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Samuel Muegge



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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.

Opinions

Opinion No. GA-0444

The Honorable Geraldine "Tincy" Miller
Chair, State Board of Education
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether funds set aside for textbooks may be used for the purchase of computer hardware and other equipment (RQ-0436-GA)

S U M M A R Y

Funds set aside for textbooks, including electronic textbooks, must be used exclusively for the purpose of conveying information, including curriculum content, to students, and such funds may not be used for the purchase of hardware or other equipment defined as "technological equipment."

Opinion No. GA-0445

The Honorable Leticia Van de Putte, R.Ph.
Chair, Committee on Veteran Affairs and Military Installations
Texas State Senate
Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether under Education Code section 54.203(a) the governing board of an institution of higher education must exempt an honorably discharged veteran from the payment of dues, fees, and charges if the veteran is not a United States citizen (RQ-0433-GA)

S U M M A R Y

To receive benefits under Education Code section 54.203(a), an honorably discharged veteran must: (1) have been a United States citizen and Texas resident at the time he or she entered the service and (2) have resided in Texas for at least 12 months at the time the veteran registers in an institution of higher education. Section 54.203(a) does not require that the veteran be a United States citizen at the time he or she registers in the institution of higher education.

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

TRD-200603944
Stacey Schiff
Deputy Attorney General
Office of the Attorney General
Filed: July 26, 2006



EMERGENCY RULES

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

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.50

The Public Utility Commission of Texas (commission) adopts on an emergency basis new §25.50, relating to Suspension of Disconnection of Electric Service during the Summer of 2006. This section is being adopted under Project Number 32874.

This emergency adoption is necessary because the state has experienced record high demand for electricity recently due to the extreme and persistent heat. The risk of disconnection due to the inability to pay by customers covered by this section has therefore increased. In addition, disconnection of electricity through the remainder of the summer season (September 30, 2006) when temperatures can be expected to be high, constitutes a threat to the health of customers covered by this section. Together these factors pose an imminent peril to the public health. In addition, an expedited effective date of this section is necessary because of the imminent peril to the public health. Therefore, this rule shall be effective immediately on filing with the secretary of state.

The new section is adopted on an emergency basis pursuant to §§11.002, 14.001, 14.002, 14.005, 39.101 and 184.001 - 184.071 of the Texas Utilities Code Annotated (Vernon 1998 & Supplement 2005). Section 11.002 states that the purpose of the Public Utility Regulatory Act is to protect the public interest inherent in the rates and services of public utilities; §14.001 provides the commission the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §14.002 provides the commission with the authority to adopt rules reasonably required in the exercise of its powers and jurisdiction; §14.005 provides the commission authority to establish criteria and guidelines with the utility industry relating to industry procedures used in terminating services to the elderly and disabled; §39.101 provides the commission authority to adopt by rule customer safeguards; and §§184.001 - 184.071 provide the commission authority over owners of master-metered and submetered residential facilities.

This section is also adopted on an emergency basis pursuant to the procedures for emergency rulemaking set forth in the Texas Government Code, §2001.034 (Vernon 2000 & Supplement 2005) and shall be effective for 120 days.

Cross reference to statutes: Texas Utilities Code §§11.002, 14.001, 14.002, 14.005, 39.101, 184.001 - 184.071.

§25.50. Suspension of Disconnection of Electric Service during Summer 2006.

(a) Definitions. The following terms when used in this section shall have the following meaning, unless the context indicates otherwise:

(1) Critical care residential customer--Defined in §25.497(a)(3) of this title (relating to Critical Care Customers).

(2) Deferred payment plan--An agreement between the electric provider and a customer that allows the customer to pay an outstanding bill in installments that extend beyond the due date of the current bill.

(3) Disconnection--Disconnection of electric service for non-payment of services rendered.

(4) Elderly low-income customer--A low income customer who is 65 years of age or older.

(5) Electric Provider--An entity defined as an electric utility in §25.5(41) of this title (relating to Definitions) that bills end-use customers for electric service, an entity defined as a retail electric provider in §25.5(115) of this title, owners of master-metered residential facilities as governed by §25.141 of this title (relating to Central System or Nonsubmetered Master Metered Utilities), and owners of submetered residential facilities as governed by §25.142 of this title (relating to Submetering for Apartments, Condominiums, and Mobile Home Parks).

(6) Low-income customer--Defined by §25.5(65) of this title.

(b) Disconnection prohibited.

(1) An electric provider shall not authorize or execute the disconnection of electric service for the period beginning the effective date of this section through September 30, 2006, for a critical care residential customer or an elderly low-income customer who contacts the electric provider regarding bill payment or in response to a disconnection notice. If the critical care residential customer or elderly low-income customer has already been disconnected during this period, the electric provider shall request or execute a reconnection of the customer's electric service. If an electric provider has already requested disconnection of electric service to occur during this period, the electric provider shall rescind such request. If a customer has an existing designation as a critical care residential customer, an electric provider shall not authorize disconnection irrespective of whether or not the customer contacts the electric provider as long as the critical care residential customer status is in effect.

(A) Critical care residential customers and elderly low-income customers should be encouraged to make a partial payment on the deferred electric bills during the period that disconnections are prohibited by this section, but the electric provider shall make clear that the critical care residential customer or elderly low-income customer will not be disconnected for non-payment prior to October 1, 2006.

(B) Any deferred payment plan established for one or more electric bills that come due during the period that disconnections are prohibited shall provide that the critical care residential customer or elderly low-income customer is not required to pay more than 25% of the deferred bill(s) as part of the first electric bill issued after September 30, 2006, with the remaining balance to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments.

(C) The deferred payment plan may be established in person or by telephone and shall be confirmed in writing by the electric provider. The deferred payment plan shall, at a minimum, include all of the information required by §25.480(j)(6) of this title (relating to Bill Payments and Adjustments), except that the plan may not include a penalty for late payments accrued during the period that disconnection was prohibited by this section, and the customer may initiate a renegotiation of the deferred payment plan one time during the time of the deferred payment plan regardless of whether the customer's economic or financial circumstances have changed.

(D) An electric provider may pursue disconnection of electric service following the prohibition on disconnection provided by this section if a customer does not meet the terms of a deferred payment plan unless other provisions of this title prohibit disconnection. However, electric service shall not be disconnected until appropriate notice has been issued, as required by this title, notifying the customer that the customer has not met the terms of the plan.

(2) An electric provider shall not authorize or execute disconnection of electric service for the period beginning the effective date of this section through September 30, 2006, for a low-income customer that contacts their electric provider regarding bill payment or in response to a disconnection notice if the low-income customer enters into a deferred payment plan with his or her electric provider for the current month's electric charges and meets the terms of any existing deferred payment plan. If the low-income customer has already been disconnected during this period due to failure to pay the current month's electric charges, the electric provider shall request or execute a reconnection of the customer's electric service if the customer enters into a deferred payment plan. If the electric provider has already requested disconnection of the customer due to failure to pay the current month's electric charges, the electric provider shall rescind such request if the customer enters into a deferred payment plan.

(A) An electric provider shall offer a deferred payment plan to any low-income customer that expresses an inability to pay an electric bill that becomes due beginning the effective date of this section through September 30, 2006, even if the electric provider is not required to offer a deferred payment plan pursuant to the provisions of §25.480(j)(3) of this title.

(B) A deferred payment plan established under this paragraph shall provide that the customer will pay no more than 25% of the deferred bill to initiate the agreement with the remaining balance to be paid in equal installments over the next five billing cycles, unless the customer requests a lesser number of installments.

(C) The deferred payment plan may be established in person or by telephone and shall be confirmed in writing by the electric provider. The deferred payment plan shall, at a minimum, include all of the information required by §25.480(j)(6) of this title, except that the plan may not include a penalty for late payments accrued during the period that disconnection was prohibited by this section, and the customer may initiate a renegotiation of the deferred payment plan during the time of the deferred payment plan regardless of whether the customer's economic or financial circumstances have changed. However, during the period that disconnection is prohibited by this section, the electric provider may require payment of no more than 25% of the current month's charges plus the due installment(s) on any prior deferred payment plan(s). The electric provider may, but is not required to, extend a deferred payment plan entered into pursuant to this subparagraph, beyond the March 2007 billing cycle.

(D) An electric provider may pursue disconnection of electric service if a customer does not meet the terms of a deferred payment plan unless other provisions of this title prohibit disconnection. However, electric service shall not be disconnected until appropriate notice has been issued, as required by this title, notifying the customer that the customer has not met the terms of the plan.

(c) For purposes of determining whether a customer is a low-income customer eligible for the protections under this section, an electric provider may utilize the most recent list of low-income customers compiled by the Low-Income Discount Administrator as defined by §25.454(d)(3) of this title (relating to Rate Reduction Program). The electric provider may require customers not identified by the Low-Income Discount Administrator to provide documentation consistent with the information required for self-enrollment used by the Low-Income Discount Administrator.

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

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603840

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective Date: July 21, 2006

Expiration Date: November 17, 2006

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



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 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 251. REGIONAL PLANS-- STANDARDS

1 TAC §251.3

The Commission on State Emergency Communications (CSEC) proposes an amendment to §251.3, concerning the use of revenue in certain counties.

The proposed amendments would shorten the rule, add additional clarity, and remove requirement that the rule be reviewed biennially.

Paul Mallett, CSEC Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Mallett has also determined that for each year of the first five years the rule is in effect the public benefit expected as a result of enforcing the rule will be an improved process for Regional Planning Commission's (RPCs) to follow in requesting funding under Health and Safety Code §771.0751. Mr. Mallett has also determined that there are no anticipated economic costs to persons who are required to comply with the rule and there is no anticipated local employment or local economy impact. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

Comments on the amendment may 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.

The amendment is proposed under the Texas Health and Safety Code, Chapter 771, §§771.051, 771.055, 771.075, and 771.0751 which authorizes CSEC to plan, develop, fund, and provide provisions for the enhancement of effective and efficient 9-1-1 service, including the use of fees and surcharges in certain counties. The amendment is proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

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

§251.3. *Use of Revenue in Certain Counties.*

(a) Purpose. The purpose of this rule is to implement [establish the requirements for the submission and approval of proposals for allocations of revenue under] Section 771.0751 of the Texas Health and Safety Code, which authorizes the Commission to provides for use of [provides for use of] 9-1-1 fees and surcharges in certain counties, in addition to other authorized or required uses, for any necessary 9-1-1 related costs [funds for services and/or equipment closely related to the 9-1-1 system, but which have not historically been funded under Chapter 771 of the Texas Health and Safety Code].

[(b) Background. As authorized by Chapter 771 of the Texas Health and Safety Code, the Commission on State Emergency Communications (Commission) may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 911 service throughout the State of Texas. In accordance with Section 771.055 of the above chapter, such service implementation shall be consistent with regional plans developed by regional planning commissions (RPC). These regional plans must meet standards established by the Commission and include a description of how money allocated to the region under this chapter is to be allocated in the region. Section 771.0751 provides for use of revenue in certain counties for costs associated with the design of a 9-1-1 system and/or the purchase and maintenance of equipment and personnel necessary to establish and operate answering points and related operations.]

(b) [(e)] 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) [(d)] Eligibility. The eligibility for approval of funding under this rule is [established] as follows:

(1) A PSAP within a county participating in a regional strategic plan [the Commission 9-1-1 program,] with a population of at least 700,000 [or greater] as reported by the Texas State Data Center; [and adopted per Commission Rule 252.6, Wireless Service Fee Proportional Distribution,] or

(2) A PSAP within a [the] county[,] participating in a regional strategic plan [the Commission 9-1-1 program,] that has the highest population within the region [a RPC] as reported by the Texas State Data Center [and adopted per Commission Rule 252.6, Wireless Service Fee Proportional Distribution].

(d) [(e)] Requests. Requests for funding under this rule shall be submitted by the RPC as part of the regional strategic plan or proposed as an amendment to the regional plan, subject to the format and documentation requirements and review and approval processes as described in Commission Rule 251.1, Regional Strategic Plans for 9-1-1 Service, Commission Rule 251.6, Guidelines for Strategic Plans, Amendments, and Revenue Allocation, and other applicable Commission rules [rule] and policies [policy]. Requests should demonstrate that all basic regional 9-1-1 needs are met and maintained prior to any additional costs proposed under this rule.

(e) [(f)] Approval. Approval of regional plans or amendments requesting funds under this rule may only be approved by vote of the Commission. Once approved, procurement, operation, and maintenance of enhancements funded under this rule are subject to all applicable Commission rules and policies.

[(g) Review. This rule shall be reviewed biennially in order to incorporate any changes made necessary by Legislative appropriation and/or change in applicable law.]

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 July 24, 2006.

TRD-200603866

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 305-6930



CHAPTER 255. FINANCE

1 TAC §255.4

The Commission on State Emergency Communications (CSEC) proposes an amendment to §255.4, concerning the definition of a local exchange access line or its equivalent.

The proposed amendment would (1) delete the federal subscriber line charge as an alternative basis for defining local exchange access line or its equivalent; (2) further clarify applicability of the rule to multi-channel services or offerings; and (3) make clear that a service provider's discounting the cost of lines that fit the definition to certain classes of end users (e.g., a service provider's employees or retirees), or itself, cannot be used to eliminate or reduce the applicable 9-1-1 service fee.

Paul Mallett, CSEC Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Mallett has also determined that for each year of the first five years the rule is in effect the public benefit expected as a result of enforcing the rule will be an improved process for Regional Planning Commission's (RPCs) to follow in requesting funding under Health and Safety Code §771.0751. Mr. Mallett has also determined that there are no anticipated economic costs to persons who are required to comply with the rule and there is no anticipated local employment or local economy impact. Mr. Mallett has determined that, although no historical data is available, there appears to be no direct effect on small or micro-businesses.

Comments on the amendment may 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.

The amendment is proposed under Texas Health and Safety Code, Chapter 771, §§771.051, 771.063, 771.071, 771.073, and 771.077, which authorize CSEC to define local exchange access line or equivalent local exchange access line for the purpose of

9-1-1 emergency service fees. The amendment is proposed in accordance with the process for rulemaking as prescribed by Texas Government Code, Chapter 2001, Subchapter B.

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

§255.4. *Definition of a Local Exchange Access Line or An Equivalent Local Exchange Access Line.*

(a) The terms "local exchange access line" or "equivalent local exchange access line" mean the physical voice grade telecommunications connection or the cable or broadband transport facilities, or any combination of these facilities, owned, controlled, or relied upon by a service provider, between an end user customer's premises and a service provider's network that, when the digits 9-1-1 are dialed, provides the end user customer access to a public safety answering point through a permissible interconnection to the dedicated 9-1-1 network. In the case of multi-channel services or offerings, channelized by a service provider, each [Each such connection (e.g.,]individual channel[)] provided to an end user customer shall constitute a separate "local exchange access line" or "equivalent local exchange access line." [A service provider that bills federal subscriber line charges on all its retail lines and services to all its end user customers may use the federal subscriber line charge as an alternative definition and may bill, collect, and remit 9-1-1 emergency service fees on that basis.] The terms "local exchange access line" or "equivalent local exchange access line" include lines as defined above that a service provider offers at a fully or partially discounted rate from the provider's base rate and provides to itself or a class of end users (e.g., the service provider's employees/retirees). Such discounting is not a basis for eliminating or reducing the 9-1-1 emergency service fee on such lines.

(b) (No change.)

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

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

TRD-200603867

Paul Mallett

Executive Director

Commission on State Emergency Communications

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 305-6930



TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

10 TAC §305.24, §305.25

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Residential Construction Commission or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Residential Construction Commission (the "commission") proposes the repeal of 10 TAC §305.24 and §305.25 as a result of amendments to §305.23, which provide for an informal notice of violation. Further, the language contained in §305.24 and §305.25 is duplicate of language that has been subsumed into other sections in this chapter by amendments adopted effective June 12, 2006.

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

Ms. Durso has also determined that for the first five years following the repeal the public will benefit from the conformity of the agency's rules with the statutory language and clarity in the agency rules resulting from consolidation. There is no anticipated economic cost to persons as a result of the proposed repeal. There will be no effect on micro, small or large businesses as a result of the proposed repeal of these rules.

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

Comments on the proposed repeal may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "Repeal of 305.24 and 305.25" in the subject line. If comments are submitted electronically without "Repeal of 303.24 and 303.25" in the subject line, they may not be considered. The deadline for submission of comments is 14 days from the date of publication of the proposed repeal in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rules proposed for repeal.

The repeal of §305.24 and §305.25 is proposed, generally, pursuant to Property Code §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; 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.

The statutory provisions affected by the proposed repeal of these rules are those set forth in Property Code, Chapters 408, 418 and 419. No other statutes, articles, or codes are affected by the proposed repeal of these rules.

§305.24. *Informal Resolution Process.*

§305.25. *Request for Hearing.*

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

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

TRD-200603876

Susan K. Durso
General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: September 3, 2006

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



CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.8

The Texas Residential Construction Commission (commission) proposes amendments for publication and comment to 10 Texas Administrative Code §313.8, relating to the fees for filing a request for the state-sponsored inspection and dispute resolution process. The amendments clarify the procedures for requesting and granting a waiver of the fees for participation in the state-sponsored inspection and dispute resolution process and add to the criteria for granting waiver applications.

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

Ms. Durso has also determined that for each year of the first five year period the proposed amendments are in effect the public will benefit from enhanced criteria used to evaluate requests for fee waivers and from the clarification of the rule. There will not be an effect on individuals or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

Interested persons may send written comments regarding these proposed amendments to the Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding these amendments will be accepted for 30 days following the date of publication in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "313.8 amendments" in the subject line. Comments submitted electronically without "313.8 amendments" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The proposed amendments implement Property Code §426.006(b), which provides for the waiver or reduction of fees for the state-sponsored inspection and dispute resolution process.

§313.8. *Fees for Filing Requests [Inspection Fee].*

(a) The commission will establish fees [a fee] that are [is] commensurate with the scope of the requested inspection and the type of construction defect(s) alleged [and which is set at the lowest possible rate necessary to cover the cost associated with the third-party inspection].

(b) The commission shall publish the established fees [fee] on its website and make them [it] available to the public in writing.

(c) The request to initiate the SIRP must include the appropriate inspection fee.

(d) A requestor who is able to show financial need may submit a request for a reduction or waiver of the required [inspection] fee.

(1) [(e)] The request for a reduction or waiver of the required [inspection] fee must include a sworn affidavit of inability to pay fees on a commission-prescribed form at the time the request to initiate a [an] SIRP is filed.

(2) [(f)] The Executive Director shall review any request for a fee reduction or waiver and the supporting affidavit to determine whether to approve or deny the request.

(3) The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.

(e) [(g)] The Executive Director shall approve a request to reduce or waive the inspection fee if the requestor:

(1) has a household income of less than five times the poverty guidelines issues each year in the *Federal Register* by the Department of Health and Human Services for the number of people in the requestor's household; and

(2) [(h)] has monthly financial obligations that amount to more than 40% of the requestor's gross monthly income; [-] and [-]

(3) [(i)] does not have more than two months of net income in liquid assets.

(f) [(j)] If the Executive Director approves a request to reduce or waive the inspection fee, the inspection fee shall be reduced or waived based on the following schedule:

(1) 35% of the fee shall be waived if the requestor has monthly financial obligations between 40% [40.00%] and 45% [45.00%] of the requestor's gross monthly income; [-]

(2) 70% of the fee shall be waived if the requestor has monthly financial obligations between 45.01% and 49.99% of the requestor's gross monthly income; or [-]

(3) 100% of the fee shall be waived if the requestor has monthly financial obligations of 50% or more of the requestor's gross monthly income.

(g) [(k)] The Executive Director may grant exceptions to subsections (e) [(g)] and (f) [(h)] of this section upon a written showing of unique need. Any exemption granted by the Executive Director to subsections (e) [(g)] and (f) [(h)] of this section must be in writing.

[(j)] The Executive Director's decision on a request for fee reduction or waiver is a final agency decision and is not subject to further administrative appeal.

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 July 21, 2006.

TRD-200603838

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Earliest possible date of adoption: September 3, 2006

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

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TITLE 16. ECONOMIC REGULATION

**PART 2. PUBLIC UTILITY
COMMISSION OF TEXAS**

**CHAPTER 26. SUBSTANTIVE RULES
APPLICABLE TO TELECOMMUNICATIONS
SERVICE PROVIDERS**

SUBCHAPTER N. PAY TELEPHONE SERVICE

16 TAC §26.345, §26.346

The Public Utility Commission of Texas (commission) proposes amendments to §26.345, relating to Posting Requirements for Pay Telephone Service Providers and §26.346, relating to Rates and Charges for Pay Telephone Service. The proposed amendments will: (1) add a sentence to §26.346(a) so that it is consistent with §55.1735 of the Public Utility Regulatory Act (PURA), regarding charges for pay phone access lines; (2) replace "pay telephone service" with the acronym "PTS" in §26.346(b)(1); (3) replace the rate table under §26.346(b)(1)(F) with a new rate table that provides for a single blended per minute rate calculated by averaging all of the mileage band rates; (4) add a new paragraph (3) to §26.346(b) to make the rule consistent with PURA §§58.051, 58.151 and 58.152, regarding electing companies; and (5) add language to §26.345(a)(3) requiring a pay telephone service provider to notify the commission of changes to payphone placards within 30 days. Project Number 31957 is assigned to these proposed amendments.

Harry Deckard, Attorney, Legal Division and Stephen Mendoza, Network Analyst, Infrastructure Reliability Division, have determined that for each year of the first five-year period the proposed amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Mr. Deckard and Mr. Mendoza have determined that for each year of the first five years the proposed amendments are in effect the public will benefit because it will receive customer refunds for money lost due to failed pay telephone service calls more efficiently. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these amendments. There will be no direct economic costs to persons who are required to comply with the proposed amendments; however, there may be economic costs to telecommunications companies that must comply with the proposed amendments. However, it is believed that the benefits accruing from implementation of the proposed amendments will outweigh those costs.

Mr. Deckard and Mr. Mendoza have also determined that for each year of the first five years the proposed amendments are in effect there should be no effect on a local economy. Therefore no local employment impact statement is required under Administrative Procedure Act, Texas Government Code §2001.022.

Comments on the proposed amendments may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. Sixteen copies of comments to the proposed amendments are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the proposed amendments. The commission invites specific comments regarding costs associated with, and benefits gained by, implementing the proposed amendments. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 31957.

This amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2005) (PURA), which authorizes the Public Utility Commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. Section 55.1735 grant(s) the commission the authority to cap the charge or surcharge a local exchange company may impose for an access line used to provide pay telephone service in an exchange so it does not exceed the charge or surcharge the company imposes for an access line used for regular business purposes in that exchange.

Cross Reference to Statutes: Public Utility Regulatory Act, §§14.002, 55.1735, 55.1759, 58.051, 58.151 and, 58.152.

§26.345. *Posting Requirements for Pay Telephone Service Providers.*

(a) The pay telephone service (PTS) provider must attach to each instrument a card that provides:

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

(3) notice stating the name, address, and ten digit telephone number for the pay telephone owner or agent providing the set, and providing the name and toll-free telephone number of the owner or agent responsible for refunds and repairs; the PTS provider shall maintain current information on the placard at all times and shall notify the commission in writing of any changes to the business telephone number of the pay telephone owner, or changes of the physical address from which the pay telephone owner operates, within thirty calendar days of such change; and

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

(b) - (f) (No change.)

§26.346. *Rates and Charges for Pay Telephone Service Providers.*

(a) Rate structure. Certificated telecommunications utility (CTU) rates for wholesale service must be designed on a flat access line and/or a local message usage rate basis. Multi-element measured rates are prohibited. In areas without measuring capabilities, the CTU may use a flat rate usage surrogate instead of a per call message rate. Measurement capabilities are defined as the capability in place to measure and bill pay telephone usage without incurring unreasonable expense. The charge or surcharge a CTU imposes for an access line used to provide pay telephone service (PTS) in an exchange may not exceed the amount of the charge or surcharge the CTU imposes for an access line used for regular business purposes in that exchange.

(b) Charges.

(1) A PTS [pay telephone service (PTS)] provider must:

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

(F) charge no more than these rate caps for intrastate long distance and operator-assisted calls at Texas pay phones: Figure: 16 TAC §26.346(b)(1)(F)

(2) (No change.)

(3) The requirements of paragraph (1)(B) and (D) through (F) of this subsection do not apply to electing local exchange companies.

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 July 20, 2006.

TRD-200603829

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: September 3, 2006

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



TITLE 22. EXAMINING BOARDS

PART 22. TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY

CHAPTER 511. CERTIFICATION AS A CPA SUBCHAPTER C. EDUCATIONAL REQUIREMENTS

22 TAC §511.57

The Texas State Board of Public Accountancy (Board) proposes amendments to §511.57, concerning Definition of Accounting Courses.

The amendments to §511.57 will add clarity to the courses that the Board may consider in meeting the definition of accounting coursework for the CPA examination by clarifying that the internship can be taken after completing a requisite number of upper division accounting courses; and clarifying that the Board may accept up to three semester hours of credit as accounting for coursework with substantial merit in the context of a career in public accounting, provided the course is predominately accounting or auditing in nature but not included elsewhere in the rule.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendments will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendments will be zero because the amendments do not require additional oversight on the Board's part.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendments will be zero because the amendments do not require additional oversight on the Board's part.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendments will be zero because the amendments do not require additional oversight on the Board's part.

Mr. Treacy has determined that for the first five-year period the amendments are in effect the public benefits expected as a result of adoption of the proposed amendments will be a clarification of the educational requirements for certification.

The probable economic cost to persons required to comply with the amendments will be the same as it was before the amendments were adopted by the Board.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendments will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendments from any interested person. Comments must be received at the Board no later than noon on August 29, 2006. Comments should be addressed to J. Randel Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendments will not have an adverse economic effect on small businesses because the amendments do not concern small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendments will have an adverse economic effect on small business; if the amendments are believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendments are to be adopted; and if the amendments are believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendments under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendments are proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§511.57. *Definition of Accounting Courses.*

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

(c) The board will accept not fewer than 30 passing semester hours of accounting courses without repeat from the courses listed below. The courses must meet the board's standards by containing sufficient business knowledge and application to be useful to candidates taking the Uniform CPA Examination. A recognized educational institution must have accepted the courses for purposes of obtaining a baccalaureate degree or its equivalent, and they must be shown on an official transcript. At least 15 of these hours must result from physical attendance at classes meeting regularly on the campus of the transcript-issuing institution.

(1) - (10) (No change.)

(11) an accounting internship program (not to exceed 3 semester hours) which meets the following requirements:

(A) - (H) (No change.)

(I) the internship course shall not be taken until a minimum of 12 semester hours of upper division accounting course work has been completed.~~;~~ ~~and~~

~~[(J) the internship course shall be taken prior to completing the last full semester of course work in order to integrate the knowledge gained during the internship into the curriculum requirements for the degree program.]~~

(12) At its discretion, the board may accept up to three semester hours of credit as ~~[for]~~ accounting for coursework with substantial merit in the context of a career in public accounting, provided the course is predominantly accounting or auditing in nature but not included in paragraph (1)-(11) of this subsection.~~;~~ ~~including courses with substantial merit in the context of a career in public accounting, and courses which are principally accounting or auditing in nature but which may be designated by some other name.]~~ For any course submitted under this provision, the Accounting Faculty Head or Chair must affirm to the board in writing its merit and content.

(d) (No change.)

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

Filed with the Office of the Secretary of State on July 20, 2006.

TRD-200603827

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 305-7848



CHAPTER 519. PRACTICE AND PROCEDURE SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §519.2

The Texas State Board of Public Accountancy (Board) proposes an amendment to §519.2, concerning Definitions.

The amendment to §519.2 will eliminate the Major Case Enforcement Committee and replace it with the Technical Standards Review 2 Committee.

William Treacy, Executive Director of the Board, has determined that for the first five-year period the proposed amendment will be in effect:

A. the additional estimated cost to the state expected as a result of enforcing or administering the amendment will be zero because it does not create an additional committee; rather it replaces one committee for another.

B. the estimated reduction in costs to the state and to local governments as a result of enforcing or administering the amendment will be zero because it does not create an additional committee; rather it replaces one committee for another.

C. the estimated loss or increase in revenue to the state as a result of enforcing or administering the amendment will be zero because the amendment replaces one committee with another.

Mr. Treacy has determined that for the first five-year period the amendment is in effect the public benefits expected as a result of adoption of the proposed amendment will be expedited investigation and prosecution of cases involving technical standard violations.

The probable economic cost to persons required to comply with the amendment will be zero because the amendment does not directly affect individuals.

Mr. Treacy has determined that a Local Employment Impact Statement is not required because the proposed amendment will not affect a local economy.

The Board requests comments on the substance and effect of the proposed amendment from any interested person. Comments must be received at the Board no later than noon on August 29, 2006. Comments should be addressed to J. Randel Hill, General Counsel, Texas State Board of Public Accountancy, 333 Guadalupe, Tower 3, Suite 900, Austin, Texas 78701 or faxed to his attention at (512) 305-7854.

Mr. Treacy has determined that the proposed amendment will not have an adverse economic effect on small businesses because the amendment does not directly affect small businesses.

The Board specifically invites comments from the public on the issues of whether or not the proposed amendment will have an adverse economic effect on small business; if the amendment is believed to have such an effect, then how may the Board legally and feasibly reduce that effect considering the purpose of the statute under which the amendment is to be adopted; and if the amendment is believed to have such an effect, how the cost of compliance for a small business compares with the cost of compliance for the largest business affected by the amendment under any of the following standards: (a) cost per employee; (b) cost for each hour of labor; or (c) cost for each \$100 of sales. See Texas Government Code, §2006.002(c).

The amendment is proposed under the Public Accountancy Act ("Act"), Texas Occupations Code, §901.151 which authorizes the Board to adopt rules deemed necessary or advisable to effectuate the Act.

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

§519.2. *Definitions.*

In this chapter:

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

(5) "Committee" means an enforcement committee of the board which are the Behavioral Enforcement Committee, the Technical Standards Review 1 Committee and the Technical Standards Review 2 [Major Case Enforcement] Committee;

(6) - (11) (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 July 20, 2006.

TRD-200603828

J. Randel (Jerry) Hill

General Counsel

Texas State Board of Public Accountancy

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 305-7848



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION SUBCHAPTER D. EFFECT OF CRIMINAL CONDUCT

28 TAC §§1.501, 1.503 - 1.509

The Texas Department of Insurance proposes amending §1.501 and adding new §§1.503 - 1.509, concerning the effect of criminal conduct on licenses. The proposal addresses who is subject to the Department's rules regarding the consequences of prior criminal conduct and fraudulent and dishonest activity and establishes a requirement and procedure for obtaining an individual's criminal history information by using the individual's fingerprints. The Department will consider the individual's criminal history information in determining an individual's fitness for licensure or other authorization, including certification, permit, or registration, or for control of an entity holding or seeking a license or other authorization, including a certificate, permit, or registration. In conjunction with this proposal and also published in this issue of the Texas Register, the Department has proposed the repeal of existing §§19.1801 - 19.1807 (relating to Fingerprint Card Requirement for Applicants for License) and amendments to existing §§3.1703 (relating to the Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees), 5.6403 (relating to the Application for Initial Certificate of Approval for workers' compensation group self-insurance), 7.209 (relating to Form A, Insurance Holding Company System Regulatory Act), and 19.711 (relating to Fingerprint Requirement for licensing of public insurance adjusters).

The proposal is necessary to maintain effective regulation of the insurance industry by establishing requirements and procedures to further ensure that persons receiving licensure and authorizations, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold those positions. The proposal establishes a reasonable procedure and funding mechanism for the Department to obtain necessary information to make those determinations. This proposal does not impose additional requirements or costs on individuals to maintain their current licenses or authorizations and thus should not affect the current license or authorization status of any person who has made a full disclosure of all past criminal conduct.

The Texas statutes applicable to the individuals affected by this proposal require the Department to determine those individuals' fitness for holding a license or authorization, or those individuals' fitness to control an entity holding or seeking a license or authorization. Additionally, the federal Violent Crime Control and Law Enforcement Act of 1994, specifically 18 U. S. C. §§1033 and 1034, prohibits an individual who has ever been convicted of a state or federal felony involving dishonesty or breach of trust from engaging in the business of insurance unless the individual is specifically authorized to do so by an insurance regulatory official. Because the applicable state statutes do not specify the method of inquiry regarding the determination of an individual's fitness, the Department has the discretion to determine the method.

The Department has determined that the use of criminal history information is the best means to assist the Department in performing this statutory duty. Additionally, to assist the Department in determining an individual's fitness, the Legislature enacted Insurance Code §§801.056 and 4001.103 authorizing the

Department to require applicants for any license or authorization issued by the Department to submit fingerprints and Government Code §§411.106 and 411.087 authorizing access to an applicant's criminal history information from both the Texas Department of Public Safety (DPS) and the Federal Bureau of Investigation (FBI).

The proposed sections set forth a secure and uniform procedure by which the Department may obtain a complete criminal history from individuals applying for a license or authorization and from individuals who are seeking to be associated with a regulated entity. Under the proposal, the Commissioner may waive the fingerprinting requirement in response to Texas statutes related to non-resident licensing, the federal Gramm-Leach-Bliley Act, and the possibility that other state insurance departments may adopt similar background checks for their resident licensees and authorized individuals. The proposal, however, does not allow waiver of the requirement for persons subject to background checks by other entities, such as the National Association of Securities Dealers. Such an exception could create a dual standard for individuals, particularly among Texas residents. Additionally, licensees of these other entities may not be subject to 18 U. S. C. §§1033 and 1034. Federal law, or possibly state law, depending on the source of the information, could also prohibit those entities from sharing an individual's criminal history information contained in their files. The proposal does not require any individual to be fingerprinted or pay fingerprint-processing fees for renewing an existing license or authorization.

The Department has consulted with the DPS and determined that fingerprint checks, and in particular electronic fingerprint checks, provide the most effective method of identifying an individual and obtaining that individual's criminal history information. Improvements in electronic fingerprint technology have increased the accuracy of fingerprint capture and substantially reduced the time frame for processing the fingerprint to obtain the criminal history information.

The proposed procedure would require affected individuals to be fingerprinted by an acceptable vendor and pay the associated fingerprint processing fees charged by the DPS and FBI. The individual's fingerprints will either be submitted directly to the DPS, if captured by the DPS electronic vendor, or to the Department and then to the DPS if captured on paper. The associated fingerprint-processing fee charged by the DPS is set by Government Code §411.088(a)(2). The associated fingerprint-processing fee charged by the FBI is set by federal authority and is made known to the Department by the DPS. The Department understands from the DPS that all fingerprints will be processed through both the DPS and FBI. The total costs for fingerprinting and fingerprint processing are in line with, or less than, those costs in other states. For example, California requires a \$76 fee; Florida requires a \$64 fee; and Idaho requires a \$60 fee. Therefore, it is the Department's position that the estimated costs to comply with this proposal, which are estimated to range from \$48.95 to \$56, are not unreasonable or unduly burdensome for an individual seeking a license or authorization. The proposal does not restrict individuals or their sponsors from making arrangements with an acceptable vendor or the DPS to facilitate the fingerprint collection process.

The Department is proposing to implement this fingerprint identification process using both DPS and FBI resources for the following three reasons. The process will prevent individuals with a criminal history in another state from attempting to evade detection by simply moving to Texas. Fingerprint collection by an

dependent third party vendor allows for independent verification of the identity of the individual being fingerprinted and increases confidence in the review process. Finally, fingerprints are the only method the FBI will accept to produce identity and criminal history information.

The following is a section-by-section overview of the proposal. The proposed amendment to §1.501(a) incorporates the establishment of the procedure for obtaining criminal history information into the purpose of the subchapter. The proposed amendment to §1.501(b) clarifies and, to the extent necessary, adds types of authorizations, insurers and related entities subject to the applicability of §1.502 (relating to guidelines for licensing persons with criminal backgrounds), including workers' compensation related authorizations under Insurance Code Chapter 1305 and workers' compensation self-insurance groups under Labor Code Chapter 407A. Additionally, the proposed amendment to §1.501(b) updates Insurance Code references in the list of affected license, authorization, certificate, permit, or registration types to reflect the new section numbers adopted as a result of the Legislature's enactment of the non-substantive Insurance Code revision and arranges this list of references in numerical order. Proposed new §1.503 specifies those individuals subject to the new fingerprint requirement proposed in §1.504. Proposed new §1.504 sets forth the requirement to submit fingerprints and pay fees and provides exemptions to this requirement. Proposed new §1.505 addresses Insurance Code §§4056.055 and 4101.004 reciprocal licensing provisions for nonresident agents and adjusters by providing that the Commissioner may waive the fingerprint requirement for nonresident individuals holding a license in their state of residence. Proposed new §1.506 authorizes the Commissioner to waive the fingerprint requirement for individuals if the individual, or the insurance carrier or related entity with which the individual is associated, is not domiciled in Texas. Proposed new §1.507 relates to licenses and authorizations not listed in §§1.505 and 1.506 and authorizes the Commissioner to waive the fingerprint requirement for individuals if the individual, or the entity with which the individual is associated, is not domiciled in Texas. Proposed new §1.508 states how the Department will use the fingerprints and identifies certain state and federal confidentiality laws that apply to the Department's use and maintenance of criminal history information. Proposed new §1.509 identifies the entities that are authorized to capture an individual's fingerprints; addresses how fingerprints will be submitted and the method for the payment of DPS and FBI fingerprint processing fees when captured by the electronic vendor acceptable to the DPS, the Department's examination vendor, or a criminal law enforcement agency; requires all fingerprint impressions to be legible and suitable for use by the DPS and FBI; specifies that fingerprints must be submitted within the time frame indicated on the appropriate application or biographical submission forms and allows for certain extensions; and provides that the application or biographical submission is not complete until the criminal history information is received.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an approximate \$600,000 annual increase in revenue to state

government as a result of the enforcement and administration of this proposal due to the estimated additional fingerprint submissions to the DPS. This amount is based on an estimated additional 40,000 annual submissions resulting from the proposed fingerprint requirement and a statutorily authorized \$15 fee for each submission collected by the DPS. Government Code §411.088(a)(2) authorizes the DPS to charge the \$15 fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints and maintaining the records and systems used by the DPS in processing submissions. Therefore, the additional submissions may result in increased costs to the DPS, which may substantially offset or eliminate the additional revenue. It is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed amendments and new sections are in effect, the anticipated public benefit will be a more thorough and comprehensive review of the suitability of individuals seeking to obtain a license or other authorization, including certification, permit, or registration, or to control an entity holding or seeking a license or other authorization, including a certificate, permit, or registration. This more thorough and comprehensive review will further ensure that each of these individuals, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, is honest, trustworthy, reliable, and fit to hold the license or authorization. The total probable economic costs to individuals required to comply with the proposal are estimated to range between \$48.95 and \$56. This cost estimate is based on compliance with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509. Any economic costs to comply with the proposed amendment to §1.501(b) result from the enactment of several statutes in the Occupations Code, Labor Code, and the Insurance Code, and are not a result of the adoption, enforcement, or administration of the proposal. These statutes include Occupations Code Chapter 53 (states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration); Occupations Code §53.025 (authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53); Labor Code §407A.051 (authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups); Insurance Code §§801.101, 801.102, 801.151, and 801.152 (authorize the Commissioner to review the fitness and reputation of officers, directors and persons in control of insurance companies and to refuse or revoke a certificate of authority to any company based on a determination that such officer, director or controlling person is not worthy of public confidence or has been convicted of a felony involving moral turpitude or breach of a fiduciary duty); Insurance Code §822.060 (authorizes the Commissioner to deny the charter of an insurance company if the Commissioner determines that proposed officers, directors, attorney in fact or managing head of the company lack sufficient standing and good record to make success of the proposed company probable); Insurance Code §823.052(b)(2) (re-

quires an insurer's registration statement to contain current information about ownership and management of the insurer, the insurer's holding company, and, if the Commissioner considers the information necessary, any of the insurer's other affiliates); Insurance Code §823.053(a) (requires the insurer to report each material change to information disclosed in a registration statement, including additional information); Insurance Code §823.157 (authorizes the Commissioner to deny the acquisition or change of control of an insurer if the Commissioner determines that due to a lack of trustworthiness or integrity of the persons who would control the operations of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public); Insurance Code §841.061 (authorizes the Commissioner to deny the charter of a life, accident, or health insurance company if the Commissioner determines that the proposed officers, directors, or managing executive of the company lack sufficient standing to make success of the proposed company probable); Insurance Code §843.082 (authorizes the Commissioner to deny a certificate to a health maintenance organization if the Commissioner determines that the person responsible for the conduct of the affairs of the applicant is not competent, trustworthy, and of good reputation); Insurance Code §844.052 (establishes that nonprofit corporations seeking a certificate under Insurance Code Chapter 844 must meet the same requirements for the issuance of a certificate of authority that a health maintenance organization is required to meet under Insurance Code Chapter 843); Insurance Code §846.003 (subjects a multiple employer welfare arrangement to Insurance Code Chapter 801); Insurance Code §846.058 (a multiple employer welfare arrangement, each board member and officer of the arrangement, and any agent or other person associated with the arrangement is subject to disqualification for eligibility for a certificate of authority if the person is prohibited from serving in any capacity with the arrangement under Section 411, Employee Retirement Income Security Act of 1974 (29 U. S. C. 1111)); Insurance Code §1305.053(2) (authorizes the Commissioner to consider the fitness and reputation of each officer or director or other person having control of a workers' compensation health care network); and Insurance Code §1305.102(d) (authorizes the Commissioner to consider a workers' compensation management contractor's prior criminal history before approving the contract).

The estimated \$48.95 - \$56 cost to individuals to comply with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509 is for charges by a vendor or criminal law enforcement agency to capture fingerprints and the fees charged by the DPS and the FBI to process the fingerprints and provide the Department with the individual's criminal history information. It is anticipated that these costs will apply only once to an individual affected by this rule as long as that individual maintains a continuous license or authorization with the Department. These costs are in line with, or less than, those required under similar requirements in other states. For example, California requires a \$76 fee, Florida requires a \$64 fee, and Idaho requires a \$60 fee.

The estimated \$48.95 - \$56 cost is based on the following considerations. The Department estimates that the cost of being fingerprinted will be \$9.95, \$10, or \$17, depending on the vendor chosen by the individual. The \$9.95 amount is based on the charge that is collected, according to the DPS, by the DPS' electronic fingerprint vendor for electronically capturing an individual's fingerprints. The \$10 amount is based on the current maximum charge criminal law enforcement agencies are autho-

rized to collect, as provided under the Human Resources Code §80.001(b), from individuals for capturing fingerprints, usually on paper cards. Additionally, the Department's licensing examination vendor currently charges \$10 to electronically capture the fingerprints of an applicant taking a Department examination. The \$17 amount is based on the Department's examination vendor's charge for electronically capturing fingerprints on an individual who is not taking a Department licensing examination. The current cost of processing fingerprints by the DPS and FBI are, respectively, \$15 and \$24 per individual. Other economic costs to comply with the proposal result from existing rules or from the enactment of the Government Code and the Insurance Code, including Government Code §§411.083 (dissemination of criminal history record information by the DPS), 411.086 (relevant rules adopted by the DPS), 411.106 (authorizes the Department to access criminal history record information from the DPS), Insurance Code §§801.056 (authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code), and 4001.103 (authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, certificate, registration, or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13 (Regulation of Professionals)) and are not a result of the adoption, enforcement, or administration of proposed amendment of §1.501(a) and new §§1.503 - 1.509.

On a per individual basis, there will be no difference in the cost of compliance between a large and small business as a result of the proposal since the costs will be the same for each category of individual required to comply with the proposal. Different business models or personnel benefits offered may result in cost differences between entities; these differences, however, are a matter of choice and are not a result of the proposed rules. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposal results in some adverse effect on small or micro businesses, the agency has considered the purpose of the applicable statutes, which is to maintain effective regulation of the insurance industry by further ensuring that persons applying for licensure or authorization, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold the licensure or authorization, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. Additionally, it is the Department's position that the various applicable statutes require equal application of any fingerprint identification process to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2644 scheduled for September 6, 2006, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333

Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendments and new sections are proposed under the Occupations Code, Government Code, Labor Code, and Insurance Code. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any entity holding or seeking a license, certificate, permit, registration, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Labor Code §407A.051 authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups. Labor Code §407A.008 authorizes the Commissioner to adopt rules to implement Labor Code Chapter 407A. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §§801.101, 801.102, and 801.151 - 801.155 authorize the Commissioner to review the fitness and reputation of officers, directors and persons in control of insurance companies and to refuse or revoke a certificate of authority to any company based on a determination that such officer, director or controlling person is not worthy of public confidence. Insurance Code §822.060 authorizes the Commissioner to deny the charter of an insurance company if the Commissioner determines that proposed officers, directors, attorney in fact or managing head of the company lack sufficient standing and good record to make success of the proposed company probable. Insurance Code §823.052(b)(2) requires an insurer's registration statement to contain current information about ownership and management of the insurer, the insurer's holding company, and, if the Commissioner considers the information necessary, any of the insurer's other affiliates. Insurance Code §823.053(a) requires the insurer to report each material change to information disclosed in a registration statement, including additional information. Insurance Code §823.157 authorizes the Commissioner to deny the acquisition or change of control of an insurer if the Commissioner determines that due to a lack of trustworthiness or integrity of the persons who would control the operations of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer's policyholders and the public. Insurance Code §841.061 authorizes the Commissioner to deny the charter of a life, accident, or health insurance company if the Commissioner determines that the proposed officers, directors, or managing executive of the company lack sufficient standing to make success of the proposed company probable. Insurance Code §843.082 authorizes the Commissioner to deny a certificate to a health maintenance organization if the Commissioner determines that the person responsible for the conduct of the affairs of the applicant is not competent, trustworthy, and of good reputation. Insurance Code §844.052 establishes that nonprofit corporations seeking a certificate under Insurance Code Chap-

ter 844 must meet the same requirements for the issuance of a certificate of authority that a health maintenance organization is required to meet under Insurance Code Chapter 843. Insurance Code §846.003 subjects a multiple employer welfare arrangement to Insurance Code Chapter 801, and under Insurance Code §846.058, a multiple employer welfare arrangement, each board member and officer of the arrangement, and any agent or other person associated with the arrangement is subject to disqualification for eligibility for a certificate of authority if the person is prohibited from serving in any capacity with the arrangement under Section 411, Employee Retirement Income Security Act of 1974 (29 U.S.C. 1111). Insurance Code §2551.001 subjects title insurance companies to Insurance Code Chapter 801, which in §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §2552.003 subjects attorney's title insurance companies to the same provisions that apply to title insurance companies. Insurance Code §§2651.301 and 2652.201 authorize the Commissioner to deny or revoke the license of a title insurance agent or direct operation, or escrow officer if the person has been found guilty of fraudulent or dishonest practices. Insurance Code §4001.002(a) provides that, except as otherwise provided by the Insurance Code, the provisions of Insurance Code Title 13 apply to the persons licensed under the provisions listed in §4001.002(a). Insurance Code §4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 13. Insurance Code §4001.102(b) authorizes the Commissioner to prescribe by rule the requirements for a properly completed application. Insurance Code §4001.103 also authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13. Insurance Code §4005.101 provides that the Department may deny or revoke a license to an individual licensed under Insurance Code Title 13, if that individual has been convicted of a felony or has engaged in fraudulent or dishonest activities. Insurance Code license types within the scope of Insurance Code Title 13 under Insurance Code §4001.002(b) include: surplus lines agent, §981.202; general property and casualty agent, §4051.051; limited property and casualty agent, §4051.101; insurance service representative, §4051.151; county mutual agent, §4051.201; agricultural agent, §4051.251; full-time home office employee, §4051.301; life and health insurance counselor, Chapter 4052; managing general agent, Chapter 4053; general life, accident, and health agent, §4054.051; limited life, accident, and health agent, §4054.101; funeral prearrangement life insurance agent, §4054.151; life insurance not exceeding \$15,000 agent, §4054.201; nonresident agent applicants, Chapter 4056; adjuster, Chapter 4101; public insurance adjuster, Chapter 4102; reinsurance intermediary manager and broker, Chapter 4152; and risk manager, Chapter 4153. Further, for a partnership or corporation applying for an agent's license, Insurance Code §§4001.106(b)(7)(B) and 4001.253(c) require the Department to find that the applicant's officers, directors, partners and other persons with a right to control the applicant have not committed an act for which licensure can be denied or revoked under Chapter 4005. Additionally, Insurance Code §4052.003 states that life and health insurance counselors are subject to the same licensing requirements as are applicable to agents under the Insurance Code.

Insurance Code §4101.052(a)(2) authorizes the Department to make reasonable inquiries into an adjuster's personal history. Insurance Code §4101.053(a)(2)(D) requires the Department to determine that an adjuster is trustworthy and §4101.201 authorizes the Department to revoke or deny an adjuster license application under the applicable insurance laws of this state, which includes Chapter 4005. Insurance Code §4101.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Chapter 4101. Insurance Code §§4102.053(a)(5) and (b), and 4102.054(5) require the Department to restrict or deny issuance of a public insurance adjuster license to a resident or nonresident individual based on a felony conviction. Further, for a partnership or corporation applying for a public insurance adjuster license, §§4102.055(b) and 4102.056(b) authorize the Commissioner to adopt rules analogous to the provisions of Chapter 4001 concerning the licensure of business entities organized under Texas law and business entities organized under the laws of another state. In addition to the provisions of Chapter 4001 previously listed concerning agent licensure, the Department has adopted §19.704 (b)(7) and (i) of this title (relating to Public Insurance Adjuster Licensing) which require the Department to find that a public insurance adjuster license applicant's officers, directors, partners and other persons with a right to control the applicant have not committed an act for which licensure can be denied or revoked under Insurance Code Chapters 4005 and 4102. Insurance Code §4102.201 authorizes the Department to revoke or deny issuing a public insurance adjuster license based on a felony conviction or engagement in fraudulent or dishonest activities. Insurance Code §4102.004 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4102. Insurance Code Article 21.58A §§3(b) and 13 authorize the Commissioner to adopt rules relating to the certification of utilization review agents. Insurance Code Article 21.58C §2(a) authorizes the Commissioner to adopt rules relating to the certification of independent review organizations. Insurance Code §1111.005(a)(1), (5) and (8) provide that the Commissioner may deny or revoke a viatical and life settlement registration if the Commissioner finds the applicant or registrant, individually or through any officer, director, or shareholder of the applicant or registrant, has been convicted of a felony or has been convicted of a misdemeanor involving moral turpitude or fraud. Insurance Code §1111.003(a) authorizes the Commissioner to adopt rules relating to viatical and life settlements. Insurance Code §1305.053(2) authorizes the Commissioner to consider the fitness and reputation of each officer or director or other person having control of a workers' compensation health care network. Insurance Code §1305.102(d) authorizes the Commissioner to consider a workers' compensation management contractor's prior criminal history before approving the contract. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposal: Occupations Code Chapter 53 Labor Code Chapter 407A; Insurance Code Articles 21.58A, 21.58C, Insurance Code Chapters 801, 822, 823, 841, 843, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001, 4005, 4051, 4052, 4053, 4054, 4055, 4056, 4101, 4102, 4152, and 4153 Government Code §§411.083, 411.087 and 411.106; Labor Code Chapter 407A; Insurance Code Articles 21.58A, 21.58C, Insurance Code Chapters 801, 822, 823, 841, 843, 846, 981, 1111, 1305, 2551, 2552, 2651, 2652, 4001,

4005, 4051, 4052, 4053, 4054, 4056, 4101, 4102, 4152, and 4153

§1.501. *Purpose and Application.*

(a) The purpose of this subchapter is to implement Chapter 53, Occupations Code, and sections and articles of the Insurance Code and Occupations Code that require and authorize the department to determine a person's fitness for holding a license, authorization, certification, permit, or registration, or a person's fitness to have the ability to control licensed, registered, permitted, certificate holding, and authorized entities, when that person has committed a criminal offense or has engaged in fraudulent or dishonest activity. This subchapter also establishes the procedure by which the department may obtain criminal history information on persons applying for a license, authorization, certification, permit, or registration, or acquiring the ability to control an entity holding or seeking a license, authorization, certificate, permit, or registration. To effect this implementation the department has developed guidelines in §1.502 of this subchapter (relating to Licensing Persons with Criminal Backgrounds) identifying the types of criminal offenses that directly relate to the duties and responsibilities of licensed and authorized insurance activities which are of such a serious nature that they are of prime importance in determining the person's fitness for licensure, authorization, certification, permit or registration, or control of a licensed, registered, permitted, certificate holding, or authorized entity.

(b) Section 1.502 of this [~~This~~] subchapter applies to the following persons:

(1) applicants for, or holders of, any license, registration, permit, authorization, or certification, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors, risk managers, reinsurance intermediaries, title agents, title escrow officers, title attorneys, utilization review agents, independent review organizations, [and] viatical and [or] life settlement registrants, and workers' compensation health care networks and management contractors, under the following Insurance Code provisions:

- (A) Article 21.58A [9.36];
- (B) Article 21.58C [9.42];
- (C) Chapter 981 [~~Article 9.56~~];
- (D) Chapter 1111 [~~Article 21.07~~];
- (E) Chapter 1305 [~~Article 21.07-1~~];
- (F) Chapter 2552 [~~Article 21.07-2~~];
- (G) Chapter 2651 Subchapter A [~~Article 21.07-3~~];
- (H) Chapter 2652 [~~Article 21.07-4~~];
- (I) Chapter 4001 [~~Article 21.07-5~~];
- (J) Chapter 4051 [~~Article 21.07-6~~];
- (K) Chapter 4052 [~~Article 21.07-7~~];
- (L) Chapter 4053 [~~Article 21.09~~];
- (M) Chapter 4054 [~~Article 21.11~~];
- (N) Chapter 4055 [~~Article 21.14~~];
- (O) Chapter 4056 [~~Article 21.14-1~~];
- (P) Chapter 4101 [~~Article 21.14-2~~];
- (Q) Chapter 4102 [~~Article 21.58A~~];
- (R) Chapter 4151 [~~Article 21.58C~~];
- (S) Chapter 4152 [981];

(T) Chapter 4153 [444]; or

(U) any other provision providing for any type of license, registration, certification, permit, or authorization that the department may deny or revoke because of a criminal offense of the applicant or license holder;

(2) applicants for, or holders of, a license, registration, permit or authorization issued by the State Fire Marshal's Office, including the following provisions:

- (A) Insurance Code Article 5.43-1;
- (B) Insurance Code Article 5.43-2;
- (C) Insurance Code Article 5.43-3;
- (D) Occupations Code Chapter 2154; or

(E) any other provision providing for any type of license, registration, or authorization that the State Fire Marshal's Office may deny or revoke because of a criminal offense of the applicant or license holder;

(3) those who are or become partners or officers, directors, or [members, managers, partners and] controlling shareholders, including limited liability company members and managers, of entities that are applicants for, or holders of, a license, authorization, permit, certification, or registration under provisions specified in paragraphs (1) and (2) of this subsection and from whom biographical information is required; [and]

(4) with regard to insurance companies, health maintenance organizations, holding companies, and other related entities, an individual who is required to provide biographical information and who:

(A) is the applicant, if the applicant is an individual, or an officer, director, or controlling shareholder of the applicant seeking an authorization as an insurer as described in Insurance Code Chapter 801 or an authorization under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling shareholder of an entity authorized as an insurer as described in Insurance Code Chapter 801 or an entity authorized under Insurance Code Chapters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, for each applicant under §7.209 of this title (relating to Form A); and

~~[(4) officers and directors of insurance companies subject to Insurance Code Chapter 801.]~~

(5) each member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer, and controller of the administrator and any service company filing biographical information under §5.6403 of this title (relating to Application for Initial Certificate of Approval).

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

§1.503. *Application of Fingerprint Requirement.*

The fingerprint requirement in §1.504(a) of this subchapter (relating to Fingerprint Requirement) applies to the following individuals:

(1) applicants for any license, registration, certification, authorization or permit, including temporary or training licenses or certificates, as agents, adjusters, public insurance adjusters, counselors,

risk managers, reinsurance intermediaries, title agents, title escrow of-
ficers, viatical and life settlement registrants, and workers' compensa-
tion health care networks and management contractors, under the fol-
lowing Insurance Code provisions:

- (A) Article 21.58A;
- (B) Article 21.58C;
- (C) Chapter 981;
- (D) Chapter 1111;
- (E) Chapter 1305;
- (F) Chapter 2651, Subchapter A;
- (G) Chapter 2652;
- (H) Chapter 4001;
- (I) Chapter 4051;
- (J) Chapter 4052;
- (K) Chapter 4053;
- (L) Chapter 4054;
- (M) Chapter 4056;
- (N) Chapter 4101;
- (O) Chapter 4102;
- (P) Chapter 4152; or
- (Q) Chapter 4153.

(2) with the exception of those individuals associated with
licenses issued to corporations and limited liability companies under
Insurance Code Chapter 2651 Subchapter A, individuals who are re-
quired to provide biographical information and who:

(A) are partners or officers, directors, or controlling
shareholders, including limited liability company members and man-
agers, of entities that are applicants for a license, certification, permit,
registration, or authorization under provisions specified in paragraph
(1) of this section; or

(B) become partners or officers, directors, or control-
ling shareholders, including limited liability company members and
managers, of entities that are holders of a license, authorization, permit,
certification or registration under provisions specified in paragraph (1)
of this section.

(3) with regard to insurance companies, health mainte-
nance organizations, holding companies, and other related entities, an
individual who is required to provide biographical information and
who:

(A) is the applicant, if the applicant is an individual, or
an officer, director, or controlling shareholder of the applicant seeking
an authorization as an insurer as described in Insurance Code Chapter
801 or an authorization under Insurance Code Chapters 822, 823, 841,
843, 844, 846, 2551, or 2552;

(B) becomes an officer, director, or controlling share-
holder of an entity authorized as an insurer as described in Insurance
Code Chapter 801 or an entity authorized under Insurance Code Chap-
ters 822, 823, 841, 843, 844, 846, 2551, or 2552; or

(C) is the applicant if such person is an individual, or the
chairman of the board, chief executive officer, president, chief financial
officer, treasurer, and controller of the applicant if the applicant is not

an individual, for each applicant under §7.209 of this title (relating to
Form A).

(4) each member of the initial board of trustees, subsequent
members of the board, and the chief executive officer, president, sec-
retary, treasurer, chief financial officer, and controller of the adminis-
trator and any service company filing biographical information under
§5.6403 of this title (relating to Application for Initial Certificate of
Approval).

§1.504. Fingerprint Requirement.

(a) In the manner described in §1.509 of this subchapter (relat-
ing to Fingerprint Format and Complete Application), each individual
listed in §1.503 of this subchapter (relating to Application of Finger-
print Requirement) must, at or near the same time that they submit their
biographical information or application for licensure, registration, au-
thorization, certification, or permit, also submit:

(1) a complete set of the individual's fingerprints;

(2) full payment for all processing fees charged by the
Texas Department of Public Safety and the Federal Bureau of Investi-
gation; and

(3) all additional identifying information required by the
Texas Department of Public Safety and the Federal Bureau of Investi-
gation for processing fingerprints.

(b) An individual listed in §1.503 of this subchapter is exempt
from the requirement set forth in subsection (a) of this section if the
individual satisfies the requirements of paragraphs (1), (2), (3), (4), (5)
or (6) of this subsection.

(1) Except as provided in subsection (d) of this section,
the individual is submitting an application or biographical information,
and:

(A) previously provided the department a complete,
legible fingerprint card or electronic set of fingerprints as part of an
earlier submission which was granted or approved; and

(B) maintains that prior license, or licensed entity asso-
ciation, in good standing on the date of the subsequent application.

(2) The individual is licensed, or associated with an entity
licensee, under Insurance Code Chapter 981 Subchapter E or Title 13
Subtitles A - D, and is:

(A) renewing an unexpired license or license that has
been expired for not more than 90 days; or

(B) applying for a license that has been expired for more
than 90 days but not more than one year.

(3) The individual is applying for an original emergency li-
cense pursuant to Insurance Code Chapters 4051, 4053, or 4101. Emer-
gency licensees who later qualify for a permanent license by exami-
nation must submit a complete set of fingerprints and payment of all
fingerprint processing fees prior to issuance of the permanent license.

(4) The individual, or the entity with which the individual is
associated, is renewing an unexpired license, certification, registration,
or authorization.

(5) The individual is licensed under Insurance Code Chap-
ter 2651 Subchapter A or Chapter 2652 and is renewing an unexpired
license or license that has been expired for not more than 90 days.

(6) The individual is submitting an application under Insur-
ance Code Chapter 2651 Subchapter A or Chapter 2652 and has previ-
ously provided the department a complete, legible fingerprint card or
electronic set of fingerprints as part of an earlier Insurance Code Chap-

ter 2651 Subchapter A or Chapter 2652 submission that was granted or approved; and either:

(A) maintains that prior license in good standing on the date of the current application; or

(B) held a prior Insurance Code Chapter 2651 Subchapter A or Chapter 2652 license that has not been canceled for more than 60 days and maintained that license in good standing at the time of cancellation.

(c) The commissioner may waive the requirement in subsection (a) of this section if the commissioner determines that the individual is unable to provide fingerprints due to permanent physical injury or illness. The individual seeking a waiver under this subsection must submit evidence of such a condition to the satisfaction of the commissioner.

(d) The exemption set forth in subsection (b)(1) of this section is subject to the department's ability to maintain an individual's previously submitted set of fingerprints, and the department may require a complete set of fingerprints and payment of all fingerprint processing fees from an individual notwithstanding the exemption.

(e) This subchapter does not limit the department's statutory authority to require the submission of fingerprints or obtain criminal history information.

§1.505. Nonresident Agents and Adjusters.

(a) As authorized under Insurance Code §§4056.055 and 4101.004, the commissioner may waive the requirement in §1.504 of this subchapter (relating to Fingerprint Requirement) to the extent necessary to comply with federal law and promote reciprocal licensing between the states for nonresident individuals holding an agent or adjuster license in their state of residence.

(b) The requirement in §1.504 of this subchapter is in addition to and does not alter the criminal history reporting requirement set forth in Insurance Code §4056.051 for nonresident individuals who do not hold a license in their state of residence.

§1.506. Insurance Companies and Related Entities.

The commissioner may waive the requirement in §1.504 of this subchapter (relating to Fingerprint Requirement) for individuals listed under §1.503(3) of this subchapter (relating to Application of Fingerprint Requirement) if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

§1.507. Other Licensees and Registrants.

The commissioner may waive the requirement in §1.504 of this subchapter (relating to Fingerprint Requirement) for individuals listed under §1.503(1), (2), and (4) of this subchapter (relating to Application of Fingerprint Requirement) if the individual, or the entity with which the individual is associated, is not domiciled in Texas.

§1.508. Use and Confidentiality of Fingerprints.

(a) The department shall submit all fingerprints received under this subchapter to the Texas Department of Public Safety and the Federal Bureau of Investigation to obtain criminal history information on the individual for the purpose of determining the individual's fitness for licensure, authorization, certification, permit, or registration, or control of an entity holding or seeking a license, authorization, certificate, permit, or registration.

(b) The department shall use and maintain all criminal history information obtained pursuant to this subchapter in accordance with state and federal laws, including:

- (1) Texas Government Code §411.106;

- (2) Texas Government Code §411.084;

- (3) United States Public Law 92-544; and

- (4) Code of Federal Regulations 28 CFR 50.12.

§1.509. Fingerprint Format and Complete Application.

(a) Each individual described in §1.503 of this subchapter (relating to Application of Fingerprint Requirement) and who is required to submit fingerprints under §1.504 of this subchapter (relating to Fingerprint Requirement) shall have a complete set of their fingerprints captured by:

- (1) an electronic fingerprint vendor acceptable to the Texas Department of Public Safety;

- (2) the department's examination vendor; or

- (3) a criminal law enforcement agency, including a sheriff's office or police department.

(b) Individuals having their fingerprints captured by a vendor acceptable to the Texas Department of Public Safety shall pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.

(c) Individuals having their fingerprints captured by the department's examination vendor shall pay, in a manner acceptable to the vendor, all fingerprint capture and processing fees directly to the vendor at the time the fingerprints are captured or at such time as is acceptable to the vendor.

(d) Individuals having their fingerprints captured by a criminal law enforcement agency shall:

- (1) pay that agency any associated charges that may apply to the capture of their fingerprints in a manner acceptable to that agency; and

- (2) submit to the department payment for all applicable fingerprint processing fees in the amount and in the manner set forth on the department's application or biographical submission form, or as otherwise posted by the department if the individual is not using a department form.

(e) Fingerprint cards may be obtained by sending a written request to the Licensing Division, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; by telecopy or facsimile to (512) 475-1819; or by e-mail to LICENSE@tdi.state.tx.us.

(f) All fingerprint impressions must be legible and suitable for use by the Texas Department of Public Safety and Federal Bureau of Investigation.

(g) Individuals required to submit fingerprints shall submit them within the time frame indicated on the specific application or biographical submission form. Individuals may request an extension of time by contacting the division of the department that will process the application or biographical submission.

(h) The application or submission of a person required to submit fingerprints shall not be complete until the department receives the criminal history information. Criminal history processing time and rejection rates for applications and submissions with paper fingerprint cards may be substantially greater than with electronic fingerprints.

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 July 24, 2006.

TRD-200603881

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 3, 2006

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



CHAPTER 3. LIFE, ACCIDENT AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER R. VIATICAL AND LIFE SETTLEMENTS

28 TAC §3.1703

The Texas Department of Insurance proposes amending §3.1703(q), concerning the fingerprint requirement for viatical and life settlement registration certificate applicants. The proposed amendment is necessary to conform the existing fingerprint requirement for individuals applying for a viatical and life settlement registration certificate, including viatical and life settlement providers, provider representatives, and brokers, with the new fingerprint submission requirement that the Department is proposing for adoption in amended §1.501 and new §§1.503 - 1.509, which are also published in this edition of the Texas Register.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an approximate \$750 annual increase in revenue to state government as a result of the enforcement and administration of this proposal due to the estimated additional fingerprint submissions to the DPS. This amount is based on an estimated additional 50 viatical and life settlement registration certificate applicant related submissions annually that will likely result from the proposed amended §3.1703(q), proposed amended §1.501, proposed new §§1.503 - 1.509, and the statutorily authorized \$15 fee for each submission collected by the DPS. Government Code §411.088(a)(2) authorizes the DPS to charge the \$15 fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints and maintaining the records and systems used by the DPS in processing submissions. Therefore, the additional submissions may result in increased costs to the DPS, which may substantially offset or eliminate the additional revenue. It is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be a more thorough and comprehensive review of the suitability of individuals seeking to obtain a viatical and life settlement registration certificate. This more thorough and comprehensive review will further ensure that each of these individuals is honest, trustworthy, reliable, and fit to hold the certificate. The total probable economic costs to individuals required to comply with the proposed amended §3.1703(q), proposed amended §1.501, and proposed new §§1.503 - 1.509, are estimated to range between \$48.95 and \$56. This cost estimate is based on compliance with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509. The proposed amendment to §1.501(b) does not affect viatical and life settlement certificate holders and, therefore, there are no costs for compliance with that amendment.

The estimated \$48.95 - \$56 cost to individuals to comply with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509 is for the charges by a vendor or criminal law enforcement agency to capture fingerprints and the fees charged by the DPS and the FBI to process the fingerprints and provide the Department with the individual's criminal history information. It is anticipated that these costs will apply only once to an individual affected by this rule as long as that individual maintains a continuous license or authorization with the Department. These costs are in line with, or less than, those required under similar requirements in other states. For example, California requires a \$76 fee, Florida requires a \$64 fee, and Idaho requires a \$60 fee.

The estimated \$48.95 - \$56 cost is based on the following considerations. The Department estimates that the cost of being fingerprinted will be \$9.95, \$10, or \$17, depending on the vendor chosen by the individual. The \$9.95 amount is based on the charge that is collected, according to the DPS, by the DPS' electronic fingerprint vendor for electronically capturing an individual's fingerprints. The \$10 amount is based on the current maximum charge criminal law enforcement agencies are authorized to collect, as provided under the Human Resources Code §80.001(b), from individuals for capturing fingerprints, usually on paper cards. Additionally, the Department's licensing examination vendor currently charges \$10 to electronically capture the fingerprints of an applicant taking a Department examination. The \$17 amount is based on the Department's examination vendor's charge for electronically capturing fingerprints on an individual who is not taking a Department licensing examination. The current cost of processing fingerprints by the DPS and FBI are, respectively, \$15 and \$24 per individual. Any other economic costs to comply with the proposal result from existing rules or from the enactment of the Government Code and the Insurance Code, including Government Code §§411.083 (dissemination of criminal history record information by the DPS), 411.086 (relevant rules adopted by the DPS), 411.106 (authorizes the Department to access criminal history record information from the DPS), Insurance Code §§801.056 (authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code), and 4001.103 (authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, certificate, registration, or other authorization issued by the Department to engage in a regulated activity under

Insurance Code Title 13 (Regulation of Professionals)) and are not a result of the adoption, enforcement, or administration of proposed amendment of §1.501(a) and proposed new §§1.503 - 1.509.

On a per individual basis, there will be no difference in the cost of compliance between a large and small business as a result of the proposal since the costs will be the same for each category of individual required to comply with the proposal. Different business models or personnel benefits offered may result in cost differences between entities; these differences, however, are a matter of choice and are not a result of the proposed rules. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposal results in some adverse effect on small or micro businesses, the agency has considered the purpose of the applicable statutes, which is to maintain effective regulation of the insurance industry by further ensuring that persons applying for licensure or authorization, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold the licensure or authorization, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. Additionally, it is the Department's position that the various applicable statutes require equal application of any fingerprint identification process to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No.2649 scheduled for September 6, 2006 at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendment is proposed under the Occupations Code Chapter 53; Government Code Chapter 411; and Insurance Code Chapters 801, 1111, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §801.056 authorizes the Department to request that applicants, including the applicant's corporate officers, provide a complete set of fingerprints for a certificate of registration issued by the Department. Section 1111.003 authorizes the Commissioner to adopt reasonable rules governing the registration of persons

engaged in the business of viatical and life settlements. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposal: Occupations Code Chapter 53, Government Code Chapter 411, and Insurance Code Chapters 801 and 1111

§3.1703. *Application for Certificate of Registration for Viatical or Life Settlement Providers, Provider Representatives, or Brokers; Fees.*

(a) - (p) (No change.)

(q) An applicant shall comply with the requirements of Chapter 1 [19], Subchapter D [S] of this title (relating to Effect of Criminal Conduct [Fingerprint Card Requirements for Applicants for License]).

(r) (No change.)

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

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

TRD-200603883

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 3, 2006

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



CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER G. WORKERS' COMPENSATION INSURANCE

DIVISION 2. GROUP SELF-INSURANCE COVERAGE

28 TAC §5.6403

The Texas Department of Insurance proposes amending §5.6403(f), concerning the fingerprint requirement for the trustees of a self-insured workers' compensation group and officers of the administrator and of any service company. The proposed amendment is necessary to conform the existing fingerprint requirement for individuals regulated under §5.6403(f) with a new fingerprint submission requirement that the Department is proposing for adoption in amended §1.501 and new §§1.503 - 1.509. Additionally, proposed amendments to §1.501 clarify that individuals regulated under §5.6403(f) are subject to existing §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds). Proposed amended §1.501 and new §§1.503 - 1.509 are also published in this edition of the Texas Register.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an approximate \$750 annual increase in revenue to state government as a result of the enforcement and administration of this proposal due to the estimated additional fingerprint submissions to the DPS. This amount is based on an estimated additional 50 self-insured workers' compensation group related submissions annually that will likely result from the proposed amended §5.6403(f), proposed amended §1.501, proposed new §§1.503 - 1.509 and the statutorily authorized \$15 fee for each submission collected by the DPS. Government Code §411.088(a)(2) authorizes the DPS to charge the \$15 fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints and maintaining the records and systems used by the DPS in processing submissions. Therefore, the additional submissions may result in increased costs to the DPS, which may substantially offset or eliminate the additional revenue. It is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be a more thorough and comprehensive review of the suitability of individuals regulated under §5.603(f), including each member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer, and controller of the administrator and of any service company, seeking a certificate of approval for a self-insured workers' compensation group from the Department. This more thorough and comprehensive review will further ensure that each of these individuals is honest, trustworthy, reliable, and fit to hold the authorization. The total probable economic costs to individuals required to comply with the proposed amended §5.6403(f), proposed amended §1.501, and proposed new §§1.503 - 1.509, are estimated to range between \$48.95 and \$56. This cost estimate is based on compliance with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509. Any economic costs to comply with the proposed amendment to §1.501(b) result from the enactment of several statutes in the Occupations Code and the Insurance Code, and are not a result of the adoption, enforcement, or administration of the proposal. These statutes include Occupations Code Chapter 53 (states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration), and Occupations Code §53.025 (authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53).

The estimated \$48.95 - \$56 cost to individuals to comply with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509 is for the charges by a vendor or criminal law enforcement agency to capture fingerprints and the fees charged by the DPS and the FBI to process the fingerprints and provide the Department with the individual's criminal history information. It is anticipated that these costs will apply only once to an individ-

ual affected by this rule as long as that individual maintains a continuous license or authorization with the Department. These costs are in line with, or less than, those required under similar requirements in other states. For example, California requires a \$76 fee, Florida requires a \$64 fee, and Idaho requires a \$60 fee.

The estimated \$48.95 - \$56 cost is based on the following considerations. The Department estimates that the cost of being fingerprinted will be \$9.95, \$10, or \$17, depending on the vendor chosen by the individual. The \$9.95 amount is based on the charge that is collected, according to the DPS, by the DPS' electronic fingerprint vendor for electronically capturing an individual's fingerprints. The \$10 amount is based on the current maximum charge criminal law enforcement agencies are authorized to collect, as provided under the Human Resources Code §80.001(b), from individuals for capturing fingerprints, usually on paper cards. Additionally, the Department's licensing examination vendor currently charges \$10 to electronically capture the fingerprints of an applicant taking a Department examination. The \$17 amount is based on the Department's examination vendor's charge for electronically capturing fingerprints on an individual who is not taking a Department licensing examination. The current cost of processing fingerprints by the DPS and FBI are, respectively, \$15 and \$24 per individual. Any other economic costs to comply with the proposal result from existing rules or from the enactment of the Government Code and the Insurance Code, including Government Code §§411.083 (dissemination of criminal history record information by the DPS), 411.086 (relevant rules adopted by the DPS), 411.106 (authorizes the Department to access criminal history record information from the DPS) and Insurance Code §§801.056 (authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code), and 4001.103 (authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, certificate, registration, or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13 (Regulation of Professionals)) and are not a result of the adoption, enforcement, or administration of proposed amendment of §1.501(a) and new §§1.503 - 1.509.

On a per individual basis, there will be no difference in the cost of compliance between a large and small business as a result of the proposal since the costs will be the same for each category of individual required to comply with the proposal. Different business models or personnel benefits offered may result in cost differences between entities; these differences, however, are a matter of choice and are not a result of the proposed rules. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposal results in some adverse effect on small or micro businesses, the agency has considered the purpose of the applicable statutes, which is to maintain effective regulation of the insurance industry by further ensuring that persons applying for licensure or authorization, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold the licensure or authorization, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. Additionally, it is the Department's position that the various applicable

statutes require equal application of any fingerprint identification process to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No.2648 scheduled for September 6, 2006 at 10.00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendment is proposed under the Occupations Code Chapter 53; Government Code Chapter 411; Labor Code Chapter 407A; and Insurance Code Chapters 801 and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Labor Code §407A.051 authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups. Labor Code §407A.008 authorizes the Commissioner to adopt rules to implement Labor Code Chapter 407A. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit, registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by the proposal: Occupations Code Chapter 53, Government Code Chapter 411, Labor Code Chapter 407A, and Insurance Code Chapter 801.

§5.6403. *Application for Initial Certificate of Approval.*

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

(f) Each member of the initial board of trustees, subsequent members of the board, and the chief executive officer, president, secretary, treasurer, chief financial officer and controller of the administrator and any service company shall comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct) [provide the department a complete set of fingerprints in a manner acceptable to the department. A complete set of fingerprints is not required when a person has one on file with the department].

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 July 24, 2006.

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Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

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



CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEM REGULATORY ACT

28 TAC §7.209

The Texas Department of Insurance proposes amending §7.209(d), concerning the fingerprint requirement for insurance company individuals and officers in connection with Form A filings. Form A is a statement regarding the acquisition or change of control of a domestic insurer. The proposed amendment is necessary to conform the existing fingerprint requirement for individuals regulated under §7.209(d), including individual applicants or persons who are the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, with a new fingerprint submission requirement that the Department is proposing for adoption in amended §1.501 and new §§1.503 - 1.509. Additionally, proposed amendments to §1.501 clarify that individuals regulated under §7.209(d) are subject to existing §1.502 of this title (relating to Licensing Persons with Criminal Backgrounds). The proposed amendments to §1.501 and proposed new §§1.503 - 1.509 are also published in this edition of the Texas Register. The proposed amendment to §7.209(d) is also necessary to make the nonsubstantive revision of setting the listed titles in lower case.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an approximate \$7,500 annual increase in revenue to state government as a result of the enforcement and administration of this proposal due to the estimated additional fingerprint submissions to the DPS. This amount is based on an estimated additional 500 Form A related submissions annually that will likely result from the proposed amended §7.209(d), proposed amended §1.501, proposed new §§1.503 - 1.509, and the statutorily authorized \$15 fee for each submission collected by the DPS. Government Code §411.088(a)(2) authorizes the DPS to charge the \$15 fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints

and maintaining the records and systems used by the DPS in processing submissions. Therefore, the additional submissions may result in increased costs to the DPS, which may substantially offset or eliminate the additional revenue. It is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be a more thorough and comprehensive review of the suitability of individuals regulated under §7.209(d), including individual applicants or persons who are the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller of the applicant if the applicant is not an individual, who are seeking to obtain a license or authorization from the Department. This more thorough and comprehensive review will further ensure that each of these individuals is honest, trustworthy, reliable, and fit to hold the authorization. The total probable economic costs to individuals required to comply with the proposed amended §7.209(d), proposed amended §1.501, and proposed new §§1.503 - 1.509, are estimated to range between \$48.95 and \$56. This cost estimate is based on compliance with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509. Any economic costs to comply with the proposed amendment to §1.501(b) result from the enactment of several statutes in the Occupations Code, Labor Code, and the Insurance Code, and are not a result of the adoption, enforcement, or administration of the proposal. These statutes include Occupations Code Chapter 53 (states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, authorization, certificate, permit, or registration), Occupations Code §53.025 (authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53), and Labor Code §407A.051 (authorizes the Commissioner to establish application requirements for self-insured workers' compensation groups).

The estimated \$48.95 - \$56 cost to individuals to comply with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509 is for the charges by a vendor or criminal law enforcement agency to capture fingerprints and the fees charged by the DPS and the FBI to process the fingerprints and provide the Department with the individual's criminal history information. It is anticipated that these costs will apply only once to an individual affected by this rule as long as that individual maintains a continuous license or authorization with the Department. These costs are in line with, or less than, those required under similar requirements in other states. For example, California requires a \$76 fee, Florida requires a \$64 fee, and Idaho requires a \$60 fee.

The estimated \$48.95 - \$56 cost is based on the following considerations. The Department estimates that the cost of being fingerprinted will be \$9.95, \$10, or \$17, depending on the vendor chosen by the individual. The \$9.95 amount is based on the charge that is collected, according to the DPS, by the DPS' electronic fingerprint vendor for electronically capturing an individual's fingerprints. The \$10 amount is based on the current maximum charge criminal law enforcement agencies are autho-

ized to collect, as provided under the Human Resources Code §80.001(b), from individuals for capturing fingerprints, usually on paper cards. Additionally, the Department's licensing examination vendor currently charges \$10 to electronically capture the fingerprints of an applicant taking a Department examination. The \$17 amount is based on the Department's examination vendor's charge for electronically capturing fingerprints on an individual who is not taking a Department licensing examination. The current cost of processing fingerprints by the DPS and FBI are, respectively, \$15 and \$24 per individual. Any other economic costs to comply with the proposal result from existing rules or from the enactment of the Government Code and the Insurance Code, including Government Code §§411.083 (dissemination of criminal history record information by the DPS), 411.086 (relevant rules adopted by the DPS), 411.106 (authorizes the Department to access criminal history record information from the DPS), Insurance Code §§801.056 (authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code), and 4001.103 (authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, certificate, registration, or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13 (Regulation of Professionals)) and are not a result of the adoption, enforcement, or administration of proposed amendment of §1.501(a) and proposed new §§1.503 - 1.509.

On a per individual basis, there will be no difference in the cost of compliance between a large and small business as a result of the proposal since the costs will be the same for each category of individual required to comply with the proposal. Different business models or personnel benefits offered may result in cost differences between entities; these differences, however, are a matter of choice and are not a result of the proposed rules. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposal results in some adverse effect on small or micro businesses, the agency has considered the purpose of the applicable statutes, which is to maintain effective regulation of the insurance industry by further ensuring that persons applying for licensure or authorization, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold the licensure or authorization, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. Additionally, it is the Department's position that the various applicable statutes require equal application of any fingerprint identification process to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2645 scheduled for September 6, 2006 at 10:00 a.m. in

Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendment is proposed under the Occupations Code Chapter 53; Government Code Chapter 411; and Insurance Code Chapters 801, 823, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §801.056 authorizes the Department to request a complete set of fingerprints from an insurance carrier applicant, or the applicant insurance company's corporate officers. Insurance Code §823.157 authorizes the Commissioner to deny the acquisition or change of control of an insurer if the Commissioner determines that due to a lack of trustworthiness or integrity of the persons who would control the operations of the domestic insurer, the acquisition or change of control would not be in the interest of the insurer' policyholders and the public. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposal: Occupations Code Chapter 53, Government Code Chapter 411, and Insurance Code Chapters 801 and 823

§7.209. *Form A.*

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

(d) Identity and background of individuals associated with the applicant.

(1) Furnish biographical data for the applicant if such person is an individual, or for all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from Financial Analysis and Examinations, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.

(2) The [Furnish fingerprint cards for the] applicant if such person is an individual, or for persons who are the chairman of the board, chief executive officer, president, chief financial officer, treasurer, and controller [Chairman of the Board, Chief Executive Officer, President, Chief Financial Officer, Treasurer, and Controller] of the applicant if the applicant is not an individual, shall comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct). [Copies of fingerprint cards may be obtained by sending a written request to Licensing Division, Mail Code 107-1B, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, by telecopy or facsimile to (512) 475-1819, or by e-mail to LICENSE@tdi.state.tx.us. The request should include the

name of the requestor, address, phone number and number of cards requested and should be limited to the actual number needed up to a maximum of 25 cards per order. Fingerprint cards are also available from local law enforcement agencies, such as sheriff and police departments, and agent testing centers. Each fingerprint card submitted should be accompanied by the full name of the law enforcement agency or testing center, the printed or typed identity of the individual performing the fingerprinting, the address, the phone and telecopy or facsimile numbers of the law enforcement agency or testing center].

(e) - (n) (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 July 24, 2006.

TRD-200603882

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 3, 2006

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

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CHAPTER 19. AGENTS' LICENSING

SUBCHAPTER H. LICENSING OF PUBLIC INSURANCE ADJUSTERS

28 TAC §19.711

The Texas Department of Insurance proposes amending §19.711, concerning the fingerprint requirement for public insurance adjuster license applicants and other individuals required to file biographical information in connection with a public insurance adjuster license. The proposed amendment is necessary to conform the existing fingerprint requirement for such individuals with the new fingerprint submission requirement that the Department is proposing for adoption in amended §1.501 and new §§1.503 - 1.509, which are also published in this edition of the Texas Register. The proposed amendment to §19.711 is also necessary to change the Insurance Code reference in this section from Article 21.07-5 to Chapter 4102 in accordance with the nonsubstantive revision of the Insurance Code enacted by the 79th Legislature, effective September 1, 2005.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposed amendments and new sections will be in effect, there will be an approximate \$1,500 annual increase in revenue to state government as a result of the enforcement and administration of this proposal the estimated additional fingerprint submissions to the DPS. This amount is based on an estimated additional 100 public insurance adjuster related submissions annually that will likely result from the proposed amended §19.711, proposed amended §1.501, proposed new §§1.503 - 1.509, and the statutorily authorized \$15 fee for each submission collected by the DPS. Government Code §411.088(a)(2) authorizes the DPS to charge the \$15

fee for each criminal history record information inquiry. It is the Department's understanding based on information provided by the DPS that this fee is for the costs of processing fingerprints and maintaining the records and systems used by the DPS in processing submissions. Therefore, the additional submissions may result in increased costs to the DPS, which may substantially offset or eliminate the additional revenue. It is anticipated that most individuals within Texas will utilize the convenience and reliability offered by the authorized electronic fingerprint services and, as such, the Department estimates that there will be no measurable fiscal impact to local governments from the capture of fingerprints on paper cards by local law enforcement agencies as a result of the enforcement or administration of this proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be a more thorough and comprehensive review of the suitability of individuals seeking to obtain a public insurance adjuster license, or become officers, directors, partners, or controlling shareholders of a public insurance adjuster licensee. This more thorough and comprehensive review will further ensure that each of these individuals is honest, trustworthy, reliable, and fit to hold the license or authorization. The total probable economic costs to individuals required to comply with the proposed amended §19.711, proposed amended §1.501, and proposed new §§1.503 - 1.509, are estimated to range between \$48.95 and \$56. This cost estimate is based on compliance with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509. The proposed amendment to §1.501(b) does not affect public insurance adjusters, and therefore, there are no costs for compliance with that amendment.

The estimated \$48.95 - \$56 cost to individuals to comply with the proposed amendment to §1.501(a) and proposed new §§1.503 - 1.509 is for the charges by a vendor or criminal law enforcement agency to capture fingerprints and the fees charged by the DPS and the FBI to process the fingerprints and provide the Department with the individual's criminal history information. It is anticipated that these costs will apply only once to an individual affected by this rule as long as that individual maintains a continuous license or authorization with the Department. These costs are in line with, or less than, those required under similar requirements in other states. For example, California requires a \$76 fee, Florida requires a \$64 fee, and Idaho requires a \$60 fee.

The estimated \$48.95 - \$56 cost is based on the following considerations. The Department estimates that the cost of being fingerprinted will be \$9.95, \$10, or \$17, depending on the vendor chosen by the individual. The \$9.95 amount is based on the charge that is collected, according to the DPS, by the DPS' electronic fingerprint vendor for electronically capturing an individual's fingerprints. The \$10 amount is based on the current maximum charge criminal law enforcement agencies are authorized to collect, as provided under the Human Resources Code §80.001(b), from individuals for capturing fingerprints, usually on paper cards. Additionally, the Department's licensing examination vendor currently charges \$10 to electronically capture the fingerprints of an applicant taking a Department examination. The \$17 amount is based on the Department's examination vendor's charge for electronically capturing fingerprints on an individual who is not taking a Department licensing examination. The current cost of processing fingerprints by the DPS and FBI are, respectively, \$15 and \$24 per individual. Any other eco-

omic costs to comply with the proposal result from existing rules or from the enactment of the Government Code and the Insurance Code, including Government Code §§411.083 (dissemination of criminal history record information by the DPS), 411.086 (relevant rules adopted by the DPS), 411.106 (authorizes the Department to access criminal history record information from the DPS), Insurance Code §§801.056 (authorizes the Department to request a complete set of fingerprints from individuals controlling an insurance company, an insurance company's corporate officers, and individual applicants for any license, permit registration, certification, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code), and 4001.103 (authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, certificate, registration, or other authorization issued by the Department to engage in a regulated activity under Insurance Code Title 13 (Regulation of Professionals)) and are not a result of the adoption, enforcement, or administration of proposed amendment of §1.501(a) and proposed new §§1.503 - 1.509.

On a per individual basis, there will be no difference in the cost of compliance between a large and small business as a result of the proposal since the costs will be the same for each category of individual required to comply with the proposal. Different business models or personnel benefits offered may result in cost differences between entities; these differences, however, are a matter of choice and are not a result of the proposed rules. Based upon the cost of labor per hour, there is no disproportionate economic impact on small or micro businesses. Even if the proposal results in some adverse effect on small or micro businesses, the agency has considered the purpose of the applicable statutes, which is to maintain effective regulation of the insurance industry by further ensuring that persons applying for licensure or authorization, including the officers, directors, partners, and controlling shareholders of insurance agencies, insurance companies and other regulated entities, are honest, trustworthy, reliable, and fit to hold the licensure or authorization, and has determined that it is neither legal nor feasible to waive the provisions of the proposal for small or micro businesses. Additionally, it is the Department's position that the various applicable statutes require equal application of any fingerprint identification process to all affected individuals.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No. 2646 scheduled for September 6, 2006 at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

The amendment is proposed under the Occupations Code Chapter 53; Government Code Chapter 411 and the Insurance Code Chapters 4001, 4102, and 36. Occupations Code Chapter 53 states the general procedure a licensing authority must employ when considering the consequences of a criminal record on granting or continuing a person's license, registration

or authorization. Occupations Code §53.025 authorizes a licensing authority to issue guidelines relating to its practice under Chapter 53. Government Code §411.106 authorizes the Department to receive criminal history information from the DPS regarding insurance company principals and officers and applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Government Code §§411.083 and 411.087 authorize the Department to obtain, through the DPS, criminal history information from the FBI on those individuals described in Government Code §411.106. Insurance Code §4001.103 authorizes the Department to request a complete set of fingerprints from an applicant for a license issued under Insurance Code Title 13. Insurance Code §§4102.053(a)(11) and 4102.054(a)(12) authorize the Department to request a complete set of fingerprints from resident and nonresident public insurance adjuster license applicants. Further, for a partnership or corporation applying for, or maintaining, a public insurance adjuster license, Insurance Code §§4102.055(b) and 4102.056(b) authorize the Commissioner to adopt rules analogous to the provisions of Insurance Code Chapter 4001 concerning the licensure of any business entity organized under the laws of Texas and any business entity organized under the laws of another state. The Department has adopted §19.704(c)(7) and (i) of this title (relating to Public Insurance Adjuster Licensing) which require the Department to find that the public insurance adjuster license applicant's officers, directors, partners, and other persons with a right to control the licensee have not committed an act for which licensure can be denied or revoked under Insurance Code Chapters 4005 and 4102. Insurance Code §4102.004 authorizes the Commissioner to adopt rules to implement Insurance Code Chapter 4102. Insurance Code §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statutes are affected by the proposal: Occupations Code Chapter 53, Government Code Chapter 411; and Insurance Code Chapters 4001 and 4102.

§19.711. *Fingerprint Requirement.*

[(a)] Any individual who submits to the Department a new application to be licensed or registered under Insurance Code Chapter 4102 [Article 21.07-5] and any individual from whom biographical information is required under §19.704 of this subchapter (relating to Public Insurance Adjuster Licensing) shall comply with the requirements of Chapter 1, Subchapter D of this title (relating to Effect of Criminal Conduct) [attach to the application or biographical information a completed, legible fingerprint card].

[(b) Fingerprints obtained under this section shall be handled in the manner set forth in §19.1807 of this chapter (relating to Confidentiality and Custody of Fingerprint Cards).]

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 July 24, 2006.

TRD-200603884

Gene Jarmon
General Counsel and Chief Counsel
Texas Department of Insurance

Earliest possible date of adoption: September 3, 2006

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

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**SUBCHAPTER S. FINGERPRINT CARD
REQUIREMENT FOR APPLICANTS FOR
LICENSE**

28 TAC §§19.1801 - 19.1807

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

The Texas Department of Insurance proposes the repeal of Subchapter S, §§19.1801 - 19.1807, concerning fingerprint requirements for applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. The repeal is necessary because the Department is proposing for adoption new fingerprint submission requirements in amended §1.501 and new §§1.503 - 1.509, which are also published in this edition of the Texas Register.

The Department anticipates that the proposal will be effective no earlier than 90 days following the date the proposal is adopted by the Commissioner. The Department is requesting input from commenters on the most viable effective date. The actual effective date will then be determined following the review and consideration of all comments.

Matt Ray, Deputy Commissioner, Licensing Division, has determined that for each year of the first five years the proposal will be in effect, there will be no fiscal impact to state or local governments as a result of the enforcement or administration of the proposal. There will be no anticipated effect on local employment or the local economy as a result of the proposal.

Mr. Ray has determined that for each year of the first five years the proposed repeal is in effect, the anticipated public benefit will be the adoption of a new requirement that will enable the Department to conduct a more thorough and comprehensive review of an individual's suitability to hold a license, permit, or other authorization, or to control a licensed entity. There is no anticipated economic costs to persons who are required to comply with the proposed repeal. There will be no effect on small or micro businesses.

To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 5, 2006 to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Matt Ray, Deputy Commissioner, Licensing Division, Mail Code 107-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. The Commissioner will consider the adoption of the proposed amendments and new sections in a public hearing under Docket No.2647 scheduled for September 6, 2006 at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas. Written and oral comments presented at the hearing will be considered.

Repeal of Subchapter S, §§19.1801 - 19.1807, is proposed pursuant to the Insurance Code Chapters 801, 4001, and 36. Section 801.056 authorizes the Department to request a complete set of fingerprints from individual applicants for any license, permit, or other authorization issued by the Department to engage in a regulated activity under the Insurance Code. Section 4001.103 authorizes the Department to request a complete set of fingerprints from any applicant for any authorization, including a license or permit, issued under Insurance Code Title 13. Section 4001.005 authorizes the Commissioner to adopt rules necessary to implement Insurance Code Title 13. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

The following statute is affected by the proposal: Insurance Code Chapters 801 and 4001.

§19.1801. General Provisions.

§19.1802. Definitions.

§19.1803. Fingerprint Card Requirement.

§19.1804. Exemptions from Fingerprint Card Requirement.

§19.1805. Nonresident Agents.

§19.1806. Effect of Requirement.

§19.1807. Confidentiality and Custody of Fingerprint Cards.

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 July 24, 2006.

TRD-200603885

Gene Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: September 3, 2006

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.12, §375.15

The Texas Water Development Board (board) proposes amendments to 31 TAC §375.12 and §375.15 concerning Clean Water State Revolving Fund, Subchapter A, relating to General Provisions, to provide for extended financing terms.

The board proposes to amend §375.12 and §375.15 in order to implement the March 17, 2006 Policy Statement of the United

States Environmental Protection Agency (EPA) on Extended Financing Terms under the Clean Water Act State Revolving Fund Program (EPA Policy Statement). Currently, §375.12 limits the term of loans from the Clean Water State Revolving Fund (CWSRF) to 20 years. According to the EPA Policy Statement, the board may use the CWSRF to purchase new municipal obligations with terms that exceed 20 years (extended financing terms). Subsequent to the EPA Policy Statement, EPA has issued additional memoranda identifying guidelines pursuant to which the board may purchase new municipal obligations with terms that exceed 20 years. The board proposes amendments to §375.12 and §375.15 to provide extended financing terms consistent with EPA guidance because the board believes that providing extended financing term responds to CWSRF program customer requests to provide terms that more closely match the life of the assets financed by the CWSRF. Additionally, the board proposes these amendments to provide an additional incentive for Texas communities to access the CWSRF program to address wastewater infrastructure needs in a cost-effective manner.

The board proposes to amend §375.12(a) to move the conditions under which the board can make loans identified in subsection (a)(1)(A), (B), and (C) to proposed new §375.12(c). According to the EPA guidance on extended financing terms, the conditions in subsection (a)(1)(A), (B), and (C) apply to both CWSRF loans as well as to the purchase of new municipal obligations with extended financing terms. The board proposes this amendment in order to consolidate the conditions applicable to loans and new municipal obligation purchases into proposed new subsection (c).

The board proposes a new subsection (c) to §375.12 to include the conditions pursuant to which the CWSRF may be used to finance loans pursuant to §375.12(a)(1) or to purchase new municipal obligations pursuant to §375.12(a)(2). The board proposes new §375.12(c)(1) and (2) because these are conditions currently applicable to loans under federal and state statute and because the EPA guidance on extended financing terms considers these conditions to be applicable to the purchase of new municipal obligations.

The board proposes new §375.12(c)(3) to apply the current loan requirement that loan repayments commence one year after project construction completion to the purchase of new municipal obligations. The proposal for this paragraph also includes new conditions that interest payments will commence no later than one year after the date of closing and principal payments will commence either one year after project completion or five years after the date the loan is closed or the purchase is made, whichever is earlier. The board proposes this amendment in order to insure that repayments are started within this timeframe in order to establish an adequate flow of funds into the CWSRF.

The board proposes new §375.12(c)(4) to include the current loan requirement that a loan term not exceed 20 years and that the loan is fully amortized within 20 years after the completion of construction, which is consistent with current federal and state statutes. As proposed, this requirement will be generally applicable to new municipal obligations purchased by the board as well. The board also proposes that this new paragraph include the additional condition that the average bond life of loans or municipal obligations not exceed 16 years. Current board rules allow loans and municipal obligations to have debt structures where the amount of principal paid may vary from year to year (also referred to as unlevel debt structure). The board has determined

that allowing more principal to mature later in the term of the loan or municipal obligation may adversely affect the integrity of the CWSRF. Therefore, the board proposes to accommodate unlevel debt structures while insuring timely flow of funds into the CWSRF by limiting the average bond life to no more than 16 years when the term of the loan or municipal obligation is 20 years.

The board proposes new §375.12(c)(5) to allow extended financing terms only for the purchase of new municipal obligations as authorized by federal and state statutes. The board proposes extended financing term be defined as greater than 20 years but no more than 30 years because terms of greater than 30 years may reduce the amount of repayments to the CWSRF and thereby adversely affect the sustainability of the program. This proposed new paragraph provides three conditions under which the board may provide extended financing terms. First, the board proposes new §375.12(c)(5)(A) to limit the term to be no longer than the earlier of either 30 years or the useful life of the asset financed by the proposed assistance. The board proposes this condition to allow longer terms while maintaining the integrity of the CWSRF consistent with EPA guidance. Second, the board proposes new §375.12(c)(5)(B) to limit the average bond life for extended term financing to be no more than 20 years in order to insure a timely flow of funds into the CWSRF. Third, the board proposes new §375.12(c)(5)(C) to limit the amount of new municipal obligations purchased by the CWSRF to the amount estimated, pursuant to proposed §375.15(a), to be available for such financings while maintaining the total amount of funds historically available through the CWSRF.

The board proposes to amend §375.15(a) to include the requirement that the executive administrator prepare a capacity model analysis of the CWSRF for the board prior to its consideration of each annual intended use plan. The proposed amendment requires that the analysis identify the historical average annual assistance levels made available for financial assistance by the CWSRF program account; estimate the total amount of funds available for financial assistance from the CWSRF for the succeeding fiscal year; estimate an amount of financial assistance from the CWSRF that can be used for financial assistance for an extended term in the succeeding year in a manner that maintains the long-term capability of the CWSRF to provide financial assistance at the historical average annual assistance levels; estimate the amount of funds from the CWSRF to be made available for projects that will serve disadvantaged communities; and evaluate the long term availability of funds for the CWSRF. The board proposes this amendment to estimate the amount of funds that may be made available for extended financing terms without adversely affecting the integrity of the CWSRF. By this proposed amendment, the board proposes to move the current provisions of §375.15(a), which establishes categories of projects in the intended use plan, to §375.15(b) and renumbering accordingly. The board proposes this amendment for subject matter organizational purposes.

James LeBas, Chief Financial Officer, has determined that for the first five-year period the amendments are in effect, there will be positive fiscal implications on state and local government as a result of enforcement and administration of the amended sections. By allowing longer terms for financial assistance under the CWSRF, local governments will be able to reduce loan repayments and consequently maintain lower utility wastewater rates. Since local governments voluntarily participate in this program, however, it is not possible to determine with any precision the amount of the impact on local governments.

Mr. LeBas 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 to allow municipalities and other public wastewater utility providers to maintain lower residential rate structures. Mr. LeBas 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 Jonathan Steinberg, Deputy Counsel, General Counsel's Office, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §6.101 and §15.605.

Cross reference to statute: Water Code, Chapter 15, Subchapter J.

§375.12. *Types of Assistance.*

(a) Use of fund. The fund may be used for the following purposes:

(1) to make loans ~~[on the condition that:]~~

~~[(A) such loans are made at or below market interest rates, including interest free loans at terms not to exceed 20 years;]~~

~~[(B) annual principal and interest payments will commence not later than one year after completion on any project and all loans will be fully amortized not later than 20 years after project completion; and]~~

~~[(C) the recipient of a loan will establish a dedicated source of revenue for repayment of loans;]~~

(2) to buy or refinance the bonds of eligible applicants within the state at or below market rates, when such debt obligations were incurred after March 7, 1985;

(3) for the reasonable costs of administering the fund and conducting activities under the Act, Title VI;

(4) as a source of revenue or security for the payment of principal and interest on revenue or general obligation bonds issued by the state if the proceeds of sale of such bonds will be deposited in the fund;

(5) to earn interest on fund accounts; and

(6) to guarantee or purchase insurance for local debt obligations.

(b) Refinancing of debt. Applications for which refinancing is sought must include provisions for purchase of insurance for the local debt obligation.

(c) Conditions of Financial Assistance. Financial assistance pursuant to subsection (a)(1) or (2) of this section may only be provided on the condition that:

(1) the financial assistance is made at or below market interest rates, including 0% interest;

(2) the recipient of the financial assistance will establish a dedicated source of revenue for repayment of the financial assistance;

(3) interest payments will commence no later than 1 year after the date of closing and annual principal payments will commence either one year after completion of project construction or five years after the date of closing, whichever is earlier;

(4) the term of the financial assistance shall not exceed 20 years, the average bond life shall not exceed 16 years provided, and the financial assistance will be fully amortized not later than 20 years after the completion of project construction; and

(5) notwithstanding paragraph (4) of this subsection, the board may buy the bonds of eligible applicants with an extended term (defined as a term of more than 20 years but not more than 30 years) on the condition that:

(A) the financial assistance is fully amortized not later than 30 years after the completion of project construction and the term of the bonds are no longer than either 30 years or the design life of the project for which the assistance is provided, whichever is earlier;

(B) the average bond life shall not exceed 20 years for either a level or unlevel debt service schedule; and

(C) providing the assistance will not exceed the amount identified in the applicable intended use plan as available for financial assistance with an extended term.

§375.15. Criteria and Methods for Distribution of Funds.

(a) Prior to the adoption by the board of the intended use plan in each fiscal year, the executive administrator shall prepare and present to the board a capacity model analysis of the CWSRF which shall, at a minimum:

(1) identify the historical average annual assistance levels made available for financial assistance by the CWSRF program account;

(2) estimate the total amount of funds available from the CWSRF for the succeeding fiscal year that can be used to provide financial assistance;

(3) estimate an amount of funds available from the CWSRF for the succeeding year that can be used to provide financial assistance for an extended term (defined as a term of more than 20 years but not more than 30 years) that maintains the long-term capability of the CWSRF to provide financial assistance at the historical average annual assistance levels;

(4) estimate an amount of funds available from the CWSRF for the succeeding year that can be used to provide financial assistance for projects that will serve disadvantaged communities; and

(5) evaluate the long term availability of funds for the CWSRF.

[(a) After the executive administrator determines the amount of funds available for projects for a fiscal year, the funds will be applied to the list of projects designated to receive funding in the intended use plan. The list will be divided into eight categories as follows:]

[(1) category A, which shall consist of treatment works projects proposed by applicants with existing populations of 3,000 or fewer;]

[(2) category B, which shall consist of treatment works projects proposed by applicants with existing populations from 3,001 to 10,000;]

[(3) category C, which shall consist of treatment works projects proposed by applicants with existing populations from 10,001 to 25,000;]

[(4) category D, which shall consist of treatment works projects proposed by applicants with existing populations from 25,001 to 100,000;]

[(5) category E, which shall consist of treatment works projects proposed by applicants with existing populations from 100,001 to 500,000;]

[(6) category F, which shall consist of treatment works projects proposed by applicants with existing populations of 500,001 or greater;]

[(7) category G, which shall consist of treatment works projects proposed by applicants for rural hardship communities; and]

[(8) category H, which shall consist of nonpoint source projects or estuary management projects;]

(b) After the executive administrator determines the amount of funds available for projects for a fiscal year, the funds will be applied to the list of projects designated to receive funding in the intended use plan.

(1) The list will be divided into eight categories as follows:

(A) category A, which shall consist of treatment works projects proposed by applicants with existing populations of 3,000 or fewer;

(B) category B, which shall consist of treatment works projects proposed by applicants with existing populations from 3,001 to 10,000;

(C) category C, which shall consist of treatment works projects proposed by applicants with existing populations from 10,001 to 25,000;

(D) category D, which shall consist of treatment works projects proposed by applicants with existing populations from 25,001 to 100,000;

(E) category E, which shall consist of treatment works projects proposed by applicants with existing populations from 100,001 to 500,000;

(F) category F, which shall consist of treatment works projects proposed by applicants with existing populations of 500,001 or greater;

(G) category G, which shall consist of treatment works projects proposed by applicants for rural hardship communities; and

(H) category H, which shall consist of nonpoint source projects or estuary management projects.

(2) [(b)] Projects for categories A-G shall be listed in priority ranking order with funds required and totaled by category. Projects in category H shall be listed in alphabetical order according to the name of the applicant with funds required and totaled for the category. Project costs will be based on cost estimates, acceptable to the executive administrator, contained in the intended use plan solicitation described in §375.17 of this title (relating to Intended Use Plan) used to establish the project list. Funds required by all projects in each category will then be totaled. Except for category G, a percentage of the total funds required by each category shall be computed based upon the ratio of funds required by each category to the funds required by all categories. The portion of the available funds shall be assigned to the categories based on this computed percentage, provided that no category will be assigned less than 7.0% of the total funds available unless the total needs of the category are less than 7.0%. The funds assigned to category G shall be equal to the amount of federal grants available for the fiscal year plus an equal amount of CWSRF loan funds.

(c) - (o) (No change.)

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

Filed with the Office of the Secretary of State on July 19, 2006.

TRD-200603823

Jonathan Steinberg

Deputy Counsel

Texas Water Development Board

Proposed date of adoption: September 19, 2006

For further information, please call: (512) 475-2052



TITLE 34. PUBLIC FINANCE

PART 5. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.4

The Texas County and District Retirement System proposes new §103.4, concerning the manner for calculating the amount of a member's prior service and the average prior service compensation for use in the determination of the member's maximum and allocated prior service credit. Under the proposed rule, instead of using the actual compensation paid to the member during each month of service during the 36 months preceding the subdivision participation date, a subdivision may use an average of the compensation reported to the Texas Workforce Commission for each full calendar quarter of the member's employment during the 36-month period. The proposed rule provides a reasonable alternative method for computing average prior service compensation which permits the subdivision to use existing data from employment reports filed with the Texas Workforce Commission in lieu of reconstructing information in a form that may require manipulation of data from information that may not be readily retrievable by the subdivision from its original payroll records. The alternate calculation method will not disadvantage the members.

Tom Harrison, Deputy Director and General Counsel for the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local governments as a result of administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the administrative cost savings to the subdivision and the retirement system by using information that is readily available to the subdivision to determine past compensation instead of reconstructing payroll records. There are no anticipated economic costs to small businesses, micro businesses or persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel for the Texas County and District Retirement System, P.O. Box 2034, Austin, Texas 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and

District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

The Government Code, §843.104 and §843.201 are affected by this proposed rule.

§103.4. Certification of Prior Service and Average Prior Service Compensation.

(a) The subdivision shall certify to the system the total number of months of prior service performed by the member and the average prior service compensation paid to the member. Based on this certified information, the system shall record the amount of credited service for prior service granted to the member and determine the member's maximum and allocated prior service credit.

(b) Prior service is that service performed for the subdivision prior to the subdivision's effective date of participation. One month of credited service for prior service shall be granted to the member for each calendar month during which the member performed at least one day of service for the subdivision other than as a temporary employee, prior to the month that includes the subdivision's effective participation date.

(c) Average prior service compensation is the average monthly compensation paid to the member for those full months of employment performed for the subdivision during the 36 months prior to the subdivision's effective date of participation. Except for a member who does not have a full month of employment with the subdivision, only full months of employment and the compensation received for such full months of employment shall be considered in the calculation of average prior service compensation. For a member who does not have a full month of employment, the subdivision shall estimate a monthly compensation for the member using the member's rate of pay.

(d) Subject to subsections (e) and (f) of this section, instead of calculating the actual compensation paid to the member for each specific full month of employment performed for the subdivision during the 36-month period, the subdivision may calculate the average monthly compensation of its member using the total wages paid to the member for each full calendar quarter of employment during the 12 calendar quarters immediately preceding the effective date of participation as that member's compensation was reported to the Texas Workforce Commission on the employer's quarterly report, averaged over the total number of months in the calendar quarters of the member's employment recognized for purposes of this calculation.

(e) For those members having less than one full calendar quarter of employment during the 36-month period, the subdivision shall use the procedure described in subsection (c) of this section.

(f) A subdivision whose effective date of participation is in the third month of a calendar quarter may consider the quarter which includes the effective date of participation to be the first calendar quarter prior to the subdivision's effective date of participation. A subdivision described by this paragraph may estimate the member's compensation for the last month of the quarter.

(g) If, under §843.201 of the Act, a subdivision has acquired a public facility or assumed a governmental function, the date of acquisition or assumption shall be the effective date of participation for purposes of calculating the prior service and average prior service compensation of those members eligible under that 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 July 24, 2006.



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.3, §421.5

The Texas Commission on Fire Protection (TCFP) proposes amendments to §421.3 and §421.5, concerning minimum standards set by the TCFP and definitions, in Chapter 421, entitled Standards for Certification. The purpose of the proposed amendments is to clarify requirements and re-word some of the language for clarity.

The proposed amendment to §421.3 adds, in the functional position description for structural fire protection personnel, the words "in English" in subsection (b)(1)(A) to clarify that the required language competencies refer to competency in English. The proposed amendment to §421.5(43)(A)(ii) and (iii) updates the name of the Department of State Health Services, to reflect that state agency's name change; and rewords the language for clarity.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no significant fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendment to §421.3 will be greater clarity regarding the English language competency requirements for structural fire protection personnel; for the amendment to §421.5, the public benefit will be greater clarity regarding years-of-experience requirements for higher levels of certification and fire service instructor certification. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

The TCFP has determined the amendments to be in compliance with Texas Government Code, §419.022(b).

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP

with the authority to establish minimum standards for appointment as fire protection personnel.

Cross reference to statute: Texas Government Code, §419.008 and §419.022(a)(5).

§421.3. *Minimum Standards Set by the Commission.*

- (a) (No change.)
- (b) Functional position descriptions.

(1) Structural fire protection personnel. The following general position description for structural fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on written and performance certification examinations; must be at least 18 years of age; generally, the knowledge and skills required show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, drag, and balance weight equivalent to the average human weight; ability to interpret in English, written[-] and oral instructions; ability to work effectively in high stress situations; ability to work effectively in an environment with loud noises and flashing lights; ability to function through an entire work shift; ability to calculate weight and volume ratios; ability to read and understand English language manuals including chemical, medical and technical terms, and road maps; ability to accurately discern street signs and address numbers; ability to document, in English [writing], all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other emergency response personnel. Good manual dexterity with ability to perform all tasks related to the protection of life and property; ability to bend, stoop, and crawl on uneven surfaces; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and ability to work in low or no light, confined spaces, elevated heights and other dangerous environments.

(B) (No change.)

(2) - (12) (No change.)

§421.5. *Definitions.*

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

(1) - (42) (No change.)

(43) Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) (No change.)

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the [a Texas] Department of State Health Services (DSHS), or its successor agency [Emergency Care Attendant (ECA) certification], or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction,

including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the [a Texas] Department of State Health Services (DSHS), or its successor agency [Emergency Care Attendant (ECA) certification], or its equivalent; or

(iv) (No change.)

(B) (No change.)

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

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603857

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 936-3821



CHAPTER 423. FIRE SUPPRESSION

37 TAC §423.1, §423.13

The Texas Commission on Fire Protection (TCFP) proposes amendments to §423.1 and §423.13, concerning minimum standards for structure fire protection personnel and International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 423, entitled Fire Suppression. The purpose of the proposed amendments is to clarify rule language.

The proposed amendments to both rules change the wording of the term "medical emergency training" to "emergency medical training" to reflect the standard wording of the commonly used term. The proposed amendment to §423.13 also clarifies in subsection (d)(2) and (3) that the type of documentation recognized by the commission demonstrates successful completion of a response course, and that it is not a certification document that is required.

The TCFP has determined the proposed amendments to be in compliance with Texas Government Code, §419.022(b).

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be greater clarity regarding standard terms such as "emergency medical training" and the assurance that firefighters in the state of Texas have completed emergency medical training that actually exceeds the national standard as found in NFPA 1001. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

§423.1. *Minimum Standards for Structure Fire Protection Personnel.*

(a) (No change.)

(b) Prior to being appointed to fire suppression duties, personnel must complete a commission approved basic structure fire suppression program and successfully complete a commission recognized emergency medical course. The individual must successfully pass the commission examination pertaining to that curriculum as required by §423.3 of this title. The commission recognizes the following emergency medical [emergency] training:

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

(c) (No change.)

§423.13. *International Fire Service Accreditation Congress (IFSAC) Seal.*

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

(d) In order [~~for an individual~~] to meet the medical requirements of NFPA 1001, the individual must document successful completion of an emergency medical [emergency] training course or program. The commission recognizes the following emergency medical [emergency] training [as meeting the medical requirements of NFPA 1001]:

(1) (No change.)

(2) American Red Cross Response course [certification showing successful completion of a course] (including optional lessons and enrichment sections);

(3) American Safety and Health Institute First Responder [~~certification showing successful completion of a~~] course;

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

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

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603858

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 936-3821



CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §425.1

The Texas Commission on Fire Protection (TCFP) proposes an amendment to §425.1, concerning minimum standards for fire service instructor certification, in Chapter 425, entitled Fire Service Instructors. The purpose of the proposed amendment is to remove obsolete language.

The proposed amendment: (1) deletes language in subsection (a) that states that the effective date of Chapter 425 is March 1, 2006 (this date has now passed and it is no longer necessary to make it explicit in the text of the rule); and (2) clarifies in subsection (c) that out of state training may meet the completion of the required competencies but does not equate to years of experience in a required position. Experience is defined in a different section.

The TCFP has determined this proposed amendment to be in compliance with Texas Government Code §419.022(b).

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendment is in effect there will be no fiscal impact on state or local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be greater clarity in the rule language as the result of the removal of obsolete information. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendment.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.028(3), which provides the TCFP with the authority to certify persons as qualified fire protection personnel instructors under conditions which the TCFP prescribes.

Texas Government Code, §§419.008, 419.022, and 419.028 are affected by this rulemaking.

§425.1. Minimum Standards for Fire Service Instructor Certification.

(a) [~~The effective date of this chapter shall be March 1, 2006.~~] Training programs that are intended to satisfy the requirements for fire service instructor certification [~~that are started on or after the effective date of this chapter~~] must meet the curriculum and competencies based upon NFPA 1041. All applicants for certification must meet the examination requirements of this section.

(b) (No change.)

(c) An out-of-state, military, or federal instructor training program may be accepted by the commission as meeting the training [~~and experience~~] requirements for certification as a fire service instructor if the training has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission-approved instructor course for that particular level of fire service instructor certification.

(d) - (j) (No change.)

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

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603859

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3821



CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §439.1, §439.19

The Texas Commission on Fire Protection (TCFP) proposes amendments to §439.1 and §439.19, concerning general requirements and procedures regarding state-administered examinations, in Chapter 439, entitled Examinations for Certification. The purpose of the proposed amendments is to change the examination requirement for certification as Head of Department, and to designate the number of questions that will be standard for that new examination.

The commission prescribes the content of certification examinations that tests the knowledge and/or skill of the examinee relative to the discipline addressed by the certification examination. The proposed amendment to §439.1 changes the examination for Head of Department certification to the types of certification examinations for which the commission prescribes content. The proposed language of the amendment states that this new examination will be based on National Fire Protection Association (NFPA) 1021, Chapter 7.

The proposed amendment to §439.19 adds a new provision that the new Head of Department examination will consist of 50 active questions, with the option of adding up to five pilot questions, for a maximum time allotment of one hour.

Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the assurance that fire service personnel certified as Head of a Department will have passed an examination based on national standards from the National Fire Protection Association. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with

the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel.

Texas Government Code, §419.008 and §419.022 are affected by this rulemaking.

§439.1. *Requirements--General.*

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

(e) The commission shall prescribe the content of any certification examination that tests the knowledge and/or skill of the examinee concerning the discipline addressed by the examination.

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

(4) The Head of Department examination will be based on NFPA 1021, Chapter 7.

(f) - (g) (No change.)

§439.19. *Number of Test Questions.*

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

(c) The Head of Department examination will consist of 50 active questions, with the option of adding up to five pilot questions, for a maximum time allotment of one hour.

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 July 21, 2006.

TRD-200603860

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

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For further information, please call: (512) 936-3821



CHAPTER 449. HEAD OF A FIRE DEPARTMENT
SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §449.3, §449.5

The Texas Commission on Fire Protection (TCFP) proposes amendments to §449.3 and §449.5, concerning minimum standards for certification as head of a suppression fire department, and head of a prevention only department, respectively, in Chapter 449, entitled Head of a Fire Department. The purpose of the proposed amendments is to change the examination requirement for certification as Head of Department.

The proposed amendments change the previous requirement that those individuals seeking certification as Head of Department pass a written commission examination based on the basic structural fire protection personnel curriculum, or basic inspector or investigator curriculum to a requirement that the individual pass a written commission Head of Department examination, which will be based on National Fire Protection Association (NFPA) 1021, Chapter 7.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year

period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the assurance that fire service personnel certified as Head of a Department will have passed an examination based on national standards from the National Fire Protection Association. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the TCFP with the authority to establish minimum educational, training, physical, and mental standards for appointment as fire protection personnel; and Texas Government Code, §419.032(f), which provides that the commission shall adopt rules for relating to the appointment of a person to the position of head of a department.

Texas Government Code, §419.008 and §419.022, and §419.032 are affected by this rulemaking.

§449.3. *Minimum Standards for Certification as Head of a Suppression Fire Department.*

(a) In order to be certified as a head of a fire department providing fire suppression, an individual must be appointed as head of a fire department; and

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

(3) provide documentation in the form of a non self serving sworn affidavit of ten years experience as an employee of a local governmental entity in a full-time structural fire protection personnel position in a jurisdiction other than Texas; and successfully pass a written commission Head of Department examination [based on the basic structural fire protection personnel curriculum] as specified in Chapter 439; or

(4) (No change.)

(5) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an active volunteer fire fighter in one or more volunteer fire departments that meet the requirements of subsection (b) of this section and successfully pass a written commission Head of Department examination [based on the basic structural fire protection personnel curriculum] as specified in Chapter 439.

(b) - (d) (No change.)

§449.5. *Minimum Standards for Certification as Head of a Prevention Only Department.*

(a) In order to be certified as the head of a fire department providing fire prevention activities only, an individual must be appointed as head of a Fire Prevention Department; and

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

(3) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an employee of a local governmental entity in a full-time fire inspector, fire investigator, or arson

investigator position in a jurisdiction other than Texas and successfully pass a written commission Head of Department examination [~~based on the basic inspector or investigator curriculum~~] as specified in Chapter 439; or

(4) (No change.)

(5) provide documentation in the form of a sworn non self serving affidavit of ten years experience as an active volunteer fire inspector, fire investigator, or arson investigator with ten years experience in fire prevention and successfully pass a written commission Head of Department examination [~~based on the basic inspector or investigator curriculum~~] as specified in Chapter 439.

(b) (No change.)

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

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603861

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 936-3821



CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (TCFP) proposes amendments to §§451.3, 451.5, 451.7, 451.203, 451.205, and 451.207, concerning minimum standards for Fire Officer I and II certification, including examination requirements and International Fire Service Accreditation Congress (IFSAC) seals, in Chapter 451, entitled Fire Officer. The purpose of the proposed amendments is to re-organize some of the provisions within various rules, and reflect recent changes made to the Chapter 425 Fire Service Instructor rules.

The proposed amendment to §451.3, Minimum Standards for Fire Officer I Certification, deletes subsection (d), relating to prerequisites for taking the Fire Office I certification examination. This provision has been moved to §451.5, Examination Requirements, in a new subsection (c), and another prerequisite has been added; that an individual must either hold Fire Service Instructor I certification through the commission, or document accreditation from the International Fire Service Accreditation Congress as an Instructor I. The proposed amendment to §451.7, International Fire Service Accreditation Congress (IFSAC) Seal, adds to the requirements for a Fire Officer I IFSAC seal in subsection (b) the requirement that an individual document an IFSAC seal as a Fire Service Instructor I.

The proposed amendments to §451.203, Minimum Standards for Fire Officer II Certification, §451.205, Examination Requirements, and §451.207, International Fire Service Accreditation Congress (IFSAC) Seal make the same changes that are being made to their counterparts (§§451.3, 451.5, and 451.7) referred to in the previous paragraph of this preamble. In addition, the proposed amendment to §451.7 removes obsolete instructor certification titles.

Mr. Jake Soteriou, Director of the Fire Service Standards and Certification Division, has determined that for the first five year

period the proposed amendments are in effect there will be no fiscal impact on state and local governments.

Mr. Soteriou has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the assurance that individuals holding fire officer certification in Texas will also have had the thorough instructor training required for instructor certification. There are no additional costs of compliance for small or large businesses or individuals that are required to comply with the proposed amendments.

Comments on the proposals may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 or e-mailed to info@tcfp.state.tx.us. Comments must be received within 30 days of publication of this proposal in the *Texas Register*.

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE OFFICER I

37 TAC §§451.3, 451.5, 451.7

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

§451.3. *Minimum Standards for Fire Officer I Certification.*

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

~~[(d) No individual will be permitted to take the commission examination for Fire Officer I certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual.]~~

§451.5. *Examination Requirements.*

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

(c) No individual will be permitted to take the commission examination for Fire Officer I certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from the International Fire Service Accreditation Congress as an Instructor I.

§451.7. *International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) (No change.)

(b) Individuals completing a commission-approved Fire Officer I program, documenting an IFSAC seal for Fire Fighter II and Instructor I, and passing the applicable state examination may be granted an IFSAC seal as a Fire Officer I by making application to the commission for the IFSAC seal and paying applicable fees.

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

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3821



SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §§451.203, 451.205, 451.207

The amendments are proposed under Texas Government Code, §419.008, which provides the TCFP with the authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

§451.203. *Minimum Standards for Fire Officer II Certification.*

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

~~[(d) No individual will be permitted to take the commission examination for Fire Officer II certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.]~~

§451.205. *Examination Requirements.*

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

~~(c) No individual will be permitted to take the commission examination for Fire Officer II certification unless the individual documents completion of the Fire Fighter I and Fire Fighter II level training as required by Chapter 1, Basic Fire Suppression, of the commission's Certification Curriculum Manual and holds, as a minimum, Fire Service Instructor I certification through the commission, or documents accreditation from International Fire Service Accreditation Congress as an Instructor I.~~

§451.207. *International Fire Service Accreditation Congress (IFSAC) Seal.*

(a) (No change.)

(b) Individuals completing a commission-approved Fire Officer II program; documenting IFSAC seals for Fire Fighter II and Fire Officer I; holding, as a minimum, ~~Instructor I [intermediate fire service instructor certification, intermediate fire education specialist certification or associate instructor]~~ certification through the commission, or documenting an IFSAC seal as an Instructor I; and passing the applicable state examination may be granted an IFSAC seal as a Fire Officer II by making application to the commission for the IFSAC seal and paying applicable fees.

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

Filed with the Office of the Secretary of State on July 21, 2006.

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Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3821



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.409, concerning conducting interviews or examinations, and the repeal of §700.522, concerning audiotaping or videotaping interviews with alleged victims, in its Child Protective Services chapter. Senate Bill 6, 79th Legislature, Regular Session, 2005, revised the Texas Family Code §261.302 to require DFPS to tape all interviews with children that DFPS conducts during an investigation. As a result, DFPS is repealing §700.522, which lists the good cause exceptions to audiotaping or videotaping interviews with children. Also, DFPS is revising §700.409 to delete the cross reference to §700.522.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposal will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section or the repeal.

Ms. Brown also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of the rule changes and repeal will be that department interviews of children during investigations will be audiotaped or videotaped, thereby preserving evidence to support actions needed to keep children safe. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposal.

Questions about the content of the proposal may be directed to Kay Love at (512) 438-3305 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-351, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the 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, do not constitute a taking under §2007.043, Government Code.

SUBCHAPTER D. SCHOOL INVESTIGATIONS

40 TAC §700.409

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §261.302, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

§700.409. *Conducting Interviews or Examinations.*

(a) (No change.)

~~[(b) The initial investigation interview of a child alleged to have been physically or sexually abused must be videotaped or audiotaped by CPS unless good cause exists not to do so, as specified in §700.522 of this title (relating to Audiotaping or Videotaping Interviews with Alleged Victims).]~~

(b) [(e)] The CPS investigator must comply with the requirements in §700.508(b) of this title (relating to Interviews with Parents or Other Alleged Perpetrators).

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 July 21, 2006.

TRD-200603841
Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 3, 2006
For further information, please call: (512) 438-3437



SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §700.522

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

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code §261.302, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

§700.522. *Audiotaping or Videotaping Interviews with Alleged Victims.*

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 July 21, 2006.

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Gerry Williams
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437



SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

40 TAC §700.519

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.519, concerning standards for investigators of child abuse, in its Child Protective Services chapter. Prior to the 79th Legislature, Texas Family Code §261.310 required DFPS to enact rules and adopt voluntary standards for investigators to encourage professionalism and consistency in the investigation of suspected child abuse and neglect. Senate Bill 6, 79th Legislature, Regular Session, 2005, revised this statute so the standards are no longer voluntary, require additional types of training, and require DFPS to preserve certain types of evidence (original recordings of intake telephone calls, original worker case notes, videotapes, and audiotapes). As a result, DFPS is proposing to delete references to the standards being voluntary, to require the additional training in specific subjects, and to require the preservation of specific types of evidence for a year. In addition, the distinction between investigations performed by Child Protective Services and those performed pursuant to Texas Family Code §261.401 is clarified. Also, paragraph (4) is amended to reflect the current best practices to minimize the number of interviews with a child abuse victim, while ensuring interviews are thorough and professional. The cumulative effect of these changes will be to improve standards, training and protocols for child abuse investigations.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended section.

Ms. Brown also has determined that for each year of the first five years the amended section is in effect the public benefit anticipated as a result of enforcing the section will be that the protection of children and the integrity of the investigation will be enhanced by setting standards for training child abuse investigators, taping of interviews with children, and preserving the evidence. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase

of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Kay Love at (512) 438-3305 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-352, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Texas Family Code §261.310, as amended by §1.21 of Senate Bill 6, 79th Legislature, Regular Session.

§700.519. *[Voluntary] Standards for Investigators of Child Abuse.*

To encourage professionalism and consistency in the investigation of reports of child abuse as specified in the Texas Family Code (TFC), §261.310 and §261.401, the [Texas] Department of Family and Protective [and Regulatory] Services (DFPS) adopts the following standards for [recommends the voluntary standards set forth in this section to] individuals who investigate reports of child abuse.

(1) (No change.)

(2) The professional training curriculum for individuals who conduct investigations or investigation interviews must include information about:

(A) [physical] abuse and neglect as defined in TFC, §261.001 (for CPS investigators) and abuse, exploitation, and neglect as defined in TFC, §261.401 (for facility investigators), including the distinction between:

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

(B) [psychological] abuse involving mental or emotional injury as defined in TFC, §261.001 (for CPS investigators) and TFC, §261.401 (for facility investigators);

(C) available treatment resources; [and]

(D) the types of abuse and neglect reported to the investigating agency for whom the investigator works, including information about:

(i) the incidence of each type of abuse and neglect reported; and

(ii) the receipt of false reports; [-]

(E) law-enforcement style-training, including information related to:

(i) forensic interviewing and investigatory techniques; and

(ii) the collection of physical evidence; and

(F) federal child welfare laws.

(3) All investigatory interviews should be taped without interruption. Individuals who conduct videotaped [~~or audiotaped~~] interviews with suspected victims of child abuse must ensure that the interviews meet the requirements [~~for recorded interviews~~] specified in TFC, §104.002 (Prerecorded Statement of Child) [~~and §104.003, including the requirement in §104.002 and §104.003 that the recording be accurate and unaltered~~].

(4) Individuals [~~Children often disclose information about the occurrence of abuse progressively over the course of several interviews. Accordingly, individuals~~] who investigate reports of child abuse should utilize specialized sexual assault victim facilities whenever possible and otherwise follow protocols to minimize the number of interviews with a child, and must [-]

~~[(A)] be thorough and exercise professional judgment and expertise in determining the nature, extent, and number of [conduct enough] interviews and examinations of suspected child abuse victims, [of child abuse to give them sufficient opportunity to disclose what they know; but]~~

~~[(B) refrain from conducting additional interviews or examinations after a child has disclosed enough information to confirm or rule out the occurrence or risk of abuse, unless there is a good reason for conducting additional interviews or examinations. When there is a good reason for conducting additional interviews or examinations, the individual responsible for conducting the interviews or examinations may consult with a supervisor or another individual with appropriate expertise to confirm the need for additional interviews or examinations. All decisions about conducting additional interviews or examinations as specified in this subparagraph must be based on the best interest of the child.]~~

(5) All [~~Investigating agencies must keep all~~] documents generated during investigations must be kept [~~in the child's case record] for at least one year, including: [the life of the record.]~~

(A) original tape recordings of telephone intakes;

(B) videotapes and audiotapes; and

(C) worker case notes regarding the investigation.

(6) Investigators must make a reasonable effort [~~efforts~~] to locate and notify each parent of a suspected victim of child abuse of the report of abuse or neglect relating to the child victim [~~regarding the disposition of the investigation, except for absent parents who are abusive, dangerous, or otherwise unlikely to protect the child, as specified in §700.513 of this title (relating to Notification about Results)].~~

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 July 21, 2006.

TRD-200603843

Gerry Williams
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: September 3, 2006
For further information, please call: (512) 438-3437



CHAPTER 702. GENERAL ADMINISTRATION SUBCHAPTER G. TRAINING AND EDUCATION

40 TAC §§702.601, 702.605, 702.617, 702.618, 702.621

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§702.601, 702.605, 702.617, and 702.621; and new §702.618, in its General Administration chapter. Senate Bill 6, 79th Legislature, Regular Session, 2005, added §40.0322, Qualifications for Adult Protective Services Personnel; Recruitment, to the Human Resources Code (HRC). The section requires DFPS to develop and implement an incentive program to encourage DFPS employees who provide adult protective services to obtain professional credentials if they do not already possess such. Section 702.605 adds the phrase "subject to the availability of funds." New §702.618 provides for an incentive program for employees who provide adult protective services to obtain professional credentials related to adult protective services. In §702.621, DFPS is deleting subsection (c), which references the PRS Board. Also, subsection (d) is revised to delete the reference to subsection (c). In the other sections, the agency's name is updated to DFPS.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended and new sections.

Ms. Brown also has determined that for each year of the first five years the amendments and new section are in effect the public benefit anticipated as a result of enforcing the amended and new sections will be that adult protective services staff will be better trained as a result of obtaining professional credentials, increasing the quality of services provided to vulnerable adults. There will be no effect on large, small, or micro-businesses because the proposed changes and new section do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new section.

Questions about the content of the proposal may be directed to James Yocum at (512) 834-3770 in DFPS's Center for Policy and Innovation Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-355, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

HHSC has determined that the proposed amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, there-

fore, do not constitute a taking under §2007.043, Government Code.

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement §40.0322 of the Human Resources Code (HRC), as added by §2.02 of Senate Bill 6, 79th Legislature, Regular Session, 2005.

§702.601. What is the purpose of this subchapter?

This subchapter contains DFPS [PRS] policies on employee eligibility to participate in training and education programs, and on employee obligations upon receipt of training and education.

§702.605. What is DFPS's [PRS's] policy on training?

DFPS [PRS] encourages the professional development of all staff through training and education programs. Subject to the availability of funds, DFPS is authorized to fund costs [PRS makes funds available] for training and education in accordance with the State Employees Training Act, Texas Government Code, §§656.041-656.049.

§702.617. When does DFPS [PRS] provide educational or technical training?

(a) DFPS [PRS] may provide training for an employee if the executive director or his designee determines that the training will:

- (1) (No change.)
- (2) benefit both DFPS [PRS] and the employee by:

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

(C) introducing new, more efficient technologies to DFPS [PRS].

(b) DFPS [PRS] may pay for the salary, tuition and other fees, travel and living expenses, training stipend, expense of training materials, and other expenses of an instructor, student, or other participant in a training or education program.

(c) Approval to participate in a training or education program is subject to the availability of funds within the DFPS [PRS] budget, and supervisory approval.

§702.618. Does DFPS provide an incentive program for employees who provide adult protective services to obtain professional credentials related to adult protective services?

Yes. Subject to the availability of funds, DFPS provides incentives in the form of training time and reimbursement for some educational expenses for employees who are enrolled in undergraduate or graduate programs leading to a professional credential related to adult protective services.

§702.621. What is the employee's obligation to DFPS [PRS] after completing education or training?

(a) An employee who completes education or training for which DFPS [PRS] provided all or part of the required fees may be required to:

(1) remain employed with DFPS [PRRS] for a specified period; and

(2) (No change.)

(b) If an employee receives training or education paid for by DFPS [PRRS] that is covered by the Texas Government Code, Chapter 656, Subchapter D, and the employee does not perform his regular duties for three or more months in order to obtain the training, the employee must:

(1) work for DFPS [PRRS] following the training for at least one month for each month of the training period; or

(2) pay DFPS [PRRS] for all the costs associated with the training that were paid by DFPS [PRRS] during the training period, including any of the employee's salary that was paid and not accounted for as paid vacation or compensatory leave; and

(3) (No change.)

~~[(e) By an order adopted in a public meeting, the PRRS board may waive the requirements in subsection (b) of this section and release an employee from the obligation to meet those requirements if the board finds it in the best interest of PRRS or it is warranted because of an extreme personal hardship suffered by the employee.]~~

~~[(c) [(d)] If an employee does not provide the services required in subsection (b)(1) of this section, provides those services for less than the required time, or fails to make payments required in subsection (b)(2) of this section, [and the employee is not released from the obligation under subsection (e) of this section,] the employee is liable for the costs described in subsection (b)(2) of this section, and for expenses incurred by DFPS [PRRS] in obtaining payment, including reasonable attorney fees.~~

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

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

TRD-200603888

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 438-3437



CHAPTER 704. PREVENTION AND EARLY INTERVENTION SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§704.1, 704.3, 704.205, and 704.207; and new §§704.209, 704.701, and 704.703, concerning the Community-Based Family Services Grant Program, in its Prevention and Early Intervention (PEI) chapter. Senate Bill 6, 79th Legislature, Regular Session, 2005, requires DFPS to administer a grant program to provide funding to community organizations, including faith-based or county organizations, to respond to (1) low-priority, less serious cases of abuse and neglect; and (2) cases in which an allegation of abuse or neglect of a child was unsubstantiated, but involved a family that has been previously investigated for abuse or neglect of a child. These rules implement the Community-Based Family Services

Grant Program. DFPS is also making the following clarifications. Section 704.205 is revised to delete the reference to the Communities In Schools Program because DFPS no longer administers the program. Section 704.207 is revised to reference the Electronic State Business Daily, where PEI currently posts procurements. New §704.209 explains how PEI administers grants, which is according to the rules specified in Chapter 732, Contracted Services. Chapter 732 also explains the submission and approval of grant requests as well as cancellation of grants. And in several rules, references to Department of Protective and Regulatory Services are changed to Department of Family and Protective Services.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and new sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended and new sections.

Ms. Brown also has determined that for each year of the first five years the proposed amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amended and new sections will be that contractors and potential contractors will have a clearer understanding of DFPS's contracting procedures for procurement, awarding, and cancellation of grants. Also, the rules will further explain the implementation parameters of the Community-Based Family Services Grant Program. There will be no adverse effect on large, small, or micro-businesses because the proposed changes and new sections do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

Questions about the content of the proposal may be directed to Rachel Porter-Daniel at (512) 821-4745 in DFPS's Purchased Client Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-354, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

SUBCHAPTER A. PURPOSE AND DEFINITIONS

40 TAC §704.1, §704.3

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Texas Family Code §264.204, as amended by §1.53 of Senate Bill 6, 79th Legislature, Regular Session.

§704.1. What is the purpose of this chapter?

The purpose of this chapter is to provide information regarding the Prevention and Early Intervention Services Division of the ~~[Texas]~~ Department of Family and Protective ~~[and Regulatory] Services (DFPS)~~ ~~[(PRS)]~~.

§704.3. How are the key terms in this chapter defined?

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

- (1) (No change.)
- (2) DFPS--Department of Family and Protective Services.
- (3) ~~[(2)]~~ Indicated prevention--Targets individual children, youth, or families who manifest a specific risk factor or behavior, and are thereby judged likely candidates for the condition that is to be prevented. Methods may be group-oriented, family-oriented, or individual-oriented, with a focus on assessing and amplifying strengths and supports at the family and individual level primarily.

(4) ~~[(3)]~~ Prevention and early intervention services--Programs intended to proactively create conditions and/or personal attributes that promote the well-being of people, in order to prevent child abuse and neglect, juvenile delinquency, academic failure, and youth homelessness.

(5) ~~[(4)]~~ PEI--The Prevention and Early Intervention Services Division within the ~~[Texas]~~ Department of Family and Protective ~~[and Regulatory] Services (DFPS)~~ ~~[(PRS)]~~.

~~[(5) PRS--The Texas Department of Protective and Regulatory Services.]~~

- (6) - (8) (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 July 24, 2006.

TRD-200603889

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER C. PREVENTION AND INTERVENTION PRIMARY RESPONSIBILITIES

40 TAC §§704.205, 704.207, 704.209

The amendments and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement Texas Family Code §264.204, as amended by §1.53 of Senate Bill 6, 79th Legislature, Regular Session.

§704.205. How does PEI select entities to receive funds for prevention and early intervention programs?

~~[(a) The Communities In Schools Program is funded according to the methodology set forth in Subchapter E of this chapter (relating to Communities In Schools).]~~

~~[(b) Funds [For all other programs administered by PEI, funds] are appropriated to DFPS [PRS] by the legislature and subsequently allocated to PEI per the Legislative Appropriation Request (LAR) strategies. The plan for distribution of funds is outlined in the LAR strategies. A procurement process is used to select providers and allocate funds through contracts. Outcomes are reported to the Legislative Budget Board [Bureau] (LBB) for specific programs as indicated in legislation.~~

§704.207. How can a member of the public obtain more information on specific PEI initiatives or funding opportunities?

PEI procurements are posted on the Electronic State Business Daily (<http://esbd.tbpc.state.tx.us/1380/sagency.cfm>) ~~[Texas Marketplace (www.marketplace.com)]~~, where the entire procurement package may be downloaded, including the Request for Proposals (RFP), budget pages, certification forms, and any clarifications. Hard copies of RFPs may also be requested from DFPS [PRS] after they are released. Information on PEI programs and initiatives may be accessed on the agency's website at: http://www.dfps.state.tx.us/Prevention_and_Early_Intervention ~~[http://www.tdprs.state.tx.us/Prevention_and_Early_Intervention/About_Prevention_and_Early_Intervention/default.asp]~~.

§704.209. How does PEI generally administer grants?

Grants awarded by PEI are generally administered as contracts subject to Chapter 732 of this title (relating to Contracted Services).

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

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Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



SUBCHAPTER H. COMMUNITY-BASED FAMILY SERVICES GRANT PROGRAM

40 TAC §704.701, §704.703

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the

Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Texas Family Code §264.204, as amended by §1.53 of Senate Bill 6, 79th Legislature, Regular Session.

§704.701. What is the Community-Based Family Services Grant Program?

The Community-Based Family Services Grant Program is a prevention and early intervention program administered by PEI to provide funding to community organizations, including faith-based or county organizations, to respond to:

(1) low-priority, less serious cases of abuse and neglect; and

(2) cases in which an allegation of abuse or neglect of a child was unsubstantiated, but involved a family that has been previously investigated for abuse or neglect of a child.

§704.703. What is PEI's role in the implementation and administration of the Community-Based Family Services Grant Program?

PEI is authorized to enter into a contract or interagency agreement with one or more qualified community organizations to deliver services in accordance with the requirements of the Texas Family Code, §264.204.

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 July 24, 2006.

TRD-200603891

Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 438-3437



CHAPTER 705. ADULT PROTECTIVE SERVICES

SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §§705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, 705.7123

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §§705.7101, 705.7103, 705.7105, 705.7107, 705.7109, 705.7111, 705.7113, 705.7115, 705.7117, 705.7119, 705.7121, and 705.7123, concerning confidentiality and release of records, in its Adult Protective Services (APS) chapter. The new sections are proposed in new Subchapter M, Confidentiality and Release of Records. The purpose of the new sections is to outline to whom and under what circumstances DFPS may disclose APS case records made confidential under Chapter 48 of the Human Resources Code.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in

effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of the individual rights to confidentiality during an APS case. In order to avoid the misuse of confidential information, the rules outline the circumstances where persons have a right to APS case records. There will be no effect on large, small, or micro-businesses because the proposed new sections do not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Dana Williamson at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-348, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement §209 of Senate Bill 6, 79th Legislature, Regular Session, 2005, and HRC, §48.101 and §48.102.

§705.7101. What is the purpose of this subchapter?

The purpose of this subchapter is to explain to whom and under what circumstances the Texas Department of Family and Protective Services may disclose Adult Protective Services case records made confidential under §48.101 and §48.102 of the Human Resources Code and §261.201 of the Texas Family Code.

§705.7103. Which investigations do this subchapter apply to?

These rules apply to investigations conducted by the Department of Family and Protective Services Adult Protective Services staff under Chapter 48 of the Human Resources Code and §261.404 of the Texas Family Code (investigations of abuse, neglect, or exploitation of persons under age 18 years receiving services for mental health or mental retardation).

§705.7105. What definitions apply to this subchapter?

The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Adult Protective Services (APS) client--An elderly or disabled person as defined in Human Resources Code, §48.002(1) and

(8), or a person under age 18 years receiving services for mental health or mental retardation as described in §261.404 of the Texas Family Code.

(2) Case records--All records described in §48.101 or §48.102 of the Human Resources Code, which were collected, developed, or used in an abuse, neglect, or exploitation investigation, or in providing services as a result of an investigation, and which are under the custody and control of DFPS. Case records include investigation records, as well as service records.

(3) DFPS--Department of Family and Protective Services.

(4) Investigation records--That portion of the records described in §48.101 or §48.102, Human Resources Code, which were collected, developed, or used in an abuse, neglect, or exploitation investigation and which are under the custody and control of DFPS.

(5) Report--An allegation of abuse, neglect, or exploitation, as described in §48.002 of the Human Resources Code or Chapter 711 of this title (relating to Investigations in TDMHMR Facilities and Related Programs) made to DFPS.

(6) Reporter--A person who initiates an unsolicited report to DFPS or to a duly constituted law enforcement agency, alleging the abuse, neglect, or exploitation of an APS client. If more than one person makes an unsolicited report of the same allegation of abuse, neglect, or exploitation of the same APS client, each person is designated as a reporter.

§705.7107. Who has the right to obtain all or part of confidential case records maintained by DFPS?

Upon request and to the extent required by state or federal law, DFPS must make case records or portions of case records available after appropriate redactions to the following persons:

(1) For living APS clients:

(A) An adult APS client;

(B) Who are minors:

(i) A parent whose parental rights have not been terminated; or

(ii) A legally appointed conservator under the Texas Family Code or guardian under the Probate Code;

(C) The court appointed guardian of an APS client; and

(D) An attorney, attorney ad litem, or other court appointed legal representative of an APS client;

(2) For deceased APS clients:

(A) The legally appointed representative of the deceased APS client's estate;

(B) Who were minors:

(i) A parent whose parental rights were not terminated; or

(ii) A legally appointed conservator under the Texas Family Code or guardian under the Probate Code;

(C) The parents of a deceased disabled adult, if parental rights were not terminated and no estate exists requiring the appointment of a legal representative for the deceased disabled adult; and either:

(i) The records requested relate to events precipitating the death of the disabled adult; or

(ii) DFPS determines that the case records should be made available in the interest of justice;

(D) A person who was guardian at the time of death of the APS client;

(3) An alleged or designated perpetrator of abuse, neglect, or exploitation of an APS client. The perpetrator is only entitled to those portions of the investigation records that relate to the alleged or designated perpetrator; and

(4) A person, including a reporter, interviewed as a part of an investigation of abuse, neglect, or exploitation. The person is only entitled to that portion of the investigation record that relates to that person's interview.

§705.7109. Are there others who may have access to APS records?

DFPS must make case records available after required redactions to the following persons:

(1) Local, state, or federal law enforcement officials for the purpose of investigating:

(A) Allegations of abuse, neglect, or exploitation of an APS client;

(B) Allegations of false or malicious reporting of alleged abuse, neglect, or exploitation of an APS client; or

(C) Failure to report alleged abuse, neglect, or exploitation of an APS client;

(2) Local, state, or federal government officials or agencies when:

(A) Specifically required by law; or

(B) DFPS determines case records should be made available in the interest of justice;

(3) A court of criminal or civil jurisdiction with a legal matter pending before it, either:

(A) Arising out of an investigation of abuse, neglect, or exploitation of an APS client; or

(B) Concerning an APS client;

(4) Persons or agencies when DFPS determines it is necessary to:

(A) Access services for an APS client;

(B) Provide services to an APS client;

(C) Properly meet the needs of an APS client; or

(D) Protect an APS client; or

(5) As otherwise provided by law.

§705.7111. When may case records be released under this subchapter?

(a) Records may not be released until:

(1) The investigation is complete;

(2) A proper request has been received, if required; and

(3) The records have been properly redacted.

(b) Portions of investigation records may be released before completion of an investigation:

(1) To law enforcement for investigation of a crime as provided by §48.1522 of the Human Resources Code, or §711.401 of this

title (relating to Who and when does the investigator notify of an allegation and when is the identity of the reporter revealed?); or

(2) As necessary for DFPS to seek emergency protective services or emergency legal action for the protection of an APS client.

(c) Requests for records will be filled on a priority basis, with a higher priority assigned to requests related to a pending administrative, civil, or criminal court hearing.

§705.7113. When may DFPS withhold records to which the requester is otherwise entitled?

(a) Notwithstanding any other provision in this subchapter, DFPS must not disclose any record or information which, if released to the requester, would:

(1) Interfere with an ongoing criminal investigation or prosecution; or

(2) In the judgment of DFPS, the release of that information would endanger the life or safety of any individual. DFPS will keep a record of any information not released and must document why the information would be likely to endanger the life or safety of an individual. Information withheld from a requester under this subsection, as well as the reason for withholding information under this subsection, must be released only upon a court order pursuant to the provisions in §48.101(c) of the Human Resources Code.

(b) Notwithstanding any other provision in this subchapter, if any party has sued DFPS and DFPS determines that the release of the requested records might interfere with its defense of that litigation, DFPS may require that a requester seek access to records under the appropriate rules of civil procedure rather than these rules.

§705.7115. What other way may records be accessed?

Individuals not otherwise authorized to obtain records under this subchapter or through the rules of civil or criminal procedure must obtain a court order using the procedures outlined in §48.101 of the Human Resources Code.

§705.7117. Are records redacted before release?

(a) Information is redacted based on the eligibility or entitlement of the requester and whether the requester is entitled to the information by law.

(b) With the exception of release to law enforcement and prosecutors as specified in paragraphs (1) and (2) of §705.7109 of this title (relating to Are there others who may have access to APS records?), DFPS must redact case records to remove the name, address, and any other information in the record which reveals the identity of any person as a "reporter." If a person who was a reporter also provided a witness statement or other evidence during the course of the investigation, that person's identity as a witness, as well as the information provided by that person in the role of a witness, will be released, provided that any information that might identify that person as the reporter is redacted.

(c) DFPS must withhold the release of any records obtained from another source, if the release of that record to this requester is specifically prohibited under state or federal law. Information which may be withheld under this section includes, but is not limited to, the following:

(1) All medical records subject to Chapter 159 of the Occupations Code, unless their release to the requester is authorized by that chapter or other law;

(2) Non-physician medical records unless their release to the requester is specifically authorized by law;

(3) Criminal history or arrest records obtained from law enforcement unless their release to the requester is specifically authorized under state and federal law; and

(4) Adult or juvenile probation records unless their release to the requester is specifically authorized under state and federal law.

§705.7119. What are the procedures for requesting access to confidential information?

(a) A request for access to case records must be submitted on DFPS' Request for Records form. DFPS may waive the use of this form, or may request additional information not included on the form, if appropriate under the circumstances surrounding a particular request.

(b) DFPS' Request for Records form provides additional instructions regarding the proper filing of the request and any fees that must be paid to obtain copies of the requested records. The methodology for calculating fees is the same as that used by DFPS when responding to any other request for records for which there is a charge.

(c) Upon receipt of a proper request for copies of records, proof of the requester's identity, and a determination that the requester is entitled to have access to those records, DFPS will redact the case records as required, assess necessary fees and upon payment, provide copies of the requested records, subject to the exceptions set forth in this subchapter.

§705.7121. Who has access to videotapes, audiotapes, and photographs?

(a) Individuals authorized under this subchapter or other law to have access to investigation records or case records may view and or listen to any videotapes, audiotapes, or photographs which are a part of the case record. Access to this category of records is permitted in controlled areas, designated by DFPS, at a time mutually convenient to the requester and DFPS. When viewing or listening to these records, the requester may not be accompanied by any individual who would not otherwise be entitled to have access to these records, unless DFPS determines the participation of this individual is appropriate under the circumstances surrounding the request.

(b) Copies of videotapes, audiotapes, and photographs may be provided to the individuals or entities by DFPS if provision of a copy is essential to the investigation, prosecution, or resolution of a case. Copies of videotapes, audiotapes, and photographs will not be provided to any other individual unless so ordered by a court pursuant to §48.101(c) of the Human Resources Code.

§705.7123. Do records lose their confidential status when released under Chapter 48 of the Human Resources Code or this subchapter?

No. The individual or entity that obtains confidential case records is responsible by law for proper use of and maintaining the confidentiality of the records. Improper release of records is punishable as a criminal offense under §40.005 of the Human Resources 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 July 21, 2006.

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Gerry Williams

General Counsel

Department of Family and Protective Services

Earliest possible date of adoption: September 3, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER N. PUBLIC AWARENESS

40 TAC §705.8101

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §705.8101, concerning public awareness, in its Adult Protective Services chapter. The purpose of the new section is to outline a statewide public awareness campaign strategy, as required by Senate Bill 6, 79th Legislature, Regular Session, 2005.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Since DFPS currently conducts public awareness campaigns and uses the same forms of public awareness noted in the proposed rule, there is no anticipated cost increase for the department.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to educate the public regarding abuse, neglect, and exploitation of vulnerable adults and to reduce the incidences of maltreatment. There will be no effect on large, small, or micro-businesses because the proposed new section does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Dana Williamson at (512) 438-3182 in DFPS's Adult Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-350, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

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

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements §2.05 of Senate Bill 6, 79th Legislature, Regular Session, 2005, and §40.0527 of the HRC.

§705.8101. Public Awareness.

(a) The Department of Family and Protective Services (DFPS) conducts a statewide public awareness campaign to educate the public regarding abuse, neglect, and exploitation of the elderly and adults with disabilities and to reduce the incidences of maltreatment involving vulnerable adults.

(b) Based on available funding, DFPS utilizes a selection of:

- (1) public service announcements;
- (2) program brochures and literature;
- (3) a prevention website; and

(4) speaking engagements. DFPS enlists the support and assistance of community organizations through speaking engagements.

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 July 24, 2006.

TRD-200603887

Gerry Williams

General Counsel

Department of Family and Protective Services

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For further information, please call: (512) 438-3437



WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING SUBCHAPTER B. DEFINITIONS

10 TAC §80.11

The Manufacturing Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) withdraws the proposed amendment to §80.11 which appeared in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4299).

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

TRD-200603868

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: July 24, 2006

For further information, please call: (512) 475-2206



SUBCHAPTER E. GENERAL REQUIREMENTS

10 TAC §80.119

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (TDHCA) withdraws the proposed amendment to §80.119 which appeared in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4299).

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

TRD-200603869

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: July 24, 2006

For further information, please call: (512) 475-2206



PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §313.8

The Texas Residential Construction Commission withdraws the proposed amendments to §313.8 which appeared in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558).

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603856

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: July 21, 2006

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



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.1, §74.3

The State Board of Education (SBOE) withdraws the proposed amendments to §74.1 and §74.3, concerning curriculum requirements, published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4142). The sections provide for curriculum requirements for school districts. The proposed amendment to §74.1 would have incorporated a change to reflect legislation from the regular session of the 79th Texas Legislature, 2005, to include emphasis on the importance of proper nutrition and exercise. The proposed amendment to §74.3 would have incorporated a technical correction to add clarification to the languages other than English requirement. The SBOE received comments in support of the proposed amendment to §74.1.

During its meeting on July 7, 2006, the SBOE took action to withdraw this proposal in order to allow for consideration of additional amendments to incorporate legislation passed during the 79th Texas Legislature, Third Called Session. The SBOE anticipates considering for action proposed amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, at the September 2006 SBOE meeting.

Filed with the Office of the Secretary of State on July 19, 2006.

TRD-200603810

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 19, 2006
For further information, please call: (512) 475-1497



SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007 - 2008

19 TAC §§74.61, 74.63, 74.64

The State Board of Education (SBOE) withdraws the proposed amendments to §§74.61, 74.63, and 74.64, concerning curriculum requirements, published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4142). The sections outline high school graduation requirements and the recommended high school program (RSHP) and distinguished achievement program (DAP) graduation plans for Texas high school students. The proposed amendment to §74.61 would have added engineering as an option for the fourth year of science beginning with students entering Grade 9 in school year 2007 - 2008. The proposed amendments to §74.63 and §74.64 included technical corrections to add clarification to the languages other than English requirement and to delete redundant language regard-

ing credit by examination. Additional technical corrections in §74.64 included replacing the term "tech prep articulated" with the correct term "advanced technical credit courses" and adding "dual credit courses" to describe requirements for advanced measures for the DAP. The SBOE received comments regarding the proposal to add engineering as an option for the fourth year of science. The comments included recommendations for other courses that could count for the fourth science credit.

During its meeting on July 7, 2006, the SBOE took action to withdraw this proposal in order to allow for consideration of additional amendments to incorporate legislation passed during the 79th Texas Legislature, Third Called Session. The SBOE anticipates considering for action proposed amendments to 19 TAC Chapter 74, Curriculum Requirements, Subchapter F, Graduation Requirements, Beginning with School Year 2007 - 2008, at the September SBOE 2006 meeting.

Filed with the Office of the Secretary of State on July 19, 2006.

TRD-200603811
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: July 19, 2006
For further information, please call: (512) 475-1497



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 3. BOLL WEEVIL ERADICATION PROGRAM

SUBCHAPTER G. TRANSFER OR ADDITION OF AREAS FROM ONE ERADICATION ZONE TO ANOTHER ZONE

4 TAC §3.306

The Texas Department of Agriculture (the department) adopts new §3.306, concerning the modification of boll weevil eradication zones, without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4822).

The new section is adopted to add Menard County to the statutorily designated Southern Rolling Plains Boll Weevil Eradication Zone described in the Texas Agriculture Code, §74.1021(f). The new section is adopted in order to allow cotton producers in the area an opportunity to establish a manageable, efficient eradication program that meets the local needs of producers. New §3.306 adds Menard County to the Southern Rolling Plains Eradication Zone that consists of Coke, Coleman, Concho, Irion, McCulloch, Runnels, Schleicher, Tom Green, and a portion of Taylor County.

No comments were received on the proposal.

The new section is adopted under the Texas Agriculture Code, §74.120, which provides the commissioner of agriculture with the authority to adopt rules to carry out the purposes of Chapter 74; and §74.108(b), which provides the commissioner of agriculture with the authority to, by rule, add an area to a boll weevil eradication zone or transfer an area or county from one statutory zone to another.

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 July 18, 2006.

TRD-200603796

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: August 7, 2006

Proposal publication date: June 16, 2006

For further information, please call: (512) 463-4075

CHAPTER 10. SEED CERTIFICATION STANDARDS

SUBCHAPTER I. NATIVE PLANT MATERIALS

4 TAC §10.31

The Texas Department of Agriculture (the department) and the State Seed and Plant Board (the Board) adopt new §10.31, concerning Native Plant Materials, without changes to the proposed text published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4822). The department is the certifying agency in the administration of the Seed and Plant Certification Act, and is charged with administering and enforcing the standards adopted by the Board. The new section is adopted to provide the eligibility requirements for species of native forbs, grasses and shrubs, including a designation of the classes of seed, field standards for inspection, seed testing standards, label requirements, and application requirements and fees for field inspection. The new standards cover seed, seedlings, or other propagating materials of native species, selections, clones, or intraspecific hybrids, which have not been released as a variety. The new section will also serve to enhance the supply of Texas native plant materials available to consumers and eligible for participation in remediation programs.

No comments were received regarding adoption of the new section.

New §10.31 is adopted under the Texas Agriculture Code, §62.002, which provides the State Seed and Plant Board with the authority to establish standards of genetic purity and identity as necessary for the efficient enforcement of agricultural interest and the Texas Agriculture Code §12.016, which provides the department with the authority to adopt rules for administration of the code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 20, 2006.

TRD-200603826

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: August 9, 2006

Proposal publication date: June 16, 2006

For further information, please call: (512) 463-4075

TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 80. MANUFACTURED HOUSING

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs (the "Department") adopts with non-substantive changes amendments to §§80.208, 80.240 and 80.260. The rules will be republished. The proposed rule was published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4299).

The proposed amendment to §80.11(28) is withdrawn and may be repropounded in §80.133 in the future, which was found to be a more accurate location for the text. The proposed amendment to §80.119(b)(3) is withdrawn because of opposition to the proposal.

The rules will be effective thirty (30) days following the date of publication with the Texas Register of notice that the rule has been adopted.

A public hearing was held on June 26, 2006. The following interested groups or associations presented comments either at the hearing or in writing: Texas Manufactured Housing Association ("TMHA").

Section 80.208: TMHA suggested the Department change the term "Taxing Unit" to "Taxing Entity" to avoid confusion since "Unit" is used to describe a manufactured home section. The Department agrees to change the term.

Figure: 10 TAC §80.240(a)(13): TMHA suggested the Department change the term "Taxing Unit" to "Taxing Entity" to avoid confusion since "Unit" is used to describe a manufactured home section. The Department agrees to change the term.

Figure: 10 TAC §80.260(a)(14) and (a)(15): TMHA suggested the Department change the term "Taxing Unit" to "Taxing Entity" to avoid confusion since "Unit" is used to describe a manufactured home section. The Department agrees to change the term.

Except as noted below, the rules as proposed on May 26, 2006, are adopted as final rules with the following non-substantive changes.

Section 80.208(d) - Changed "taxing unit" to "taxing entity."

Figure: 10 TAC §80.240(a)(13) - Changed "taxing unit" to "taxing entity."

Figure: 10 TAC §80.260(a)(14) - Changed "taxing unit" to "taxing entity."

Figure: 10 TAC §80.260(a)(15) - Changed "taxing unit" to "taxing entity."

The following is a restatement of the rules' factual basis:

Section 80.208 is adopted (with changes) to revise subsection (a) to address filing tax liens manually and add new subsection (b) to address filing tax liens electronically. Also, subsection (d) is added to provide a method for tax collectors who file for multiple taxing entities to file as a central tax collector under a single taxing entity ID number. It is not a requirement for tax collectors that file for multiple taxing entities to file as a central tax collector.

Figure: 10 TAC §80.208(b) - the proposal to relocate the tax lien form to §80.260(a)(14) is adopted (without changes).

Section 80.240(a)(13) - The layout example for filing tax liens electronically is adopted (with changes).

Figure: 10 TAC §80.240(a)(13) - Tax lien layout for electronically filed tax liens is adopted (with changes).

Section 80.260(a)(14) and (15) - is adopted (with changes) relating to moving the tax lien form from §80.208(b) and adding a new form for tax collectors to file as a central tax collector if they file for multiple taxing entities.

Figure: 10 TAC §80.260(a)(14) - is adopted (with changes) relating to moving the tax lien form from §80.208(b) and revising the certification statements in blocks 2 and 3 to address certifying as a central tax collector.

Figure: 10 TAC §80.260(a)(15) - is adopted (with changes) relating to adding a new form for tax collectors to file as a central tax collector if they collect for multiple taxing entities.

SUBCHAPTER G. STATEMENTS OF OWNERSHIP AND LOCATION

10 TAC §80.208

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306. 6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.208. *Recording Tax Liens on Manufactured Homes.*

(a) Manually filed tax liens shall be filed with the Department using the form provided in §80.260(a)(14) of this title (relating to Required and Optional Forms). No other form will be accepted for the manual filing of tax liens. The form must be properly completed.

(b) Electronically filed tax liens and tax lien releases shall be filed with the Department using the required file layout as provided in §80.240(a)(13) of this title (relating to Tables and Figures). No other format will be accepted for electronic filing of tax liens.

(c) For tax liens recorded after June 18, 2005, but prior to the effective date of these rules, those tax liens relating to tax years prior to 2001 will be disregarded and will not be treated as having been recorded.

(d) If a tax collector wishes, it may file as a central tax collector under a single taxing entity ID number, in which case the liens recorded or released under that taxing entity ID number will extend to all liens created for tax obligations to the taxing entity for which the filer collects. In order, however, to file as a central collector, the filer must complete and provide to the Department the form set out in §80.260(a)(15) of this title (relating to Required and Optional Forms).

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 July 24, 2006.

TRD-200603870

Timothy K. Irvine
Executive Director, Manufactured Housing Division of TDHCA
Texas Department of Housing and Community Affairs
Effective date: September 3, 2006
Proposal publication date: May 26, 2006
For further information, please call: (512) 475-2206



SUBCHAPTER H. TABLES AND FIGURES

10 TAC §80.240

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306. 6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.240. *Tables and Figures.*

(a) Tables.

(1) Maximum Spacing for Diagonal Ties.

Figure: 10 TAC §80.240(a)(1) (No change.)

(2) Minimum Number of Diagonal Ties.

Figure: 10 TAC §80.240(a)(2) (No change.)

(3) Maximum Spacing for Diagonal Ties (Wind Zone II) per side of the Assembled Unit.

Figure: 10 TAC §80.240(a)(3) (No change.)

(4) Bracket Installation - Maximum Centerline Wall Opening for Column Uplift Brackets.

Figure: 10 TAC §80.240(a)(4) (No change.)

(5) Floor Connections - Wind Zone I and II.

Figure: 10 TAC §80.240(a)(5) (No change.)

(6) Roof Connection - Fastener Type and Spacing.

Figure: 10 TAC §80.240(a)(6) (No change.)

(7) Main Panel Box Feeder Conductor Sizes.

Figure: 10 TAC §80.240(a)(7) (No change.)

(8) Footer Capacities.

Figure: 10 TAC §80.240(a)(8) (No change.)

(9) Pier Loads without Perimeter Supports.

Figure: 10 TAC §80.240(a)(9) (No change.)

(10) Pier Loads with Perimeter Supports.

Figure: 10 TAC §80.240(a)(10) (No change.)

(11) Mating Line Column Loads.

Figure: 10 TAC §80.240(a)(11) (No change.)

(12) Enforcement Matrix.

Figure: 10 TAC §80.240(a)(12) (No change.)

(13) Tax Lien Layout for Electronically Filed Tax Liens.

Figure: 10 TAC §80.240(a)(13)

(b) Figures.

(1) Counties Located in Wind Zone II.

Figure: 10 TAC §80.240(b)(1) (No change.)

(2) Anchor Installation.

Figure: 10 TAC §80.240(b)(2) (No change.)

(3) Placement of Stabilizing Devices.

Figure: 10 TAC §80.240(b)(3) (No change.)

(4) Wind Zone I Installation (Single & Multi-Section).

Figure: 10 TAC §80.240(b)(4) (No change.)

(5) Diagonal Strap Placement for Piers Exceeding 36 in. in Height.

Figure: 10 TAC §80.240(b)(5) (No change.)

(6) Diagonal and Vertical Ties.

Figure: 10 TAC §80.240(b)(6) (No change.)

(7) Typical Installation Details.

Figure: 10 TAC §80.240(b)(7) (No change.)

(8) Anchor Span.

Figure: 10 TAC §80.240(b)(8) (No change.)

(9) Typical Longitudinal Stabilizing Device.

Figure: 10 TAC §80.240(b)(9) (No change.)

(10) Longitudinal Ties.

Figure: 10 TAC §80.240(b)(10) (No change.)

(11) Mating Line Surfaces.

Figure: 10 TAC §80.240(b)(11) (No change.)

(12) Floor Connections.

Figure: 10 TAC §80.240(b)(12) (No change.)

(13) Endwall Connections.

Figure: 10 TAC §80.240(b)(13) (No change.)

(14) Roof Connection.

Figure: 10 TAC §80.240(b)(14) (No change.)

(15) Exterior Roof Close Up.

Figure: 10 TAC §80.240(b)(15) (No change.)

(16) HVAC (Heat/Cooling) Duct Crossover.

Figure: 10 TAC §80.240(b)(16) (No change.)

(17) Multi-Section Water Crossover Connections.

Figure: 10 TAC §80.240(b)(17) (No change.)

(18) Drain, Waste and Vent Floor Piping System.

Figure: 10 TAC §80.240(b)(18) (No change.)

(19) Chassis Bonding.

Figure: 10 TAC §80.240(b)(19) (No change.)

(20) Electrical Crossover.

Figure: 10 TAC §80.240(b)(20) (No change.)

(21) Fuel Gas Pipe Crossover Connections.

Figure: 10 TAC §80.240(b)(21) (No change.)

(22) Footer Configurations.

Figure: 10 TAC §80.240(b)(22) (No change.)

(23) Pier Design (Single and Multi-Section Stack).

Figure: 10 TAC §80.240(b)(23) (No change.)

(24) Perimeter Pier Front & Side View.

Figure: 10 TAC §80.240(b)(24) (No change.)

(25) Typical Multi-Section Pier Layout.

Figure: 10 TAC §80.240(b)(25) (No change.)

(26) Typical Single Section Pier Layout.

Figure: 10 TAC §80.240(b)(26) (No change.)

(27) Determining Column Load and Marriage Line Elevation.

Figure: 10 TAC §80.240(b)(27) (No change.)

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 July 24, 2006.

TRD-200603871

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: September 3, 2006

Proposal publication date: May 26, 2006

For further information, please call: (512) 475-2206



SUBCHAPTER I. FORMS

10 TAC §80.260

The amended rules are adopted under the Texas Manufactured Housing Standards Act, Occupations Code, Chapter 1201, §1201.052, which provides the department with authority to amend, add, and repeal rules governing the Manufactured Housing Division of the Department and under Texas Government Code, Chapter 2306, §2306. 6014, which authorizes the director to administer and enforce the manufactured housing program through the Manufactured Housing Division.

No other statute, code, or article is affected by the adopted rules.

§80.260. *Required and Optional Forms.*

(a) Required Forms.

(1) Site Preparation Notice.

Figure: 10 TAC §80.260(a)(1) (No change.)

(2) Consumer Disclosure Statement.

Figure: 10 TAC §80.260(a)(2) (No change.)

(3) Consumer Protection Disclosure - Chattel Mortgage Transactions.

Figure: 10 TAC §80.260(a)(3) (No change.)

(4) Notice of Installation (Form T).

Figure: 10 TAC §80.260(a)(4) (No change.)

(5) Estimate for Reassigned Warranty Work.

Figure: 10 TAC §80.260(a)(5) (No change.)

(6) Application for Statement of Ownership and Location.

Figure: 10 TAC §80.260(a)(6) (No change.)

(7) Release or Foreclosure of Lien (Form B).

Figure: 10 TAC §80.260(a)(7) (No change.)

(8) Quick Processing Form.

Figure: 10 TAC §80.260(a)(8) (No change.)

(9) Form M.

Figure: 10 TAC §80.260(a)(9) (No change.)

(10) Affidavit of Fact for Right of Survivorship.

Figure: 10 TAC §80.260(a)(10) (No change.)

(11) Retailer/Broker Disclosure Statement.

Figure: 10 TAC §80.260(a)(11) (No change.)

(12) Warranty of Habitability.

Figure: 10 TAC §80.260(a)(12) (No change.)

(13) Manufacturer's Certificate of Origin.

Figure: 10 TAC §80.260(a)(13) (No change.)

(14) Tax Lien Record and Release Form.

Figure: 10 TAC §80.260(a)(14)

(15) Notification of filing status as a Central Tax Collector.

Figure: 10 TAC §80.260(a)(15)

(b) Optional Forms. Spanish Version of Consumer Disclosure Statement.

Figure: 10 TAC §80.260(b) (No change.)

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-200603872

Timothy K. Irvine

Executive Director, Manufactured Housing Division of TDHCA

Texas Department of Housing and Community Affairs

Effective date: September 3, 2006

Proposal publication date: May 26, 2006

For further information, please call: (512) 475-2206



PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 313. STATE-SPONSORED INSPECTION AND DISPUTE RESOLUTION PROCESS (SIRP)

10 TAC §§313.2, 313.5, 313.6, 313.9, 313.15, 313.16, 313.21

The Texas Residential Construction Commission adopts amendments to 10 Texas Administrative Code (TAC) §§313.2, 313.6, and 313.21 without changes to the proposed text, as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558). The Commission also adopts amendments to 10 TAC §§313.5, 313.9, 313.15 and 313.16 with nonsubstantive changes to the proposed text, which also was published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558).

The amendments to these sections clarify the procedures for participation in the state-sponsored inspection and dispute resolution process and improve the readability of the sections.

Section 313.2 describes the actions that the commission may take if a homeowner fails to provide thirty days notice to a builder of alleged defects prior to filing a request for the SIRP. Section 313.5 relates to the SIRP inspection fee. Section 313.6 sets forth the information required to file a SIRP request. Section 313.9 describes the procedure for withdrawal if a requestor fails to timely provide information to complete a request to participate in the SIRP. Section 313.15 provides for a reasonable extension of time for a third-party inspector to meet commission deadlines. Section 313.16 describes the commission's expectations regarding the third-party inspector's duties to complete the report, revise the report or re-inspect an alleged defect on remand. Section 313.21 clarifies the appeal process and the obligations of the appeal panel regarding the appeal and the third-party inspector regarding any matter remanded to him after an appeal.

No comments were received regarding the proposed amendments to the sections.

The amendments are adopted under §408.001 of the Property Code which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code Chapter 426 which provides for the implementation of the SIRP; and Property Code Chapter 27 which includes statutory requirements that affect users of the SIRP. The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code Chapters 408, 426, 428 and Title 4, Property Code Chapter 27.

Cross Reference to Statutes: Title 16, Property Code Chapters 408, 426 and 428, and Title 4, Property Code Chapter 27. No other statutes, articles, or codes are affected by the adoption.

§313.5. Filing a Request to Initiate the SIRP.

(a) Either the homeowner or the builder may initiate the SIRP by filing a request with the commission.

(b) If the affected home is not registered with the commission at the time the request is filed, the requesting party must also register the home with the commission by submitting a Home Registration Form and the appropriate fee. A builder who failed to register the affected home in accordance with Chapter 303 of this title, Registration of Homes, shall reimburse the cost of the home registration fee if paid by the homeowner under this section.

(c) When a person contacts the commission to initiate the SIRP, the commission will provide the person with information necessary to file a request, information on the applicable fees to request a third-party inspection, the registration status of the affected home and instructions to register an unregistered home, if applicable.

§313.9. Initial Request Review.

(a) Upon receipt of a request to initiate the SIRP, the commission shall review the request for eligibility to determine if the request contains information alleging or otherwise demonstrating:

- (1) that the dispute arises from a transaction governed by the Act;
- (2) that the request is complete and includes the required attachments and the payment of the appropriate fees;
- (3) that the affected home is registered with the commission;
- (4) that the alleged construction defect(s) were discovered on or after September 1, 2003;
- (5) that the request is timely under §313.4 of this chapter; and
- (6) that the request involves a dispute between a homeowner and a builder regarding alleged construction defect(s) giving rise to a claim that is not:
 - (A) solely for personal injury, survival, wrongful death; or
 - (B) solely for damage to goods not including damage to the home; or
 - (C) for an alleged violation of §27.01, Business and Commerce Code, regarding Fraud in Real Estate and Stock Transactions; or
 - (D) based solely on a builder's wrongful abandonment of an improvement project before completion; or

(E) for an alleged violation of Property Code, Chapter 162, regarding Construction Payments, Loan Receipts, and Misapplication of Trust Funds.

(b) If the commission determines that the request is not complete or that the claim is not eligible for the SIRP, the commission shall notify the requestor in writing and specify the reason(s) the request is not complete or is ineligible for the SIRP.

(c) A requestor who has submitted an incomplete request will be provided an opportunity to supplement the request to cure its deficiencies. If a requestor fails to complete a request or to provide supplemental information requested by the commission within ten business days after the commission has made the request, the commission will administratively withdraw the request and refund any inspection fee paid.

(d) If the commission determines that the claim is ineligible for the SIRP, the commission will retain copies of all materials submitted, return all originally submitted materials to the requestor and will refund any inspection fee paid.

§313.15. Extension of Time.

(a) The Executive Director may grant an extension of time for a period of no longer than five days for any deadline imposed on the third-party inspector under §313.13 of this chapter upon the written request of a third-party inspector.

(b) The Executive Director may grant an extension of time for any deadline imposed on the third-party inspector under §313.13 of this chapter upon receipt of a written request from either party to the SIRP.

(c) The Executive Director shall grant an extension of time requested under subsection (a) of this section upon a showing that the cause for the delay was not reasonably foreseeable by the third-party inspector when the appointment was accepted.

(d) The Executive Director shall grant an extension under subsection (b) of this section as follows:

- (1) for any reasonable period requested without regard to cause if the parties to the dispute agree to the extension in writing; or
- (2) for any reasonable period requested under the circumstances upon a showing of good cause by the requesting party or
- (3) if the other party to the dispute does not agree to an extension.

(e) The Executive Director's decision on whether to grant or deny an extension of time requested under this section is a final agency decision not subject to further administrative appeal.

§313.16. Third-Party Inspector's Report.

(a) The third-party inspector's report shall be submitted to the commission on the commission's Third-Party Inspection Form or in a format substantially similar to the commission's form, so long as the report includes all of the information required by the commission's form.

(b) The commission shall return any third-party inspector's report that fails to provide the required information or that includes findings, conclusions, comments or other information outside the scope of the third-party inspector's duties to the assigned third-party inspector for revision.

(c) If a third-party inspector fails to revise a report returned for revision within a reasonable time after notification of the need for revision, the commission may consider that failure in making a determination whether the third-party inspector has fulfilled his duties and is thus eligible for payment and in making a determination as to whether

to assign the third-party inspector to future SIRP requests or to renew the third-party inspector's registration under Chapter 303 of this title.

(d) The third-party inspector shall submit his completed report to the commission and the commission shall promptly transmit the completed report, or revised report if required, to the homeowner and the builder.

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 July 21, 2006.

TRD-200603865

Susan K. Durso

General Counsel

Texas Residential Construction Commission

Effective date: August 10, 2006

Proposal publication date: March 10, 2006

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



10 TAC §313.7

The Texas Residential Construction Commission adopts amendments to 10 Texas Administrative Code §313.7, concerning notice of the request, with changes to the proposed text, as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558).

The changes are made to clarify the information that must be provided for participation in the state-sponsored inspection and dispute resolution process and to clarify the commission's procedure when a request for a SIRP is received and a suit or arbitration is pending between the homeowner and builder.

Section 313.7 explains the items that a requestor must submit with the request and information that a recipient of notice of a request must submit to the commission.

Gregory Harwell of Gardere, Wynne, & Sewell, LLP, submitted written comments on the proposed amendments via facsimile transmission on March 27, 2006. Mr. Harwell commented that §313.7(d) should be amended to delete language that the commission determines that compliance with Subtitle D of Title 16 is not required, because if the commission made such a determination it would not then "proceed" with the SIRP. Mr. Harwell's comment raises a good point--the proposed sentence as constructed would provide for the commission to proceed with the SIRP when Title 16 does not apply. The commission will adopt the proposed amendment for the commission to abate an inspection request if there is pending litigation between the parties until the commission learns of an order dismissing or abating the litigation. Rather the commission will proceed with any eligible request for an inspection unless the parties are ordered to abate or withdrawal the request.

All comments regarding the section, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The amendment is adopted under §408.001 of the Property Code which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code Chapter 426 which provides for

the implementation of the SIRP; and Property Code Chapter 27 which includes statutory requirements that affect users of the SIRP. The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code Chapters 408 and 426; Title 4, Property Code Chapter 27 and House Bill 730, 78th Legislature, Regular Session.

Cross Reference to Statutes: Title 16, Property Code Chapters 408 and 426, and Title 4, Property Code Chapter 27. No other statutes, articles, or codes are affected by the adoption.

§313.7. *Notice of the Request.*

(a) The requestor shall send a copy of the request and copies of all information submitted to the commission along with the request, by certified mail, return receipt requested, to all other interested parties to the dispute.

(b) A copy of the request and the submitted information mailed to other interested parties under subsection (a) of this section must also be mailed to counsel for any interested party represented by counsel, if the identity of counsel is known to the requestor.

(c) An interested party who receives notice that a request has been submitted to the commission and who has information pertaining to the determination of eligibility under §313.9 of this chapter shall submit that information to the commission and provide a copy of the information to the requestor within ten days of receiving a copy of the notice of the request.

(d) A homeowner is required to request a SIRP prior to initiating an action for damages or other relief arising from an alleged construction defect.

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 July 24, 2006.

TRD-200603879

Susan K. Durso

General Counsel

Texas Residential Construction Commission

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Proposal publication date: March 10, 2006

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



10 TAC §§313.11, 313.17, 313.19, 313.20

The Texas Residential Construction Commission adopts amendments to §§313.11, 313.17, 313.19 and 313.20, related to the state-sponsored inspection and dispute resolution process, with changes to the proposed text, as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1558). Changes made to the sections were in response to comments received, to correct errors and for clarification purposes.

The amendments clarify the procedures for participation in the state-sponsored inspection and dispute resolution process.

Section 313.11 incorporates language previously contained in §313.12 which the commission intends to repeal upon the effective date of these amendments and provides a description of the process by which a qualified third-party inspector is first identified by the commission, the strike period that follows and the subsequent notice to the third-party inspector of the appointment. The rule describes the third-party inspector's obligation to notify the

commission of any potential conflict of interest after the commission informs the inspector of the assignment. The rule also explains that during the strike period the parties are not to initiate contact with the third-party inspector. Section 313.17 describes the commission's expectations regarding the third-party inspector's duties to complete the report, revise the report or re-inspect an alleged defect on remand. Section 313.19 provides for a reasonable extension of time to appeal a third-party inspector report. Section 313.20 explains that information that is not provided to a third-party inspector for inspection prior to writing the report will not be provided to or considered by the appeals panel and clarifies the appeal process and the obligations of the appeal panel regarding the appeal and the third-party inspector regarding any matter remanded to him after an appeal.

Gregory Harwell of Gardere, Wynne, & Sewell, LLP, submitted written comments on the proposed amendments via facsimile transmission on March 27, 2006.

Mr. Harwell commented that §313.11(c) should be amended to include language relating to the identity of the third-party inspector. The commission accepts the suggested modification, which has been incorporated into the rule.

Mr. Harwell also commented that §313.11(d) should be amended to delete language relating to a conflict of interest that could not have been reasonably discovered based on the rationale that parties should not be compelled to search out conflict of interest issues in advance. However, if the rule were to be revised as suggested, then a party who failed to timely object to the identified third-party inspector but who discovers information after the expiration of the strike period, that if known, would have been material to the party's decision whether to assert a strike, will have no opportunity to do so. The current statutory timetable for the issuing a report on a SIRP request on workmanship and materials issues is 15 days. Accordingly, the strike period is limited to two business days. The short strike period makes a search for potential conflicts of interest very difficult but does allow parties to note any objection that arises simply from knowing the identity of the assigned inspector. This is one of the reasons the commission has imposed on the third-party inspector the obligation to inform the commission of any conflicts of interest that the third-party inspector has determined make him unable to perform the inspection without bias for or against either party to the dispute. Once the third-party inspector has received notice of the assignment, with the identity of the parties and the address of the residence in question, the third-party inspector should be able to determine whether he will be able to perform his duties without bias. The commission finds that the rule as proposed offers a limited opportunity for a party to assert an objection for cause after expiration of the strike period, without allowing those who are simply dilatory in asserting their objections another bite at the apple. Therefore, the commission declines to modify the rule as suggested by Mr. Harwell.

Mr. Harwell commented that §313.11(f) should be amended to substitute the word "notify" for "notice." The commission agrees that Mr. Harwell's suggested word choice is better and has incorporated the change into the rule.

Mr. Harwell commented that §313.11(g) and §313.11(g)(1) should be amended to refer to "conflicts" as "potential conflicts." The commission declines to accept the suggested modifications to the rule because it is incumbent upon the third-party inspector to determine if an actual conflict exists. The determination of a conflict rests solely with the third-party inspector who must

report them as required by rule. Third-Party inspectors are required to take commission training prior to assignment of a SIRP. The training includes information on ethics and maintaining the integrity of the SIRP through avoiding the appearance of impropriety. The rule as written puts the onus on the third-party inspector to determine whether he can perform the inspection without bias for or against either party. If the third-party inspector cannot perform the inspection without bias, then he must notify the commission and decline the assignment. However, Mr. Harwell's comment raises an issue that suggests the section can be improved upon by making clear what the commission believes is a conflict of interest for a third-party inspector, to wit: the inability to perform the inspection without bias for or against either party. Accordingly, the section has been modified for clarity.

Mr. Harwell offered language revisions for §313.11(g)(2) that the commission has determined are non-substantive language changes. The commission declines the suggested modifications because the proffered language directs the party to "proceed," but does not provide further instruction on the procedure. One of the reasons behind the commission's decision to propose amendments to the SIRP rules is that the procedures are not clear to many homeowners and builders who are not represented by legal counsel. The proposed language requires that the process "begin, again," which the commission finds sufficiently clear to explain that the steps enumerated in the section will be followed, again, if necessary. Throughout Mr. Harwell's comments, he makes good suggestions for eliminating redundancies. However, the commission finds that many of its stakeholders need more guidance rather than less in the rule language; thus, while the commission appreciates the thoughtfulness of Mr. Harwell's comments, many have not been accepted even if the rule language is repetitive.

Mr. Harwell commented that §313.17 and §313.19 should be amended to insert a capital letter in references to a Third-Party Inspector. The commission has revised all the section subtitles that use the term Third-Party Inspector so that the capitalization is uniform.

Mr. Harwell commented that the subtitle to §313.19 should be amended to substitute the word "deadline" for "time." The commission finds that the suggestion does not offer a substantive change to the rule and declines to accept the suggested modification.

Mr. Harwell suggested edits and deletions to §313.20(d) relating to the availability of information to the third-party inspector. The commission accepts most of Mr. Harwell's recommended changes, which improve readability. However, Mr. Harwell suggested removing the language stating that information submitted with an appeal that had not been provided to the inspector for consideration in writing his report would not be provided to the appeal panel. The commission does not give the appeal panel information submitted by a party with its appeal, if the information was not available to the third-party inspector at the time he wrote his report. This policy avoids the possibility that new information may affect the panel's review. Therefore, the commission declines to accept that suggestion.

All comments regarding these sections, including any not specifically referenced herein, were fully considered by the commission. The commission has made other minor modifications to the proposed rule text for the purpose of clarifying its intent and improving style and readability.

The amendments are adopted under §408.001 of the Property Code which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code; Property Code Chapter 426 which provides for the implementation of the SIRP; and Property Code Chapter 27 which includes statutory requirements that affect users of the SIRP. The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code Chapters 408, 426, and Property Code Chapter 27.

Cross Reference to Statutes: Title 16, Property Code Chapters 408 and 426, and Property Code Chapter 27. No other statutes, articles, or codes are affected by the adoption.

§313.11. Appointment of Third-Party Inspector.

(a) No later than fifteen days after the commission has determined that the request to initiate a SIRP is complete and that the dispute is eligible for the SIRP, the commission shall identify a third-party inspector for assignment to conduct an inspection and shall notify the requestor and respondent of the identity of the third-party inspector in writing.

(1) Written notification under this subsection will be provided by the most expedient and effective means that is available to both parties, including facsimile or electronic transmission.

(2) The commission, in its sole discretion, shall determine the most expedient and effective means available to both parties for transmission of the written notice of the appointment based upon the contact information provided by the parties.

(b) The commission shall identify a qualified third-party inspector from the list of registered third-party inspectors maintained by the commission. The inspector identified shall be the next available inspector on the list of qualified inspectors in the affected home's geographic region.

(c) Each party shall have one opportunity to object to the third-party inspector identified, with or without cause. The objection must be submitted to the commission in writing, by mail, facsimile or electronic transmission within two business days of receipt of notice of the identity of the third-party inspector.

(d) Failure to timely notify the commission of a party's objection to the notice of third-party inspector's identity waives the party's right to object.

(e) If the commission does not receive a timely written objection to the third-party inspector notice, the commission shall notify the third-party inspector of the SIRP assignment and provide the inspector with the names of the interested parties and their counsel, if any, and a copy of the SIRP request and other information provided by the parties, if it relates to the inspection request.

(f) After receipt of the assignment notice under subsection (e) of this section, the third-party inspector shall advise the commission of a conflict of interest that prevents him from performing the inspection without bias for or against either party to the dispute or any other reason that the third-party inspector is unable to accept the assignment. If the third-party inspector advises the commission of a conflict of interest that prevents him from accepting the assignment, the inspector will return the material provided to the commission.

(g) If the third-party inspector assigned is unable to accept the assignment or a party objects timely to the third-party inspector identified, the commission shall identify another qualified third-party inspector and the process for assignment of a third-party inspector shall begin, again, as provided in this subsection.

(h) If a third-party inspector declines an assignment without an explanation that is satisfactory to the Executive Director on more than three occasions, the commission may consider that information when determining whether to continue offering assignments to the inspector and whether to renew the third-party inspector's registration under Chapter 303 of this title.

(i) Until the commission has finally assigned a third-party inspector and the inspector has contacted the parties to determine the date of the inspection, the parties shall not initiate contact with the third-party inspector.

§313.17. Issues Remanded to the Third-Party Inspector.

(a) If the appellate panel remands an issue to the third-party inspector under §313.20 of this chapter, the third-party inspector shall respond to the matter remanded as directed by the appellate panel and file the third-party inspector's report on the remanded matter(s) with the commission within ten business days of receipt of the appellate report.

(b) If a third-party inspector fails to timely file the report on remanded matters, the commission may consider that failure in making a determination whether the third-party inspector has fulfilled his duties and is thus eligible for payment and in making a determination as to whether to assign the third-party inspector to future SIRP requests or to renew the third-party inspector's registration under Chapter 303 of this title.

(c) Within three business days of receipt of the third-party inspector's report filed pursuant to subsection (a) of this section, the Executive Director shall issue the report to the parties.

(d) A report issued on remanded matters is subject to appeal pursuant to the provisions of §313.19 and §313.20 of this chapter.

§313.19. Time to Appeal the Third-Party Inspector's Report.

(a) A homeowner or builder may appeal the third-party inspector's report and recommendation(s) on or before the 15th day after the date of the commission's letter issuing the report to the parties.

(b) A party to the dispute may request in writing an extension of time to file a notice of appeal of the third-party inspector's report in writing.

(1) Upon a showing of good cause for an extension of time to file a notice of appeal, the Executive Director may extend the deadline for a reasonable time under the circumstances.

(2) The Executive Director's determination of good cause to grant or deny an extension of time under this subsection is a final agency decision and is not subject to further administrative appeal.

§313.20. Appeal Process.

(a) A homeowner or builder may appeal the standards applied to support findings or the reasonableness of the repair recommendations in a third-party inspector's report.

(b) Upon receipt of an appeal from either party, the Executive Director shall refer the appeal to a three-person panel of state inspectors. If the request includes a structural matter, one of the panel members shall be a licensed professional engineer.

(c) The appellate panel shall conduct a review of the third-party inspector's report and the written documents and tangible things considered by the third-party inspector in making the findings and recommendations, including but not limited to materials submitted with the request, any information or data gathered by the third-party inspector and documentation or tangible things provided to the third-party inspector by one of the parties during the SIRP and prior to the issuance of the report.

(d) Information submitted with the appeal by either party that was not provided to the third-party inspector for his consideration when preparing his report will not be provided to or considered by the appellate panel.

(e) The appellate panel shall make written findings of fact and shall recommend approval, rejection or modifications to the findings and recommendations of the third-party inspector or shall recommend that the matter be remanded to the third-party inspector for further action as directed by the appellate panel.

(f) The appellate panel shall file a written report of its findings and recommendations with the Executive Director not later than the 25th day after the notice of appeal is filed with the commission.

(g) The Executive Director shall transmit the appellate panel's rulings to the parties to the appeal not later than the fifth day after receipt of the appellate panel's rulings.

(h) The Executive Director shall return to the appointed third-party inspector for a response any issue remanded by the appellate panel.

(i) A ruling by an appellate panel under this section is a final agency decision not subject to further administrative appeal.

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 July 24, 2006.

TRD-200603880
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Effective date: August 13, 2006
Proposal publication date: March 10, 2006
For further information, please call: (512) 463-2886



10 TAC §313.12

The Texas Residential Construction Commission adopts the repeal of §313.12, relating to State Sponsored Inspection and Dispute Resolution Process and the parties right to strike a third-party inspector assigned. The repeal is adopted without changes to the proposal as published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1564).

The repealed rule is incorporated into amendments to §313.11, which were adopted by order of the commission on July 19, 2006.

No comments were received regarding the proposal.

The repeal is adopted under Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §428.003.

Cross Reference to Statutes: Title 16, Property Code §408.001 and §428.003.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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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) adopts an amendment to §61.1081, concerning the classroom supply reimbursement program. The amendment is adopted without changes to the proposed text as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4555) and will not be republished. Section 61.1081 establishes a program whereby classroom teachers may be reimbursed for personal expenditures made for classroom supplies. The adopted amendment updates 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 adopted amendment updates several provisions of the program. Reimbursement of campus library media specialists is added in subsections (a) - (e) whenever reimbursement to teachers is referenced. Senate Bill 1, General Appropriations Act, Rider 60, 79th Texas Legislature, 2005, authorizes the TEA to include "campus library media specialist" for the reimbursement of personal expenditures made for classroom supplies. A revi-

sion to reference district procedure rather than district policy is made in subsections (a)(4) and (b)(5). Additional specific updates include the following.

Subsection (a) regarding the application process is 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 is 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 also clarifies 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.

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

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

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 adopted revision included in subsection (b) addresses this concern.

Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 61, School Districts, Subchapter HH, Commissioner's Rules Concerning Classroom Supply Reimbursement Program, §61.1081, Teacher Supply Reimbursement Grant Program.

Comment. Numerous comments were received from librarians supporting the addition of campus library media specialists, including endorsement by the Texas Library Association.

Agency Response. The agency agrees and has maintained language as filed as proposed.

Comment. A school district volunteer who had also worked in two school districts in Texas expressed hesitation regarding the inclusion of campus library media specialists. The individual stated that less is known if a similar amount of money is spent by librarians and asked if there are statistics to support their inclusion in the rule.

Agency Response. The agency disagrees and has maintained language as filed as proposed. The agency heard from many campus library media specialists indicating that they spend a similar amount as teachers on supplies. They indicated that as educators they supported the inclusion of campus library media specialists in the rule.

Comment. A school librarian inquired whether these funds could be used to pay registration fees for staff development.

Agency Response. Reimbursement for staff development is outside the purview of this source of funds. These funds are to be used only for reimbursement of expenses related to classroom

supplies and materials. No changes were made to the amendment as filed as proposed.

Comment. A library consultant and an individual provided comments regarding very specific use and suggested disallowable use of funds.

Agency Response. The agency disagrees and has maintained language as filed as proposed. Senate Bill 1, General Appropriations Act, Rider 60, 79th Texas Legislature, 2005, states that funds allocated are intended for the direct benefit of students and use of the funds is solely the discretion of the classroom teacher or campus library media specialist. The commissioner's rule requires, as part of the application process, that districts submit a procedure that would ensure each teacher and campus library media specialist meets the requirement that an expenditure will benefit students.

The amendment is adopted 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).

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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Cristina De La Fuente-Valadez

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CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) adopts amendments to §§74.24, 74.28, 74.32, 74.43, 74.44, and 74.52 - 74.54 and new §74.34, concerning curriculum requirements. The amendments to §§74.24, 74.43, 74.44, and 74.52 - 74.54 and new §74.34 are adopted without changes to the proposed text as published in the May 19, 2006, issue of the *Texas Register* (31 TexReg 4142) and will not be republished. The amendments to §74.28 and §74.32 are adopted with changes. The rules outline graduation requirements and include other provisions that relate to curriculum requirements.

19 TAC Chapter 74 is organized as follows: Subchapter A, Required Curriculum; Subchapter B, Graduation Requirements; Subchapter C, Other Provisions; Subchapter D, Graduation Requirements, Beginning with School Year 2001 - 2002; Sub-

chapter E, Graduation Requirements, Beginning with School Year 2004 - 2005; and Subchapter F, Graduation Requirements, Beginning with School Year 2007 - 2008.

The adopted amendments incorporate changes in 19 TAC Chapter 74, Subchapters C - E, to reflect legislation passed in 2005 and technical corrections, as follows.

During the regular 2005 legislative session, the 79th Texas Legislature passed Senate Bill (SB) 42, which allows the SBOE to amend rules to include a physical activity requirement for students in Grades 6-8. The adopted amendment to 19 TAC §74.32, Physical Activity Programs for Elementary School Students (which is re-titled Physical Activity Programs for Students in Kindergarten-Grade 8), in Subchapter C addresses this legislation. Section 74.32 is modified to add language requiring a local school board to establish a policy that determines the extent to which students enrolled in middle and junior high school settings are allowed to meet physical activity requirements throughout the school year. The adopted SBOE rule addresses how the physical activity requirement can be met and includes permissible exemptions. Section 74.32 was modified subsequent to being published as proposed. At adoption, the SBOE added language in subsection (b) to clarify that an open-enrollment charter school board must also adhere to the new requirements.

The 79th Texas Legislature also passed House Bill (HB) 492 during the 2005 regular legislative session. HB 492 requires the SBOE to adopt rules relating to personal finance education. Adopted new 19 TAC §74.34, Additional Requirements for Economics Classes, Grades 9-12, in Subchapter C is added to satisfy this requirement. The adopted new rule addresses the requirement for a school district and an open-enrollment charter school to incorporate instruction in personal financial literacy into any course meeting a requirement for an economics credit, using materials approved by the SBOE. The new rule establishes the minimum elements that must be included in personal financial literacy instruction. In consideration of the fact that calendars and curriculum may already be established for the upcoming school year, new §74.34 includes a provision for school districts to request an extension from the commissioner of education in complying with these new requirements for the 2006 - 2007 school year.

Also in Subchapter C, the adopted amendment in 19 TAC §74.28, Students with Dyslexia and Related Disorders, changes language in subsection (h) from "may" to "shall," thereby requiring school districts to provide education programs for parents or guardians of students with dyslexia and related disorders. Section 74.28 was modified subsequent to being published as proposed. At adoption, the SBOE changed language in subsection (c) from "may" to "shall" to clarify that school districts must either purchase a reading program or develop its own reading program for students with dyslexia and related orders. The programs must be characterized by the descriptors found in the SBOE-approved "Procedures Concerning Dyslexia and Related Disorders."

A technical correction in Subchapter C adds language to 19 TAC §74.24, Credit by Examination, to provide clarification in subsection (a) that there are two uses for credit by examination: (1) acceleration for each primary school grade level and (2) course credit for secondary school academic subjects. This amendment mirrors language in the Texas Education Code. Technical edits in subsection (b) further clarify that all three delineated requirements must be met for acceleration.

In Subchapters D - E, adopted technical corrections include clarifying the languages other than English requirement in subsection (b)(6) in 19 TAC §§74.43, 74.44, 74.53, and 74.54 to allow for students who are at higher proficiency levels to meet the graduation requirements by taking higher level language courses. Adopted technical corrections also replace the term "tech prep articulated" with the correct term "advanced technical credit" in subsection (d)(3) in 19 TAC §74.44 and §74.54 that describe advanced measures for the distinguished achievement program. Tech prep is a program of study, not a course. The program may include dual credit or advanced technical credit courses. This change makes the options clearer.

Other adopted amendments include minor technical edits in 19 TAC §§74.52(c), 74.53(c), and 74.54(c) in Subchapter E to correct the cross reference to elective courses. Adopted amendments in subsection (b)(10)(D) in 19 TAC §74.53 and §74.54 in Subchapter E that describe requirements to satisfy the technology applications credit for the recommended and distinguished achievement program delete redundant language regarding credit by examination. This change would permit districts to measure proficiency in the technology applications course in a variety of ways in addition to credit by examination. Districts may continue; however, to use this option.

The following comments were received regarding adoption of the proposed amendment to 19 TAC §74.32.

Comment: An individual commented that middle school students should participate in physical education every day, emphasizing the need to make daily physical activity a priority.

Response: The SBOE disagreed and took action to adopt the amendment as proposed with the addition of language to clarify that open-enrollment charter school boards must also adhere to the adopted requirements. School districts and open-enrollment charter schools should be permitted to determine the extent to which students meet physical activity requirements in order to best meet the needs of their student populations.

Comment: An individual commented on the importance of physical education to the lives, minds, and well-being of students. The individual noted benefits of physical education and recommended that it should be required at least two times per week in elementary, middle, and junior high schools. The individual stated that local officials should be allowed to determine how other programming needs can be met around the goal for physically fit children.

Response: The SBOE agreed that local officials should determine local programming needs. The SBOE took action to adopt the amendment as proposed with the addition of language to clarify that open-enrollment charter school boards must also adhere to the adopted requirements.

Comment: The Texas Association for School Nutrition (TASN) and the Texas Dietetic Association (TDA) expressed concern that the proposed amendment does not require local school districts to implement the specified physical activity program but only requires that districts adopt a policy whether they wish to implement one. The TASN and the TDA urged the SBOE to require that local districts adopt a program of regular physical activity for Texas school children in the middle and high school settings. The associations commented that the SBOE should provide flexibility in the implementation of the "mandate," out of due consideration of the difficulties such a new mandate will impose on some local school districts, but that the program should be one which is "required" and not merely permissive.

Response: The SBOE disagreed and took action to adopt the amendment as proposed with the addition of language to clarify that open-enrollment charter school boards must also adhere to the adopted requirements. School districts and open-enrollment charter schools should be permitted to determine the extent to which students meet physical activity requirements in order to best meet the needs of their student populations.

Comment: A parent commented that parents, schools, and communities need to work together to make sure that children learn how to live healthy, be physically active, and take care of themselves and noted that schools are a big part of the equation. The parent commented that all schools should have at least one semester of physical education each year during middle school. The parent expressed support for rule action to enact SB 42 as it was intended and to give middle school children more physical education and more physical activity. The parent also expressed appreciation to the SBOE for the elementary school physical activity requirements already in rule.

Response: The SBOE agreed with the importance of physically fit children but disagreed with including specific time requirements for physical activity programs for middle and junior high school settings. The SBOE took action to adopt the amendment as proposed with the addition of language to clarify that open-enrollment charter school boards must also adhere to the adopted requirements.

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §§74.24, 74.28, 74.32, 74.34

The amendments and new rule are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; §28.002(l), which authorizes the SBOE to adopt rules to include a physical activity requirement for students in Grades 6-8; §28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and §38.003, which requires the SBOE to adopt rules relating to screening and treatment for dyslexia and related disorders.

The amendments and new rule implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, 28.025, and 38.003.

§74.28. *Students with Dyslexia and Related Disorders.*

(a) The board of trustees of a school district must ensure that procedures for identifying a student with dyslexia or a related disorder and for providing appropriate instructional services to the student are implemented in the district. These procedures will be monitored by the Texas Education Agency with on-site visits conducted as appropriate.

(b) A school district's procedures must be implemented according to the State Board of Education (SBOE) approved strategies for screening, and techniques for treating, dyslexia and related disorders. The strategies and techniques are described in "Procedures Concerning Dyslexia and Related Disorders," a set of flexible guidelines for local districts that may be modified by SBOE only with broad-based dialogue that includes input from educators and professionals in the field of reading and dyslexia and related disorders from across the state. Screening should only be done by individuals/professionals who are trained to assess students for dyslexia and related disorders.

(c) A school district shall purchase a reading program or develop its own reading program for students with dyslexia and related

disorders, as long as the program is characterized by the descriptors found in "Procedures Concerning Dyslexia and Related Disorders." Teachers who screen and treat these students must be trained in instructional strategies which utilize individualized, intensive, multisensory, phonetic methods and a variety of writing and spelling components described in the "Procedures Concerning Dyslexia and Related Disorders" and in the professional development activities specified by each district and/or campus planning and decision making committee.

(d) Before an identification or assessment procedure is used selectively with an individual student, the school district must notify the student's parent or guardian or another person standing in parental relation to the student.

(e) Parents/guardians of students eligible under the Rehabilitation Act of 1973, §504, must be informed of all services and options available to the student under that federal statute.

(f) Each school must provide each identified student access at his or her campus to the services of a teacher trained in dyslexia and related disorders. The school district may, with the approval of each student's parents or guardians, offer additional services at a centralized location. Such centralized services shall not preclude each student from receiving services at his or her campus.

(g) Because early intervention is critical, a program for early identification, intervention, and support for students with dyslexia and related disorders must be available in each district as outlined in the "Procedures Concerning Dyslexia and Related Disorders."

(h) Each school district shall provide a parent education program for parents/guardians of students with dyslexia and related disorders. This program should include: awareness of characteristics of dyslexia and related disorders; information on testing and diagnosis of dyslexia; information on effective strategies for teaching dyslexic students; and awareness of information on modification, especially modifications allowed on standardized testing.

§74.32. *Physical Activity Programs for Students in Kindergarten-Grade 8.*

(a) In accordance with Texas Education Code, §28.002, all students enrolled in full-day kindergarten or Grades 1-6 in an elementary school setting are required to participate in physical activity for a minimum of either 30 minutes daily or 135 minutes weekly under the following conditions:

(1) participation must be in a Texas Essential Knowledge and Skills (TEKS)-based physical education class or a TEKS-based structured activity; and

(2) each school district shall establish procedures for providing the required physical activity that must consider the health-related education needs of the student and the recommendations of the local health advisory council.

(b) A school district board of trustees or open-enrollment charter school board shall adopt a policy that determines the extent to which students enrolled in middle and junior high school settings are allowed to meet physical activity requirements throughout the school year, under Texas Education Code, §28.002(1). School districts may permit an exemption for students participating in private or commercially-sponsored physical activities including only those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Students certified to participate at this level may not be dismissed from any part of the regular school day. Under Texas Education Code, §28.002, school districts must provide for an exemption for:

(1) students identified in the categories specified in paragraphs (2) and (3) under §74.31 of this title (relating to Health Classifications for Physical Education); or

(2) students participating in a TEKS-based physical education class or a TEKS-based structured activity.

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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Director, Policy Coordination

Texas Education Agency

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SUBCHAPTER D. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2001 - 2002

19 TAC §74.43, §74.44

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; §28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and §28.025(a), which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, and 28.025(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.

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SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004 - 2005

19 TAC §§74.52 - 74.54

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule designate subjects constituting a well-balanced curriculum and to require each district to provide instruction in the essential knowledge and skills at appropriate grade levels; §28.023, which authorizes the SBOE to establish guidelines for examinations for acceleration for primary school grade levels and secondary school academic subjects; and §28.025(a), which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, 28.023, and 28.025(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 July 19, 2006.

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CHAPTER 109. BUDGETING, ACCOUNTING, AND AUDITING

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

19 TAC §§109.1002 - 109.1005

The Texas Education Agency (TEA) adopts amendments to §§109.1002 - 109.1005, concerning the financial accountability rating system. The amendment to §109.1002 is adopted with changes to the proposed text as published in the April 21, 2006, issue of the *Texas Register* (31 TexReg 3345). The amendments to §§109.1003 - 109.1005 are adopted without changes to the proposed text and will not be republished. The sections establish provisions relating to the financial accountability rating system, including the assignment of ratings, types of ratings, criteria, and reporting. The sections also include the financial accountability rating form entitled "School FIRST - Rating Worksheet" that explains the indicators that the TEA will analyze to assign school district financial accountability ratings. The adopted amendments update the rating system by specifying new provisions that would be implemented beginning with fiscal year 2006-2007, including the addition and enhancement of indicators, along with a new worksheet and calculations; the incorporation of the Governor's Executive Order regarding the 65% instructional expenditure standard; the establishment of a point system for rating districts; and the delineation of certain disclosures that must be included in districts' annual financial management reports.

Senate Bill (SB) 875, 76th Texas Legislature, 1999, added TEC, §39.201, requiring the commissioner of education in consulta-

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

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

The rating worksheet, along with accompanying calculation instructions, was adopted in 19 TAC §109.1002 to be effective October 20, 2002, and later amended to be effective May 7, 2003. The 2003 amendment to 19 TAC §109.1002 included minor technical edits that crosswalked exhibit numbers referenced in the "School FIRST - Rating Worksheet" according to the standard for the Annual Financial and Compliance Report filed by school districts for fiscal year 2002-2003. This rating worksheet, dated May 2003, establishes the indicators applicable to school district financial accountability ratings assigned for fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006.

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

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

The adopted amendments update the rating system by specifying new provisions that will be implemented beginning with fiscal year 2006-2007, including the addition and enhancement of indicators, along with a new worksheet and calculations; the establishment of a point system for rating districts; the incorporation of

the 65% instructional expenditure standard; and the delineation of certain disclosures that must be included in districts' annual financial management reports. The following specify the adopted amendments to 19 TAC Chapter 109, Subchapter AA.

The adopted amendment to 19 TAC §109.1002, Financial Accountability Ratings, updates the rating system by adding one new critical indicator, adding two noncritical indicators, and enhancing other existing indicators. The revised rating system will be applicable to school district financial accountability ratings assigned beginning with fiscal year 2006-2007 (the ratings that will be issued in summer 2008).

The adopted amendment to 19 TAC §109.1002 includes the following changes from current text. Any additional changes made since the proposal was published are also described.

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

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

New subsection (c) was added to establish the applicable fiscal years to which the new rating worksheet, effective August 2006, applies. The rule text as proposed reflected a July 2006 effective date. The adopted rule text was updated to reflect August 2006. Reference to the indicator related to the 65% expenditure standard was updated. The new worksheet and accompanying calculation instructions were added as new Figure: 19 TAC §109.1002(c).

Subsection (d) was renumbered accordingly.

New subsection (e) was added to specify the procedures for submitting a request for the TEA to review a district's preliminary rating. This new subsection also includes provisions in paragraph (2)(D) that allow school districts that do not meet the 65% expenditure standard to post their district's check register (excluding their payroll register) and an aggregate total payroll expenditure to the district's website and receive full credit. The adopted language in paragraph (2)(D) was updated to reflect the appropriate point award and indicator number (3 points for Indicator 13). In addition, new paragraph (2)(E) was added to allow for an appeal to Indicators 19 and 20 by a district that is the fiscal agent for a shared service arrangement to reflect current policy.

Differences between the rating worksheet published as proposed and the adopted August 2006 version are described below. Specifically, one indicator was moved, three indicators were deleted, one indicator was added, and three indicators were modified, as follows.

As proposed, two new critical indicators would have been added. However, in response to public comment, only one new critical indicator was added: Indicator 2 relating to total unrestricted net asset balance in governmental activities. In response to public comment, this critical indicator that requires the district to have an unrestricted net asset balance greater than zero was modified to include an exception for fast-growth districts. The critical academic indicator (proposed Indicator 5) that required the district to exceed the academically unacceptable rating was moved to a noncritical indicator (adopted Indicator 7) but districts must pass this indicator to receive a superior achievement rating.

As proposed, three indicators were to be identified to address fiscal efficiencies and academic performance. In response to public comment, proposed Indicators 8-10, addressing the operating

expenditures per weighted average daily attendance (WADA) and requiring the district to have a recognized or exemplary rating, were eliminated.

The title of the category for fiscal responsibility was changed to include academic performance, reflecting the move of proposed Indicator 5 to adopted Indicator 7. Subsequent indicators were renumbered.

As proposed, a budgeting indicator, Indicator 16, would have increased the standard percentage related to operating expenditures for instruction from 54% to 65% over a three-year period and changed the calculation. This is the indicator that incorporates the Governor's Executive Order. As proposed, the calculation definition for this indicator included the National Center for Education Statistics (NCES) definition and coding for librarians to count toward the 65% standard.

At adoption, this indicator was renumbered to Indicator 13. In response to public comment, the agency modified Indicator 13 to dedicate the indicator solely to the NCES definition, which includes only Functions 11, 36, 93, and 95. The point value for Indicator 13 was dropped from 5 to 3 points but will still be phased in over three years.

At adoption, the agency also added another indicator (Indicator 14) relating to operating expenditures exceeding 65% for instructional expenditures including the NCES definition plus librarians, counselors, and nurses. Indicator 14 includes Functions 11, 12, 31, 33, 36, 93, and 95. This indicator is worth 3 points and will not be phased in over three years.

At adoption, the points awarded for a cash management indicator, renumbered to Indicator 24, was reduced to 4 points in order to accommodate the realignment of total points awarded for indicators. Indicator 24 relates to per-student investment earnings, excluding debt service and capital projects funds.

As part of the School FIRST rating worksheet, information related to the determination of financial accountability ratings and the applicable number of points was modified since published as proposed. Also, the date of the form was updated from July 2006 to August 2006 in keeping with the effective date of the rule changes.

The adopted amendment to 19 TAC §109.1003, Types of Financial Accountability Ratings, modified text to incorporate minor technical edits to cross-references. The existing types of ratings continue to apply during fiscal year 2006-2007, in accordance with the procedures, scores, and classifications established in 19 TAC §109.1002. No changes were made since published as proposed.

The adopted amendment to 19 TAC §109.1004, Criteria for Financial Accountability Ratings, clarified that changes to criteria for ratings will be communicated to school districts in accordance with the applicable effective dates. No changes were made since published as proposed.

The adopted amendment to 19 TAC §109.1005, Reporting, added requirements that must be presented in the annual financial management report, including a copy of the superintendent's current employment contract, transactions involving the superintendent and board members, and gifts that the superintendent and board members receive from vendors. No changes were made since published as proposed.

A public hearing on the proposed amendments to 19 TAC Chapter 109, Subchapter AA, was held on May 5, 2006. Following

is a summary of public comments received, including comments received at the public hearing, on the proposed amendments to 19 TAC Chapter 109, Subchapter AA, and corresponding agency responses.

Indicator 16 - 65% Instructional Expenditure Standard

More than 560 individuals, including counselors, nurses, librarians, educators, school officials, legislators, government officials, State Board of Education members, regional education service centers, organizations, and interested citizens submitted comments regarding the proposed 65% standard.

Comment. Numerous individuals commented that librarians, counselors, and nurses should be included in the 65% calculation since they are a vital part in educating the children and they are all educators.

Response. The agency agrees and added a new indicator (Indicator 14) to include Functions 12, 31, and 33 (librarians, counselors, and nurses) in addition to functions defined by the National Center for Education Statistics (NCES). The agency modified proposed Indicator 16 (adopted as Indicator 13) to dedicate an indicator solely to the NCES definition. The agency believes these measures are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. Some individuals suggested that there is no basis for this indicator and it should be deleted. A couple of individuals stated that the amount spent on instruction should be a local decision and not set by the state. Several comments were made that the 65% instructional standard should be eliminated and that one size does not fit all.

Response. The agency disagrees with eliminating the indicator. Districts should be motivated to spend more on direct instructional programs with the expectation of raising student performance. The agency believes these measures are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. An official from the Northside Independent School District (ISD) stated that all functions should be included in the calculation since they all contribute to the education of the children. Several school officials stated that the rule should exclude special revenue funds since some of these funds dictate how the money should be spent and it will hurt districts trying to meet the 65% instructional expenditure standard. Several school officials stated that the food services, transportation, tax appraisal and collection fees, and utilities should be excluded from the denominator since these are uncontrollable costs to the district.

Response. The agency disagrees in part with the comments. The agency does not collect some of the data that were requested to be excluded from the calculation. To get this data would require districts to provide this information or add new codes to the PEIMS data standards. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. Several individuals commented that the 65% standard would split campuses and go against the schools' efforts to make the campus one team.

Response. The agency disagrees. Districts should be motivated to spend more on direct instructional programs with the expectation of raising student performance. The agency believes

these measures are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. Several individuals commented that sports and athletics should not be part of the 65% expenditure calculation.

Response. The agency disagrees. The 65% expenditure calculation is defined by the NCES definition. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. A state official and several individuals commented that the 65% instructional expenditure standard was developed to produce political gains and there is no proof that shifting the money would improve school performance.

Response. The agency disagrees. Districts should be motivated to spend more on direct instructional programs with the expectation of raising student performance. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. A representative from Americans for Prosperity and two individuals stated that the indicator should not be modified from the NCES definition; otherwise, it would not meet the standardized definition. The representative and another individual stated that the indicator did not carry enough weight and that credit should not be given for publishing the district's check register.

Response. The agency agrees in part. Districts should be motivated to spend more on direct instructional programs with the expectation of raising student performance. The agency modified Indicator 16 (adopted as Indicator 13) regarding the 65% instructional expenditure to dedicate an indicator solely to the NCES definition and added another indicator (Indicator 14) to include the NCES definition plus Functions 12, 31, and 33 (librarians, counselors, and nurses). The agency believes these measures are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education. The agency disagrees with the comment that a district should not be given credit for publishing its check register and maintained in rule that option for districts.

Comment. Several school districts commented that teacher training and curriculum development should be added to the 65% instructional expenditure calculation.

Response. The agency disagrees. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. A school official from New Braunfels ISD stated that the indicator should be adjusted to reduce the total operating expenditures in the denominator by the amount of revenues generated through grants and fees for the support of the community programs.

Response. The agency disagrees. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. A Region XIII Education Service Center representative proposed that the calculation for Indicator 16 be modified to allow school districts to exclude from the calculation any expen-

diture relating to a cooperative arrangement, including an inter-local agreement that is designed to reduce administrative costs.

Response. The agency disagrees. The agency does not collect some of the data that were requested be excluded from the calculation. To get this data would require districts to provide this information or add new codes to the PEIMS data standards. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. One individual stated that the rule should not be phased in over three years and should be effective immediately.

Response. The agency agrees in part. The agency modified Indicator 16 (adopted as Indicator 13) regarding the 65% instructional expenditure to dedicate an indicator solely to the NCES definition. A three-year, phase-in period for such a measure is reasonable. The agency added another indicator (Indicator 14) to include the NCES definition plus Functions 12, 31, and 33 (librarians, counselors, and nurses). This measure will be effective immediately.

Comment. A school district official from Chapel Hill ISD stated that there is no research that has confirmed a correlation between dollars, or percentage of dollars, to academic success. The official stated that this percentage indicator is unfair to small districts, poor districts, districts that transport students over large areas, and districts that have a high number of students eligible for free and reduced lunches.

Response. The agency disagrees. Districts should be motivated to spend more on direct instructional programs with the expectation of raising student performance. The agency believes the measures adopted by this rule action are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Indicator 2 - Unreserved Net Assets

Comment. Officials from Frisco ISD, Denton ISD, and Northside ISD and representatives from Moak, Casey & Associates and SWS Group commented that this indicator does not recognize the needs of fast growing districts that issue bonds in the building of schools for materials and needs that cannot be capitalized.

Response. The agency agrees and modified this indicator to give an exception to districts that have a 10% increase in students over the past five years.

Indicator 4 - Timely Audit Report

Comment. A representative from Moak, Casey & Associates commented that this indicator should not be a critical indicator and a district should not be subject to sanctions because it failed to submit a timely audit report.

Response. The agency disagrees. The receipt of the district's annual audit report in a timely manner is critical for the agency to produce reports and is an indicator that the district does not have their financial books in order for the external auditor to complete their job.

Indicators 5 and 10 - Academic Accountability Ratings

Comment. School officials from Chapel Hill ISD, San Antonio ISD, Alief ISD, Austin ISD, Tyler ISD, Amarillo ISD, Brownsville ISD, Laredo ISD, and Northside ISD and representatives from Moak, Casey & Associates, Texas Association of Schools Boards (TASB) and Texas Association of School Business Officials (TASBO) commented that financial accountability ratings

and student academic ratings should not be linked together. They did not feel a district's financial rating should be lowered due to the district's academic rating. A comment was made that these indicators do not take into consideration the number of lower income students. An Austin ISD official felt that the lowering of a district's financial rating might result in a lowered bond rating, which, in turn, would require an additional financial burden to the taxpayers. Two individuals commented that the financial accountability ratings and the academic ratings should be linked.

Response. The agency disagrees in part with these comments. Fiscal management can and does have an effect on the district's academics. The management and distribution of the district's financial resources toward instruction can have an effect on the district's academic rating. The agency believes that if a district is not excelling at its core mission, its financial management practices may be a contributing factor. The agency eliminated proposed Indicator 10 regarding recognized and exemplary ratings and moved critical Indicator 5 to a non-critical indicator; however, the district must meet this indicator, adopted Indicator 7, to receive a superior achievement rating.

Indicators 8 and 9 - Operating Expenditures per WADA

Comment. A representative from Moak, Casey & Associates stated that these indicators do not measure fiscal efficiency, the state should not penalize districts for spending funds made available by the state and federal government, and the amounts used in these measures are out of date. A district official from Union Grove ISD pointed out that Texas as a whole spends less than the national average on education and these indicators will keep school districts from seeking or wanting more state or federal money. A representative from the TASBO voiced concern that these indicators do not sufficiently consider factors beyond the control of local school administrators and board members that increase the cost of education for certain school districts. They also stated that these indicators may cause unintended consequences if school officials perceive a disincentive to participate in certain state and federally funded grants and projects. In addition, the threshold amounts do not reflect that Texas public schools spend significantly less than the average per student cost reported by other states. Brownsville ISD and Laredo ISD officials stated that the proposed indicator penalizes school districts that are aggressive in supplementing their fiscal resources. School districts statewide apply for state and federal grants to enhance available resources from local property taxes and the Foundation School Program. The districts also commented that high poverty districts and districts with large populations of special needs students would incur the greatest negative impact by this indicator, and that a small school's adjustment should be used for this indicator. A Northside ISD official stated that establishing one benchmark for all Texas school districts is a very complex issue that should require consideration of factors such as demographics and special needs populations. An official of Vernon ISD voiced their concern regarding this indicator. An official from Joaquin ISD stated that Teacher Retirement System On-Behalf costs, supplemental compensation, and plant and maintenance operation costs should be excluded from the calculation. A Chapel Hill ISD official stated that the proposed limits were too low but was glad the point system would give them some points if they were not at the proposed limits.

Response. The agency disagrees in part with the comments. In demonstrating how much a district is spending on operating costs per WADA, proposed Indicators 8 and 9 would have pro-

vided a standardized measure in relation to other districts. However, in response to public comments, the agency eliminated both of these proposed indicators in the adopted rule but will revisit these indicators at a later time.

Indicator 11 - Tax Collection

Comment. A Union Grove ISD official stated they do not have control over protest made by taxpayers, and an adjustment for protest should be considered in the calculation. In addition, this indicator does not take into consideration the school districts that have a greater percentage of lower income taxpayers and have a harder time collecting the school taxes. A La Vega ISD official requested that the agency consider expanding the indicator to encompass a "best four out of five-years" average for tax collections rather than the three-year average proposed. Changing the indicator to allow for the exclusion of catastrophic events and other anomalies is wise. Brownsville ISD and Laredo ISD officials stated that an adjustment should be provided to districts that are located in an economically depressed area since the economic vitality of a community significantly affects a citizen's ability to pay taxes. School districts are already adversely impacted financially since the current Tier II funding formula penalizes districts for not maximizing their tax collections. This change creates a double jeopardy for conditions outside of the districts' control.

Response. The agency disagrees in part with these comments. The agency recognizes that districts do not have control over protest by taxpayers and that some years the districts may not collect all their taxes. That is why the proposal, and subsequent adoption, modified this indicator from the current indicator to use a three-year average instead of a yearly collection.

Indicator 13 - Debt Related Expenditures per Student

Comment. A representative from Moak, Casey & Associates stated the use of per student debt service expenditures as a measure of fiscal responsibility is not supported by research. The artificial distinction between districts with high and low-growth rates or property taxes collected per penny of tax effort does not provide an adequate basis for awarding points in the accountability system.

Response. The agency disagrees in part with these comments. The management of debt is an important part of the district's financial management. It is believed that high levels of indebtedness for districts that are not growing at significant rates can be indicative of potential financial stress.

Indicator 20 - Administrative Costs

Comment. An official from Joaquin ISD commented that the threshold caps for administrative cost need to be adjusted. An official from Moak, Casey & Associates stated that the administrative cost ratio is no longer sanctioned or required by state law and appears to measure the same thing as proposed Indicator 16 and they recommend deletion of this indicator.

Response. The agency disagrees. Although state law does not require it, it still is a valid indicator for addressing administrative cost.

Indicators 21 and 22 - Teacher and Staff Ratios

Comments. An official from Moak, Casey & Associates stated that with the addition of proposed Indicators 8, 9, and 16, the continued use of these staffing indicators without further research is inappropriate. These indicators should be suspended to permit additional research of appropriate staffing indicators in FIRST.

The official also stated that the staffing indicators should be set to consider only those personnel hired in the general fund and should exclude transportation and food service personnel. Brownsville ISD and Laredo ISD personnel stated that only staff funded in the general fund should be considered in this indicator since school districts that maximize their participation in federal grants are penalized. A Denton ISD official stated that this indicator is problematic for several reasons stating districts with large numbers of special needs students, especially those who are severely and profoundly handicapped requiring very small teacher/student ratios are evaluated the same as districts that do not have these enrollments. Districts with large numbers of economically disadvantaged and/or limited English proficient students use small teacher/student ratios as an effective strategy to close achievement gaps. The Denton ISD official also stated that this indicator works in opposition to proposed Indicator 16 and added that the use of a "one-size-fits-all" model ignores the true complexity and differences among school districts and the children they educate.

Response. The agency disagrees. The student-to-teacher/staff ratios can have a direct effect on the district's financial well-being. The agency continues to see districts with declining student enrollment that maintain the same number or increase staff despite the reduction in funding. The agency believes the ranges allowed relative to the size-based standards provide sufficient latitude for local choice while maintaining a measure of efficiency.

Financial Disclosure

Comment. A representative from the TASBO stated that requiring districts to disclose additional information in the financial management report provided to taxpayers at the public hearing for School FIRST is a duplication of the information required in House Bill 914 and will increase administrative costs.

Response. The agency disagrees. School FIRST requirements follow HB 914 regarding reporting of gifts and other disclosures so there should not be an extra burden on districts to provide this information.

Comment. Two individuals stated that more disclosures are needed and that schools districts should be required to report the superintendent's salary and contract, any outside employment by the superintendent, and all gifts to the superintendent and board members. One of the individuals also stated that it is vital that taxpayers know just how their money is being spent and why.

Comment. A school district official from Chapel Hill ISD objected to all of the additional reporting requirements stating they seemed petty and spiteful and that the district's superintendent and school board have a budget for their travel and they do not receive gifts of any value from an outside entity.

Comment. A representative from Americans for Prosperity requested that the agency include a prohibition on superintendents "moonlighting" on taxpayer dollars to increase their already exorbitant "packages." She stated that many school boards and taxpayers do not know that their administrative personnel are involved in outside activities.

Comment. A school district official from La Vega ISD stated that the agency should exclude from the proposed rules any attempt to address ethical issues. Requesting that school districts supply information about its officers and leaders is no guarantee of

full disclosure, whereas information gathered by an independent audit firm is much more likely to be objective and unbiased.

Response. The agency disagrees. Part of the purpose of the School FIRST system is to provide financial transparency. The requirement to provide the superintendent's current employment contract, a summary of reimbursements received by the superintendent and the board members, and a summary of any compensation and/or other personal services does help provide financial information to the public.

General Comments

Comment. A representative from the TASBO stated that they support the financial rating system but would like to see a rating system that is more timely; the current rating system is received by districts over two years after the budget planning cycle for a fiscal period and one year after the close of the fiscal period. Another concern of the organization is the changes to the overall protocol for School FIRST that will result in a bell-shaped performance profile for the financial ratings. This change will cause many school districts to question the overall fairness and equity of the system due to factors beyond the control of local school administrators and board members. They would also like to see the system apply to charter schools.

Response. The agency disagrees. The ratings are issued as soon as the agency can process the data received from the school districts. The audited financial data are not received from the school districts until February and then must be processed by the agency. If districts are late in submitting their data, this delays the process even further. Moving the system from a pass/fail system to a point system gives the districts an opportunity to receive points even if they do not meet the standards set in the indicator. Several of the indicators have exceptions to them depending on the districts' status. The rules give districts the opportunity to appeal their ratings if they feel their rating is calculated incorrectly. Legislation to address financial accountability for charter schools has been considered but not yet enacted.

Comment. An individual stated that the agency should let local school boards act as professionals in determining how to best meet local needs and should not "micro-manage" the boards.

Response. The agency disagrees. Part of the purpose of the School FIRST system is to provide financial transparency. Furthermore, the agency believes these measures are reasonable indicators of the allocation of resources to critical functions and the overall community investment in education.

Comment. A representative from Moak, Casey & Associates stated that with the passage of HB 1 the new provisions substantially increase the importance of the School FIRST rating system and provide for the use of sanctions against districts that are consistently rated "Substandard Achievement." Modifications should be incorporated into the rules to permit district appeals on the basis of unusual circumstances.

Response. The agency agrees that the passage of HB 1 emphasizes the importance of the financial accountability rating system. The rules give a district the opportunity to appeal its rating if the district feels its rating is calculated incorrectly.

Comment. A representative of Performance and Results International, LLC, recommended that the agency add another non-critical indicator to the rating system relating to whether or not a school district had achieved ISO 9001:2000 Quality Management Certification and assign 5 points if more than one department or office in the district has achieved certification.

Response. The agency disagrees. At this time the agency will not be adding an indicator to the system in regard to certification in ISO 9001:2000 Quality Management; however, this may be considered at a later date.

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

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

§109.1002. Financial Accountability Ratings.

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

(b) For fiscal years 2002-2003, 2003-2004, 2004-2005, and 2005-2006, each financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet," effective May 2003. Figure: 19 TAC §109.1002(b) (No change.)

(c) Beginning with fiscal year 2006-2007, the financial accountability rating of a school district is based on its overall performance on certain financial measurements, ratios, and other indicators established by the commissioner of education in the financial accountability rating form provided in this subsection entitled "School FIRST - Rating Worksheet Effective August 2006." On this form, Indicator 13 entitled, "Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%?" will be phased in over a three-year period, as follows.
Figure: 19 TAC §109.1002(c)

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

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

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

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

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

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

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

(A) The TEA office responsible for financial audits must receive the request for review no later than 30 days after the

TEA's release of the preliminary rating, and the request must include substantial evidence that supports the district's position.

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

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

(D) A district that does not meet the 65% instructional expenditure standard (Indicator 13) may publish on their website their check register (excluding their payroll register) and their yearly payroll expenditure and receive full credit (3 points) for this indicator. The district must notify the TEA within the 30-day review process that they have posted their register on the district's website and provide the website address to receive credit for this indicator.

(E) A district that is the fiscal agent for a shared service arrangement (SSA) and has the staff of the SSA on their payroll may appeal Indicators 19 and 20 if they fail these indicators due to the number of staff that are SSA staff. The district must provide the TEA with the number of staff that are employees of the district and the number of staff that are part of the SSA.

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

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

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

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 July 24, 2006.

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

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Proposal publication date: April 21, 2006

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

◆ ◆ ◆
TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER M. FILING REQUIREMENTS

The Commissioner of Insurance adopts amendments to §§5.9310, 5.9332, 5.9340, 5.9341, and 5.9357, concerning form, rate, underwriting guideline, and reduced filing requirements for certain property and casualty insurers. The amendments to §5.9310 and §5.9332 are adopted with changes

to the proposed text published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4357) to update statutory references changed as a result of the enactment of the Texas Legislative Council's non-substantive Insurance Code revision by the 78th Texas Legislature, Regular Session, 2003, and 79th Texas Legislature, Regular Session, 2005. The amendments to §5.9357 are adopted with changes to correct minor typographical errors in the proposed text published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4357). The amendments to §5.9340 and §5.9341 are adopted without changes to the proposed text.

The adopted amendments are necessary to conform filings made by certain property and casualty insurers pursuant to Insurance Code Articles 5.13-2, 5.55, and 5.55A to legislative amendments that were enacted by the 79th Legislature, Regular Session, in SB 99, HB 7, and HB 2437, and by the 78th Legislature, Regular Session, in SB 14. SB 99 added Chapter 706 to the Insurance Code which authorizes property and casualty insurers to offer insurance coverage for a loss suffered by a policyholder who is a victim of identity theft or attempted identity theft and also amended Insurance Code Article 5.13-2 to add identity theft insurance coverage as a line of insurance subject to Article 5.13-2. Thus, amendments are necessary to §5.9310(b)(7) to add identity theft insurance as a commercial and a personal line of insurance, each of which is subject to the filing requirements of §5.9310. SB 14 amended Insurance Code Article 5.13-2, §4 (Rate Standards) to remove consideration of contingencies in an insurer's setting of rates under Article 5.13-2, but Insurance Code Articles 5.55, §2(b)(4) and 21.50, §1A(g)(1) were not amended to remove contingencies from factors to be considered by insurers in setting rates under these two statutes. Therefore, workers' compensation insurers and mortgage guaranty insurers, which are regulated under these two statutes, must continue to submit supporting information on a reasonable margin for profit and contingencies with rate filings; and the amendment to §5.9332(e)(1)(N) is necessary to reflect this statutory requirement. Amendments are also necessary for consistency with provisions enacted in HB 7. One of these provisions requires that rates filed in accordance with Article 5.55 consider the effect on premiums of individual risk variations based on loss or expense considerations; and accordingly, a new subparagraph (O) has been added to §5.9332(e)(1). Under HB 7, which added Article 5.55A to the Insurance Code, insurers of workers' compensation insurance are required to file their underwriting guidelines with the Department; prior to this enactment, workers' compensation insurers were only required to provide underwriting guidelines to the Department upon request pursuant to the Insurance Code §38.003. Thus, amendments to §5.9340 and §5.9341 are necessary to conform these sections to the statutory underwriting guideline filing requirements of new Article 5.55A. HB 2437 amended Insurance Code Article 5.13-2, §13(h) to provide for reduced filing requirements for certain insurers writing personal automobile insurance and, therefore, it is necessary to amend §5.9357(a) to clarify that subsection §5.9357(a) applies to county mutual insurers writing non-standard personal automobile insurance and to add a new subsection (b) to specify reduced filing requirements for all insurers writing personal automobile insurance that meet the criteria described in Insurance Code Article 5.13-2, §13(h). It is necessary to re-designate the remaining subsections of §5.9357 as subsections (c) and (d) to properly incorporate new §5.9357(b) and to conform the application of re-designated §5.9357(d) to the insurers who qualify for reduced filing requirements specified in subsections (a), (b), or (c) of §5.9357.

The Department has adopted changes to §5.9310 and §5.9332 to delete obsolete statutory citations. Insurance Code Articles 21.35A and 21.35B, which are referenced in the §5.9310(b)(4) definition of Interline filing and also referenced in the §5.9332(a)(3) filing requirements, were repealed in the non-substantive Insurance Code revision, Acts 2003, 78th Legislature, Chapter 1274, §26(a)(1), effective April 1, 2005. Article 21.35A was re-adopted as §§4005.001 - 4005.003 in the same non-substantive Insurance Code revision, and Article 21.35B was re-adopted as §550.001 in the same non-substantive Insurance Code revision. Therefore, the references to the repealed statutes in §5.9310(b)(4) and §5.9332(a)(3) are deleted; and the updated and correct references are substituted. Insurance Code Article 21.49-2U, which is referenced in the §5.9332(a)(1) filing requirements, was repealed in the non-substantive Insurance Code revision, Acts 2005, 79th Legislature, Chapter 728, §11.020(b), effective September 1, 2005. Article 21.49-2U was re-adopted as Chapter 559 in the same non-substantive Insurance Code revision. Therefore, the reference to the repealed statute in §5.9332(a)(1) is deleted; and the updated and correct reference is substituted. Minor changes were also made to §5.9357(b) as proposed in the text published in the May 26, 2006, issue of the *Texas Register* (31 TexReg 4357) to correct typographical errors of capitalization of the term insurer and the term insurance.

Amended §5.9310(b)(7) adds identity theft insurance as a commercial and a personal line of insurance in accordance with Chapter 706, each of which is subject to the filing requirements of §5.9310. Section 5.9310 specifies the form and content of the filing transmittal form that is to be used with form, rate, underwriting guideline, and credit scoring model filings. Amended §5.9332(e)(1)(N) provides that profit and contingency provisions should be included in the actuarial supporting information that is submitted with a rate filing made in accordance with the Insurance Code Article 5.55 (Workers' Compensation Rates) or Article 21.50 (Mortgage Guaranty Insurance). Amended §5.9332(e)(1) adds subparagraph (O) to require that rates filed in accordance with Article 5.55 consider the effect on premiums of individual risk variations based on loss or expense considerations. Amendments to §5.9340 and §5.9341 regarding underwriting guideline filing requirements for workers' compensation insurance apply the underwriting guideline filing requirements in those sections to workers' compensation insurers. Amended §5.9340 amends the purpose of Division 7, which regulates underwriting guideline filing requirements, to include workers' compensation insurance. Amended §5.9341 provides that the definitions set forth in Insurance Code Article 5.55A apply to insurers filing underwriting guidelines for workers' compensation insurance. Amended §5.9357(a) clarifies that the reduced filing requirements of this subsection apply to county mutual insurers that meet certain criteria, and new subsection (b) specifies reduced filing requirements for all insurers writing personal automobile insurance that meet the criteria described in Insurance Code Article 5.13-2, §13(h). The remaining subsections of §5.9357 are re-designated as subsections (c) and (d).

SUMMARY OF COMMENTS AND AGENCY RESPONSE TO COMMENTS.

Comment: One commenter expresses support of the adoption of the proposed amendments to 28 TAC §5.9340 and §5.9341.

Agency Response: The Department appreciates the support.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTIONS.

For: Insurance Council of Texas.

Against: None.

DIVISION 4. FILINGS MADE EASY--FILING TRANSMITTAL FORM AND REQUIREMENTS FOR PROPERTY AND CASUALTY FORM, RATE, RULE, UNDERWRITING GUIDELINE, AND CREDIT SCORING MODEL FILINGS

28 TAC §5.9310

The amendments are adopted under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2, §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and, therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2 §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates, and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A, §3, Article 5.55A may be enforced in the manner provided by §38.003(g). Chapter 706 was enacted; and Article 5.13-2, §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9310. Property and Casualty Filing Transmittal Form.

(a) Purpose. The purpose of this division is to specify the form and content of the filing transmittal form that is to be used for property and casualty form, rate, rule, underwriting guideline, and credit scoring model filings and provide information on obtaining such form.

(b) Definitions. Words and terms not defined in this division may be defined in the Insurance Code Article 5.13-2 and Subchapter D of Chapter 5 and shall have the same meaning when used in this division. The following words and terms when used in this division shall have the following meanings unless the context indicates otherwise:

- (1) Department--Texas Department of Insurance (TDI).
- (2) TDI file number--The number assigned by the department to a filing submitted by an individual company.
- (3) TDI link number--The number assigned by the department to link individual TDI file numbers to a filing which is submitted for more than one company within a group.
- (4) Interline filing--A filing submitted for an endorsement that may be used with more than one line of insurance provided the endorsement does not have an impact on rates or a rate filing that may be used with more than one line of insurance that contains only information concerning policy fees, service fees, and other fees that are charged or collected by the insurer under Insurance Code §§4005.001 - 4005.003 or §550.001.
- (5) Reference filing--A filing that references the use of adopted or approved policy form(s), endorsement(s), manual rule(s), rate(s), or other acceptable policy form(s), or endorsement(s), manual rule(s), or rate(s), to which the department has assigned a TDI file number.
- (6) Dual filing--A monoline filing submitted for a specific line of insurance that may also be written as part of a multi-peril policy.
- (7) Line of insurance--For purposes of this section, each of the following is a line of insurance:
 - (A) automobile-commercial;
 - (B) automobile-personal;
 - (C) boiler and machinery;
 - (D) casualty (personal and commercial);
 - (E) credit;
 - (F) credit-involuntary unemployment;
 - (G) crime;
 - (H) crop hail;
 - (I) excess liability;
 - (J) excess umbrella;
 - (K) farm and ranch;
 - (L) farm liability;
 - (M) farm and ranch owners;
 - (N) fidelity bonds;
 - (O) financial guaranty bonds or insurance;
 - (P) guaranteed auto protection (GAP) (commercial);
 - (Q) guaranteed auto protection (GAP) (personal);
 - (R) general liability;
 - (S) glass;
 - (T) identity theft (commercial);
 - (U) identity theft (personal);
 - (V) inland marine (commercial);
 - (W) inland marine (personal);
 - (X) involuntary unemployment;
 - (Y) miscellaneous casualty;
 - (Z) miscellaneous liability;

- (AA) mortgage guaranty;
- (BB) multi-peril;
- (CC) personal liability;
- (DD) professional liability;
- (EE) property-commercial;
- (FF) property-residential (dwelling);
- (GG) property-residential (homeowners);
- (HH) rain;
- (II) surety bonds (other than criminal court appearance bonds);
- (JJ) umbrella-commercial;
- (KK) umbrella-personal; and
- (LL) workers' compensation.

(c) Form and content of transmittal form. The filing transmittal form must be typed and contain, at a minimum, the following information:

- (1) company name;
- (2) NAIC number of the company;
- (3) company group name and group NAIC number;
- (4) type of filing:
 - (A) new filing; or
 - (B) revision or replacement of an existing filing. If revising or replacing an existing filing, the TDI file number or link number of the filing that is being revised or replaced must be provided.
- (5) line of insurance:
 - (A) all filings must specify the line of insurance for which the filing is being made;
 - (B) interline filings must indicate all lines of insurance to which the filing is applicable;
 - (C) dual filings must indicate multi-peril insurance and a specific line of insurance to which the filing is applicable;
- (6) basic description of the filing:
 - (A) rate filing, rating manual filing, and rating rule filing;
 - (B) policy form;
 - (C) endorsement;
 - (D) manual rules, other than rating manual rules;
 - (E) reference filing--must list the TDI file number or TDI link number of the filing being referenced;
 - (F) credit scoring model; or
 - (G) underwriting guidelines;
- (7) proposed effective date; and
- (8) contact person, including name, telephone number, mailing address, fax number, and e-mail address (if available).

(d) Availability of transmittal form. The Filing Transmittal Form (FTF) is a form that is provided by the department for insurers who are making the filings specified in subsection (c)(6) of this section. This form may be obtained from the TDI website at www.tdi.state.tx.us.

(e) Alternative transmittal forms. An insurer may use, as an alternative, a transmittal form published by the National Association of Insurance Commissioners (NAIC) or any other transmittal form if the information included in the transmittal form, or in an addendum to the transmittal form, contains all the information required under subsection (c) of this section.

(f) The department maintains the Filings Made Easy guide to assist insurers in submitting filings and complying with statutory requirements. This guide may be obtained from the TDI website at www.tdi.state.tx.us.

(g) Filings under Divisions 4, 5, 6, 7, 8, and 9 of this subchapter must be submitted to the Texas Department of Insurance, Property & Casualty Intake Unit, 333 Guadalupe, Austin, Texas 78701 or to the Texas Department of Insurance, Property & Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas 78714-9104.

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 July 24, 2006.

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 Brenda Caldwell
 Assistant General Counsel
 Texas Department of Insurance
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 Proposal publication date: May 26, 2006
 For further information, please call: (512) 463-6327



DIVISION 6. FILINGS MADE EASY--RATE AND RATE MANUAL FILING REQUIREMENTS

28 TAC §5.9332

The amendments are adopted under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003, and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2, §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and, therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2, §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates; and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the

Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A, §3, Article 5.55A may be enforced in the manner provided by §38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§5.9332. *Filing Requirements.*

(a) An insurer shall keep the following information current with the department and is not required to re-file unless affected by the proposed filing or requested by the department or commissioner:

(1) All prospective loss cost multipliers, rates, and rating manuals as required by Insurance Code Articles 5.13-2, 5.41-3, 5.55, 5.171, 21.50, and Chapter 559 or other articles that impose specific filing requirements for any line of insurance;

(2) Supplementary rating information; and

(3) Information concerning all policy fees, service fees, and other fees that are charged or collected by an insurer under Insurance Code §§4005.001 - 4005.003 or §550.001.

(b) For rates filed pursuant to Insurance Code Article 5.13-2 or 5.41-3, a filing containing rate information must contain the information described in paragraphs (1) - (3) of this subsection:

(1) A filing transmittal form as required in Division 4 of this subchapter (relating to Filings Made Easy--Filing Transmittal Form and Requirements for Property and Casualty Form, Rate, Rule, Underwriting Guideline, and Credit Scoring Model Filings).

(2) The filing memorandum briefly explaining the purpose of the filing, and all material background details relating to the filing including a statement on the overall impact of the filing. For example, a filing memorandum may include one or more of the following, as applicable:

- (A) reasons for entry into a new market;
- (B) reasons for offering additional coverages;
- (C) reasons for offering new discounts or applying new surcharges;
- (D) reasons for changing rates;
- (E) changes in the insurer's goals and objectives; or
- (F) an explanation of changes in insurer or insurer group operations.

(3) Rating information can be any rate pages detailing information described in subsection (a) of this section or any supporting information required by §5.9941 or §5.9960 of this title (relating to Differences in Rates Charged Due Solely to Difference in Credit Scores and Exception to Territory Rating Requirements under Insurance Code Article 5.171) or any other applicable statute or rule.

(4) In accordance with Article 5.41-3, insurers filing commercial group property rates shall clearly identify the group of businesses or the association to be insured.

(c) For rates filed pursuant to Insurance Code Article 5.55, a filing containing rating information must contain the information described in paragraphs (1) - (3) of subsection (b) of this section. An insurer

may not make such filing more frequently than every six months in accordance with Insurance Code Article 5.55, §3(a).

(d) For rates filed pursuant to Insurance Code Article 21.50, a filing containing rating information must contain the information described in paragraphs (1) - (3) of subsection (b) of this section. In accordance with Article 21.50 rates must be filed at least 15 days before they are to become effective and must include a certification as described in Article 21.50, §1A(g)(4).

(e) Except as provided in Division 9 of this subchapter (relating to Filings Made Easy--Reduced Filing Requirements for Certain Insurers), insurers must provide supporting information as necessary for the department to establish that a filing produces rates which are adequate, not excessive or unfairly discriminatory for the risks to which they apply. Categories of supporting information are listed in paragraphs (1) - (7) of this subsection, but are not necessarily required for every rate filing. Insurers must only provide sufficient materials to justify specific rates or changes being proposed. To the extent the information originally submitted in a rate filing is insufficient, the department may request additional information as deemed necessary by the department or commissioner.

(1) Actuarial support. Actuarial support generally includes rate indications and support, including the data and methodologies utilized by the insurer to derive such indications. Supporting information that is submitted with a filing should include each of the following to the extent applicable:

- (A) premiums at current rate level and applicable on-level factors;
- (B) incurred and paid losses;
- (C) loss and claim development factors;
- (D) premium and loss trend factors;
- (E) rate relativities (e.g., classification, territory, amount of insurance);
- (F) increased limits factors;
- (G) hurricane and non-hurricane catastrophe factors or loss provisions;
- (H) definition of a catastrophe and how it has changed over the experience period used to calculate the provisions;
- (I) deductible credits and debits;
- (J) description and support for discounts and surcharges;
- (K) off-balance factors if there have been changes in relativities (e.g., discounts, surcharges, territorial definitions);
- (L) credibility;
- (M) expense and profit provisions;
- (N) for rates filed in accordance with Articles 5.55 or 21.50, profit and contingency provisions; and
- (O) for rates filed in accordance with Article 5.55, the effect on premiums of individual risk variations based on loss or expense considerations.

(2) Projected and historical expense information. As applicable to the insurer's filing, the information set out in subparagraphs (A) - (C) of this paragraph should be filed. For Texas, and if applicable, country-wide experience, the insurer should provide projected and historical expense information. The loss adjustment expenses would be shown as a dollar amount as well as a ratio to incurred losses. All

other expenses should be shown as a dollar amount as well as a ratio to direct written premium. All expense items should be on a direct basis.

(A) Three years of historical Texas experience for commission and brokerage expenses incurred; taxes, licenses, and fees incurred; losses incurred; and, defense and cost containment expenses incurred. These shall be the amounts, or a subset of the amounts, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement.

(B) Three years of historical countrywide experience for commission and brokerage expenses incurred, other acquisition expenses incurred, general expenses incurred, losses incurred, defense and cost containment expenses incurred and adjusting and other loss adjustment expenses incurred. These shall be the amounts reported in the insurer's Insurance Expense Exhibit, Part III (IEE) in the insurer's Annual Statement.

(C) Three years of historical countrywide experience for each category of disallowed expenses shall be the amounts reported in the insurers' response to the annual Texas Department of Insurance Call for Disallowed Expense Data. Total other acquisition expenses and general expenses each adjusted for disallowed expenses should be listed. The total adjusted general expense percentage should reflect any necessary adjustment due to the capping of general expenses at 110% of the industry median for the line of insurance.

(D) To the extent the expense provisions that underlie the rates differ from the historical expenses, support should be provided. For filings submitted under Insurance Code Article 5.13-2, the expense provisions should be net of the disallowed expenses as defined in §5.9331 of this division (relating to Definitions). Provisions for commissions and brokerage expenses; other acquisition expenses; general expenses; taxes, licenses and fees; and profit and contingencies, should be displayed and a sum computed. In addition, a permissible loss and loss adjustment expense ratio shall be computed as unity less the sum of these expense provisions.

(3) Historical experience information. This displays an insurer's most recent five year historical experience for Texas which are the amounts, or a subset of the amounts pertinent to the subline, reported on the Exhibit of Premiums and Losses (Statutory Page 14 Data) in the insurer's Annual Statement. It also includes the most recent five year countrywide experience which are the amounts, or a subset of the amounts pertinent to the subline, reported on the insurer's IEE, part III. Direct premiums written, direct premiums earned, direct losses and defense and cost containment expenses paid, and direct losses and defense and cost containment expenses incurred are shown as well as the ratio of the incurred loss and defense and cost containment expenses incurred to direct earned premiums, for both Texas and countrywide experience.

(4) Profit provision information. A brief description of the methodology and assumptions used to arrive at the profit provisions underlying the proposed rates.

(5) Rate change information. This generally includes a rate change history, the statewide average proposed rate change for each applicable coverage, form, or classification and the total average rate change for all coverages, forms, and classifications combined, even if only the rates for some of the coverages or forms are being changed. For loss cost reference filings, rate change information would include the proposed percentage change in the underlying loss costs, the change in the insurer's loss cost multiplier, and the rate level change (i.e., the product of the change in the loss costs and the loss cost multipliers, expressed as a factor). For workers' compensation filings, change information would include the impact of the change in relativities if the filing includes adopting a new set of relativities using either the insurer's

own class distribution or the industry wide distribution, the change in the insurer's deviation, and the rate level change (i.e., the product of the change in the relativities and the deviation, expressed as a factor).

(6) Loss cost reference information. This includes the following:

(A) The TDI file number, link number, or reference number of the loss costs being referenced;

(B) The derivation of the loss cost multiplier proposed including any loss cost modification factor and the following expense and profit provisions:

(i) commission and brokerage expenses;

(ii) other acquisition expenses;

(iii) general expenses;

(iv) taxes, licenses and fees; and

(v) underwriting profit and contingencies;

(C) The loss cost multiplier to be used as of the effective date of the filing; and

(D) For rate change filings, the loss cost multiplier used immediately prior to the effective date of the filing, and the effective rate level change due to any change in loss cost multiplier.

(7) Rate reference information. Rate reference information includes:

(A) A description of the rates being referenced including the line of business and TDI file number or link number;

(B) If an insurer is developing package modification factors, proposed modification factors and supporting data; and

(C) If an insurer is referencing package modification factors, a description of the package modification factor including a TDI file number or link number.

(f) Any filings that do not fully comply with all of the filing requirements described in this division may be considered incomplete and may be returned to the filer for completion with a notice stating that the filing is not complete and shall identify the additional information that is required for completion of the filing.

(g) The department may request additional information as necessary related to a rate filing, including actuarial or other reasonable support of rates as deemed necessary by the department or commissioner.

(h) Filings under this division may be combined with filings made in accordance with Division 5 of this subchapter (relating to Filings Made Easy--Requirements for Property and Casualty Policy Form, Endorsement, and Manual Rule Filings). These combined filings may utilize a single transmittal form. Filings under this division may not be combined with filings made in accordance with Division 7 or 8 of this subchapter (relating to Filings Made Easy--Underwriting Guideline Filing Requirements for Personal Automobile, Residential Property, and Workers' Compensation Insurance and Filings Made Easy--Credit Scoring Models Filing Requirements for Personal Insurance) due to distinct and separate statutes governing underwriting guidelines and credit scoring models.

(i) The department maintains the Filings Made Easy guide to assist insurers with compliance of statutory requirements. Insurers may refer to the Filings Made Easy guide for rate filing forms that insurers may use to display necessary supporting information described in sub-

section (e) of this section. This guide may be obtained from the TDI website at www.tdi.state.tx.us.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Brenda Caldwell

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Texas Department of Insurance

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



DIVISION 7. FILINGS MADE EASY-- UNDERWRITING GUIDELINE FILING REQUIREMENTS FOR PERSONAL AUTOMOBILE, RESIDENTIAL PROPERTY, AND WORKERS' COMPENSATION INSURANCE

28 TAC §5.9340, §5.9341

The amendments are adopted under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003 and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and, therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2, §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates; and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by §38.003(g). Chapter 706 was enacted and Article 5.13-2 §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner

of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 9. FILINGS MADE EASY-- REDUCED FILING REQUIREMENTS FOR CERTAIN INSURERS

28 TAC §5.9357

The amendments are adopted under Insurance Code Articles 5.13-2, 5.55, 5.55A, 5.98, and 21.50, Chapter 706, and §38.003 and §36.001. Article 5.13-2 governs rates and forms for certain property and casualty insurance lines and the respective filing requirements in this state. Article 5.13-2 §4(b)(7) was amended by the 78th Legislature, Regular Session, in SB 14 to delete "contingency provisions" from the factors to be considered by insurers in setting rates under Article 5.13-2 and, therefore, from supporting information that insurers must submit with rate filings under Article 5.13-2. Article 5.13-2, §13 was amended by HB 2437, 79th Legislature, Regular Session, to provide for reduced filing requirements for personal automobile insurers that meet the statutorily specified criteria. Article 5.55 governs workers' compensation rates, and §2(b)(4) of Article 5.55 provides that an insurer in setting rates must consider a reasonable margin for profit and contingencies. Article 5.98 authorizes the Commissioner to adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5. Article 21.50 governs mortgage guaranty insurance rates; and §1A(g)(1) of Article 21.50 requires insurers to file, with any rate filing, adequate supporting data, including information on a reasonable margin for profit and contingencies. HB 7, 79th Legislature, Regular Session, amended various provisions of the workers' compensation regulatory statutes, including adding subdivision (2-a) to Article 5.55 to define "premium" to mean the amount charged for a workers' compensation insurance policy, including any endorsements, after the application of individual risk variations based on loss or expense considerations. HB 7 also added Article 5.55A to the Insurance Code to require that workers' compensation insurers file their underwriting guidelines with the Department. In accordance with Article 5.55A §3, Article 5.55A may be enforced in the manner provided by §38.003(g). Chapter 706 was enacted and Article 5.13-2, §2 was amended in SB 99 by the 79th Legislature, Regular Session, to add specific regulations for identity theft as a commercial insurance product and as a personal insurance product. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 21. TRADE PRACTICES

SUBCHAPTER J. PROHIBITED TRADE PRACTICES

28 TAC §21.1007

The Commissioner of Insurance adopts amendments to §21.1007, concerning prohibitions on the use of unfair underwriting guidelines involving water damage claims, previous mold damage, or mold damage claims. The amendments are adopted with changes to the statutory citations in proposed text published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 792). The Department has made changes to the text of the rule to update statutory references changed as a result of the enactment of the Texas Legislative Council's nonsubstantive Insurance Code revision by the 78th Texas Legislature, Regular Session, 2003 and the 79th Texas Legislature, Regular Session, 2005.

The amendments include a new definition of the term appliance, a mold remediation certification standard consistent with the Occupations Code and the Insurance Code, and updated references to statutory citations and agency nomenclature. The adopted amendments are necessary to implement changes enacted by the 79th Legislature, Regular Session, in HB 941, effective September 1, 2005 and HB 1328, effective May 24, 2005. HB 941 amended Insurance Code Article 5.35-4 §2 by adding a definition of appliance in subdivision (4). HB 1328 amended the Insurance Code Article 21.21-11 §3(4)(A) to be consistent with the Occupations Code §1958.154 by providing that a certificate of mold remediation issued to the property owner must establish with reasonable certainty that the underlying cause of the mold at the property has been remediated.

The new statutory definition of appliance in Insurance Code Article 5.35-4 §2(4) requires amendment of the definition of appliance-related claim in current §21.1007(b)(5). Prior to the enactment of HB 941, the Department's rule excluded the failure of external attachments like hoses from the definition of appliance-related claims. Article 5.35-4 §2(4) defines an appliance as "a household device operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, ice-makers, clothes washers, water heaters, and disposals." Therefore, current §21.1007(b)(5) is amended, in accordance with the new statutory definition of appliance, to provide that the term appliance as defined within the definition of appliance-related claim means a household device operated by gas or electric current, including hoses directly attached to the device.

HB 1328 enacts a consistent standard for evaluating whether or not the underlying cause of mold has been remediated. Under the Occupations Code §1958.154, an assessor must establish with reasonable certainty that the underlying cause of mold has been remediated. Prior to the enactment of HB 1328, under the Insurance Code Article 21.21-11 §3(4)(A), an assessor was required to establish that the underlying cause of mold had been remediated; there was no with reasonable certainty provision. Insurance Code Article 21.21-11 §3(4)(A) was amended in HB 1328 to add the with reasonable certainty provision for consistency with the Occupations Code §1958.154. Therefore, it is necessary to amend §21.1007(e)(1)(D)(i) to incorporate the reasonable certainty standard into the rule.

The adopted amendments also delete obsolete statutory citations and outdated references to state agencies. Section 2, Article 21.49-1, which is referenced in the §21.1007(b)(4) definition of insurer, was repealed by Acts 2001, 77th Legislature, Chapter 1419, §31(a), effective June 1, 2003; therefore, the reference to the repealed statute is deleted, thereby updating the rule to reflect the correct reference to the nonsubstantive revised Insurance Code enacted by the 77th Legislature, effective June 1, 2003. Additional changes are adopted throughout the text of the rule to change the references to the Texas Board of Health and Texas Department of Health to the Department of State Health Services. These changes are necessary because the former Texas Department of Health became part of the Department of State Health Services on September 1, 2004.

Amended §21.1007(b)(5) provides a more expansive definition of the term appliance as defined within the definition of appliance-related claim; as amended, an appliance-related claim pertains to a household device operated by gas or electric current, including hoses directly attached to the device. Amended §21.1007(e)(1)(D)(i) incorporates a standard consistent with the language in the Insurance Code Article 21.21-11 §3(4)(A); it provides that a certificate of mold remediation is issued when it is determined with reasonable certainty that the underlying cause or causes of the mold at the property have been remediated. Amended §21.1007(a)(4), which defines the term insurer, deletes the reference to the obsolete statutory citation for Section 2, Article 21.49-1 of the Insurance Code. Amended §§21.1007(d)(3)(C), 21.1007(e)(1)(d)(i)-(ii), and 21.1007(e)(2) reference the new agency name Department of State Health Services in lieu of the former agency name the Texas Department of Health.

SUMMARY OF COMMENTS AND AGENCY RESPONSE TO COMMENTS.

Comment: One commenter expressed support for the proposed amendments to §21.1007 because it implements statutory changes made by HB 941 and HB 1328. According to the commenter, the specific amendments make the protections afforded by §21.1007 stronger.

Agency Response: The Department agrees and appreciates the supportive comment.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION.

For: Office of Public Insurance Counsel.

The amendments are adopted pursuant to the Insurance Code Article 5.35-4, Article 21.21-11, and §36.001. Article 5.35-4 §2(4) includes a definition of appliance. Under Article 5.35-4 §4 (enacted as §544.354 as part of the nonsubstantive revision

of the Insurance Code by Acts 2005, 79th Legislature, Chapter 728, §11.015(a), effective September 1, 2005), the Commissioner is specifically charged with adopting rules to accomplish the purpose of this subchapter as defined by Article 5.35-4 §1 (enacted as §544.351 as part of the nonsubstantive revision of the Insurance Code by Acts 2005, 79th Legislature, Chapter 728, §11.015(a) effective September 1, 2005). The purpose of §544.351 is to protect people and property from being unfairly stigmatized in obtaining residential property insurance by the filing of a water damage claim or claims under a residential property insurance policy. Article 21.21-11 §3(4) provides that a certificate of mold remediation is evidence of remediation if it has been established with reasonable certainty that the underlying cause of the mold at the property has been remediated. Under Article 21.21-11 §4 (enacted as §544.304 as part of the nonsubstantive revision of the Insurance Code by Acts 2005, 79th Legislature, Chapter 728, §11.014(a) effective September 1, 2005), the Commissioner has specific authority to adopt rules as necessary to implement Chapter 544 Subchapter G relating to Mold Claim or Damage. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

§21.1007. Restrictions on the Use of Underwriting Guidelines Based On a Water Damage Claim(s), Previous Mold Damage or a Mold Damage Claim(s).

(a) Purpose. The purpose of this section is to protect persons and property from being unfairly stigmatized in obtaining residential property insurance by previous mold damage or by the filing of mold damage claims, a water damage claim, or certain appliance-related claims, under a residential property insurance policy.

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

(1) Residential property insurance--Insurance against loss to residential real property at a fixed location or tangible personal property provided in a homeowners policy, including a tenant policy, a condominium owners policy, or a residential fire and allied lines policy.

(2) Underwriting guideline--A rule, standard, guideline, or practice; whether written, oral, or electronic; that is used by an insurer or an agent of an insurer to decide whether to accept or reject an application for a residential property insurance policy or to determine how to classify the risks that are accepted for the purpose of determining a rate.

(3) Consumer--The person making the application to insure a property and includes both existing insureds and applicants for insurance.

(4) Insurer--An insurance company, reciprocal or interinsurance exchange, mutual, capital stock company, county mutual insurance company, farm mutual insurance company, association, Lloyd's plan company, or other entity writing residential property insurance in this state. The term includes an affiliate as described by §823.003 of the Insurance Code if that affiliate is authorized to write and is writing residential property insurance in this state. The term does not include the Texas Windstorm Insurance Association, the FAIR Plan, or an eligible surplus lines insurer regulated under Chapter 981.

(5) Appliance-related claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam from an appliance that is the direct result of the failure of the appliance. An appliance means a household device

operated by gas or electric current, including hoses directly attached to the device. The term includes air conditioning units, heating units, refrigerators, dishwashers, icemakers, clothes washers, water heaters, and disposals.

(6) Water damage claim--A request by an insured for indemnification from an insurer for a loss arising from the discharge or leakage of water or steam that is the direct result of the failure of a plumbing system or other system that contains water or steam.

(c) Restrictions on the use of a water damage claim in underwriting. An insurer shall not use an underwriting guideline based solely upon a single prior water damage claim either filed by the applicant or on the covered property. Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of §551.107.

(d) Restrictions on underwriting and rating and the inspection and certification process of appliance-related claims.

(1) Except as provided in §544.353(e) of the Insurance Code an insurer shall not use a prior appliance-related claim as a basis for determining a rate to be paid or for determining whether to issue, renew, or cancel a residential property insurance policy if the consumer complies with the requirements specified in §544.353(c) and §544.353(d) of the Insurance Code. It is the consumer's option whether to have the appliance-related claim inspected and certified, however, it is the consumer's responsibility to bear the cost of such inspection and certification. An appliance-related claim that is not inspected and certified shall be subject to the provisions contained in subsection (c) of this section.

(2) Nothing contained in subsection (d) of this section shall exempt an insurer from the notice provisions contained in §551.107(e). However, appliance-related losses are a special class of non-weather related losses and the notice must be specific to the insured's appliance-related loss history.

(3) The following individuals who hold one or more of the following licenses are inspectors that may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related claim:

(A) inspectors licensed or certified through the Voluntary Inspection Program pursuant to Article 5.33B of the Insurance Code;

(B) persons licensed to perform real estate property inspections under the Real Estate Licensing Act;

(C) persons licensed as assessors or remediators by the Department of State Health Services pursuant to Chapter 1958 of the Occupations Code;

(D) licensed Texas Professional Engineers.

(4) If the consumer has an inspection and certification performed by an inspector under paragraph (3) of this subsection who is not on a list provided by the insurer, the insurer may not reject or challenge the certification unless the insurer re-inspects the property and specifies in writing the areas of deficiency to the consumer. An insurer that re-inspects the property shall maintain all documentation, including documentation that supports the areas of deficiency identified by the inspection and specified in writing to the consumer.

(5) Inspectors shall also include persons who are authorized by insurers to perform appliance-related water damage remediation inspections. An insurer who provides a list of inspectors authorized by the insurer must give verbal notice to any claimant at the time of the claimant's phone call reporting the claim and written notice to the claimant within 15 days of receiving notice of the claim that

the claimant has the right to select the inspector including the right to choose an inspector who is not on the insurer's list who will perform the inspection of the appliance-related water damage remediation. If the consumer has the inspection and certification performed by an inspector from the list of inspectors authorized by the insurer then the insurer does not have the right to reject or challenge the certification.

(6) If the inspector determines by a physical inspection of the residential property that the appliance-related water damage has been properly remediated, the inspector shall issue within 10 days of the completion of the inspection a Certificate of Appliance-Related Water Damage Remediation (WDR-1).

(7) The Certificate of Appliance-Related Water Damage Remediation (WDR-1) is a form that is prescribed by the Department for use by inspectors who will provide certifications. This form may be obtained from the Texas Department of Insurance website <http://www.tdi.state.tx.us> or by requesting such form from the Automobile/Homeowners Section, MC 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas, 78714-9104.

(8) Information regarding inspectors that may have the knowledge and experience in the remediation of water damage to inspect and certify the proper remediation of an appliance-related claim may be obtained from the Texas Department of Insurance website or by requesting such information from the Automobile/Homeowners Section.

(e) Restrictions on the use of previous mold damage or a claim for mold damage in underwriting residential property insurance.

(1) An insurer shall not use an underwriting guideline regarding a residential property insurance policy based upon previous mold damage or a prior mold damage claim filed either by the applicant or on the covered property if:

(A) the applicant for insurance has property that is eligible for residential property insurance coverage;

(B) the property has had mold damage;

(C) mold remediation has been performed on the property; and

(D) the property was:

(i) remediated in accordance with the requirements specified in Chapter 1958, Subchapter D of the Occupations Code, and any applicable rules promulgated by the Department of State Health Services pursuant to Chapter 1958 of the Occupations Code; and a Certificate of Mold Damage Remediation (MDR-1) is issued to the property owner under Section 1958.154 of the Occupations Code which certifies with reasonable certainty that the underlying cause or causes of the mold at the property have been remediated; or

(ii) inspected by an independent mold assessor or adjuster, who is licensed to perform mold assessment in accordance with rules promulgated by the Department of State Health Services under Chapter 1958 of the Occupations Code and the independent mold assessor or adjuster provides to the property owner written certification on a Certificate of Mold Damage Remediation (MDR-1) that based on the mold assessment inspection, the property does not contain evidence of mold damage.

(2) The Certificate of Mold Damage Remediation (MDR-1) is a form that is prescribed by the Department for use by mold remediators, assessors, and adjusters who will provide certifications. This form may be obtained from the Texas Department of Insurance website <http://www.tdi.state.tx.us> or by requesting such

form from the Automobile/Homeowners Section or from the Department of State Health Services.

(3) Nothing contained herein shall preclude an insurer from the surcharge and renewal provisions of §551.107.

(f) Filing requirements for underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims.

(1) All underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims shall be filed with the Department and shall comply with the requirements contained in this section and with any rules relating to underwriting guidelines that may be adopted by the Commissioner.

(2) Underwriting guidelines relating to water damage claims, previous mold damage, or mold damage claims shall be submitted to the Texas Department of Insurance, Property and Casualty Intake Unit, Mail Code 104-3B, P.O. Box 149104, Austin, Texas, 78714-9104 or to the Texas Department of Insurance, Property and Casualty Intake Unit, 333 Guadalupe Street, Austin, Texas 78701.

(g) Subsection (c) of this section applies only to a residential property insurance policy that is delivered or issued for delivery based on an application that is submitted on or after the effective date of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER G. ELECTRONIC MEDICAL BILLING, REIMBURSEMENT, AND DOCUMENTATION

28 TAC §133.500, §133.501

The Commissioner of the Division of Workers' Compensation, Texas Department of Insurance, adopts new Subchapter G, §133.500 and §133.501, concerning electronic medical billing, reimbursement, and documentation. The sections are adopted with changes to the proposed text as published in the February 3, 2006, issue of the *Texas Register* (31 TexReg 679).

House Bill (HB) 2511, enacted by the 76th Legislature, Regular Session, added Labor Code §401.024, which was amended by HB 7, 79th Legislature, Regular Session, allows or requires electronic transmission of information to be used in lieu of trans-

mitting information via paper format and sets goals for paper reduction in the workers' compensation system. HB 7 enacted Labor Code §408.0251, which requires the commissioner to adopt rules regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. Paper medical bills and related medical documentation account for the majority of paper exchanged in the Texas workers' compensation system. Section 401.024 allows the Division to adopt rules to permit or require electronic transmission in place of established forms, manner, or procedures that require paper processing.

The provisions of Subchapter G are designed to meet the requirements of HB 2511 and HB 7 by establishing procedures for the electronic submission of medical billing and reimbursement data, which will reduce paper in the workers' compensation system. Approximately six to eight million paper medical bills are processed annually in the Texas workers' compensation system. The majority of medical bills in the workers' compensation system are submitted by health care providers on paper forms to insurance carriers, third-party administrators, or medical bill review vendors. Because minimal electronic billing occurs in the system, initial estimates indicate a potential for significant reductions in the administrative costs and handling time for medical bill processing through the use of electronic processing.

Previously, insurance carriers report only professional and hospital bill payment data to the Division in electronic file formats. However, the Division is transitioning from a Texas specific format to a national standard format that will collect pharmacy and dental data as well as professional and hospital data.

The new sections of Subchapter G are part of the Division's Electronic Billing and Reimbursement (eBill) project initiated to identify and implement an electronic billing solution for the Texas workers' compensation system. eBill processing includes the method of transmission; components of the transactions being transmitted; and the structure, organizations, systems, or applications enabling the transmissions. The eBill project is a component of the Division's Business Process Improvement initiative; a coordinated set of projects that use technology to streamline agency processes to meet the requirements of HB 2511 and HB 7.

The new sections were developed in conjunction with a workgroup comprised of insurance carriers and health care providers. Many workgroup member concerns were alleviated during the development of the sections due to the extensive input received from the workgroup.

These adopted sections apply to networks certified under Insurance Code Chapter 1305 and to political subdivisions with contractual relationships under Labor Code §504.053(b)(2).

The Division made changes to the proposed sections. However, neither of the changes introduces new subject matter or affect additional persons other than those subject to the rules as originally published.

Subchapter G encompasses the processes and methods for transmitting electronic medical bill data and documentation related to electronic medical bills between the Division, health care providers, and insurance carriers. The adopted sections establish the method of transmission and the required elements to be contained within an electronic transaction. Standardized formats for data collection improves the integrity of the data collected by the Division and exchanged between system participants. The collected data is used to administer statutory

mandates, such as monitoring for compliance, aiding in fee guideline development, and monitoring the effect of networks in the workers' compensation system. The adopted sections are subject to the specific provisions of Chapters 133 and 134.

Section 133.500 specifies the use of specific national standard formats, national implementation guides, and Division implementation guides for transmitting electronic medical bill data and associated transactions between the Division, health care providers, and insurance carriers. These formats and guides allow the Division to define the elements required in a transaction, the applicable code sets, and data edits by reference to the national and Division implementation guides. The section provides flexibility to exchange data in non-prescribed formats when mutually agreed upon by a health care provider and an insurance carrier. The data elements, code sets, and edits in non-prescribed formats must conform to the requirements of the Division prescribed format which will allow flexibility in responding to participants' needs while ensuring consistency of reporting.

Section 133.501 establishes the exclusive process to exchange medical bill and reimbursement data between the Division, health care providers, and insurance carriers. This section establishes applicability, the effective date for electronic billing, and includes provisions that allow health care providers and insurance carriers to contract with other entities to process electronic medical bill data. The section also includes waiver provisions for health care providers and insurance carriers. The waiver provisions exempt health care providers or insurance carriers from the requirement of exchanging medical bill data exclusively by electronic means, if implementing electronic medical bill processing would cause an unreasonable financial burden to the health care provider or insurance carrier. The Division changed subsection (a) to permit waivers based on unreasonable financial burden for health care providers, as well as insurance carriers, on a case-by-case basis. In addition, a health care provider whose workers' compensation business constitutes less than 10 percent of their practice and employs 10 or fewer full time employees also qualifies for a waiver. The intent of the provision is to quantify 10 percent of a practice to include patient volume, bill volume, and dollar volume. If a health care provider believes it qualifies for a waiver under this provision, the health care provider may request a waiver from the Division and continue to use the paper billing process. An insurance carrier that questions a health care provider's paper billing practices may forward a request for review to the Division.

Section 133.501 defines an electronic medical bill and the components of a complete electronic medical bill. The section limits the submission of duplicate electronic medical bills by health care providers. This section also establishes an acknowledgment process for the receipt of an electronic medical bill. Subsection (c) is changed to establish that an insurance carrier must acknowledge receipt of an electronic medical bill within one business day rather than 24-hours. The acknowledgment process is not an admission of insurance carrier liability. The acknowledged acceptance of a complete medical bill does not prohibit an insurance carrier from subsequently rejecting an accepted electronic medical bill based on limited or contested liability.

Section 133.501 also includes provisions for electronic remittance notification from insurance carriers to health care providers that comply with Division rules regarding payment or denial of a medical bill, recoupment request, or acknowledgment of receipt of a refund. An electronic remittance notification must be issued

no later than 45 days after receipt of a complete electronic medical bill or within five days of generating a payment. The Division recognizes that in an electronic process, a payment and the electronic remittance notification may not be issued at the same time. The intent is to ensure that there is not an unreasonable delay between the payment and the electronic remittance notification.

Section 133.501 establishes a process for electronically exchanging documentation associated with electronic medical bills by defining the method of transmission and adopting a standard electronic format. This section does not designate documentation as a component of a complete electronic medical bill because the prescribed electronic billing formats do not support electronic documentation in the same billing transaction. Chapters 133 and 134 establish documentation requirements related to health care services provided.

Section 133.500(a): Several commenters recommend offering additional formats to the prescribed formats in §133.500(a).

Agency Response: The Division declines to make the requested change. The Electronic Billing and Reimbursement rules align with HIPAA standards, managed care and Medicare models. In addition, since insurance carriers and health care providers may use non-prescribed formats by mutual agreement as provided in §133.500(d), additional formats will be available without the need to prescribe the formats.

Section 133.500(a) and §133.501(b)(2): Several commenters recommend adding a definition of "reconsideration" and the exclusion of reconsiderations from the electronic billing and reimbursement process. A few commenters state that the rules do not address billing by out-of-network pharmacies and other providers when no pre-arranged method exists for the carrier to receive the bill.

Agency Response: The reconsideration process, as described in §133.250, is not excluded from these rules to avoid unreasonable restrictions on system participants who wish to exchange information in an efficient manner. The Division clarifies that the adopted rules define "electronic billing" as the "exclusive process to exchange medical bill data." Medical bills, including bills for reconsideration, shall be submitted electronically, unless a health care provider meets the waiver criteria, the insurance carrier being billed has obtained a waiver, or a mutual agreement between the two exists. This applies to all system participants, regardless of a provider's network or pharmacy benefit manager status.

Section 133.500(a)(1)(D): A few commenters state that the ANSI 837 format may be needed by pharmacies when billing for durable medical equipment and other supplies and services.

Agency Response: The Division clarifies that the ANSI 837 format is the appropriate format to use when a pharmacy provides and bills durable medical equipment and supplies. The standard billing formats correspond to the type of service performed and billed rather than the specific provider type.

Section 133.500(a)(1)(D): A commenter recommends the rules allow for updates to formats, accept input from external stakeholders, and provide sufficient transition time.

Agency Response: The Division notes that updates to adopted formats require the Division to review the formats to ensure system applicability and determine benefits/costs. To the extent that changes to standard formats or versions of adopted formats necessitate a rule revision, such rule revisions require a formal rule-making process and a public comment period during which input from external stakeholders is considered and changes are made

as appropriate. The rulemaking process for these rules involved substantial input from stakeholders. Additionally, this rule adoption process provides a transition period for system participants.

Sections 133.500(d), 133.501(a)(3) and (4): Several commenters recommend allowing for alternative data exchange methods that would be efficient and cost effective.

Agency Response: The Division points out that §133.500(d) permits insurance carriers and health care providers to exchange data in an alternative method by mutual agreement.

Section 133.500(a)(1)(D): Several commenters support adoption of the NCPDP Telecommunication Standard Version 5.1 and IAABC 837 Version 4010 formats. Another commenter supports the Department's efforts on implementing electronic billing and states it will benefit the system in the future. A commenter also supports the provision that allows current electronic relationships to continue.

Agency Response: The Division acknowledges the commenters' support.

Section 133.500: Some commenters indicate support for the NCPDP Universal Claim form for paper bill processing but are concerned about the timing of the transition from the DWC-66 paper pharmacy billing form.

Agency Response: The Division clarifies that the adoption of the NCPDP Universal Claim Form for pharmacy paper billing was included in the recently adopted billing and reimbursement rules (Chapters 133 and 134) and is outside the scope of these adopted Electronic Billing and Reimbursement Rules (§133.500 and §133.501). The Division will take into consideration the deadline for transition to the NCPDP Universal Claim Form in another rule initiative.

Section 133.500(b): Several commenters recommend implementation guides be finalized 180 days prior to January 1, 2008 and any subsequent changes reflected in a subsequent version of the format with 90 days notice prior to implementation.

Agency Response: The Division clarifies that the implementation guides adopted by HIPAA rules are currently available to the public, with the exception of the NCPDP format. The Division specification documents will be made available as early as possible for review and comment. It is the Division's goal to comply with the commenters' request for at least 180 days prior notice of the initial implementation guides and, to the extent possible, at least 90 days notice of subsequent changes.

Section 133.501(a)(1): Some commenters recommend changing language in §133.501(a)(1) to "priority" rather than "exclusive" because of potential computer system problems and the cost to implement electronic processes.

Agency Response: The Division declines to make the requested change. The rule includes provisions for health care provider and insurance carrier waivers from the requirement to exchange data electronically and provisions to exchange data in non-prescribed formats by mutual agreement. The Division anticipates that the costs to implement electronic processes are offset by the savings achieved by reducing paper processes. The Division will consider the financial impact when considering waiver requests.

Section 133.501(a)(2) and (3): A commenter supports a January 1, 2008 implementation date. Several commenters support the health care provider waiver requirements.

Agency Response: The Division acknowledges and appreciates the commenters' support.

Section 133.501(a)(5): A commenter recommends that the waiver provision for pharmacies apply only when 10 percent or less of the pharmacy's business is workers' compensation. A commenter states that waiver provisions do not provide leverage to providers or a vehicle for provider input.

Agency Response: The Division has changed subsection (a) to allow the Division to consider waivers based on unreasonable financial burden for health care providers on a case-by-case basis. Additionally, the Division will monitor the impact of the waiver criteria on system participants and, if necessary, will change the waiver requirements. The Division has retained the original proposed waiver criteria as well. The specific provider waiver provisions are intended to be non-arbitrary and eliminate burdensome administrative processes to obtain a waiver. The general waiver approach aligns with HIPAA rules, because the number of employees is a criterion for waiver. The Division added the 10 percent of practice criteria to maximize participation and provide cost effective electronic alternatives to paper processing.

Section 133.501(a)(6): A commenter recommends general guidelines for granting carrier waivers.

Agency Response: The Division believes that it is premature at this point in the project to develop specific criteria prior to identifying potential costs and savings. The preamble indicates that the intent is to allow waivers based on an unreasonable financial burden to the insurance carrier. The Division anticipates that this provision will be monitored and changed, if necessary, based on experience, costs analysis, and voluntary participation.

Section 133.501(a): A commenter recommends adding subsections to require prompt pay and timely acknowledgment, and to prohibit discrimination against providers filing paper medical bills.

Agency Response: The Division declines to make the requested change and clarifies that §133.500 and §133.501 apply to the method and content in the electronic exchange of medical bill data. Medical payment requirements and paper medical bill processing are administered in other sections of Chapters 133 and 134.

Section 133.501(b)(2): Several commenters recommend requiring documentation as a criterion for a complete electronic medical bill. A commenter recommends a medical bill should not be submitted to the insurance carrier until the medical bill is complete.

Agency Response: The Division declines to make the requested change. The medical billing and reimbursement rules, which are elsewhere in Chapter 133, establish the requirements for documentation. A complete electronic or paper medical bill does not contain documentation as part of the billing transaction. However, insurance carriers and payers may deny services if appropriate, or if required documentation is not timely received rather than rejecting the electronic medical bill. The efficiencies and effectiveness of electronic medical billing are artificially limited if documentation is required every time as part of a complete medical bill. The requirement may put an unreasonable burden to match documentation to an electronic bill on insurance carriers that choose to implement an electronic billing solution independently of a clearinghouse. It may also prevent the participation of health care providers that are able to bill electronically but lack the technology to attach documentation electronically. The rules

and implementation guides outline the process to reject an electronic medical bill that does not contain all mandatory fields in the electronic file format.

Section 133.501(b)(2): Several commenters recommend adding a "documentation" flag to the definition of a complete medical bill. Other commenters recommend adding specific elements to the definition of a complete medical bill.

Agency Response: The Division declines to make the requested change. The definition of a complete electronic medical bill relates to the bill data in an electronic file format. Documentation requirements are addressed in other sections of Chapter 133. Insurance carriers and payers may deny services if appropriate, or if required documentation is not timely received rather than rejecting the electronic medical bill. The efficiencies and effectiveness of electronic medical billing are artificially limited if documentation is required every time as part of a complete medical bill. Additionally, specific data elements are defined in the national standard implementation guides and Division specification documents.

Section 133.501(c)(3): Several commenters recommend changing the 24-hour acknowledgement requirement to "one business day" and changing "detail" acknowledgement to "functional" acknowledgement.

Agency Response: The Division has changed subsection (c) to reflect that an insurance carrier must acknowledge receipt of an electronic medical bill within one business day rather than by 24-hours, but declines to change "detail" acknowledgement to "functional" acknowledgement. A functional acknowledgment indicates that the insurance carrier accepts or rejects a file in its entirety. A detail acknowledgement indicates the insurance carrier accepts or rejects each transaction within the file.

Section 133.501(c)(3)(B): Several commenters agree with duplicate billing submission provisions and recommend enforcement action if health care providers violate this provision.

Agency Response: The Division acknowledges the support for duplicate billing submission provisions. Health care provider compliance is addressed in Chapter 180, Monitoring and Enforcement, Subchapter B, Medical Benefits Regulation.

Section 133.501(c)(4): A commenter recommends a new proposed section to clarify that all medical bills are still fully subject to the medical bill review and audit process.

Agency Response: The Division declines to make the requested change. Other sections of Chapters 133 and 134 administer the process of medical bill review and reimbursement and need to be read in conjunction with this rule.

Section 133.501(c)(4): A few commenters state that §133.501(c)(4) does not address returning a bill for reasons other than liability.

Agency Response: The Division clarifies that the rules anticipate that electronic medical bills are rejected in a Detail Acknowledgment as specified in §133.501(c)(2), not returned to the provider through a manual, paper process.

Section 133.501(e)(1): A few commenters inquired whether documentation received prior to a bill is considered a first notice of injury.

Agency Response: The Division clarifies that notices of an injury or occupational disease are administered under §§120.2, 122.1, and 124.1.

Section 133.501(e)(3): Some commenters recommend extending the seven-day time frame for health care provider submission of electronic documentation associated with an electronic medical bill to 14 or 21 days.

Agency Response: The Division declines to make the requested change. If there is a known delay before documentation is available, a health care provider may delay submission of the electronic medical bill. Requiring an insurance carrier to hold an electronic medical bill for 14 to 21 days before audit is an unreasonable burden. Insurance carriers may deny an electronic medical bill in a more efficient manner if required documentation is not submitted timely.

Section 133.501: A commenter states that there is no alternative process if the electronic billing system fails and that paper billing is working and economical and should be maintained as the primary billing process or at least as a back up process.

Agency Response: The Division has accounted for the potential for paper billing if electronic billing poses an unreasonable financial burden to individual participants. The waiver provision allows participants that meet the criteria to be excepted from electronic billing processes, using paper billing as a back up process to electronic billing. The adopted rules provide a more efficient and cost effective method for billing and reimbursement in the Texas workers' compensation system. Electronic billing in general, and electronic billing in the pharmacy system, is a proven process that is documented to deliver traceable, efficient, and cost effective processes.

Section 133.501(a): A commenter recommends the electronic billing model be deemed workable and accurate prior to implementation.

Agency Response: The Division clarifies that electronic billing and reimbursement is a proven process with documented efficiencies and cost effectiveness. The adopted rules will provide a significant amount of time to transition to the adopted formats as well as testing electronic billing processes in the Texas workers' compensation system.

Section 133.501(a): A commenter states that in its practice, a pharmacy that provides workers' compensation services exclusively, must implement an extensive process with potentially significant costs without benefit to the patient or to the pharmacy.

Agency Response: The Division clarifies that the potential costs to implement an electronic billing process is expected to be offset by the savings in administrative costs achieved by eliminating paper processes. Electronic billing is documented to be more efficient and provide benefits to both providers and payers, such as faster billing processing and payment.

For: Texas Medical Association.

For, with changes: P2P Link, American Insurance Association, Texas Mutual Insurance Company, Texas Association of School Boards, Texas Pharmacy Association/Texas Association of Drug Stores, The Boeing Company, Insurance Council of Texas, Property and Casualty Insurers of America, Association of Fire and Casualty Insurers of Texas, Working Rx and The Workers' Compensation Pharmacy Alliance.

Against: None.

The sections are adopted under Labor Code §§401.024, 408.025, 408.0251, 408.027, 413.007, 413.008, 413.053, 402.00111, and 402.061. Section 401.024 provides the commissioner the authority to permit or require by rule the use of

facsimile or other electronic means to transmit information in the system. Section 408.025 requires the commissioner to specify by rule the reports a health care provider is required to file. Section 408.0251 gives the commissioner the authority to adopt rules in cooperation with the commissioner of insurance regarding the electronic submission and processing of medical bills by health care providers to insurance carriers. Section 408.027 provides for payment of health care providers by insurance carriers and subsection (g) requires the commissioner to adopt rules as necessary to implement the provisions of §408.027 and §408.0271. Section 413.007 directs the Division to maintain a statewide database of medical billing information. Section 413.008 authorizes the Division to collect certain medical bill and payment information from the insurance carrier. Section 413.053 gives the commissioner the authority to establish standards of reporting and billing governing both form and content by rule. Section 402.00111 provides that the commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority under Title 5 of the Labor Code and other laws of this state. Section 402.061 provides the commissioner the authority to adopt rules as necessary to implement and enforce the Texas Workers' Compensation Act.

§133.500. *Electronic Formats for Electronic Medical Bill Processing.*

(a) The Division prescribes standard electronic formats by adopting the following implementation guides for the medical billing transactions:

(1) Billing:

(A) Professional Billing--ANSI x12 837(P) Version 4010.

(B) Institutional/Hospital Billing--ANSI x12 837(I) Version 4010.

(C) Dental Billing--ANSI x12 837(D) Version 4010.

(D) Pharmacy Billing--NCPDP Telecommunications Standard Version 5.1.

(2) Acknowledgment:

(A) Functional Acknowledgment--ANSI x12 997 Version 4010.

(B) Detail Acknowledgment--ANSI x12 824 Version 4010.

(3) Remittance--ANSI x12 835 Version 4010.

(4) Reporting--IAIABC 837 Version 4010.

(5) Documentation--ANSI x12 275 Version 4050.

(b) An implementation guide is a:

(1) specification document for national standard electronic formats as defined in subsection (a) of this section and published by a national standard setting organization that defines data requirements, data transaction sets, and data mapping; or

(2) published specification document that defines specific data requirements, data set transactions, data mapping, or data edits and is intended to accompany national standard implementation guides.

(c) Medical billing transactions must:

(1) contain all fields required in the applicable format implementation guide as set forth in subsection (a) of this section and associated Division implementation guides; and

(2) be populated with current and correct values defined in the applicable implementation guide as set forth in subsection (a) of this section and associated Division implementation guides.

(d) Insurance carriers and health care providers may exchange electronic data in a non-prescribed format by mutual agreement. All data elements required in the Division prescribed formats must be present in a mutually agreed upon format.

§133.501. Electronic Medical Bill Processing.

(a) Applicability.

(1) Electronic medical bill processing is the exclusive process to exchange medical bill data in accordance with §133.500 of this chapter (relating to Electronic Formats for Electronic Medical Bill Processing) for professional, institutional/hospital, pharmacy, and dental services.

(2) Insurance carriers must be able to exchange electronic data by January 1, 2008 unless the insurance carrier is excepted from the process in accordance with paragraph (6) of this subsection.

(3) Health care providers must be able to exchange electronic data by January 1, 2008 unless the health care provider is excepted from the process in accordance with paragraph (5) of this subsection.

(4) Health care providers and insurance carriers may contract with other entities for electronic medical bill processing. Insurance carriers and health care providers are responsible for the acts or omissions of its agents executed in the performance of services for the insurance carrier or health care provider.

(A) Health care provider agent is a person or entity that the health care provider contracts with or utilizes for the purpose of fulfilling the health care provider's obligations for electronic medical bill processing under the Texas Labor Code or Division rules.

(B) Insurance carrier agent is a person or entity that the insurance carrier contracts with or utilizes for the purpose of providing claims service or fulfilling the insurance carrier's obligations for electronic medical bill processing under the Texas Labor Code or Division rules.

(5) A health care provider is waived from the requirement to submit medical bills electronically to an insurance carrier if:

(A) the health care provider employs 10 or fewer full time employees, and workers' compensation constitutes less than 10% of their practice; or

(B) the health care provider requests and the Division approves a waiver. The Division will approve a request on a case-by-case basis and will base the decision on whether or not electronic billing causes an unreasonable financial burden on the health care provider.

(6) An insurance carrier is waived from the requirement to receive medical bills electronically from health care providers on approval from the Division. The Division may grant an exception on a case-by-case basis if an insurance carrier establishes that electronic billing will result in an unreasonable financial burden.

(b) Electronic medical bill.

(1) An electronic medical bill is a medical bill submitted electronically by a health care provider or an agent of the health care provider.

(2) A complete electronic medical bill is an electronic medical bill that:

(A) is submitted in accordance with this chapter, and

(B) identifies the:

(i) injured employee;

(ii) employer;

(iii) insurance carrier;

(iv) health care provider; and

(v) service, supply, or medication.

(3) The received date of an electronic medical bill is the date the bill is electronically transmitted in accordance with §102.4(p) of this title (relating to General Rules for Non-Division Communication). An electronic medical bill is considered received if it meets the criteria of a complete electronic medical bill.

(c) Acknowledgment.

(1) A Functional Acknowledgment is an electronic notification to the sender of an electronic file that the file has been received and:

(A) accepted as a complete, correct file, or

(B) rejected with a valid rejection code.

(2) A Detail Acknowledgment is an electronic notification to the sender of an electronic transaction within an electronic file that the transaction has been received and:

(A) accepted as a complete, correct submission, or

(B) rejected with a valid rejection code.

(3) An insurance carrier must acknowledge receipt of an electronic medical bill by returning a Detail Acknowledgment within one business day of receipt of the electronic submission.

(A) Notification of a rejection is transmitted in a Detail Acknowledgment when an electronic medical bill does not meet the definition of a complete electronic medical bill or does not meet the edits defined in the applicable implementation guide or guides.

(B) A health care provider may not submit a duplicate electronic medical bill earlier than 45 days from the date submitted if an insurance carrier has acknowledged acceptance of the original complete electronic medical bill. A health care provider may submit a corrected medical bill electronically to the insurance carrier after receiving notification of a rejection. The corrected medical bill is submitted as a new, original bill.

(4) Acceptance of a complete medical bill is not an admission of liability by the insurance carrier. An insurance carrier may subsequently reject an accepted electronic medical bill if it is determined that the employer listed on the medical bill is not a policyholder of the insurance carrier.

(A) The subsequent rejection must occur no later than 7 days from the date of receipt of the complete electronic medical bill.

(B) The rejection transaction must clearly indicate the reason for the rejection is due to denial of liability.

(d) Electronic remittance notification.

(1) An electronic remittance notification is an explanation of benefits (EOB), submitted electronically regarding payment or denial of a medical bill, recoupment request, or receipt of a refund.

(2) An insurance carrier must provide an electronic remittance notification no later than 45 days after receipt of a complete electronic medical bill or within 5 days of generating a payment.

(e) Electronic documentation.

(1) Electronic documentation consists of medical reports and/or records submitted electronically that are related to an electronic medical bill.

(2) Complete electronic documentation related to an electronic medical bill:

(A) is submitted by fax, electronic mail, or in an electronic format and

(B) identifies the:

- (i) injured employee,
- (ii) insurance carrier,
- (iii) health care provider;
- (iv) related medical bill(s), and
- (v) date(s) of service.

(3) When a health care provider submits electronic documentation related to an electronic medical bill, the documentation must be submitted within 7 days of submission of the electronic medical bill.

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 July 21, 2006.

TRD-200603855

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: August 10, 2006

Proposal publication date: February 3, 2006

For further information, please call: (512) 804-4288



TITLE 31. NATURAL RESOURCES AND CONSERVATION

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) adopts amendments to 31 TAC §§368.1, 368.5, and 368.10 concerning the Flood Mitigation Assistance Program without changes to the proposed text as published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4573) and will not be republished. The amendments provide clarification consistent with directives from the Federal Emergency Management Agency (FEMA).

Amendment to §368.1 is adopted 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 amendment makes eli-

gible 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 amendment also makes eligible any other authority which has been specifically authorized by FEMA to apply for FMA.

The board adopts 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 adopts 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 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.

There were no comments received on the proposed amendments.

The amendments are adopted 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 amendments are Texas Water Code Chapter 15.

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 July 19, 2006.

TRD-200603824

Jonathan Steinberg

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Texas Water Development Board

Effective date: August 8, 2006

Proposal publication date: June 2, 2006

For further information, please call: (512) 475-2052



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 143. EXECUTIVE CLEMENCY

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC §143.43 and §143.57, concerning the procedure in capital reprieve cases and commutation of death sentence to lesser penalty. The amendments are adopted without change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4705). The text of the rules will not be republished.

The amended rules are adopted for the purpose of clarifying the address for submission of an application and supplemental information for a reprieve and commutation of death sentence to a lesser penalty.

No public comment was received regarding adoption of the amendment.

SUBCHAPTER D. REPRIEVE OF EXECUTION

37 TAC §143.43

The amended rules are adopted under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that invest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603835

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

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Proposal publication date: June 9, 2006

For further information, please call: (512) 406-5388



SUBCHAPTER E. COMMUTATION OF SENTENCE

37 TAC §143.57

The amended rules are adopted under Article IV, Section 11 of the Texas Constitution and Article 48.01, Code of Criminal Procedure, that invest the Board of Pardons and Paroles with the power to recommend clemency, including pardons, commutations of sentence, and reprieves; and under §508.036(b), Government Code, that provides the Board with authority to adopt rules relating to the decision-making processes used by the Board of Pardons and Paroles.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603837

Laura McElroy
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Texas Board of Pardons and Paroles

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CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.3

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.3, concerning policy statements relating to parole release decisions by the Board of Pardons and Paroles. The amendment is adopted without change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4707). The text of the rule will not be republished.

The amended rule is adopted for the purpose of updating the cross references to 37 TAC §145.17 and clarifying the language of the rule.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603833

Laura McElroy

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Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



37 TAC §145.16

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.16, concerning action upon special review--release approved. The amendment is adopted without change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4707). The text of the rule will not be republished.

The amended rule is adopted for the purpose of updating the language of the section title and to clarify the procedures regarding

subsequent reviews of parole panel votes to approve release to parole or mandatory supervision.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board authority to consider and order release on parole.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200603831

Laura McElroy

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Texas Board of Pardons and Paroles

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For further information, please call: (512) 406-5388



37 TAC §145.17

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.17, concerning action upon special review--release denied. The amendment is adopted with one change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4708). The purpose of the change is to specify who may submit a request for special review. The text of the rule will be republished.

The amended rule is adopted for the purpose of updating the language of the section title and to clarify the procedures regarding subsequent reviews of parole panel votes to deny release to parole or mandatory supervision.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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

§145.17. *Action upon Special Review--Release Denied.*

(a) This rule provides a forum for receipt and consideration of information not previously available to the parole panel where the decision of the panel was to deny release to parole or mandatory supervision. While affording a remedy for consideration of such information, the Board also intends by this rule to reduce frivolous and duplicate requests for special consideration.

(b) Requests for special review shall apply only to cases reviewed for release to parole or mandatory supervision where the decision of the parole panel was to deny release to parole or mandatory supervision.

(c) All requests for special review shall be in writing and signed by the offender or their attorney.

(d) All requests for special review shall be filed with the Texas Board of Pardons and Paroles, Board Administrator, P.O. Box 13401, Austin, Texas 78711.

(e) The board administrator shall refer to the special review parole panel only those requests for special review which meet the criteria set forth herein.

(f) Requests for special review shall be considered in the following circumstances:

(1) a parole panel denied release to parole or mandatory supervision and a parole panel member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review (NR) date; or

(2) a written request on behalf of an offender is received which cites information not previously available to the parole panel.

(3) both parole panel members who voted with the majority are no longer active board members or parole commissioners, and the presiding officer (chair) places the decision in the special review process to be reconsidered prior to the NR date.

(g) Information not previously available shall mean only:

(1) responses from trial officials and victims;

(2) a change in an offender's sentence and judgment; or

(3) an allegation that the parole panel has committed an error of law or board rule.

(h) A special review parole panel, other than the current voting panel, shall decide and exercise final action on such requests for special review.

(i) Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) vote remain set; or

(3) revoke the case in accordance with applicable provisions of Subchapter A of this chapter (relating to Parole Process).

(j) The special review parole panel shall not set an offender's NR date on a date later than the previous NR date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603832

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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Proposal publication date: June 9, 2006
For further information, please call: (512) 406-5388



SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.21

The Texas Board of Pardons and Paroles adopts an amendment to 37 TAC §145.21, concerning parole in absentia (parole review and mandatory supervision for offenders not in actual physical custody of the TDCJ Correctional Institutions Division). The amendment is adopted without change to the proposed text as published in the June 9, 2006, issue of the *Texas Register* (31 TexReg 4709). The text of the rule will not be republished.

The amended rule is adopted for the purpose of updating the cross references to 37 TAC §145.16 and §145.17, in the language of the rule.

No public comment was received regarding adoption of the amendment.

The amended rule is adopted under §§508.036, 508.0441, and 508.141, Government Code. Section 508.036 provides the board with the authority to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.141 provides the board with the authority to consider and order release on parole.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200603834

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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Proposal publication date: June 9, 2006
For further information, please call: (512) 406-5388



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 18. TEXAS CHILD CARE DEVELOPMENT BOARD

CHAPTER 631. STANDARDS FOR STATE AGENCY EMPLOYEE CHILD CARE FACILITIES

40 TAC §631.1, §631.2

The Texas Building and Procurement Commission (TBPC) adopts the repeal of 40 TAC §631.1 and §631.2, concerning standards for state agency employee child care facilities. The repeal is adopted without changes to the proposal as published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3659).

These rules are being repealed because the Texas Child Care Development Board no longer exists and there is no longer a need for these rules.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code §663.101(b) and Act of September 1, 2001, 77th Leg., R.S. ch. 761, 2001 Tex. Gen. Laws 1494, 1499, authorizing the TBPC to adopt rules relating to the Child Care Development 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.

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TRD-200603836

Ingrid K. Hansen
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Texas Child Care Development Board
Effective date: August 10, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 463-3562



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.316, new §700.316, and an amendment to §700.324, without changes to the proposed text as published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3660).

The justification for the sections is to update the rule based on legislation passed in the 79th Legislature, Regular Session, 2005, and to conform to current federal regulations. There are four primary changes. House Bill (HB) 614 amended §264.101(a) of the Texas Family Code (TFC) to require that DFPS continue to pay for foster care for a youth who is enrolled in high school or a secondary school program. Under this statute, eligibility for extended foster care extends until the youth graduates, leaves school, or turns 22 years old. The current rule only paid foster care for those youth expected to complete high school by age 20. HB 614 was effective May 10,

2005, and DFPS has implemented the change through policy. The second change provides for an extension of foster care up to the age of 21 for youth enrolled in vocational or technical training. This is consistent with Senate Bill (SB) 6, which directs DFPS to address the unique challenges that foster children face when transitioning to independent living, and is authorized under TFC, §264.101(d). The current rule only provides for foster care funding up to age 19 years for qualified youth. The third change deletes the requirement that placements be non-profit, which conforms with current federal regulations that no longer restrict payments to nonprofit entities. The fourth change addresses eligibility for foster care for those incapacitated youth for whom the Texas Department of Aging and Disability Services becomes guardian. SB 6 moved the Adult Protective Services guardianship program for incapacitated children aging out of CPS conservatorship to the Texas Department of Aging and Disability Services.

The sections will function by ensuring that youth reaching adult age while in the foster care system will have additional living options and a smoother transition into adulthood and independent living.

No comments were received regarding adoption of the sections.

40 TAC §700.316

The repeal is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements Texas Family Code (TFC) §264.101(a-1) and §264.101(d).

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 July 24, 2006.

TRD-200603892

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2006

Proposal publication date: May 5, 2006

For further information, please call: (512) 438-3437



40 TAC §700.316, §700.324

The amendment and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner

regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement Texas Family Code (TFC) §264.101(a-1) and §264.101(d).

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 July 24, 2006.

TRD-200603893

Gerry Williams

General Counsel

Department of Family and Protective Services

Effective date: September 1, 2006

Proposal publication date: May 5, 2006

For further information, please call: (512) 438-3437



SUBCHAPTER Y. CONTRACTING WITH LICENSED RESIDENTIAL CHILD-CARE PROVIDERS

40 TAC §700.2501

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.2501, without changes to the proposed text published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3662). The justification for the amendment is to update the rule to comply with the Fair Access to Foster Care Act, Public Law 109-113, which allows foster care maintenance payments to be paid on behalf of eligible children to either a nonprofit or for-profit child-placing agency, and to clarify recent changes made to the residential child-care licensing rules.

The amendment will function by ensuring that the rules are consistent with the federal laws, which will allow for a larger pool of residential providers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Public Law 119-113, the Fair Access Foster Care Act of 2005, as it amends §472(b) of the Social Security Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 21, 2006.

TRD-200603845

Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 438-3437

◆ ◆ ◆
CHAPTER 705. ADULT PROTECTIVE SERVICES
SUBCHAPTER L. RISK ASSESSMENT
40 TAC §705.6101

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), new §705.6101, without changes to the proposed text published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3664).

The justification for the new section is to outline the risk assessment criteria adult protective services staff will use when assessing risk during an investigation of alleged abuse, neglect, and exploitation of an elderly or disabled person. The new section is the result of Senate Bill 6, 79th Legislature, Regular Session, 2005, which amended Human Resources Code, §48.004.

The section will function by ensuring staff are aware of the criteria used to evaluate risk to the safety and well-being of an elderly or disabled client who is in a state of abuse, neglect, or exploitation.

No comments were received regarding adoption of the section.

The new section is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements HRC, §48.004, as amended by §2.06 of Senate Bill 6, 79th Legislature, Regular Session.

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 July 21, 2006.

TRD-200603847
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 438-3437

◆ ◆ ◆
CHAPTER 732. CONTRACTED SERVICES
SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §732.203

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §732.203, without changes to the proposed text published in the May 5, 2006, issue of the *Texas Register* (31 TexReg 3664). The justification for the amendment is to allow a longer timeframe for initial contract periods and renewals for outsourcing the delivery of substitute care and case management services, and the evaluation of these services. Senate Bill 6, 79th Legislature, Regular Session, 2005, added Chapter 45, Privatization of Substitute Care and Case Management Services to the Human Resources Code. Chapter 45 requires DFPS to outsource substitute care and case management services. The outsourcing must be completed by September 1, 2011.

The amendment will function by ensuring that there will be a new structural model for child welfare services resulting in community-centered delivery of substitute care and case management services that improves child protective services, achieves timely permanency, and improves the overall well-being of children.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements Human Resources Code §45.004(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 July 21, 2006.

TRD-200603846
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: September 1, 2006
Proposal publication date: May 5, 2006
For further information, please call: (512) 438-3437

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Review

Texas Department of 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 47 concerning Employee Notice of Injury or Death and Claim for Benefits. 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:

§47.5. Information Constituting Claim.

§47.10. Signature of Claimant.

§47.15. Employer Advances Compensation.

§47.20. Beneficiaries Filing Claim.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 3, 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-200603926

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Filed: July 26, 2006



Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Commissioner's Rules Concerning Special Education Services; Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students; Subchapter CC, Commissioner's Rules Concerning Adult and Community Education; Subchapter DD, Commissioner's Rules Concerning High School Equivalency Programs; and Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program, pursuant to the

Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 89 in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1737).

Relating to the review of 19 TAC Chapter 89, Subchapter AA, the TEA finds that the reasons for adopting Subchapter AA continue to exist and that the rules should be readopted. The TEA will propose changes to Subchapter AA at a later date in order to align the rules with federal regulations associated with the reauthorization of the Individuals with Disabilities Improvement Education Act (IDEA 2004). Once federal regulations have been issued, proposed commissioner's rules will also reflect the required technical edits, additions, and deletions.

Relating to the review of 19 TAC Chapter 89, Subchapter BB, the TEA finds that the reasons for adopting Subchapter BB continue to exist and that the rules should be readopted, with the exception of 19 TAC §89.1260, Monitoring of Programs and Enforcing Law and Commissioner's Rules. The TEA will repeal 19 TAC §89.1260 in accordance with House Bill 3459, 78th Texas Legislature. The repeal will reflect statutory changes from the use of onsite program compliance monitoring to performance based monitoring indicators. The TEA will also propose changes to Subchapter BB to bring the rules into alignment with House Bill 1 legislation passed by the 79th Texas Legislature, Third Called Session, which addresses bilingual education programs.

Relating to the review of 19 TAC Chapter 89, Subchapter CC, the TEA finds that the reasons for adopting Subchapter CC continue to exist and that the rule should be readopted. The TEA is proposing no changes to Subchapter CC at this time.

Relating to the review of 19 TAC Chapter 89, Subchapter DD, the TEA finds that the reasons for adopting Subchapter DD continue to exist and that the rules should be readopted. As a result of its review, the TEA proposed changes to Subchapter DD to clarify conditions for students to be eligible to participate in the high school equivalency program and required assessments of these students. This proposal was published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4825).

Relating to the review of 19 TAC Chapter 89, Subchapter EE, the TEA finds that the reasons for adopting Subchapter EE continue to exist and that the rules should be readopted. The TEA will propose changes to Subchapter EE at a later date in order to provide clarification regarding funding.

The TEA received one comment relating to the rule review of 19 TAC Chapter 89, Subchapter AA.

Comment. An individual requested that the TEA review the graduation requirements in 19 TAC §89.1070(i) to clarify what must occur when a student who has graduated comes back to request additional services. The individual expressed their opinion that the current rule is

confusing and does not clearly address whether such students are automatically entitled to come back to receive services or what happens if the admission, review, and dismissal (ARD) committee determines that there are no "needed educational services" for the student. The individual recommended that subsection (i) be deleted and that subsection (a) be revised to reflect that graduation under any subsection terminates a student's eligibility for special education services.

Agency response. The TEA disagrees. 19 TAC §89.1070 is consistent with 34 CFR §300.122. Under §89.1070, the ARD committee is responsible for determining whether a student with a disability is eligible to graduate from high school. Pursuant to subsection (i), the ARD committee also determines whether students who graduate under subsection (c) need additional services in order to receive a free appropriate public education. In addition, students who graduate under subsection (c) and return to school continue to be eligible for funding as referenced in subsection (a). Adult students, or parents authorized to act on behalf of students, can pursue their disagreements with ARD committee decisions through dispute resolution. Section 89.1070 will be reviewed and revised, if necessary, once federal regulations subsequent to the 2004 reauthorization of the IDEA 2004 are issued.

The TEA received no comments related to the rule review requirement for 19 TAC Chapter 89, Subchapters BB - EE.

This concludes the review of 19 TAC Chapter 89.

TRD-200603830

Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: July 20, 2006



Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC Chapter 145, relating to Parole. The Board amended §145.16 for the purpose of updating the language of the section title and to clarify the procedures regarding subsequent reviews of parole panel votes to approve release to parole or mandatory supervision; §145.17 for the purpose of updating the language of the section title and to clarify the procedures regarding subsequent reviews of parole panel votes to deny release to parole or mandatory supervision with one change to specify who may submit a request for special review; §145.3 for the purpose of updating the cross references to §145.17 and clarifying the language of the rule; and §145.21 for the purpose of updating the cross

references to §145.16 and §145.17 in the language of the rule. The readoption of Chapter 145 is filed in accordance with the Board of Pardons and Paroles' Notice of Intent to Review published in the June 9, 2006 issue of the *Texas Register* (31 TexReg 4740). No public comments were received.

The assessment of Chapter 145 indicates that the original justification for the rules continues to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapter 145.

TRD-200603864

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Filed: July 21, 2006



Texas Water Development Board

Title 31, Part 10

Pursuant to the notice of proposed rule review published in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4663), the Texas Water Development Board (board) has reviewed and considered for readoption, revision or repeal 31 Texas Administrative Code (TAC) Part 10, Chapter 368, Flood Mitigation Assistance Program, in accordance with the Texas Government Code, §2001.039.

The board considered, among other things, whether the reasons for adoption of these rules continue to exist. No comments were received on the proposed rule review.

As a result of the review, the board determined that the rules are still necessary and readopts the sections because it governs the Board's responsibilities for administering the program. As a result of the review, the board concurrently adopts amendments to §§368.1, 368.5, and 368.10. The amendments are adopted for clarification consistent with directives from the Federal Emergency Management Agency. This completes the board's review of 31 TAC Chapter 368, Flood Mitigation Assistance Program.

TRD-200603825

Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: July 19, 2006



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 10 TAC §80.240(a)(13)

Texas Department of Housing and Community Affairs
Tax Lien File Layout

MUST be ASCII Fixed Record Layout (Text Format)			
516 bytes total per each record			
All text fields, addresses, names, etc should be left justified.			
ITEM	PICTURE	OFFSET	Additional Information for Accurate Filing
Home Identification Label-No	Alpha 10	1-10	The label number must be exactly 10 characters - anything more or less will be invalid. Also, additional text (i.e., "Lab#" before the label or "A" or "A/B" after the number) will invalidate the field. If there is no label number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
Serial-No	Alpha 26	11-36	Serial numbers must only include the number of the first section - and not be prefixed with anything else (i.e., SER#, #, S#, or using both section letters as A/B). The chances of recording a lien with only a serial number are very slim. Having a label number is the best chance for a successful recording. If there is no serial number, LEAVE SPACES BLANK – DO NOT enter ZEROS, UNKNOWN, NONE or anything else in this field.
FILLER (blank spaces)	Alpha 20	37-56	Model name is no longer required, so leave the 20-spaces originally allocated for this blank.
Taxpayer Identification			
Taxpayer-Name	Left Justified	Alpha 40	
Taxpayer-Name2	Left Justified	Alpha 40	
Taxpayer -Addr1	Left Justified	Alpha 30	
Taxpayer -Addr2	Left Justified	Alpha 30	
Taxpayer -City	Left Justified	Alpha 20	
Taxpayer -State	Left Justified	Alpha 2	
Taxpayer -Zipcode	Left Justified	Alpha 10	
		57-96	
		97-136	
		137-166	
		167-196	
		197-216	
		217-218	
		219-228	

ITEM	PICTURE	OFFSET	Additional Information for Accurate Filing
Collector Identification			
Collector-Tax-Entity-ID	Alpha 10	229-238	The taxing entity id number MUST be 10 characters and in the following format XXX-XXX-XX. If the State Comptroller's Office has not assigned a taxing entity ID to the taxing entity, enter 999-999-99 in this field.
Collector-Name	Left Justified Alpha 40	239-278	Enter the name of the taxing jurisdiction.
Collector-Name2	Left Justified Alpha 40	279-318	Enter the name of the collector.
Collector-Addr1	Left Justified Alpha 30	319-348	
Collector-Addr2	Left Justified Alpha 30	349-378	
Collector-City	Left Justified Alpha 20	379-398	
Collector-State	Left Justified Alpha 2	399-400	
Collector-Zipcode	Alpha 10	401-410	
Lien Information			
Tax-Roll-Account-No	Alpha 26	411-436	
FILLER (blank spaces)	Alpha 8	437-444	Lien date is the date the lien is received by TDHCA and will be inserted when recorded; so leave the 8-spaces originally allocated for this blank.
Tax-Year - YYYY	Alpha 4	445-448	
FILLER (blank spaces)	Alpha 8	449-456	Tax amount is no longer required, so leave the 8-spaces originally allocated for this blank.
Release-Date - YYYYMMDD	Alpha 8	457-464	The date MUST be formatted as YYYYMMDD and have no slashes or spaces.
FILLER (blank spaces)	Alpha 49	465-513	
County Code	Alpha 3	514-516	A carriage return after entering the 3-digit County Code is needed after each record for proper formatting.

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
 P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109
 Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

TAX LIEN RECORD/RELEASE

Please type or print clearly.

BLOCK 1: Information

Taxpayer Name and Tax Roll Account # are for information purposes only. All other information is REQUIRED.

HUD Label or Texas Seal #: _____ **OR** Serial #: _____
 Tax Roll Account #: _____
 Complete 8-Digit Taxing Entity ID #: _____
 County Code (3 digits): _____
 County Name: _____
 Year for which taxes are owed: _____
 Taxpayer Name: _____
 (Name)
 Taxpayer Address: _____
 (Address)

 (City) (State) (Zip Code)
 Collector's Name & Name of Taxing Entity: _____
 Collector's Address: _____
 (Address)

 (City) (State) (Zip Code)
 Collector's Phone #: ()

BLOCK 2: Signature REQUIRED for Tax Lien Recording

I hereby certify that the lien being **RECORDED** with this form is in accordance with all applicable provisions of the Tax Code. If this lien recordation is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

 (Collector's Signature) (Date)

BLOCK 3: Signature REQUIRED for Tax Lien Release

I hereby certify that the lien being **RELEASED** with this form has been discharged and should be removed from the records of the Texas Department of Housing and Community Affairs. If this lien release is done as a central collector, the undersigned further represents that it is on file as a central collector with the Texas Department of Housing and Community Affairs and that such records are complete and current.

 (Collector's Signature) (Date)

Department Use Only

<p>Filing Recorded Date:</p>	<p>Filing NOT Recorded because:</p> <p><input type="checkbox"/> No manufactured home ID#(s) provided.</p> <p><input type="checkbox"/> Our records indicate that this home is real property. No lien can be recorded.</p> <p><input type="checkbox"/> Received after the filing deadline.</p> <p><input type="checkbox"/> Required Information not provided.</p>
-------------------------------------	--

Figure: 10 TAC §80.260(a)(15)

Texas Department of Housing and Community Affairs
MANUFACTURED HOUSING DIVISION
 P. O. BOX 12489 Austin, Texas 78711-2489
 (800) 500-7074, (512) 475-2200 FAX (512) 475-1109
 Pursuant to the Texas Manufactured Housing Standards Act, Chapter 1201 of the Occupations Code
 Internet Address: www.tdhca.state.tx.us/mh/index.htm

NOTIFICATION OF FILING STATUS AS A CENTRAL TAX COLLECTOR

Please type or print clearly.

BLOCK 1: Central Tax Collector Information

Central Collector Name: _____
 Central Collector's Address: _____
(Address) (City) (State) (Zip Code)
 Primary Taxing Entity ID#: ____-____-____ Central Collector's Phone #: (____) _____

BLOCK 2: Taxing Jurisdiction Information

County Name: _____ County Code (3 digits): _____

Complete 8-Digit Taxing Entity ID #	Name of Taxing Entity

Additional taxing entities may be listed on the reverse side of this form.

BLOCK 3: Notarized Signature Required

Until revoked by written notice to the Department, the undersigned will be the sole agent of each taxing entity listed herein for the recordation and release of tax liens on manufactured homes within the county specified herein. The undersigned represents and warrants that it is acting as a centralized collector and that it has legal authority to record and release such liens under the Primary Taxing Entity ID number designated herein. A lien filed for a particular year under the designated Primary Taxing Entity ID number may be for taxes due to one or more of the entities for which the Central Collection Agent collects, whereas a lien release filed for that year under that same number indicates that ALL taxes due to each entity for which the Agent collects have been discharged. In the event that any of the information provided herein changes, the undersigned agrees and undertakes to provide the Department with written notice of such change at least ten (10) days prior to its taking effect, and until and unless such written notice has been actually received by the Department at least ten (10) days prior to its taking effect, the Department will not be bound by it.

_____ (Central Collector's Signature) _____ (Date)

Before me personally appeared the person(s) whose signature(s) appear above, who by being sworn, upon oath, say that the statements set forth hereinabove are true and correct. Subscribed and sworn before me this ____ day of _____ 20__.

(Name of Notary)

(Notary Public)

(Commission Expires)

SEAL

Notary Public State of Texas

Figure: 16 TAC §26.346(b)(1)(F)

Distance	Per Minute
All distances	\$0.3456

[Mileage]	[1st Min.]	[Add'l Min.]
[0—10]	[.2975]	[.2625]
[11—22]	[.3150]	[.2975]
[23—55]	[.3325]	[.3150]
[56—124]	[.3675]	[.3500]
[125—292]	[.4025]	[.3850]
[293—Over]	[.4200]	[.4025]

Operator Service Charges:	
Customer-Dialed Calling Card Station	\$2.50
Operator-Dialed Station	\$3.75
Person To Person	\$4.50
Long Distance Access Fee	\$1.00

Determination Of Rating

A. Did The District Answer No To Indicators 1, 2, 3 OR 4; OR Both 5 And 6 If The District Answered No To Either, The District's Rating Is Substandard Achievement	Points
B. Determine Rating By Applicable Number Of Points	>=75 AND Yes To Indicator 7
Superior Achievement	>=65 <75 OR
Above Standard	>=75 AND No To Indicator 7
Standard Achievement	>=55 <65
Substandard Achievement (If Less Than 55 Points OR If The District Answered No To Indicators 1, 2, 3 OR 4; OR Both 5 And 6)	<55 OR Answered No To One Default Indicator

* UL - Upper limit
** LL - Lower limit

For Questions Call The Division Of School Financial Audits At (512) 463-9095

Administrative Cost Ratio Indicator 18

ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less Than 500	.2654
Share	0.3614

Student To Teacher Ratio Indicator 19

District Size - Number of Students Between	Low	High
<500	7.0	22
500 - 999	10.0	22
1000 - 4999	11.5	22
5000 - 9999	13.0	22
=>10,000	13.5	22

Student To Staff Ratio Indicator 20

District Size - Number of Students Between	Low	High
<500	5.0	14
500 - 999	5.8	14
1000 - 4999	6.3	14
5000 - 9999	6.8	14
=>10,000	7.0	14

Completed By: _____ Date: _____

Notes:

School FIRST - Rating Worksheet Calculations Effective August 2006

	Indicator	Calculation Defined
1	Was Total Fund Balance Less Reserved Fund Balance Greater Than Zero In The General Fund?	$A > 0$ Where $A = [\text{Aggregate Of Unreserved, Designated Fund Balance And Unreserved, Undesignated Fund Balance In General Fund At June 30 or August 31 Depending On Fiscal Year End}]$
2	Was the Total Unrestricted Net Asset Balance (Net of the Accretion of Interest for Capital Appreciation Bonds) in the Governmental Activities Column in the Statement of Net Assets Greater Than Zero? (If The District's Five-Year Percent Change In Students Was A 10% Increase Or More Then The District Answers Yes)	If $((C - D) / D) \times 100 < 10\%$ Then Continue Calculation $A + B > 0$ Where $A = \text{Total Unreserved Net Asset Balance in the Governmental Activities Column in Exhibit A-1, Statement of Net Assets in the Annual Financial Report; } B = \text{Accretion of Interest for Capital Appreciation Bonds; } C = [\text{Number Of Students In Year 5 From Base Year}]; D = [\text{Number Of Students In Base Year}]$
3	Were There No Disclosures In The Annual Financial Report And/OR Other Sources Of Information Concerning Default On Bonded Indebtedness Obligations?	No Calculation Involved
4	Was The Annual Financial Report Filed Within One Month After November 27th or January 28th Deadline Depending Upon The District's Fiscal Year End Date (June 30th or August 31st)?	No Calculation Involved
5	Was There An Unqualified Opinion In Annual Financial Report?	No Calculation Involved
6	Did The Annual Financial Report Not Disclose Any Instance(s) Of Material Weaknesses In Internal Controls?	No Calculation Involved

School FIRST - Rating Worksheet Calculations Effective August 2006		
	Indicator	Calculation Defined
7	Did The District's Academic Rating Exceed Academically Unacceptable?	No Calculation Involved
8	Was The Three-Year Average Percent Of Total Tax Collections (Including Delinquent) Greater Than 98%?	$((A / B) \times 100)$ Where A = [Tax Collections For Three Years]; B = [Tax Levy For Three Years] Reported In Exhibit J-1 Schedule of Delinquent Taxes Receivable In The Annual Financial Report
9	Did The Comparison Of PEIMS Data To Like Information In Annual Financial Report Result In An Aggregate Variance Of Less Than 3 Percent Of Expenditures Per Fund Type (Data Quality Measure)?	$((A / B) \times 100)$ Of C Where A = [Absolute Value Of All Differences In Expenditures In Exhibit C-2 Statement of Revenues, Expenditures, and Changes in Fund Balance And PEIMS]; B = [Sum Of Expenditure In PEIMS Per Fund Type Presented In Exhibit C-2]; C = [Fund Class]
10	Were Debt Related Expenditures (Net Of IFA And/Or EDA Allotment) Less Than \$250.00 Per Student? (If The District's Five-Year Percent Change In Students Was A 7% Increase Or More, Or If Property Taxes Collected Per Penny Of Tax Effort Were More Than \$200,000 Per Student, Then The District Receives 5 Points)	If $((B - D) / D) \times 100 < 7\%$ Or $E / F < \$200,000$, Then Continue Calculation $((A - C) / B)$ Where A = [Function 71 Expenditures Report In The Debt Service And General Funds (Excluding Expenditure Object Codes 6524 and 6525)]; B = [Number Of Students In Year 5 From Base Year]; C = [IFA + EDA Allotments]; D = [Number Of Students In Base Year]; E = [Total Tax Collections]; F = [Total Tax Rate In Pennies]
11	Was There No Disclosure In The Annual Audit Report Of Material Noncompliance?	No Calculation Involved
12	Did The District Have Full Accreditation Status In Relation To Financial Management Practices? (e.g., Conservator Assigned)	No Calculation Involved

School FIRST - Rating Worksheet Calculations Effective August 2006

	Indicator	Calculation Defined
13	Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%? (Functions 11, 36, 93, 95) <u>(Phased in over three years: 55% for 2006-2007; 60% for 2007-2008; and 65% for 2008-2009)</u>	((A / B) X 100) Where A = [Expenditures In General Fund, Special Revenue Funds (Excluding SSA Fund Codes) and Capital Projects In Functions 11, 36, 93, 95 And Object Codes 6112-6499]; B = [Expenditures In General Fund, Special Revenue Fund, And Enterprise Fund 701(Child Nutrition Program); (Excluding SSA Fund Codes) And Capital Projects Fund; Functions 11 through 61 and 93 & 95; Object Codes 6112 through 6499]
14	Was The Percent Of Operating Expenditures Expended For Instruction More Than or Equal to 65%? (Functions 11, 12, 31, 33, 36, 93, 95)	((A / B) X 100) Where A = [Expenditures In General Fund, Special Revenue Funds (Excluding SSA Fund Codes) and Capital Projects In Functions 11, 12, 31, 33, 36, 93, 95 And Object Codes 6112-6499]; B = [Expenditures In General Fund, Special Revenue Fund, And Enterprise Fund 701(Child Nutrition Program); (Excluding SSA Fund Codes) And Capital Projects Fund; Functions 11 through 61 and 93 & 95; Object Codes 6112 through 6499]
15	Was The Aggregate Of Budgeted Expenditures And Other Uses Less Than The Aggregate Of Total Revenues, Other Resources and Fund Balance in General Fund?	(A + B) - (C + D + E) < 0 Where A = [Budgeted Appropriations In General Fund]; B = [Budgeted Other Uses In The General Fund]; C = [Budgeted Revenues In General Fund]; D = [Budgeted Other Resources In The General Fund]; E = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]
16	If The District's Aggregate Fund Balance In The General Fund And Capital Projects Fund Was Less Than Zero, Were Construction Projects Adequately Financed? (Were Construction Projects Adequately Financed Or Adjusted By Change Orders Or Other Legal Means To Avoid Creating Or Adding To The Fund Balance Deficit Situation?)	If (C + D) < 0 Then Continue Calculation As (A - B - (C + D)) < 0 Where A = [Expenditures Function 81 In General Fund and Capital Projects Fund]; B = [Other Resources For Real Property Financing In General Fund and Capital Projects Fund]; C = [Fund Balance In General Fund At July 1 or September 1 Depending On Fiscal Year End]; D = [Fund Balance In Capital Projects Fund At July 1 or September 1 Depending On Fiscal Year End]
17	Was The Ratio Of Cash And Investments To Deferred Revenues (Excluding Amount Equal To Net Delinquent Taxes Receivable) In The General Fund Greater Than Or Equal To 1:1? (If Deferred Revenues Are Less Than Net Delinquent Taxes Receivable, Then The District Receives 5 Points)	If B > 0 Then Continue Calculation As (A / B) Where A = [Cash And Investments In General Fund]; B = [Deferred Revenue In General Fund - Property Tax Receivable Net Of Uncollectible]

School FIRST - Rating Worksheet Calculations Effective August 2006		
	Indicator	Calculation Defined
18	Was The Administrative Cost Ratio Less Than The Threshold Ratio? (See Ranges Below)	(A>B) A = [Acceptable Administrative Cost Ratio]; B = [Administrative Cost Ratio Of The District]
19	Was The Ratio Of Students To Teachers Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Number Of Teachers FTEs]
20	Was The Ratio Of Students To Total Staff Within The Ranges Shown Below According To District Size? (See Ranges Below)	(A / B) Where A = [Number Of Students]; B = [Total Staff FTEs]
21	Was The Total Fund Balance In The General Fund More Than 50% And Less Than 150% of Optimum According To The Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report?	Deficient Fund Balance Amount In General Fund Is Defined As $A < (B \times .5)$ And Excess Is Defined As $A > (B \times 1.5)$ Where A = [Total General Fund Balance At June 30, 20XX or August 31, 20XX Depending On Fiscal Year End]; B = Line 10 in Exhibit J-3, Fund Balance and Cash Flow Calculation Worksheet in the Annual Financial Report.
22	Was The Decrease In Undesignated Unreserved Fund Balance Less Than 20% Over Two Fiscal Years? (If 1.5 Times Optimum Fund Balance Is Less Than Total Fund Balance In General Fund Or If Total Revenues Exceeded Operating Expenditures In The General Fund, Then The District Receives 5 Points).	If $(A - B) > 0$ And Optimum Fund Balance $\times 1.5$ Is Less Than Total Fund Balance In General Fund And $[C] \times .80 > [D]$, Then Continue Calculation $[A] - [B]$ Where A = [Expenditures In General Fund In Functions 11 Through 61 And Expenditure Object Codes 6100 Through 6400]; B = [Total Revenues In General Fund]; C = [Undesignated, Unreserved Fund Balance In General Fund At June 30 or August 31, Depending On Fiscal Year End, Two Fiscal Years Prior]; D= [Undesignated, Unreserved Fund Balance In General Fund For The Last Fiscal Year]
23	Was The Aggregate Total Of Cash And Investments In The General Fund More Than \$0?	$A > 0$ Where A = [Cash and Investments In General Fund]
24	Were Investment Earnings In All Funds (Excluding Debt Service Fund And Capital Projects Fund) More Than \$20 Per Student?	(A / B) Where A = [Investment Earnings In All Funds Except Debt Service Fund And Capital Projects Fund]; B = [Number Of Students]

Indicator 18	
ADA Group	Standard
10,000 and Above	0.1105
5,000 to 9,999	.1250
1,000 to 4,999	.1401
500 to 999	.1561
Less than 500	.2654
Sparse	0.3614

		Ranges for Ratios	
District Size - Number of Students Between		Low	High
Indicator 19			
	<500	7.0	22
	500 999	10.0	22
	1,000 4,999	11.5	22
	5,000 9,999	13.0	22
	=>10,000	13.5	22
Indicator 20			
	<500	5.0	14
	500 999	5.8	14
	1,000 4,999	6.3	14
	5,000 9,999	6.8	14
	=>10,000	7.0	14

For Questions Call The Division Of School Financial Audits At (512) 463-9095

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ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Parks and Wildlife Department, announces the issuance of Request for Proposals (RFP) #303-7-10037. TBPC seeks a 10 year lease of approximately 15,291 square feet of lease space in the Bryan area, Brazos County, Texas.

The deadline for questions is August 9, 2006, and the deadline for proposals is August 21, 2006 at 3:00 PM. The award date is September 15, 2006. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Myra Beer at (512) 463-5773. A copy of the RFP may be downloaded from the *Electronic State Business Daily* at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=66113.

TRD-200603921

Ingrid K. Hansen

General Counsel

Texas Building and Procurement Commission

Filed: July 26, 2006



Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of July 14, 2006, through July 20, 2006. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on July 26, 2006. The public comment period for these projects will close at 5:00 p.m. on August 25, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Harry C Schultz Jr.; Location: The project is located in Offatts Bayou, at 7909 Broadway, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Galveston, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 319468; Northing: 3240730. Project De-

scription: The applicant proposes to construct a commercial marina. One 448-square-foot main pier will extend out to a 2,640-square-foot main walkway. Twenty, 248-square-foot finger piers will extend from two, 2,688-square-foot access piers. A central pier and breakwater, totaling 6,688 square feet, is also included. In addition, the applicant proposes to mechanically dredge 2,200 cubic yards of material from an area at the northeast side of the project site. Material will be placed in an upland area onsite. Current depths along the project site range from -2.5 feet below mean high water at the start of the proposed fixed pier, to -20.0 feet at the terminus of the proposed project. The applicant proposes to dredge to a uniform depth of -5.0 feet below mean high water at the start of the proposed fixed pier. A bulkhead was also proposed. However, because it was proposed to be constructed above the High Tide Line, the bulkhead is not subject to our jurisdiction and, as such, does not require a permit. CCC Project No.: 06-0349-F1; Type of Application: U.S.A.C.E. permit application #24139 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, 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-200603903

Larry L. Laine

Chief Clerk/Deputy Land Commissioner

Coastal Coordination Council

Filed: July 24, 2006



Comptroller of Public Accounts

Notice of Contract Award

Pursuant to Chapters 403 and 2156, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the following contract awards:

The notice of request for proposals was published in the February 17, 2006, issue of the *Texas Register* (31 TexReg 1077) (RFP #1751).

The contractors will provide large capital growth investment management services for the Texas Prepaid Higher Education Tuition Board.

Two (2) contracts were awarded as follows: 1. Chase Investment Counsel Corporation, 300 Preston Avenue, Suite 403, Charlottesville, VA 22902-5091. The total amount of the contract is based on the fair market value of assets invested. The term of the contract is July 11, 2006 through August 31, 2011, with option for 2 additional 1-year renewals; and 2. Wells Capital Management, Inc., 525 Market Street,

10th Floor, San Francisco, CA 94104. The total amount of the contract is based on the fair market value of assets invested. The term of the contract is July 19, 2006 through August 31, 2011, with option for 2 additional 1-year renewals.

TRD-200603923

Pamela Smith

Deputy General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 26, 2006

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/31/06 - 08/06/06 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/31/06 - 08/06/06 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005³ for the period of 08/01/06 - 08/31/06 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by §303.005 for the period of 08/01/06 - 08/31/06 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-200603906

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 25, 2006

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Texas Education Agency

Request for Applications Concerning Public Senior College/University Open-Enrollment Charter Guidelines and Application

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-06-022 from eligible entities to operate open-enrollment charter schools. Eligible entities are limited to Texas public senior colleges and universities.

Description. The purpose of an open-enrollment charter is to provide an alternative avenue for restructuring schools. An open-enrollment charter offers flexibility and choice for educators, parents, and students. A public senior college or university open-enrollment charter school may operate on the campus of the public senior college or university or in the same county in which the campus of the public senior college or university is located.

An open-enrollment charter school will provide instruction to students at one or more elementary or secondary grade level(s) as provided by the charter. It is governed under the specifications of the charter and retains authority to operate for the term of the charter contingent on satisfactory student performance as defined by the state accountability

system. An open-enrollment charter school does not have the authority to impose taxes.

An open-enrollment charter school is subject to federal laws and certain state laws governing public schools, including laws and rules relating to a criminal offense, requirements relating to the Public Education Information Management System, criminal history records, high school graduation, special education programs, bilingual education, prekindergarten programs, extracurricular activities, health and safety provisions, and public school accountability. As stated in the Texas Education Code (TEC), §12.156, in matters related to operation of an open-enrollment charter school, an open-enrollment charter school is immune from liability to the same extent as a school district, and its employees and volunteers are immune from liability to the same extent as school district employees and volunteers. A member of the governing body of an open-enrollment charter school or of a charter holder is immune from liability to the same extent as a school district trustee. An employee of an open-enrollment charter school who qualifies for membership in the Teacher Retirement System of Texas shall be covered under the system to the same extent a qualified employee of a school district is covered.

Dates of Project. Completed applications can be received by the TEA Document Control Center at 1701 N. Congress Avenue, Austin, Texas, 78701-1494, Room 6-108, at any time.

Project Amount. TEC, §12.106(a), states that a charter holder is entitled to receive funding for the open-enrollment charter school under Chapter 42 as if the school were a school district without a tier one local share for purposes of §42.253 and without any local revenue for purposes of §42.302. In determining funding for an open-enrollment charter school, adjustments under §§42.102, 42.103, 42.104, and 42.105 and the district enrichment tax rate under §42.302 are based on the average adjustment and average district enrichment tax rate for the state. TEC, §12.106(b), states that an open-enrollment charter school is entitled to funds that are available to school districts from the agency or the commissioner in the form of grants or other discretionary funding unless the statute authorizing the funding explicitly provides that open-enrollment charter schools are not entitled to the funding. An open-enrollment charter school may not charge tuition. An open-enrollment charter school must prohibit discrimination in admission policy on the basis of sex; national origin; ethnicity; religion; disability; academic, artistic, or athletic ability; or the district the child would otherwise attend. However, a charter school that specializes in the performing arts may require a student to demonstrate artistic ability and may require an applicant to audition. To be eligible for certain federal funding, the charter must admit students on the basis of a lottery if more students apply than can be admitted. The charter may provide for the exclusion of a student who has a documented history of a criminal offense, a juvenile court adjudication, or a discipline problem under TEC, Chapter 37, Subchapter A.

Selection Criteria. A complete description of selection criteria is included in the RFA.

The State Board of Education (SBOE) may approve open-enrollment charter schools as provided in TEC, §12.101 and §12.152. There is a cap of 215 charters approved under TEC, §12.101, and no cap on the number of charters approved under TEC, §12.152.

The SBOE will consider Statements of Impact from any school district whose enrollment is likely to be affected by the open-enrollment charter school.

Requesting the Application. An application must be submitted under SBOE guidelines to be considered. A complete copy of the publication *Public Senior College/University Open-Enrollment Charter Guidelines and Application* (RFA #701-06-022),

which includes an application and procedures, may be obtained by writing the Division of Charter Schools, Room 5-107, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701-1494, by calling (512) 463-9575, or at <http://www.tea.state.tx.us/charter/rfas/rfascharter.htm>.

Further Information. For clarifying information about the public senior college/university open- enrollment charter school application, contact Mary Perry, Division of Charter Schools, Texas Education Agency, at (512) 463-9575 or mary.perry@tea.state.tx.us.

TRD-200603915

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: July 26, 2006

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. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the 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 **September 5, 2006**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building 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 September 5, 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 shall be submitted to the commission in **writing**.

(1) COMPANY: Agrifos Fertilizer Inc.; DOCKET NUMBER: 2006-0315-IWD-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN101621944; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0000649000, Outfall 001A, Effluent Limitations and Monitoring Requirements, and the Texas Water Code (the Code), §26.121(a), by failing to comply with permit effluent limits for total copper; PENALTY: \$5,740; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Rahim Ali Maknojia dba All Seasons Food Store; DOCKET NUMBER: 2006-0475-PST-E; IDENTIFIER: RN101273738; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.10(b), by failing to make available legible copies of all required underground storage tank (UST) records for inspection; 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs; and 30 TAC §115.246(3) and (5) and Texas Health & Safety Code (THSC), §382.085(b), by failing to maintain all required Stage II records at the station and make them immediately available for review; PENALTY: \$2,938; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Shobhana Patel dba Bear Food Mart; DOCKET NUMBER: 2006-0358-PST-E; IDENTIFIER: RN102447844; LOCATION: Waco, McLennan County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and the Code, §26.3475(c)(1), by failing to provide a method of release detection capable of detecting a release from any portion of the UST system; 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking with the UST identification number is permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: City of Bremond; DOCKET NUMBER: 2005-0686-MWD-E; IDENTIFIER: RN101720910; LOCATION: Bremond, Robertson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number WQ0010917001, Interim Effluent Limitations and Monitoring Requirements Number 1 and Sludge Provisions, and the Code, §26.121(a), by failing to comply with the permitted effluent limits for ammonia nitrogen (NH₃N), dissolved oxygen (DO), and fecal coliform and by failing to submit the annual sludge report; PENALTY: \$9,120; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Central Transport International, Inc.; DOCKET NUMBER: 2006-0360-WQ-E; IDENTIFIER: RN103898995; LOCATION: Laredo, Webb County, Texas; TYPE OF FACILITY: transportation; RULE VIOLATED: 30 TAC §281.25(a)(4), TPDES General Permit Number TXR050000, Part III.A.1.(a), III.A.5.(b)(7) and (g), III.A.7.(b), III.D.1.(b), and III.E.3.(e)(2), and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to maintain at the facility and have readily available for review a copy of the storm water pollution plan developed according to the requirements of TPDES General Permit Number TXR050000, by failing to maintain at the facility and have readily available for review an inventory of spill cleanup materials and equipment, by failing to conduct periodic inspections once per quarter in all four quarters of 2005, by failing to conduct an annual comprehensive site compliance evaluation, by failing to obtain a monitoring exclusion or conduct annual hazardous metals monitoring, and by failing to retain records and reports at the facility and have them readily available for review; and 30 TAC §205.6 and the Code, §5.702, by failing to pay the general permit storm water fees; PENALTY: \$6,804; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(6) COMPANY: ExxonMobil Chemical Company; DOCKET NUMBER: 2006-0393-AIR-E; IDENTIFIER: RN102574803; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: chemical company; RULE VIOLATED: 30 TAC §116.115(c) and §116.715(a), TCEQ Flexible Air Permit Number 20211, Special Condition Number 1, TCEQ Air Permit Number 28441, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$20,000; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3423; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: ISP Synthetic Elastomers LP; DOCKET NUMBER: 2006-0422-AIR-E; IDENTIFIER: RN100224799; LOCATION: Port Neches, Jefferson County, Texas; TYPE OF FACILITY: styrene butadiene rubber manufacturing; RULE VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), Permit Number 74010, Special Condition 1, and THSC, §382.085(b), by failing to comply with permitted nitrogen oxide and volatile organic compound emission limits; PENALTY: \$5,160; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(8) COMPANY: Kaufman County Fresh Water Supply District Number 1A; DOCKET NUMBER: 2005-1116-MWD-E; IDENTIFIER: RN102334638; LOCATION: Forney, Kaufman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13910001, Interim Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for total suspended solids, NH₃N, five-day carbonaceous biochemical oxygen demand, and DO; PENALTY: \$65,280; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Hossein Lahiji dba Lahiji Urology Center; DOCKET NUMBER: 2006-0458-MSW-E; IDENTIFIER: RN104890397; LOCATION: McAllen, Hidalgo County, Texas; TYPE OF FACILITY: urology clinic; RULE VIOLATED: 30 TAC §330.1207(a) and (b)(3), and §330.1219(b) (formerly 30 TAC §330.1004(b), (c)(5), and (h)(4)), by failing to identify and segregate medical waste from ordinary garbage and provide for the appropriate disposal of treated and untreated medical waste, and by failing to maintain a file of receipts for shipments of medical waste; PENALTY: \$1,600; ENFORCEMENT COORDINATOR: Michael Limos, (512) 239-5839; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(10) COMPANY: William A. Ansley, Jr. dba Lone Star Cleaning & Laundry; DOCKET NUMBER: 2006-0667-DCL-E; IDENTIFIER: RN100602705; LOCATION: Wharton, Wharton County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form for the facility; PENALTY: \$948; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Longhorn Excavators, Inc.; DOCKET NUMBER: 2006-0698-WQ-E; IDENTIFIER: RN104958699; LOCATION: Port Aransas, Nueces County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26, by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$720; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(12) COMPANY: Umar Bhatti Ltd. dba One Stop Food Store 2; DOCKET NUMBER: 2006-0257-PST-E; IDENTIFIER: RN101557809; LOCATION: Irving, Dallas County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(c)(4) and the Code, §26.3475(d), by failing to inspect and test the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(1)(A) and the Code, §26.3475(c)(1), by failing to monitor USTs for releases; 30 TAC §334.45(c)(3)(A), by failing to properly install and maintain a secure anchor at the base of each UL-listed emergency shutoff valve in a piping system; 30 TAC §334.51(b)(2)(B)(i) and the Code, §26.3475(c)(2), by failing to ensure that a spill containment device is designed to prevent the release of regulated substances to the environment; and 30 TAC §334.48(a), by failing to prevent an unauthorized discharge of hydrocarbons; PENALTY: \$11,520; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: U.S. Denro Steels, Inc.; DOCKET NUMBER: 2006-0456-IWD-E; IDENTIFIER: RN100217421; LOCATION: Baytown, Chambers County, Texas; TYPE OF FACILITY: steel works; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0001332000, Effluent Limits and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits for nickel; PENALTY: \$13,860; ENFORCEMENT COORDINATOR: Carolyn Lind, (903) 535-5100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Vanity Homes, LLC; DOCKET NUMBER: 2006-0413-WQ-E; IDENTIFIER: RN104915236; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$2,160; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Wadsworth Golf Construction Company of the Midwest; DOCKET NUMBER: 2006-0712-WQ-E; IDENTIFIER: RN104959515; LOCATION: Port Aransas, Nueces County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 CFR §122.26(a), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: \$720; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Willie De Hoyos dba WD Septic; DOCKET NUMBER: 2006-0604-SLG-E; IDENTIFIER: RN103150082; LOCATION: Wilson County, Texas; TYPE OF FACILITY: sludge transportation operation; RULE VIOLATED: 30 TAC §312.143 and the Code, §26.121(a), by failing to deposit wastes at a facility designated by or acceptable to the generator where the owner or operator of the facility agrees to receive the waste and the (Texas) facility has written authorization by permit or registration issued by the executive director to receive the waste; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(17) COMPANY: City of Weatherford; DOCKET NUMBER: 2006-0070-WQ-E; IDENTIFIER: RN101614055; LOCATION: Weatherford, Parker County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: the Code, §26.121(a)(1), by failing

to prevent an unauthorized discharge of wastewater; PENALTY: \$8,700; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(18) COMPANY: City of Weslaco; DOCKET NUMBER: 2005-0513-PST-E; IDENTIFIER: RN101688984; LOCATION: Weslaco, Hidalgo County, Texas; TYPE OF FACILITY: vehicle fleet refueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), (b)(1)(A), and (d)(1)(B)(iii)(I), and the Code, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from any portion of the UST system, by failing to ensure that all tanks are monitored for releases, and by failing to conduct inventory control; and 30 TAC §334.7(d)(3), by failing to amend, update, or change registration information; PENALTY: \$3,142; ENFORCEMENT COORDINATOR: Edward Moderow, (512) 239-2680; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(19) COMPANY: City of West Tawakoni; DOCKET NUMBER: 2004-0220-PWS-E; IDENTIFIER: RN101423671; LOCATION: West Tawakoni, Hunt County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(6)(B), (m), (m)(l), (n)(2), (s)(2)(B)(iii) and (iv), and (C)(i) and (ii), and THSC, §341.033(a), by failing to employ at least two properly licensed operators, by failing to initiate a maintenance program, by failing to conduct inspections of ground and elevated storage tanks, by failing to make available an accurate and up-to-date map of the distribution system, by failing to calibrate on-line turbidimeters with primary standards, by failing to verify calibration of the on-line turbidimeters, by failing to calibrate the continuous disinfectant residual analyzers using chlorine solutions, and by failing to verify the accuracy of the manual disinfectant residual analyzers; 30 TAC §290.110(b)(4), by failing to maintain the residual disinfectant concentration in the far reaches of the distribution system; 30 TAC §290.41(e)(3)(C), by failing to adequately maintain an intruder-resistant fence; and 30 TAC §290.42(a), (d)(6)(C), (d)(11)(D)(i), and (d)(13), by failing to provide sufficient treatment plant capacity to accommodate the maximum daily usage of the system, by failing to label the caustic storage tank, by failing to provide rate of flow controllers on each filter, and by failing to properly identify the influent, effluent, waste backwash, and chemical feedlines; PENALTY: \$13,685; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Williams Field Services Group, LLC; DOCKET NUMBER: 2006-0497-AIR-E; IDENTIFIER: RN100906155; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: pipeline company; RULE VIOLATED: 30 TAC §111.111(a)(4)(A)(ii) and THSC, §382.085(b), by failing to record at least 98% of the required daily flare observations in the daily flare operation log; PENALTY: \$952; ENFORCEMENT COORDINATOR: Sherronda Martin, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200603904

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 25, 2006



Enforcement Orders

A default order was entered regarding Mohammad N. Qureshi dba HAH Gas Mart, Docket No. 2002-0970-PST-E on 07/14/2006 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert McAdams dba Crossroads Mercantile, Docket No. 2003-1035-PST-E on 07/13/2006 assessing \$4,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding USS Tubular Processing, Inc. dba Delta Tubular Processing, L.P. Docket No. 2003-1564-IWD-E on 07/13/2006 assessing \$11,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Texline, Docket No. 2003-1242-MWD-E on 07/05/2006 assessing \$5,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Saniha & Associates, Inc. dba Brothers Future Food Mart, Docket No. 2003-1249-PST-E on 07/05/2006 assessing \$15,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Waste Management of Texas, Inc., Docket No. 2003-0609-AIR-E on 07/05/2006 assessing \$62,595 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Davis, Staff Attorney at (512) 239-5487, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Hillsboro, Docket No. 2003-0036-MWD-E on 07/05/2006 assessing \$15,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zulfigar K. Momin dba Hungerford Supermarket 344, Docket No. 2003-0972-PST-E on 07/05/2006 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mohammad Salman dba Stop N Drive 1, Docket No. 2003-1156-PST-E on 07/05/2006 assessing \$9,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Okpohworho, Staff Attorney at (713) 422-8918, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Munday, Docket No. 2004-0156-MWD-E on 07/13/2006 assessing \$20,161 in administrative penalties with \$4,032 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N. H. Kim, Inc. dba Fast Stop Mart a/k/a J. S. Kim, Inc. dba Fast Stop Mart Docket No. 2004-0293-PST-E on 07/05/2006 assessing \$35,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brant-Sta, Inc. dba Wilmer Food Mart, Docket No. 2004-0483-AIR-E on 07/05/2006 assessing \$4,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laredo Paving, Inc., Docket No. 2004-0508-AIR-E on 07/05/2006 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maverick Trucking Company, Inc., Docket No. 2004-0907-MSW-E on 07/05/2006 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen C. Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 8, Docket No. 2004-0970-MWD-E on 07/05/2006 assessing \$6,280 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prater Equipment Co., Inc. dba PEC Materials Reid Pit, Docket No. 2004-0911-WQ-E on 07/13/2006 assessing \$8,000 in administrative penalties with \$1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Osburn Sand Co., Docket No. 2004-1062-WQ-E on 07/13/2006 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Courtney St. Julian, Staff Attorney at (512) 239-0617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding US Ecology Texas L.P., Docket No. 2004-1146-MLM-E on 07/05/2006 assessing \$138,320 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & B Scobee's Mini Mart #3, Inc. dba R & B Scobee's Mini Mart 3, Docket No. 2004-1160-PST-E on 07/05/2006 assessing \$11,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackie W. Davis, Executor, Estate of Ola Faye Davis, Deceased, Docket No. 2004-1291-MSW-E on 07/13/2006 assessing \$13,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tanoli Enterprises, Inc. dba Super Starr II, Docket No. 2004-1341-PST-E on 07/05/2006 assessing \$7,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at (817) 588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marshall Pottery Inc., Docket No. 2004-1496-AIR-E on 07/13/2006 assessing \$28,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Felipe Gutierrez dba Buffalo Drive In Grocery, Docket No. 2004-2005-PST-E on 07/05/2006 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Abed Brothers Corporation dba Texas Meat Market, Docket No. 2004-2053-PST-E on 07/13/2006 assessing \$4,050 in administrative penalties with \$810 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kosse, Docket No. 2004-2115-MWD-E on 07/13/2006 assessing \$7,800 in administrative penalties with \$1,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jacinto Enterprises, Inc. Siesta Grocery, Docket No. 2005-0084-PST-E on 07/13/2006 assessing \$13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Z. A. O. Inc., Docket No. 2005-0341-PST-E on 07/05/2006 assessing \$18,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Colorado Fayette Medical Center, Docket No. 2005-0384-PST-E on 07/05/2006 assessing \$200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amie Dutta Richardson, Staff Attorney at (512) 239-2999, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SESE LLC dba Pic N Go, Docket No. 2005-0437-PST-E on 07/13/2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert R. Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bexar County, Docket No. 2005-0481-PWS-E on 07/05/2006 assessing \$1,188 in administrative.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco, Inc. (R&M), Docket No. 2005-0794-AIR-E on 07/05/2006 assessing \$3,614 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713) 422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Orange County Water Control and Improvement District No. 1, Docket No. 2005-0930-MWD-E on 07/05/2006 assessing \$28,425 in administrative penalties with \$5,685 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Center Point Supply, Inc. dba Children's Depot, Docket No. 2005-0931-PWS-E on 07/13/2006 assessing \$9,595 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shana L. Horton, Staff Attorney at (512) 239-1088, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding BASN Corporation dba Swif T Store 21, Docket No. 2005-0950-PST-E on 07/13/2006 assessing \$4,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert R. Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lone Star Crushed Stone and Sand, Inc., Docket No. 2005-0997-WQ-E on 07/05/2006 assessing \$15,504 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathleen C. Decker, Staff Attorney at (512) 239-6500, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Marcus Ivan Thomas, Docket No. 2005-1005-OSI-E on 07/05/2006 assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lena Roberts, Staff Attorney at (512) 239-0019, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Products North America Inc., Docket No. 2005-1027-AIR-E on 07/13/2006 assessing \$22,268 in administrative penalties with \$4,454 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Donald Drago dba Union Hill Water Corporation, Docket No. 2005-1070-PWS-E on 07/13/2006 assessing \$500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Raymond Balderas, Docket No. 2005-1082-LII-E on 07/05/2006 assessing \$1,500 in administrative penalties with \$300 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lisanti Realty Corporation dba Lisanti Food Service, Docket No. 2005-0138-PST-E on 07/05/2006 assessing \$950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Enforcement Coordinator at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Eshetu Teklu dba Niyala Fina, Docket No. 2005-1340-PST-E on 07/13/2006 assessing \$7,360 in administrative penalties with \$1,472 deferred.

Information concerning any aspect of this order may be obtained by contacting Deana Holland, Enforcement Coordinator at (512) 239-2504, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Noor Suteria dba M & S Kountry Grocery, Docket No. 2005-1343-PST-E on 07/05/2006 assessing \$14,000 in administrative penalties with \$2,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra L. Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frontera Materials, Inc., Docket No. 2005-1373-AIR-E on 07/13/2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Shannon Strong, Staff Attorney at (512) 239-0252, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Zaval-Tex Construction Company, Docket No. 2005-1380-PST-E on 07/13/2006 assessing \$5,400 in administrative penalties with \$1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward R. Moderow, Enforcement Coordinator at (512) 239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brownsville Val-Marts, L.L.C. dba Val-Mart No. 2, Docket No. 2005-1464-PST-E on 07/13/2006 assessing \$9,000.

Information concerning any aspect of this order may be obtained by contacting Robert R. Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Centergas, Inc. dba Dean's One Stop, Docket No. 2005-1469-PST-E on 07/13/2006 assessing \$27,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Davis, Staff Attorney at (512) 239-5487, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Candido dba La Hacienda Station and Amaya Consuelo Amaya dba La Hacienda, Docket No. 2005-1513-PST-E on 07/13/2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Mosley, Staff Attorney at (512) 239-0627, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Braunfels Aero Service, Inc. dba Brauntex Aviation, Docket No. 2005-1589-PST-E on 07/05/2006 assessing \$6,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Laredo Paving, Inc., Docket No. 2005-1816-AIR-E on 07/13/2006 assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-1877, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Beaumont Partners, L.P., Docket No. 2005-1865-AIR-E on 07/13/2006 assessing \$36,765 in administrative penalties with \$7,353 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Cotulla, Docket No. 2005-1874-MWD-E on 07/13/2006 assessing \$14,875 in administrative penalties with \$2,975 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dalworthington Gardens, Docket No. 2005-1894-MWD-E on 07/05/2006 assessing \$3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pam Campbell, Enforcement Coordinator at (512) 239-4493, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ExxonMobil Oil Corporation, Docket No. 2005-1903-AIR-E on 07/05/2006 assessing \$16,867 in administrative penalties with \$3,373 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ConocoPhillips Company, Docket No. 2005-1904-AIR-E on 07/05/2006 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Burgess, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kaneka Texas Corporation, Docket No. 2005-1943-AIR-E on 07/05/2006 assessing \$9,880 in administrative penalties with \$1,976 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Total Petrochemicals USA Inc., Docket No. 2005-1949-AIR-E on 07/13/2006 assessing \$3,725 in administrative penalties with \$745 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C & R Distributing, Inc. Docket No. 2005-1974-AIR-E on 07/05/2006 assessing \$1,900 in administrative penalties with \$380 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hewlett Holdings, Ltd., Docket No. 2005-1986-EAQ-E on 07/05/2006 assessing \$6,150 in administrative penalties with \$1,230 deferred.

Information concerning any aspect of this order may be obtained by contacting Colin Barth, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Intercontinental Terminals Company, Docket No. 2005-2017-AIR-E on 07/13/2006 assessing \$5,174 in administrative penalties with \$1,035 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding South Tawakoni Water Supply Corporation, Docket No. 2005-2023-PWS-E on 07/13/2006 assessing \$313.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxon Mobil Corporation, Docket No. 2005-2070-AIR-E on 07/13/2006 assessing \$10,807 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Muennink, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company, Docket No. 2005-2074-AIR-E on 07/05/2006 assessing \$14,364 in administrative penalties with \$2,873 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clark Miller dba American Underground Utilities, Docket No. 2005-2086-WQ-E on 07/05/2006 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Celanese LTD., Docket No. 2006-0006-AIR-E on 07/05/2006 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dal-Tile Corporation, Docket No. 2006-0013-AIR-E on 07/13/2006 assessing \$7,350 in administrative penalties with \$1,470 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Dal-Tile Corporation, Docket No. 2006-0013-AIR-E on 07/13/2006 assessing \$7350 in administrative penalties with \$1470 deferred.

Information concerning any aspect of this order may be obtained by contacting Terry Murphy, Enforcement Coordinator at (512) 239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-0023-AIR-E on 07/05/2006 assessing \$13,680 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jasper Oil Company, Docket No. 2006-0025-OSS-E on 07/05/2006 assessing \$1,050 in administrative penalties with \$210 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G S III, Docket No. 2006-0029-AIR-E on 07/05/2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Bryan Elliott, Enforcement Coordinator at (512) 239-6162, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rockdale, Docket No. 2006-0032-MLM-E on 07/05/2006 assessing \$9,900 in administrative penalties with \$1,980 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding John Dudley Batla dba Texana Vacuum, Docket No. 2006-0033-MLM-E on 07/05/2006 assessing \$7,000 in administrative penalties with \$1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pavestone Company, L.P., Docket No. 2006-0042-MLM-E on 07/05/2006 assessing \$18,900 in administrative penalties with \$3,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maxine McMurry dba Primerose Mobile Home Park, Docket No. 2006-0049-PWS-E on 07/05/2006 assessing \$420 in administrative penalties with \$84 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Exxonmobil Oil Corporation, Docket No. 2006-0057-AIR-E on 07/13/2006 assessing \$8,112 in administrative penalties with \$1,622 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GWD Operating, LTD. dba Vintage Car Wash, Docket No. 2006-0060-PST-E on 07/05/2006 assessing \$4,800 in administrative penalties with \$960 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2006-0068-AIR-E on 07/05/2006 assessing \$4,100 in administrative penalties with \$820 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rollins E. Bilby,, Docket No. 2006-0069-MSW-E on 07/05/2006 assessing \$2,500 in administrative penalties with \$500 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAF-T-BOX INCORPORATED, Docket No. 2006-0073-AIR-E on 07/05/2006 assessing \$5,250 in administrative penalties with \$1,050 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NNS Enterprises Inc. dba EZ Mart, Docket No. 2006-0097-PST-E on 07/05/2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flo Community Water Supply Corporation, Docket No. 2006-0113-PWS-E on 07/13/2006 assessing \$3,480 in administrative penalties with \$696 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210) 403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Community Water Company dba Rolling Hills Water System, Docket No. 2006-0119-PWS-E on 07/05/2006 assessing \$1,705 in administrative penalties with \$341 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-2670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Dwayne Wankan dba Wankan Distribution Services, Docket No. 2006-0120-SLG-E on 07/05/2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dallas, Docket No. 2006-0126-AIR-E on 07/13/2006 assessing \$2,425 in administrative penalties with \$485 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Auxiliary of Sierra Medical Center, Docket No. 2006-0134-PST-E on 07/13/2006 assessing \$1,300 in administrative penalties with \$260 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BMB Wood Recycling, Ltd., Docket No. 2006-0148-AIR-E on 07/13/2006 assessing \$1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Innovene USA LLC, Docket No. 2006-0149-AIR-E on 07/13/2006 assessing \$2,550 in administrative penalties with \$510 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Monarch Utilities I.L.P., Docket No. 2006-0152-MWD-E on 07/05/2006 assessing \$8,835 in administrative penalties with \$1,767 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Star Investments, Inc., Docket No. 2006-0156-PST-E on 07/13/2006 assessing \$14,500 in administrative penalties with \$2,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Joseph Daley, Enforcement Coordinator at (817) 588-5928,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Superior Stone Inc., Docket No. 2006-0173-MLM-E on 07/05/2006 assessing \$12,000 in administrative penalties with \$2,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Larry West dba West Dairy Farm, Docket No. 2006-0174-AGR-E on 07/05/2006 assessing \$2,750 in administrative penalties with \$550 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Delta Tubular International, L.P., Docket No. 2006-0178-IWD-E on 07/05/2006 assessing \$4,095 in administrative penalties with \$819 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Danny Wilde, Docket No. 2006-0180-MSW-E on 07/05/2006 assessing \$2,040 in administrative penalties with \$408 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chevron Phillips Chemical Company LP, Docket No. 2006-0189-AIR-E on 07/13/2006 assessing \$13,425 in administrative penalties with \$2,685 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lott, Docket No. 2006-0194-PWS-E on 07/13/2006 assessing \$1,943 in administrative penalties with \$389 deferred.

Information concerning any aspect of this order may be obtained by contacting Libby Hogue, Enforcement Coordinator at (512) 239-1165, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding M. A. D. Property Mgt. L.P. dba J & H Exxon, Docket No. 2006-0198-PST-E on 07/05/2006 assessing \$4,365 in administrative penalties with \$873 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Akzo Nobel Polymer Chemicals LLC, Docket No. 2006-0212-AIR-E on 07/13/2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Scott Barnett, Enforcement Coordinator at (713) 767-3523,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Katy-Hockley Corp., Docket No. 2006-0222-MWD-E on 07/05/2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Iredell, Docket No. 2006-0223-MWD-E on 07/13/2006 assessing \$4,410 in administrative penalties with \$882 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Hupp, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Site Concrete, Inc., Docket No. 2006-0238-WQ-E on 07/13/2006 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sunoco Pipeline L.P., Docket No. 2006-0251-AIR-E on 07/13/2006 assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NNN AmberOaks LLC, Docket No. 2006-0253-EAQ-E on 07/05/2006 assessing \$3,600 in administrative penalties with \$720 deferred.

Information concerning any aspect of this order may be obtained by contacting Carolyn V. Lind, Enforcement Coordinator at (903) 535-5145, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Manh Le dba M & D Grocery, Docket No. 2006-0301-PST-E on 07/05/2006 assessing \$1,875 in administrative penalties with \$375 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Mahr, Enforcement Coordinator at (512) 239-6017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LBC Houston, L.P., Docket No. 2006-0309-AIR-E on 07/13/2006 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Phillip M. Grisham, Sr., Docket No. 2006-0317-OSI-E on 07/05/2006 assessing \$375 in administrative penalties with \$75 deferred.

Information concerning any aspect of this order may be obtained by contacting Lynley Doyen, Enforcement Coordinator at (512) 239-1364,

Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.J.G. Corp dba Salt Lick Bar B Q, Docket No. 2006-0352-PWS-E on 07/13/2006 assessing \$1,438 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & J Enterprise, Docket No. 2006-0375-AIR-E on 07/13/2006 assessing \$1,575 in administrative penalties with \$315 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed field citation was entered regarding Handy Randy's, Docket No. 2006-0444-PST-E on 07/05/2006 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Staff Attorney at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Producers Cooperative Elevator, Docket No. 2006-0463-PST-E on 07/05/2006 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Staff Attorney at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed field citation was entered regarding Wanda Morgan, Docket No. 2006-0464-PST-E on 07/05/2006 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Staff Attorney at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed field citation was entered regarding Three Rivers Flying Service, Docket No. 2006-0489-PST-E on 07/05/2006 assessing \$4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Melissa Keller, Staff Attorney at (512) 239-1768, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed field citation was entered regarding American OGD Corporation dba Galloway Food Mart, Docket No. 2006-0491-PST-E on 07/14/2006 assessing \$3,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200603916

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 26, 2006

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Notice of Availability of the Draft July 2006 Update to the Water Quality Management Plan

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2006 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft July 2006 WQMP update may be found on the commission's Web site located at http://www.tceq.state.tx.us/nav/eq/eq_wqmp.html. A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 4, 2006. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at nvignali@tceq.state.tx.us.

TRD-200603913

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 26, 2006

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 21, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. KR Mina, Inc. dba Fuqua Power Fuel; SOAH Docket No. 582-06-2081; TCEQ Docket No. 2005-1748-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against KR Mina, Inc. dba Fuqua Power Fuel on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200603917

LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 26, 2006



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 20, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Sunshine Stores, Inc.; SOAH Docket No. 582-06-2111; TCEQ Docket No. 2005-0849-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Sunshine Stores, Inc. on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200603918
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 26, 2006



Request for Nominations for Appointment to the Pollution Prevention Advisory Committee

The Texas Commission on Environmental Quality (commission) is soliciting nominations to fill several vacant positions on the Pollution Prevention Advisory Committee (PPAC). The legislatively created advisory committee, established under Texas Health and Safety Code, §361.0215, advises the commission on the state's policy and goals for pollution prevention and waste minimization.

The PPAC is composed of nine voting members who offer a balanced representation of environmental and public interest groups and the regulated community. The nine official members include: four members from an environmental or public interest organization; four members from the regulated community; and one member representing academia.

The commission may appoint *ex officio* members to provide additional participation from other members of the regulated community and the public who work on pollution prevention and performance-based regulatory initiatives. The commission currently has designated eight *ex officio* positions, including one representative from each of the following sectors: small business, local government, agriculture, Department of Defense, labor, and the Clean Texas Program. The commission also extends *ex officio* positions to the chairs of the House Environmental Regulation Committee and the Senate Natural Resources Committee.

Individuals interested in being considered by the commission should submit a one-page letter of interest and brief resume or biography. **All materials must be received by the commission no later than 5:00 p.m. on August 31, 2006.**

The PPAC advises the commission on: the appropriate organization of state agencies and the financial and technical resources required to aid the state in its efforts to promote waste reduction and minimization; the

development of public awareness programs to educate citizens about hazardous waste and the appropriate disposal of hazardous waste and hazardous materials that are used and collected by households; the provision of technical assistance to local governments for the development of waste management strategies designed to assist small quantity generators of hazardous waste; other possible programs to more effectively implement the state's hierarchy of preferred waste management technologies as set forth in Texas Health and Safety Code, §361.023(a); and the implementation of the Recycling Market Development Implementation Program.

The PPAC also advises the commission on the creation and implementation of the strategically directed regulatory structure developed under Texas Water Code, §5.755, and reports quarterly to the commission on its activities, including suggestions or proposals for future activities and other matters the committee considers important. The PPAC must report in writing to the commission a minimum of once per year, unless otherwise directed.

The PPAC operates under the requirements of 30 TAC Chapter 5, Advisory Committees and Groups. The PPAC meets a minimum of four times per year and as needed. Members may not miss three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. Semi-annual meetings typically last one full day and are typically held at the commission headquarters in Austin, Texas. The 79th Legislature, 2005, authorized reimbursement for committee members' travel expenses.

The commissioners invite nominations for the following positions. Each nomination should include a brief cover letter and biographical summary that includes the individual's experience and qualifications, and an agreement to serve on the committee if appointed. Except as otherwise provided by law, advisory committee members may serve two or four-year terms. Please submit nomination(s) for consideration by the commission for the following terms: **one representative from the regulated community (vacant four-year term to expire on August 31, 2009); one representative from academia (vacant four-year term to expire on August 31, 2009); and one representative from an environmental or public interest group (vacant four-year term to expire on August 31, 2007).**

Written nominations must be received in the Small Business and Environmental Assistance Division Office **by 5:00 p.m. on August 31, 2006**, via mail, hand delivery, e-mail, or fax. Nominations should be directed to: Brian Christian, Small Business and Environmental Assistance Division (MC 112), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. They can also be sent via e-mail to bchristi@tceq.state.tx.us, or they can be faxed to (512) 239-3165. Documents can be submitted via hand delivery to the Small Business and Environmental Assistance Division, 12100 Park 35 Circle, Building F, Suite 1301, Austin, Texas 78753.

Questions regarding the PPAC and the current nominations process can be directed to James Voelker at (512) 239-3182.

TRD-200603914
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 26, 2006



Texas Health and Human Services Commission

Notification of Consulting Procurement - Request for Proposals for Consultant Services

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals for consultant services to assist the State in securing contracts for a pool of multiple pre-qualified and readily accessible consultants. The Multiple Consultant Multiple Award Contract (RFP #529-06-0425) will involve maintaining a pool of highly skilled professional consultants who will provide comprehensive and professional services to assist the State in meeting Federal and State legislative mandates and other program requirements with more efficiency.

The primary objectives for this procurement include the following:

- * Administrative time, paperwork, and scheduling will be reduced and streamlined through the blanket consultant contracting process.
- * HHSC will be enabled to respond to and/or meet Federal and State legislative mandates and other program requirements in a timely manner.
- * HHSC will have the ability to plan, manage, and deliver health and human services to Texans in a more productive, effective, and efficient manner.

The RFP is located in full on HHSC's Business Opportunities Page under "Contracting Opportunities" link at http://www.hhsc.state.tx.us/about_hhsc/BUSOpp/BO_opportunities.html. HHSC also posted notice of the procurement on the Texas Marketplace on July 28, 2006.

The successful Vendor will demonstrate the ability to meet these objectives and will be evaluated, in part, by the degree to which the respondent shows how it will achieve them.

The Health and Human Services Commission's Sole Point-Of-Contact for this procurement is:

Peggie J. Laser, Procurement Project Manager
Texas Health and Human Services Commission
P.O. Box 85200-5200
Austin, Texas 78708-5200
(512) 491-1195
Peggie.laser@hhsc.state.tx.us

All proposals must be received at the above-referenced address on or before 3:00 PM Central Time on August 18, 2006. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200603946
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: July 26, 2006

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

Multifamily Housing Revenue Bonds (Idlewilde 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 Harris County Public Library Northwest Branch 11355 Regency Green, Cypress, Harris County, Texas 77429, at 6:00 p.m. on August 23, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$15,000,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Idlewilde Apartments, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 250-unit multifamily residential rental development to be located at approximately the 11600 block of Bobcat Road and the 9905 block of FM 1960 West Road, Houston, Harris County, Texas. A physical address has not been assigned by the City of Houston or Harris County. 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-200603912
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 26, 2006

◆ ◆ ◆
Notice of Public Hearing

Multifamily Housing Revenue Bonds (Generations at Mansfield 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 Mansfield High School, 3001 East Broad Street, Mansfield, Tarrant County, Texas 76063, at 6:00 p.m. on August 22, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$11,200,000 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 GS 360 Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 152-unit multifamily residential rental development to be located approximately 1,000 feet north of South Miller Road and to the

east of the Highway 360 frontage road and adjacent to Mansfield National Golf Club (the golf course is located at 3750 National Parkway), Tarrant County, Texas. A physical address has not been assigned by the City of Mansfield. 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, Texas 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-200603919
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 26, 2006



Notice of Public Hearing

Multifamily Housing Revenue Bonds (Havens at Mansfield 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 Mansfield High School, 3001 East Broad Street, Mansfield, Tarrant County, Texas 76063, at 6:00 p.m. on August 22, 2006 with respect to an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed \$5,800,000 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 TX 360 Senior Housing, L.P., a limited partnership, or a related person or affiliate thereof (the "Borrower") to finance a portion of the costs of acquiring, constructing, and equipping a multifamily housing development (the "Development") described as follows: 100-unit multifamily senior residential rental development to be located to the east of the Highway 360 frontage road and to the west of and adjacent to Mansfield National Golf Club (the golf course is located at 3750 National Parkway), Tarrant County, Texas. A physical address has not been assigned by the City of Mansfield. 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, Texas 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-200603920
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 26, 2006



Texas Department of Insurance

Company Licensing

Application to change the name of IDS LIFE INSURANCE COMPANY to RIVERSOURCE LIFE INSURANCE COMPANY, a foreign life, accident, and/or health company. The home office is in Minneapolis, Minnesota.

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-200603925
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 26, 2006



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of DISABILITY MANAGEMENT ALTERNATIVES, LLC, a foreign third party administrator. The home office is FARMINGTON, CONNECTICUT.

Application for admission to Texas of ACCLARIS, INC., a foreign third party administrator. The home office is WILMINGTON, DELAWARE.

Application for incorporation in Texas of SELF-INSURANCE RESOURCE, INC., a domestic third party administrator. The home office is DALLAS, TEXAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200603924
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: July 26, 2006

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Texas Lottery Commission

Instant Game Number 688 "Triple Fortune"

1.0 Name and Style of Game.

A. The name of Instant Game No. 688 is "TRIPLE FORTUNE". The play style is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 688 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 688.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, \$\$ SYMBOL, \$\$\$ SYMBOL, \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, \$200, \$1,000, and \$25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 688 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
\$\$ SYMBOL	DBL
\$\$\$ SYMBOL	TPL
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$30.00	THIRTY
\$60.00	SIXTY
\$200	TWO HUND
\$1,000	ONE THOU
\$25,000	25 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 688 - 1.2E

CODE	PRIZE
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
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 \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$30.00, \$60.00, or \$200.

I. High-Tier Prize- A prize of \$1,000 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (688), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 250 within each pack. The format will be: 688-0000001-001.

L. Pack - A pack of "TRIPLE FORTUNE" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in a A- B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TRIPLE FORTUNE" Instant Game No. 688 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 "TRIPLE FORTUNE" Instant Game is determined once the latex on the ticket is scratched off to expose 22 (twenty-two)

Play Symbols. If a player matches any of YOUR NUMBERS play symbols to either WINNING NUMBER play symbol, the player wins the PRIZE shown for that number. If a player reveals a double dollar "\$\$" play symbol, the player wins DOUBLE the PRIZE shown. If a player reveals a triple dollar "\$\$\$" play symbol, the player wins TRIPLE the PRIZE shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code, and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted, or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code, and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No more than one pair of non-winning prize symbols on a ticket.

C. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

D. No duplicate WINNING NUMBERS play symbols on a ticket.

E. The doubler and tripler play symbols will only appear on winning tickets as dictated by the prize structure.

F. Non-winning prize symbols will never be the same as the winning prize symbol(s).

G. No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE FORTUNE" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$60.00, or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$30.00, \$60.00, or \$200 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 "TRIPLE FORTUNE" Instant Game prize of \$1,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS, if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE FORTUNE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "TRIPLE FORTUNE" 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 "TRIPLE FORTUNE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 688. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 688 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	720,000	12.50
\$3	456,000	13.16
\$5	84,000	90.91
\$10	72,000	100.00
\$15	54,000	111.11
\$20	24,000	250.00
\$30	24,000	250.00
\$60	14,200	452.83
\$200	2,750	2,553.19
\$1,000	150	40,000.00
\$25,000	8	750,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.12. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 688 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. 688, 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-200603910

Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: July 25, 2006



Instant Game Number 731 "Money Maker"

1.0 Name and Style of Game.

A. The name of Instant Game No. 731 is "MONEY MAKER". The play style for Game 1 is "three in a line". The play style for Game 2 is "key symbol match with doubler". The play style for Game 3 is "key number match". The play style for Game 4 is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 731 shall be \$5.00 per ticket.

1.2 Definitions in Instant Game No. 731.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$100,

\$500, \$1,000, \$100,000, \$0.00, CLOVER SYMBOL, DIAMOND SYMBOL, GOLD BAR SYMBOL, POT OF GOLD SYMBOL, MONEY BAG SYMBOL, STACK OF COINS SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, HORSE SHOE SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, or VAULT 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. 731 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$15.00	FIFTN
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$100	ONE HUND
\$500	FIV HUND
\$1,000	ONE THOU
\$100,000	HUN THOU
\$0.00	NO\$
CLOVER SYMBOL	CLVR
DIAMOND SYMBOL	DIAMD
GOLD BAR SYMBOL	GOLD
POT OF GOLD SYMBOL	POTGLD
MONEY BAG SYMBOL	MBAG
STACK OF COINS SYMBOL	COINS
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR
HORSE SHOE SYMBOL	SHOE
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
VAULT SYMBOL	WIN

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for val-

idation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 731 - 1.2E

CODE	PRIZE
FIV	\$5.00
TEN	\$10.00
FTN	\$15.00
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 Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game.

The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$5.00, \$10.00, \$15.00, or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000, \$5,000, or \$100,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number, and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (731), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 731-0000001-001.

L. Pack - A pack of "MONEY MAKER" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

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 "MONEY MAKER" Instant Game No. 731 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 "MONEY MAKER" Instant Game is determined once the latex on the ticket is scratched off to expose 44 (forty-four)

Play Symbols. For GAME 1, if a player reveals three (3) matching amounts in any one row, column, or diagonal, the player wins that amount. For GAME 2, if a player reveals three (3) matching play symbols, the player wins prize shown in PRIZE BOX. If a player reveals four (4) identical play symbols, the player wins DOUBLE the prize shown in the PRIZE BOX. For GAME 3, if a player reveals any prize amount, the player wins that amount. For GAME 4, if a player matches any of YOUR NUMBERS play symbols to any of the WINNING NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "vault" play symbol, the player wins all 12 (twelve) prizes shown in GAME 4 instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 44 (forty-four) 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 44 (forty-four) 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 44 (forty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 44 (forty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Game 1: No more than one occurrence of three like amounts creating a win.

C. Game 1: No more than four like amounts in this game.

D. Game 1: No three or more pairs in this game.

E. Game 2: No five or more like symbols in this game.

F. Game 2: No more than one non-winning pair of like symbols in this game.

G. Game 4: No more than two pairs of non-winning prize symbols in this game.

H. Game 4: The "vault" play symbol will appear only on intended winning tickets as dictated by the prize structure.

I. Game 4: Non-winning prize symbols will never be the same as the winning prize symbol(s).

J. Game 4: No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "MONEY MAKER" Instant Game prize of \$5.00, \$10.00, \$15.00, \$20.00, \$50.00, \$100, or \$500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100, or \$500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "MONEY MAKER" Instant Game prize of \$1,000, \$5,000, or \$100,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS, if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MONEY MAKER" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller of Public Accounts, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Office of the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "MONEY MAKER" 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 "MONEY MAKER" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code, §466.408. Any prize not claimed within that period and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available

in a game may vary based on number of tickets manufactured, testing, distribution, sales, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 731. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 731 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$5	720,000	8.33
\$10	400,000	15.00
\$15	240,000	25.00
\$20	140,000	42.86
\$50	80,000	75.00
\$100	13,900	431.65
\$500	600	10,000.00
\$1,000	44	136,363.64
\$5,000	11	545,454.55
\$100,000	6	1,000,000.00

*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 3.76. 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. 731 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. 731, 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-200603911
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 25, 2006



Texas Board of Professional Land Surveying

Public Hearing Agenda

FRIDAY, AUGUST 4, 2006 AT 9:00 P.M., 12100 Park 35 Circle, Building A, Suite 173 Austin, Texas 78753

1. Call to Order

2. The Texas Board of Professional Land Surveying (Board) now calls a Public hearing to receive comments from interested persons concerning amendments to Rule 663.17 and Rule 661.46 proposed under Section 1071.151 of the Professional Land Surveying Practices Act, which provides the Board with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rules relating to monumentation and seal requirements. The proposed rule amendment, 663.17(e) (TRD 200603476) and 661.46 (TRD 200603475), were both published in the July 14, 2006, issue of the *Texas Register*.

Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Board or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Board reserves the right to restrict statements in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments through a representative member where possible.

Persons with disabilities who have special needs and who plan to attend the meeting should contact Sandy Smith at (512) 239 5263 at least 4 days prior to the meeting.

3. Adjourn.

TRD-200603922

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Filed: July 26, 2006

Public Utility Commission of Texas

Announcement of Amendment to Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 20, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.00-66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P., doing business as Time Warner Cable, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32973 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32973.

TRD-200603875

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2006

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 21, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable San Antonio, L.P., doing business as Time Warner Cable, to Amend its State-Issued Certificate of Franchise Authority, Project Number 32980 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32980.

TRD-200603908
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2006

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on July 21, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001-66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Grande Communications Networks, Incorporated to Amend its State-Issued Certificate of Franchise Authority, Project Number 32981 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 32981.

TRD-200603909
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 25, 2006

Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 20, 2006, for retail electric

provider (REP) certification, pursuant to §§39.101-39.109 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of ANPA HOLDINGS, LLC for Retail Electric Provider (REP) certification, Docket Number 32965 before the Public Utility Commission of Texas.

Applicant's requested service area by geography includes the entire State of Texas.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 11, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 32965.

TRD-200603877
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2006



Notice of Application for a Waiver of P.U.C. Substantive Rule §25.101(b)(3)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application filed on July 20, 2006, for a waiver of P.U.C. Substantive Rule §25.101(b)(3).

Docket Style and Number: Application of Southwestern Public Service Company for a Waiver of P.U.C. Substantive Rule §25.101(b)(3). Docket Number 32971.

The Application: Southwestern Public Service Company (SPS) is requesting permission from the commission to construct a temporary single-pole 69 kV transmission line approximately 1.5 miles in length to serve the Mid American Pipeline Company (MAPCO) facility near Seminole, Texas, and a waiver of P.U.C. Substantive Rule §25.101(b)(3) so it can construct and operate the temporary line without obtaining a Certificate of Convenience and Necessity (CCN). The temporary 69 kV transmission line will be used while an eight mile transmission line and two substations are being upgraded. The temporary 69 kV line is expected to be in service for approximately two years and will be removed upon completion of the upgrades. SPS has obtained written consent from all landowners on the proposed temporary line route to construct and operate the temporary line.

Persons wishing to comment on the action sought or intervene 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. 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 32971.

TRD-200603873
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2006



Notice of Application to Amend Certificated Service Area Boundaries in Nueces County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 20, 2006, for an amendment to certificated service area boundaries within Nueces County, Texas.

Docket Style and Number: Joint Application of Nueces Electric Cooperative, Incorporated and AEP Texas Central Company for a Certificate of Convenience and Necessity for Service Area Boundaries within Nueces County. Docket Number 32972.

The Application: Nueces Electric Cooperative, Incorporated (NEC) and AEP Texas Central Company (TCC) requested a boundary amendment to clarify an error in marking boundaries on a map filed in Docket Number 30633. The area impacted by the proposed boundary amendment was intended to become singly certificated to TCC; however the intended proposed boundary in this area was marked in error on the Nueces County map submitted in Docket Number 30633. Currently, TCC owns and operates all of the electric distribution facilities within the area and TCC provides electric delivery service to all of the customers within the area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than August 11, 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 32972.

TRD-200603874
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2006



Notice to Telecommunications Providers of a Reporting Requirement Pursuant to P.U.C. Substantive Rule §26.420(f)

Notice is given to telecommunications providers of a reporting requirement pursuant to P.U.C. Substantive Rule §26.420(f).

Project Style and Number: Waivers to Apply Safe-Harbor Percentage to Calculate TUSF Assessment Pursuant to P.U.C. Substantive Rule §26.420(f). Project Number 32969.

Description: The recently adopted amendment to P.U.C. Substantive Rule §26.420(f), Assessments for the TUSF, effective July 20, 2006, requires telecommunications providers to report actual intrastate taxable telecommunications receipts by January 1, 2007; certain providers may obtain a waiver that would allow the provider to apply a safe-harbor percentage.

Effective January 1, 2007, starting with the January 2007 report, the Commission will require all telecommunications providers to contribute to the Texas Universal Service Fund (TUSF) based on their actual intrastate telecommunications receipts pursuant to Chapter 151 of the Texas Tax Code.

Pursuant to P.U.C. Substantive Rule §26.420(f)(3)(B)--available for download at <http://www.puc.state.tx.us/rules/rule-make/28708/28708.cfm>--a provider that contributes more than \$500/month to the fund but is unable to calculate actual intrastate receipts must apply for a waiver to use a Commission-ordered safe-harbor percentage (see Order in Docket Number 21208). A provider that contributes less than \$500/month does not need a waiver to use the Commission-ordered safe-harbor percentage to calculate its assessment. Currently, about 400 providers contribute more than

\$500 per month to the fund, and out of that subset of providers, it is anticipated that roughly 20% (or about 80) will seek a waiver to apply a safe-harbor percentage.

The Commission recommends that waivers be filed by November 1, 2006, at the latest, to ensure an effective date prior to the January 1, 2007, deadline.

For publicly filed information, please submit the original filing plus three hard copies to: Texas Public Utility Commission, Central Records, 1701 N. Congress Ave., P.O. Box 13326, Austin, TX 78711-3326. All filings shall reference Project Number 32969.

If confidential treatment is requested for information submitted in support of the waiver request, the confidential information must be submitted to Central Records pursuant to P.U.C. Procedural Rule §22.71, which may be downloaded at <http://www.puc.state.tx.us/rules/procrules/pr-e/22.71/22.71.pdf>; quantitative supporting documentation must be provided in both hard copy and electronic versions (e.g., diskette or CD ROM).

For assistance in filing public material, please contact the Filing Clerk in Central Records at (512) 936-7180. For assistance in filing confidential material pursuant to P.U.C. Procedural Rule §22.71, please contact Carol Milner at (512) 936-7279.

If you have any questions or require assistance in this matter, please contact Rosemary McMahill at rosemary.mcmahill@puc.state.tx.us or at (512) 936-7244 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.

TRD-200603878
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 24, 2006

◆ ◆ ◆
Texas Residential Construction Commission

Notice for Comments

The Texas Residential Construction Commission's Advisory Committee on Warranties and Building and Performance Standards plans to meet on September 12, 2006 at 1:30 p.m. in the commission's hearing room at 311 E. 14th St., Suite 200, Austin, Texas. If you plan to attend and need, require auxiliary aids, services or materials in an alternate format, please contact the Texas Residential Construction Commission at least five (5) working days prior to the meeting date. Phone: (512) 463-1040, FAX: (512) 463-9507, E-MAIL: dora.rivera@trcc.state.tx.us. TDD Relay Texas: 1-800-relay-VV (for voice), 1-800-TX (for TDD).

Interested persons who have suggestions for amending the warranties and building and performance standards adopted by the commission pursuant to Title 16 of the Property Code must submit those suggestions in writing to the commission by the close of business Tuesday, August 15, 2006. The adopted warranties and building and performance standards can be located with the commission's adopted rules Chapter 304, which are on the commission's website at www.trcc.state.tx.us/Rules. The rules can also be located on the Secretary of State's website www.sos.state.tx.us under Title 10, Texas Administrative Code Chapter 304.

Mail comments to "Standards Advisory Committee c/o Texas Residential Construction Commission, P.O. Box 13144, Austin, TX 78711-3144 or send comments electronically to comments@trcc.state.tx.us. Comments sent electronically must have "Standards Advisory Committee" in the subject line or they may not be considered." Comments should be organized consistent with the organization of the rules. Comments not received by 5 p.m. on Tuesday August 15, 2006, will not be considered at the September 12, 2006 meeting.

TRD-200603905
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Filed: July 25, 2006

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Texas Department of Transportation

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site: <http://www.dot.state.tx.us>. Under Citizen, click on Hearings and Meetings, then click on Aviation Public Hearing. Or, contact Joyce Moulton, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4501 or 800-68-PILOT.

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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).