart-Scott Rodino applications with the Department of Justice (DOJ). The amendment will allow parties to close certain transfer of control transactions upon receiving FCC and DOJ approval.

Pursuant to Administrative Procedure Act §2001.021, the commission shall either deny the petition in writing, stating its reasons for denial, or initiate a rulemaking proceeding not later than the 60th day after the date the petition is filed.

Comments on the petition may be filed no later than Friday, June 23, 2006. Sixteen copies shall be delivered to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All comments should reference Project Number 32730. Persons wishing to contact the Public Utility Commission of Texas by phone may call (512) 936-7120 or (toll free) 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.

TRD-200602883
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 23, 2006

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Texas Department of Transportation

Public Notice - Public Hearing

The Texas Department of Transportation (department) will conduct a public hearing to receive comments on the proposed formation of the Camino Real Regional Mobility Authority ("Camino Real RMA") by the City of El Paso (the "City").

On May 15, 2006, the City filed a revised petition requesting authorization from the Texas Transportation Commission to form the Camino Real RMA. As proposed, the Camino Real RMA would encompass the boundary of the City, and would be governed by a board of directors of seven members. Six of the board members would be appointed by the City Council. In addition to the board members appointed by the City, the presiding officer of the board will be appointed by the Governor. The Camino Real RMA's initial candidate project is an approximately 7 mile long project known as the Border Highway West Project intended to complete the outer Loop 375 by extending the existing terminus of Loop 375 in the downtown area westward to Interstate Highway 10 (I-10) at the US 85/NM273 interchange.

Pursuant to Title 43, Texas Administrative Code, §26.12, the department will hold a public hearing on the date and at the time and location indicated below to receive public comments and assess the level of public support concerning the proposed Camino Real RMA:

Monday, June 12, 2006 at 6:00 p.m.

El Paso City Hall, City Council Chambers

2 Civic Center Plaza, 2nd Floor

El Paso, Texas 79901

All interested citizens are invited to attend the public hearing and to provide input. Those desiring to make official comments may register starting at 5:30 p.m. Oral and written comments may be presented at the public hearing, or written comments may be submitted by mail. To be included in the official record of the public hearing, written comments must be received by 5:00 p.m. on June 22, 2006. Written comments should be mailed to: Doug Woodall P.E., Director of Turnpike Planning and Development, Texas Turnpike Authority Division, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

Persons with disabilities who plan to attend the public hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are re-

quested to contact the El Paso City Clerk's Office at (915) 541-4127, at least two business days prior to the hearing, so that appropriate arrangements can be made.

A copy of the City of El Paso's petition to the Texas Transportation Commission is available for inspection at the Office of the City Clerk, El Paso City Hall, 2 Civic Center Plaza, 2nd Floor, El Paso, Texas 79901.

TRD-200602888
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: May 23, 2006

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University of North Texas

Notice of Request for Information (RFI) for Outside Legal Services Related to Intellectual Property Matters

The University of North Texas System (UNT System) requests information from law firms interested in representing its component institution the University of North Texas (UNT) in intellectual property matters. This RFI is issued to establish (for the time frame beginning September 1, 2006 to August 31, 2007) a referral list from which the UNT System, by and through its Office of Vice Chancellor and General Counsel, will select appropriate counsel for representation on specific intellectual property matters as the need arises.

Description: The UNT System comprises one health institution and two academic institutions located in three cities in Texas. Research activities and other educational pursuits at UNT produce intellectual property that is carefully evaluated for protection and licensing to commercial entities. Subject to approval by the Office of the Attorney General (OAG) for the State of Texas, UNT will engage outside counsel to prepare, file, prosecute, and maintain patent applications in the United States and other countries; secure copyright protection for computer software; prepare, file and prosecute applications to register trademarks and service marks in the United States and other countries; advise and/or prepare material transfer agreements, license agreements and other related agreements; and advise on complex matters relating to intellectual property and technology transfer. UNT also will engage outside counsel from time to time to pursue litigation against infringers of these intellectual property rights and to handle other related matters. The UNT System invites responses to this RFI from qualified firms for the provision of such legal services under the direction and supervision of UNT System's Office of Vice Chancellor and General Counsel.

Responses; Qualifications: Responses to this RFI should include at least the following information: (1) a description of the firm's or attorney's qualifications for performing the legal services requested, including the firm's prior experience in intellectual property-related matters, and appropriate information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision both of the firm's legal services generally and intellectual property matters in particular; (2) the names, experience, and scientific or technical expertise of the attorneys and patent agents who may be assigned to work on such matters; (3) the submission of fee information (either in the form of hourly rates for each attorney and patent agent who may be assigned to perform services in relation to UNT's intellectual property matters, flat fees, or other fee arrangements directly related to the achievement of specific goals and cost controls) and billable expenses; (4) disclosures of conflicts of interest (identifying each and every matter in which the firm has, within the past calendar year, represented any entity or individual with an interest adverse to the UNT System, UNT, or to the State of Texas, or any of its boards, agencies, commissions, universities, or elected or appointed officials); and (5) confirmation of willingness to comply with policies, directives and guidelines of the UNT System, UNT and the OAG for the State of Texas.

The law firm(s) or attorney(s) will be selected based on demonstrated knowledge and experience, quality of staff assigned to perform services under the contract, compatibility with the goals and objectives of UNT, and reasonableness of proposed fees. The successful firm(s) or attorney(s) will be required to sign the Texas OAG's Outside Counsel Agreement, and execution of a contract with UNT is subject to approval by the Texas OAG. UNT reserves the right to accept or reject any or all responses submitted. UNT is not responsible for and will not reimburse any costs incurred in developing and submitting a response.

Format and Person to Contact: Two copies of the response are requested. The response should be typed, preferably double spaced, on 8 1/2 x 11 inch paper with all pages sequentially numbered, and either stapled or bound together. They should be sent by mail, facsimile, or electronic mail, or delivered in person, marked "Response to Request for Information," and addressed to Michelle Williams, Associate General Counsel, University of North Texas System, P.O. Box 310907, Denton, TX 76203-0907; or E-mail mwilliams@unt.edu or fax to (940) 369-7026.

Deadline for Submission of Response: All responses must be received at the address set forth above no later than 5:00 p.m., July 10, 2006. Questions regarding this request may be directed to Michelle Williams at (940) 565-2717.

TRD-200602900
Sandy Shelton
Director of Purchasing and Payments Services/HUB Coordinator
University of North Texas
Filed: May 24, 2006

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles 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).