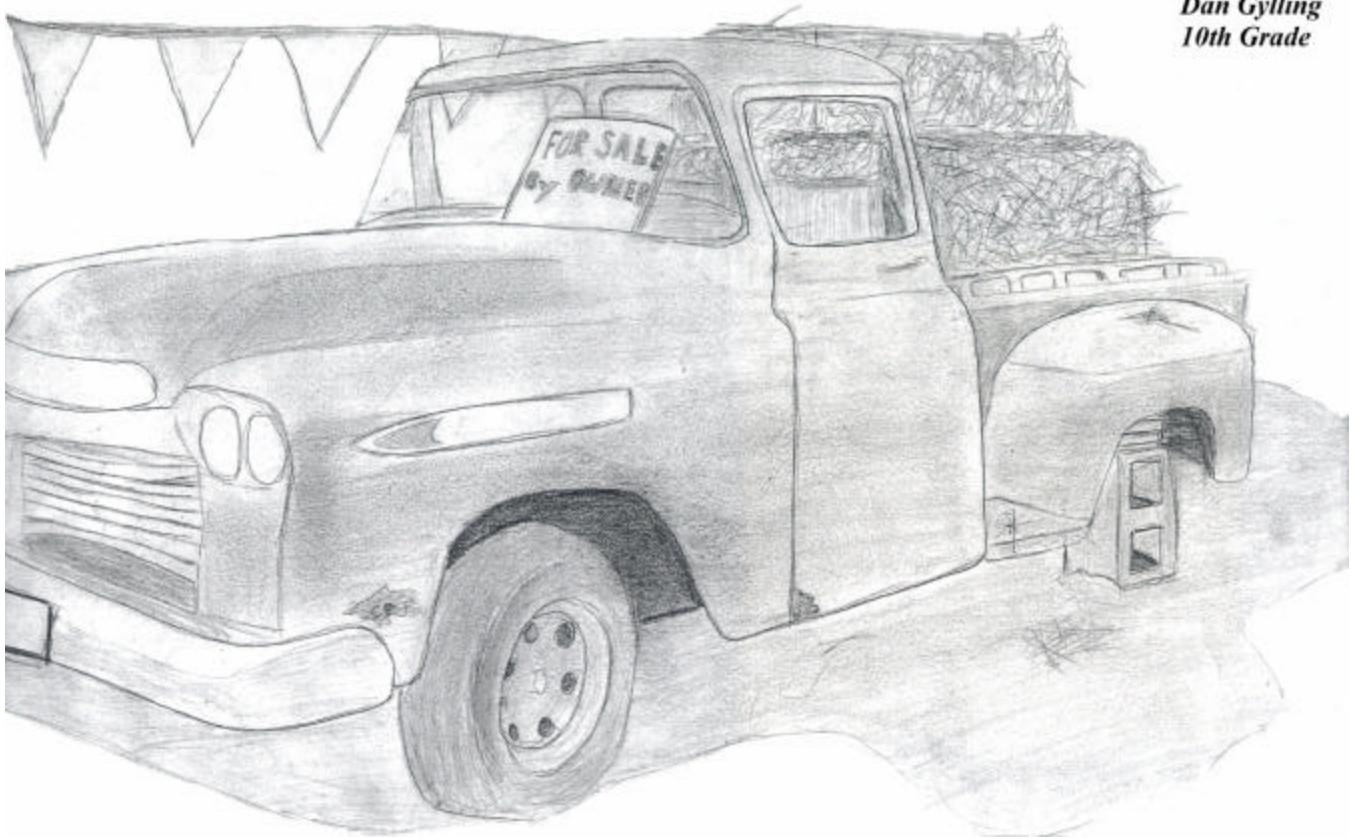

TEXAS REGISTER

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*Dan Gylling
10th Grade*



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

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THE GOVERNOR

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

Appointments

Appointments for September 5, 2006

Appointed as District Attorney for the 97th Judicial District for a term until the next General Election and until his successor shall be duly elected and qualified, Jack Arnold McGaughey of Nocona. Mr. McGaughey will be replacing Tim Cole who resigned.

Appointed to the Texas Commission on Environmental Quality for a term to expire August 31, 2011, Martin August Hubert of Austin (replacing Ralph Marquez of Round Rock who resigned).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2008, Clark Vandergriff, Mayor, City of Meridian (replacing Jess Taylor).

Appointed to the Heart of Texas Regional Review Committee for a term to expire January 1, 2008, Juanita Hogg, Mayor, City of Lott (replacing Connie Johnson).

Appointed to the Texas Academy of Mathematics and Science Advisory Board for a term to expire May 2, 2012, Janelle Amy Collier of Austin (replacing Alan Gilkes of Plano whose term expired).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2007, Darlene Metter, M.D. of San Antonio (replacing Dr. Justin LeVasseur of Wichita Falls who resigned).

Appointed to the Texas Radiation Advisory Board for a term to expire April 16, 2011, Ana D. Cleveland, Ph.D. of Denton (replacing Elaine Wells of Tyler whose term expired).

Appointed to the Finance Commission of Texas for a term to expire February 1, 2012, Vidal Gonzales of San Antonio (replacing Vernon Bryant of Fort Worth who resigned).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2009, James Michael Boyd of Houston (replacing Joseph Adame of Corpus Christi whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2009, Catarina Gonzales Cron of Houston (replacing Catherine Miller of Fort Worth whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2011, Barbara A. Russell of Denton (replacing Joe Bob McCart of Amarillo whose term expired).

Appointed to the Real Estate Research Advisory Committee for a term to expire January 31, 2011, D. Marc McDougal of Lubbock (replacing Nick Nicholas of Dallas whose term expired).

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Robert J. Cheeseman.

Appointed to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas, pursuant to Government Code 431.055, with all rights, privileges and emoluments appertaining to this office, Colonel Victor M. Ortiz, Jr.

Rick Perry, Governor

TRD-200605103



THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following:
Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from
the Attorney General's Internet site <http://www.oag.state.tx.us>.

Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: <http://www.oag.state.tx.us/opinopen/opinhome.shtml>.)

Request for Opinions

RQ-0527-GA

Requestor:

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Construction and validity of comptroller's rule implementing Tax Code section 23.521, which relates to property tax exemption for land used for wildlife management (Request No. 0527-GA)

Briefs requested by October 16, 2006

RQ-0528-GA

Requestor:

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Whether certain types of improvements may be funded from assessments levied pursuant to Subchapter A or B of Chapter 372, Texas Local Government Code (Request No. 0528-GA)

Briefs requested by October 16, 2006

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

TRD-200605216

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: September 20, 2006



Opinions

Opinion No. GA-0454

Colonel Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

5805 North Lamar Blvd.

Post Office Box 4087

Austin, Texas 78773-0001

Re: Whether a sex offender with a reportable conviction based on an out-of-state offense prior to September 1, 1995, must register as a sex offender if he resides in Texas even though he was not under the supervision and control of a Texas-based penal institution, probation department, or parole office for the offense (RQ-0453-GA)

S U M M A R Y

Code of Criminal Procedure chapter 62 requires a sex offender who has a reportable out-of-state conviction occurring on or after September 1, 1970 to register as a sex offender in the Texas city or county where he resides or intends to reside, even though the offender has not been under the supervision and control of a Texas-based penal institution, probation department, or parole office for the out-of-state conviction. The savings clauses of amendments to chapter 62 and its predecessor adopted in 1995 and 1997 do not govern the duty to register based on a reportable out-of-state conviction.

Opinion No. GA-0455

The Honorable Robert Duncan

Chair, Committee on State Affairs

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether Government Code section 2306.6710, which requires the Texas Department of Housing and Community Affairs to score and rank low-income housing tax-credit applications according to statutorily specified criteria, violates Texas Constitution article II, section 1, the Separation-of-Powers Doctrine (RQ-0457-GA)

S U M M A R Y

Government Code section 2306.6710(b)(1), which requires the Texas Department of Housing and Community Affairs to score and rank applications for low-income-housing tax credits in part based on written statements from state elected officials, does not violate the Separation-of-Powers Doctrine in Texas Constitution article II, section 1.

Opinion No. GA-0456

The Honorable Geraldine "Tincy" Miller

Chair, State Board of Education

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether the State Board of Education may adopt a rule requiring school textbooks to meet general textbook content standards as a condition of the Board's approval; reconsidering Attorney General Opinion DM-424 (1996) (RQ-0430-GA)

S U M M A R Y

Attorney General Opinion DM-424 is overruled to the extent that it concludes that the statutory definition of the term "textbook" cannot include materials that are ancillary for purposes of section 31.151(a)(3) of the Education Code. *See* Tex. Att'y Gen. Op. No. DM-424 (1996). Opinion DM-424 is further overruled to the extent it suggests that textbook publishers, not the Board, determine what materials are textbooks within the Board's review jurisdiction. The Board may adopt a reasonable rule further defining the components of the statutory definition of "textbook" by, for example, defining the phrase "system of instructional materials" or "supplementary instructional materials," and textbook publishers must comply with the rule. Whether a particular material considered ancillary for purposes of section 31.151(a)(3) is a textbook within the Board's jurisdiction to adopt or reject is a question of fact.

The legislature has provided the State Board of Education with certain specific authority over textbooks and their content. First, the Board must identify the TEKS standards by which all submitted textbooks will be judged. Second, the Board must evaluate whether each textbook submitted (a) contains factual errors and (b) meets physical specifications that the Board has set. Third, of those textbooks that have no factual errors and meet the established physical standards, the Board must place the books on either the conforming or nonconforming list. Fourth, "in the adoption of textbooks" the Board must "foster the continuation of the tradition of teaching United States and Texas history and the free enterprise system." The Board may adopt general textbook content standards that fall within these statutory authorizations, but the legislature has not authorized the Board to regulate textbook content to the extent such regulation falls outside these statutory provisions. To the extent Attorney General Opinion DM-424 is read or applied inconsistently with this opinion, it is overruled. *See* Tex. Att'y Gen. Op. No. DM-424 (1996).

Opinion No. GA-0457

The Honorable Jaime Esparza

District Attorney

34th Judicial District

El Paso County Courthouse

500 East San Antonio Street, 2nd Floor

El Paso, Texas 79901-2420

Re Whether City of El Paso police officers may set reasonable bail for both misdemeanor and felony arrestees pursuant to Code of Criminal Procedure articles 17.05, 17.20, and 17.22 (RQ-0439-GA)

S U M M A R Y

Under Code of Criminal Procedure article 17.20, a City of El Paso municipal police officer may set reasonable bail for defendants arrested on misdemeanor charges. And under article 17.22, a City of El Paso

municipal police officer may set reasonable bail for defendants arrested on felony charges if no prosecution has yet been filed.

The El Paso County Sheriff may, but is not required to, accept into the county jail a defendant whose bail has been set by a municipal police officer. If a magistrate has not determined whether probable cause exists to believe that such a defendant committed the offense charged, however, the defendant must be brought before a magistrate within 24 hours of an arrest on a misdemeanor charge or 48 hours of an arrest on a felony charge. *See* TEX. CODE CRIM. PROC. ANN. art. 17.033(a) - (b)(Vernon 2005).

Opinion No. GA-0458

The Honorable Eddie Lucio, Jr.

Chair, Committee on International Relations and Trade

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Texas Lottery Commission may issue a group license under Texas Occupations Code chapter 2001, the Bingo Enabling Act (RQ-0450-GA)

S U M M A R Y

Occupations Code chapter 2001, The Bingo Enabling Act, permits the Texas Lottery Commission to issue a manufacturer's or distributor's license to a group that is composed of multiple legal entities. A person comprising a group of entities that applies for a manufacturer's or distributor's license must meet the eligibility requirements established by the act and commission rules, which do not necessarily require common ownership and control of the group.

Opinion No. GA-0459

The Honorable Jeff Wentworth

Chair, Committee on Jurisprudence

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a home-rule city is required to improve and maintain an unimproved, dedicated public right-of-way within the city limits so that the city may provide municipal services to adjacent property annexed by the city (RQ-0454-GA)

S U M M A R Y

A city is required to (1) improve and maintain an unimproved, dedicated public right-of-way within the city limits if the city has accepted the dedicated right-of-way; or (2) improve such right-of-way if the improvement is necessary to provide adequate municipal services to adjacent annexed property. Whether a city has accepted the dedicated rights-of-way or whether the improvement is necessary to provide adequate municipal services to the annexed property are questions of fact that cannot be resolved in an attorney general opinion.

Opinion No. GA-0460

The Honorable Russell Wilson

Wilson County Attorney

1420 Third Street

Floresville, Texas 78114

Re: Whether a county attorney may accept appointment as a voluntary ombudsman for the National Committee for Employer Support of the Guard and Reserve (RQ-0458-GA)

S U M M A R Y

A county attorney is not barred by either article XVI, section 12 of the Texas Constitution or the common-law doctrine of incompatibility from simultaneously serving as a volunteer ombudsman for the National Committee for Employer Support of the Guard and Reserve.

Opinion No. GA-0461

The Honorable Bruce Isaacks
Denton County Criminal District Attorney
Post Office Box 2850
Denton, Texas 76202

Re: Whether an indigent parent is entitled to receive a free transcript of hearings and depositions in cases where the state initiates proceedings under chapter 262 of the Family Code (RQ-0459-GA)

S U M M A R Y

The three-factor balancing test of *Mathews v. Eldridge* and its progeny is the legal test to determine whether non-appellate transcripts should be provided at no cost to an indigent parent in a state-initiated proceeding to terminate the parent-child relationship. Because of its fact-intensive nature, only the presiding court can conduct the appropriate *Mathews* analysis. In the event that a court were to find an indigent parent should be provided the non-appellate transcripts, we believe the costs of the transcripts are a cost of representing the parent and therefore an expense of the proceeding under section 107.015, Texas Family Code, to be borne by the county.

A county is obligated to pay for the court reporter's record for the indigent parent's appeal when it has been ordered to do so by the court under the Texas Family Code.

Opinion No. GA-0462

The Honorable William M. Jennings
Gregg County Criminal District Attorney
101 East Methvin Street, Suite 333
Longview, Texas 75601

Re: Statutory maximum salary for the county court at law judges in Gregg County (RQ-0460-GA)

S U M M A R Y

Government Code section 25.0942(d) sets the maximum salary for Gregg County statutory county court at law judges at an amount not to exceed 90 percent of the total annual salary received by a district judge in the county.

For purposes of section 25.0005 of the Government Code, a district judge's or statutory county court judge's total annual salary includes contributions and supplements paid by the state or a county, except for compensation received for serving as a presiding judge of an administrative judicial region.

Opinion No. GA-0463

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

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

S U M M A R Y

The federal Law Enforcement Officers Safety Act of 2004 (the "Act") permits a qualified retired law enforcement officer to carry concealed firearms if the officer "has met the State's standards for training and qualification for active law enforcement officers to carry firearms." 18 U.S.C.A. § 926C(c)(5) (West Supp. 2006). In Texas, a qualified retired law enforcement officer must meet the firearms proficiency standards set out in title 37, section 217.21 of the Texas Administrative Code. We cannot, however, determine in an attorney general opinion that any particular agency's qualifying standards meet the state's standard, as required by the Act.

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

TRD-200605215
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 20, 2006



PROPOSED RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.13

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.13, concerning Educational Requirements, that remove the requirement that qualifying education courses must be specifically approved by the Board and that a minimum number of hours must be in specific fundamental real estate courses. Additionally, the amendments will remove an outdated statutory reference and specify that course subject matter must be appraisal related.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect the anticipated public benefit as a result of these amendments will be the clarification of Board rules relating to acceptable appraisal coursework. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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

§153.13. Educational Requirements.

(a) General Real Estate Appraiser Certification.

(1) Applicants for General Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 180 classroom hours in courses ~~[approved by the board]~~ which meet the requirements as set out in sub-

sections (e) - (o) of this section. Of these 180 classroom hours~~;~~ at least 90 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board~~;~~ and] at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application. At least 30 classroom hours of the fundamental real estate appraisal course requirements must be in courses with emphasis on the appraisal of non-residential properties.

(2) (No change.)

(b) Residential Real Estate Appraiser Certification.

(1) Applicants for Residential Real Estate Appraiser Certification whose application is received by the board prior to November 1, 2007 must have successfully completed 120 classroom hours in courses ~~[approved by the board]~~ which meet the requirements as set out in subsections (e) - (o) of this section. Of these 120 classroom hours~~;~~ at least 60 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board~~;~~ and] at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) (No change.)

(c) Real Estate Appraiser License or Provisional License.

(1) Applicants for a Real Estate Appraiser License or Provisional License whose application is received by the board prior to November 1, 2007 must have successfully completed 90 classroom hours ~~[in courses approved by the board]~~ which meet the requirements as set out in subsections (e) - (o) of this section. Of these 90 classroom hours~~;~~ at least 40 classroom hours must be in fundamental real estate appraisal courses specifically approved by the board~~;~~ and] at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice completed within two years prior to submission of the application.

(2) (No change.)

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

(f) The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal related; ~~[provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, 7(a)(1) and (2) shall be deemed appraisal-related;]~~

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

(g) - (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 September 18, 2006.

TRD-200605168

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 465-3959



22 TAC §153.17

The Texas Appraiser Licensing and Certification Board proposes an amendment to §153.17, concerning Renewal or Extension of Certification and License or Renewal of Trainee Approval, that permits continuing education required for renewals to be deferred for 180 days for licensed or certified appraisers on active duty in the United States armed forces. A new subsection (e) relating to identity theft is being proposed to provide a procedure for the issuance of a new license when the Board has determined that a licensee has been a victim of identity theft.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Thorburn also has determined that for each year of the first five years the amendment is in effect, the anticipated public benefit as a result of the amendment is that it establishes continuing education criteria that is consistent with the Appraiser Qualifications Board for renewals. Additionally, the anticipated public benefit regarding identity theft is that it provides licensees who are victims of theft a mechanism for reporting such an incident to the Board and a procedure whereby the licensee can seek to obtain a new license. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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

§153.17. Renewal or Extension of Certification and License or Renewal of Trainee Approval.

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

(c) Renewal of Licenses or Certification for Servicemen on Active Duty.

(1) (No change.)

(2) Appraiser continuing education requirements as set out in §153.18 of this title, that would have been imposed for a timely renewal shall be deferred under this section for a period of up to 180 days [to the next renewal of a license or certification].

(d) (No change.)

(e) Identity Theft.

(1) For purposes of this subsection "identity theft" shall mean any of the following activities occurring in connection with the rendition of real estate appraisal services:

(A) Unlawfully obtaining, possessing, transferring or using a certification, license, authorization or registration issued by the board;

(B) Unlawfully obtaining, possessing, transferring or using a person's electronic or handwritten signature.

(2) A person holding a certification, license, authorization or registration issued by the board shall implement and maintain reasonable procedures to protect and safeguard themselves from identity theft.

(3) A person holding a certification, license, authorization or registration shall notify the board if they are the victim of identity theft within ninety (90) days of discovering such theft. Notice shall be effectuated by filing a signed, written complaint on a form prescribed by the board.

(4) The board may invalidate a current certification, license, authorization or registration and issue a new one to a person the board determines is a victim of identity theft. Any person seeking the invalidation of a current certification, license, authorization or registration and issuance of a new one shall:

(A) submit a written, signed request for the invalidation of a current certification, license, authorization or registration and issuance of a new one. The basis for the request must be because the person is a victim of identity theft and shall be made on a form prescribed by the board; and

(B) have the burden to submit evidence that the board determines is credible which demonstrates they are the victim of identity theft; Without limiting the type of evidence a person may submit to the board, a court order issued in accordance with Texas Business and Commerce Code §48.202, declaring that the person is a victim of identity theft shall constitute credible evidence. Any such court order must relate to identity theft as defined in this subsection.

(5) Engaging in identity theft, constitutes a violation of §§153.20(a)(4), (18) and (20) of this title and in addition to any action taken by the board, persons engaging in identity theft may also be referred to the appropriate law enforcement agency for criminal prosecution.

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 September 18, 2006.

TRD-200605169

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 465-3959



22 TAC §153.18

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.18, concerning Appraiser Continuing Education, that remove the requirement that the board must have specifically approved an annual renewal education course as a

fundamental course for appraiser trainees renewing an authorization that was issued prior to March 1, 2006. Further, the propose amendment will permit the continuing education requirements for appraiser trainees on active duty in the United States armed forces to be deferred for a period of up to 180 days upon return to civilian status.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Thorburn also has determined that for each year of the first five years the amendments are in effect, the anticipated public benefit as a result of these amendments is that they will bring board rules into conformity with requirements dictated by the Appraiser Qualifications Board and clarify board rules with respect to appraiser continuing education. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendments are proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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

§153.18. Appraiser Continuing Education.

- (a) (No change.)
- (b) Renewing an Appraiser Trainee Approval.

(1) For a trainee Whose Application Was Accepted by the Board Prior to March 1, 2006. As a condition for renewing an appraiser trainee authorization, a trainee must successfully complete educational courses during the one-year period preceding the expiration of the appraiser trainee authorization being renewed. The courses must comply with the fundamental education requirements for application for licensing and certification as set out in §153.13(f) - (o) of this title (relating to Educational Requirements):

(A) For the first annual renewal and every other annual renewal thereafter (third, fifth, seventh, etc) a total of 45 classroom hours which shall include a minimum of 30 classroom hours of ~~[fundamental]~~ real estate appraisal courses and 15 classroom hours in a course devoted to the USPAP. The course ~~[must specifically be approved by the board and]~~ shall include successful completion of an examination; and

(B) For the second annual renewal and every other annual renewal thereafter (fourth, sixth, etc.), a minimum of 30 classroom hours of ~~[fundamental]~~ real estate appraisal courses ~~[specifically approved by the board,]~~ which shall include the successful completion of an examination.

- (2) (No change.)

(c) The appraiser continuing education requirement as set forth in §153.17 of this title (relating to Renewal of Certification, License or Trainee Approval) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces may be deferred for a period up to 180 days upon return to civilian status ~~[and serves in this capacity outside the State of~~

~~Texas are deferred until the next renewal of a license or certification]~~ provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty ~~[outside the state]~~ during the person's last renewal period.

- (d) (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 September 18, 2006.

TRD-200605170
Wayne Thorburn
Commissioner
Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: October 29, 2006
For further information, please call: (512) 465-3959



22 TAC §153.23

The Texas Appraiser Licensing and Certification Board proposes an amendment to §153.23, concerning Inactive Certificate or License, that will require an appraiser whose certification or license has been inactive to satisfy all appraiser continuing education requirements that were not completed while on inactive status before they can return to active status.

Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Thorburn also has determined that for each year of the first five years the amendment is in effect, the anticipated public benefit as a result of this amendment is that it modifies board rules to make them consistent with the Appraiser Qualifications Board Criteria for certified or licensed appraisers' continuing education. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Wayne Thorburn, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under the Texas Appraiser Licensing and Certification Act, Subchapter D, concerning Board Powers and Duties (Occupations Code, Chapter 1103), which provides the board with authority to adopt rules under §1103.151, concerning Rules Relating to Certification and Licenses.

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

§153.23. Inactive Certificate or License.

- (a) - (c) (No change.)
- (d) To return to active status, a licensed or certified appraiser who has been placed on inactive status must:
 - (1) - (2) (No change.)
 - (3) satisfy all ~~[the then current]~~ appraiser continuing education (ACE) requirements specified in §153.18 of this title (relating to Appraiser Continuing Education) that were not completed while on

inactive status within two years preceding the date of the request to return to active status.

(e) A licensed or certified appraiser who has been on inactive status may resume practice once the appraiser has applied for return to active status, satisfied ~~current~~ ACE requirements, paid the appropriate fees, and the active license or certification has been issued by the board.

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

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

TRD-200605171

Wayne Thorburn

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 465-3959



PART 10. TEXAS FUNERAL SERVICE COMMISSION

CHAPTER 203. LICENSING AND ENFORCEMENT--SPECIFIC SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Service Commission (commission) proposes an amendment to 22 TAC §203.6, concerning Provisional Licensees.

The amendment is proposed in order to insure the provisional licensee expeditious access to information relating to their provisional license program. The number of provisional licensing programs has tripled since the amendment of Texas Occupations Code §651.302 during the 78th Legislative Session. The amendment, as proposed, would be conducive to the provisional licensees for obtaining information and tracking the funeral directing and/or embalming cases submitted.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robbins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.6. Provisional Licensees.

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

(c) The provisional licensure period is a minimum of 12 and a maximum of 24 consecutive months, beginning on the date of the first case for which the licensee receives credit from ~~training report filed~~ with the commission. The provisional licensure programs for funeral director and embalmer may be served simultaneously.

(d) - (g) (No change.)

(h) Provisional licensees must file with the commission a training/case report for each month of the provisional license program by the 10th day of the next month as outlined in Texas Occupations Code §651.304. Each report must consist of the actual training/case report only. All supporting documentation will be kept by the provisional licensee's sponsor, not the Commission. Training/case[- Case] report submission post marked after the 10th day of the month will not be accepted. The licensee will not be given credit for those training/case reports and those months will not count toward the 12 required months. An additional month will be added to the provisional program for every month the training/case report is late. In any month in which the provisional licensee does not perform a case, the provisional licensee must file a "notwithstanding" report with the commission, and that month will not count toward the 12 required months. Additionally, if a licensee fails to file a report for a month that is counted as a "notwithstanding" and additional month will be added to the provisional program for every month the licensee files a "notwithstanding". If a provisional licensee files "notwithstanding" reports for two consecutive months, the licensee is required to restart the provisional licensee program. Similarly, provisional licensees who fail to file a case report within 90 days after receiving the provisional license shall submit a new provisional license application and pay a new provisional license fee.

(i) (No change.)

(j) Each training/case report shall be certified by the licensee under whom the provisional licensee performed the work. The supervising licensee and the provisional licensee both are subject to disciplinary action if the information submitted is not true and accurate.

(k) - (m) (No change.)

(n) Upon the completion of the provisional license program, as defined as the provisional licensee meeting all the requirements for regular licensure, the sponsor of the provisional licensee shall notify in writing of the same by submitting the number of cases performed while the licensee was under the sponsorship of said sponsor. The Commission shall cross check the information provided with the information held by the Commission to ensure each provisional licensee has met all requirements. All information submitted is subject to inspection. Once confirmed the Commission shall issue to the provisional licensee a written sponsor affidavit to be completed by the sponsor. In addition the Commission shall issue a written letter outlining the fees required for regular licensure. The sponsor shall execute and provide to the commission the written affidavit attesting to the proficiency of the provisional licensee in those areas observed.

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 September 15, 2006.

TRD-200605119

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 936-2466



22 TAC §203.22

The Texas Funeral Service Commission (commission) proposes an amendment to 22 TAC §203.22, concerning Required Documentation for Embalming.

The amendment is proposed in order to insure the provisional licensee expeditious access to information relating to their provisional license program. The number of provisional licensing programs has tripled since the amendment of Texas Occupations Code, §651.302 during the 78th legislative session. The amendment, as proposed, would be conducive to the provisional licensees for obtaining information and tracking the funeral directing and/or embalming cases submitted.

O.C. "Chet" Robbins, Executive Director, has determined that, for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that, for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small, or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.22. *Required Documentation for Embalming.*

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

(f) In the case of provisional licensees, this form must be completed and submitted to the sponsor of the provisional licensee [~~sent to the Commission~~] within 30 days following the embalming procedure. All blank spaces must be completed with correct information. Should false or misleading information be submitted, an instructor or supervisor or sponsor may face disciplinary action by the Commission.

(g) - (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 September 15, 2006.

TRD-200605117

O.C. "Chet" Robbins

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 936-2466



22 TAC §203.27

The Texas Funeral Service Commission (commission) proposes an amendment to 22 TAC §203.27, concerning Sponsors of Provisional Licensees.

The amendment is proposed in order to insure the provisional licensee expeditious access to information relating to their provisional license program. The number of provisional licensing programs has tripled since the amendment of Texas Occupations Code §651.302 during the 78th Legislative Session. The amendment, as proposed, would be conducive to the provisional licensees for obtaining information and tracking the funeral directing and/or embalming cases submitted.

O.C. "Chet" Robbins, Executive Director, has determined that for the first five-year period the amendment is in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Robbins further has determined that for each year of the first five-year period the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be eliminating the oral exit interviews in order to expedite the licensure of qualified applicants thereby allowing them to be placed into the community sooner. There will be no effect on large, small or micro-businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Mr. Robbins at P.O. Box 12217, Capitol Station, Austin, Texas 78711-1440, (512) 479-5064 (fax), or electronically to chet.robins@tfsc.state.tx.us.

The amendment is proposed under Texas Occupations Code, §651.152. The commission interprets §651.152 as authorizing it to adopt rules as necessary to administer Chapter 651.

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

§203.27. *Sponsors of Provisional Licensees.*

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

(c) A sponsor shall ensure that direct personal supervision of a provisional licensee is provided in order to provide firsthand and factual documentation of work accomplished by the provisional licensee on each training/case report submitted. The term personal supervision as used in Texas Occupations Code §§651.251, 651.301, 651.303, and 651.306 requires a licensed embalmer or funeral director to be physically present in the room with the provisional licensee and in view of the work performed during the course of the work performed by the provisional licensee.

(d) - (h) (No change.)

(i) Sponsors of each provisional licensee shall retain copies of all training reports with supporting documentation for all case credit claimed for two years from the date of the training report.

(j) Each sponsor shall be responsible for keeping a running total of all case work done on a monthly basis and make available to the Commission if an audit is requested. Additionally, each sponsor shall make available to the provisional licensee the total number of cases for which the provisional licensee has received credit and for each month individually. In each case where a provisional licensee has more than one sponsor, a primary "sponsor" shall be designated to keep all documentation and will be responsible for keeping track of the provisional licensee's provisional program.

(k) Each sponsor shall review any and all submitted training/case reports, check for accuracy in completion of the proper documentation, and verify that the provisional licensee actually worked on each case reported. Each sponsor shall keep a record of how many cases the provisional licensee did not get credit for due to incomplete reports, failure to submit reports by the 10th of the following month, or filing of a "notwithstanding".

(l) Once the provisional licensee has met all the requirements of the provisional program the sponsor shall notify the Commission in writing by submitting copies of training reports submitted for credit.

(m) When the provisional licensee lists two or more sponsors the sponsor(s) must designate a primary sponsor who will be responsible for keeping all documentation pertaining to the provisional program. To include all training reports submitted and supporting documentation, amendment forms, and any other documentation submitted to the agency.

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 September 15, 2006.

TRD-200605118
O.C. "Chet" Robbins
Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 936-2466



PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) proposes amendments to §§781.102, 781.215, 781.217, 781.301 - 781.304, 781.306, 781.313, 781.314, 781.402, 781.405, 781.409, 781.413, 781.414, 781.508, 781.511 - 781.514, 781.604, 781.605, 781.806, and new §781.516 and §781.517, concerning the licensure and regulation of social workers.

BACKGROUND AND PURPOSE

The proposed amendments and new sections are necessary to complete implementation of Senate Bill 810, 78th Texas Legislature, 2003, which amended the Occupations Code, Chapter

505, and required the board to establish independent practice authorization for all levels of licensure.

Additionally, the board proposes amendments to correct minor errors, improve the rules, and ensure that the rules reflect current legal, policy, and operational considerations.

SECTION-BY-SECTION SUMMARY

The amendments to §781.102 adds new definitions of "Conditions of exchange," "Independent clinical practice," "Independent non-clinical practice," and "Sole responsibility for the client;" improves the definition of Supervisor; and renumbers the definitions accordingly.

The amendments to §781.215 clarify what is displayed on the license certificate. Amendments to §781.217 clarify the fees for changing to inactive status, the reactivation of a license, and renewal fee for an inactive license; update terminology used for an approved continuing education provider and a board approved supervisor; and renumber the section accordingly.

The amendments to §781.301 reflect the new designation of "Bachelors" for the examination for LBSW; specify the licensure categories and specialty recognition required to practice independently (and receive remuneration from direct billing or through contract work); establish August 31, 2007, as a deadline for licensees to have obtained the appropriate level of licensure and/or specialty recognition (or be under application for same) in order to continue practicing independently; clarify that a person may not practice independently without the proper license or specialty recognition; and to reorder and renumber the section accordingly. The amendments to §781.302 define two distinct supervised experience tracks, one for clinical licensure and one for non-clinical independent practice recognition; to establish that experience under a temporary license is not eligible for supervision hours or experience toward clinical licensure or independent practice recognition; to provide clarity on the process for application for a licensure upgrade or independent practice recognition and required supervision and experience documentation; to establish rules for supervision when it is required as a condition of initial or continued licensure or as a result of disciplinary action or in order to participate in the AMEC program. The amendments to §781.303 establish a one time application period ending on August 1, 2007, for a waiver of the experience requirements for independent practice recognition based on criteria established in rule; to establish that appeals of denials by staff be reviewed by a board committee whose decisions on appeals are final; and to establish that a licensee who applies for the independent practice recognition must cease and desist independent practice immediately if their application is finally denied (30 days after the denial of the application by staff or an appeal is not granted), unless they are under a board approved supervision plan for independent practice recognition. Amendments to §781.304 clarify language referring to a supervisor as a board approved supervisor, to clarify the application and approval process, and to establish the supervisory functions that are authorized by holding board approved supervisory status according to license type and specialty recognition held by the supervisor; to add rules that revise the general rules of supervision; and, reorder and renumber the section accordingly. The amendment to §781.306 deletes obsolete language. The amendments to §781.313 establish that the criteria for eligibility for the AMEC program is to have scored twice within five points of passing instead of four points and to require that supervision required for participation in the AMEC program be provided by

a board approved supervisor. The amendments to §781.314 specify information provided on a license certificate.

The amendments to §781.402 change the title of the section; add language describing services that constitute the practice of social work; and revise the terms used for the independent practice of clinical social work from "private practice" to "independent clinical practice" and revise the term used for non-clinical independent practice from "independent practice" to "independent non-clinical practice." The amendments to §781.405 clarify that sexual exploitation may occur in an agency setting in addition to an independent practice setting and to revise language to be consistent with the current definition of independent practice. The amendments to §781.409 clarify the duties of licensees regarding maintaining compliance with laws concerning confidentiality of protected health information and the release of mental health records. The amendments to §781.413 revise language to be consistent with the current definition of independent clinical and non-clinical practice. The amendments to §781.414 revise the methods by which a licensee may provide consumer information to consumers to be consistent with the Occupations Code, §505.252.

The amendments to §781.508 indicate the executive director's decision regarding a request for a waiver of all or part of continuing education requirements may be appealed to an appropriate committee of the board as opposed to the Professional Development Committee. The amendments to §781.511 change the title of the section; change the term of continuing education sponsor to a continuing education provider; update the rule, indicating that the executive director reviews continuing education provider applications to indicate that the function is provided by department staff; require that continuing education providers provide a list of subcontractors upon renewal or upon request; require continuing education providers to maintain training records for a period of three years as opposed to two years; and renumber the section accordingly. The amendments to §781.512 revise the title of the section; change the term of "Continuing education sponsor" to "Continuing education provider"; define the process of evaluating continuing education providers; provide for the review by a committee of the board for possible rescinding of approved continuing education provider status if a provider is not in compliance with rules regarding continuing education programs; disallow credit toward approval as a supervisor by the board for a completion of a course by a provider after the provider's approval status has been rescinded; and renumber the section accordingly. The amendments to §781.513 change the term of continuing education sponsor to a continuing education provider and update the rule to indicate that the decision of the executive director regarding the acceptability of continuing education from providers approved by another licensing board may be appealed to the appropriate board committee. The amendments to §781.514 revise the number of hours that may not be exceeded during a renewal period for published works and independent study programs. New §781.516 establishes the criteria for approval and renewal of a supervisory training course provider and supervisory training program; establishes rules regarding application for approval; and establishes rules regarding documentation of participation and retention of the documentation. New §781.517 establishes a process for the evaluation of supervisor training course providers and the courses they present; establishes a process for the board to rescind approval of a supervisor training course provider; establishes a process for reapplication for approved supervisor training course provider status once it has been rescinded; and disallows credit toward approval as a

supervisor by the board for a completion of a course by a provider after the provider's approval status has been rescinded.

The amendments to §781.604 allow only the respondent to a complaint to request an informal hearing, as opposed to allowing any party to a complaint to request an informal hearing. The amendments to §781.605 reflects the current name of the board committee that reviews complaints filed with the board from "Complaints Committee" to "Ethics Committee."

The amendments to §781.806 allow supervision of licensees on probation by any board approved supervisor with expertise in the licensee's field of practice, as opposed to only LCSWs and to be consistent with supervisory functions authorized by proposed changes in §781.304.

FISCAL NOTE

Charles Horton, Executive Director, has determined that for each fiscal year of the first five years the sections are in effect, there will be fiscal implications to the state as a result of enforcing or administering the sections as proposed. The effect on state government will be an increase in revenue to the state of \$155,660 the first year, \$44,000 the second year, \$53,000 the third year, \$60,000 the fourth year, and \$65,000 the fifth year for new applications for the Independent Practice Recognition (IPR), the IPR waiver of experience requirement, license renewals that will have added the IPR, new approved supervisor status applications, and newly approved supervisor status renewal fees.

Implementation of the proposed sections will not result in any fiscal implications for local governments.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Horton has also determined that there may be anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. There will be an increase in the licensing fees for sole proprietors who are engaged in the independent non-clinical practice of social work and for other small or micro-businesses that choose to cover licensing costs for their employees who are required to hold a social worker license. The probable economic cost to those persons and businesses will increase from \$80 to \$100 biennially. There will also be an increase in the fees for sole proprietors who are engaged in the independent non-clinical practice of social work and for other small or micro-businesses that choose to cover licensing costs for their employees who choose to obtain supervisory status. The probable economic cost to those persons and businesses will be an increase of \$25 annually.

Additionally, there will be anticipated economic costs to small businesses or micro-businesses required to comply with the sections as proposed. Sole proprietors who are engaged in the independent non-clinical practice of social work who do not meet the criteria for the waiver of experience requirement for independent practice recognition will have to obtain supervision for a minimum period of two years in order to continue practicing at an approximate cost of \$1,250 per year for each licensee, based on an average minimum hourly fee of \$25 per hour for supervision and 50 hours of supervision per year. After the minimum of two years of supervision or longer if it is required to obtain the necessary supervised experience hours and supervision required; these licensees will be eligible to obtain independent practice recognition. The cost for obtaining independent practice recognition after obtaining the supervised experience will be \$20 for

the application fee. The cost of maintaining independent practice recognition once obtained will be \$20 for each renewal.

There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Mr. Horton has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to generate funding to operate the regulatory program; to increase licensee knowledge of, and compliance with, Texas social worker laws and rules; and to effectively regulate the practice of social work in Texas, all of which will protect and promote public health, safety, and welfare.

REGULATORY ANALYSIS

The board has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment nor reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The board 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Charles Horton, Executive Director, Texas State Board of Social Worker Examiners, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756 or by e-mail to lsw@dshs.state.tx.us. When e-mailing comments, please indicate "Comments on Proposed Rules" in the e-mail subject line. Comments will be accepted for 60 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendment affects Occupations Code, Chapter 505.

§781.102. Definitions.

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

(1) - (14) (No change.)

(15) Conditions of exchange--The setting of rates of reimbursement or fee structure and business rules or policies involving is-

ues such as cancellation of appointments, office hours, management of insurance claims.

(16) [(15)] Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(17) [(16)] Counseling--A method used by social workers to assist individuals, couples, families or groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(18) [(17)] Consultation--To provide advice, opinions and to confer with other professionals regarding social work practice.

(19) [(18)] Continuing education--Formal or informal education or trainings, which are oriented to maintain, improve or enhance social work practice.

(20) [(19)] Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(21) [(20)] Department--Department of State Health Services.

(22) [(21)] Detrimental to the client--An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

(23) [(22)] Direct practice--The provision of services, research, system linkage, system development, maintenance and enhancement of social and psychosocial functioning of clients.

(24) [(23)] Dual relationship--Dual or multiple relationships occur when social workers relate to clients in more than one capacity, whether it be before, during or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

(25) [(24)] Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(26) [(25)] Examination--A standardized test or examination of social work knowledge, skills and abilities, which has been approved by the board.

(27) [(26)] Exploitation--An unequal balance is inherent in the client/professional relationship and may be present in the professional/professional relationship. To use this power imbalance for the personal benefit of the professional at the expense of the client or another professional is exploitation. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(28) [(27)] Exploitive behavior--A pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the social worker rather than in the best interest of the client or at the expense of another professional. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(29) [(28)] Family systems--An open, on-going, goal-seeking, self-regulating, social system. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life

stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, sexual orientation, health and temperament) and its socio-cultural and historic position in its larger environment.

(30) [(29)] Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(31) [(30)] Flagrant--Obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.

(32) [(31)] Fraud--Any misrepresentation or omission by a social worker related to professional qualifications, services, or related activities or information that benefits the social worker.

(33) [(32)] Full-time experience--Social work services totaling 30 or more hours per week.

(34) [(33)] Group supervision--Supervision that involves a minimum of two and no more than six supervisees in a supervision hour.

(35) [(34)] Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(36) [(35)] Home study--A formal written evaluation or social study to determine what is the best interest of a minor child or other dependent person.

(37) [(36)] Independent practice--The practice of social work services outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients in exchange for direct payment or third party reimbursement.

(38) Independent clinical practice--The provision of clinical social work in independent practice wherein the practitioner is solely responsible for the welfare of the client and the services rendered.

(39) Independent non-clinical practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients.

(40) [(37)] Indirect practice--Work on behalf of the client utilizing negotiation, education, advocacy, administration, research, policy development and resource location that does not involve immediate or personal contact with the clients being served.

(41) [(38)] Individual supervision--Supervision of one supervisee during the supervision session.

(42) [(39)] Investigator--A professional utilized by the board in the investigation of allegations of professional misconduct.

(43) [(40)] LBSW--Licensed Baccalaureate Social Worker.

(44) [(41)] LCSW--Licensed Clinical Social Worker.

(45) [(42)] License--A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

(46) [(43)] Licensee--A person licensed or recognized by the board to perform professional social work practice.

(47) [(44)] LMSW--Licensed Master Social Worker.

(48) [(45)] LMSW-AP--Licensed master social worker-advanced practitioner.

(49) [(46)] Non-clinical social work--The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, non-clinical consultation and other related social work activities.

(50) [(47)] Part-time--Social work services totaling less than 30 hours per week.

(51) [(48)] Party--Each person, governmental agency, or officer or employee of a governmental agency named by the ALJ as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(52) [(49)] Persistently--Existing for a long or longer than usual time or continuously.

(53) [(50)] Person--An individual, corporation, partnership, or other legal entity.

(54) [(51)] Pleading--Any written allegation filed by a party concerning its claim or position.

(55) [(52)] Psychotherapy--The use of treatment methods utilizing a specialized, formal interaction between a clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand intrapersonal, interpersonal and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

(56) [(53)] Reciprocity--The granting of an official license based on the current status of licensure in a different jurisdiction. Reciprocity is granted based on the formal written agreement between the board and regulatory body in the other jurisdiction.

(57) [(54)] Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.

(58) [(55)] Rules--Provisions in this chapter specifying the implementation of statute and operations of the board and individuals affected by the Act.

(59) [(56)] Sexual contact--Any touching or behavior that can be construed as sexual in nature.

(60) [(57)] Sexual exploitation--A pattern, practice or scheme of exploitative behavior, which may include sexual contact.

(61) [(58)] Social Work Case Management--The use of a biopsychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client.

(62) [(59)] Social worker--A person licensed under the Act.

(63) [(60)] Social work practice--Services and actions performed as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of social work is guided by special knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy,

marriage and family therapy, couples therapy, group therapy, case management, supervision of social work services, counseling, assessment, and evaluation. Social work practice may also be referred to as social work services, of social welfare policies and services, social welfare systems and resources, human services.

(64) Sole responsibility for the client--The discretion to fully define the scope, methods and length of treatment.

(65) [~~(64)~~] Supportive counseling--The methods used by social worker to help individuals create and maintain adaptive patterns. Such methods may include building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support. This type of social work is not considered clinical social work.

(66) [~~(62)~~] Supervisor, board approved--A person meeting the requirements set out in §781.302 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition [Supervisor Requirements]), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.

(67) [~~(63)~~] Supervision--The professional interaction between a supervisor and a social worker in which the supervisor evaluates and directs the services provided by the social worker and promotes continued development of the social worker's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

(68) [~~(64)~~] Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(69) [~~(65)~~] Telepractice--Interactive service delivery where the client resides in one location and the professional in another.

(70) [~~(66)~~] Termination--The end of professional services, meetings, and billing for services.

(71) [~~(67)~~] Texas Open Meetings Act--Government Code, Chapter 551.

(72) [~~(68)~~] Texas Public Information Act--Government Code, Chapter 552.

(73) [~~(69)~~] Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

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

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

TRD-200605155

Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

Proposed date of adoption: November 28, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER B. THE BOARD

22 TAC §781.215, §781.217

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.215. *The License.*

(a) The board shall prepare and provide to each licensee a license certificate, which contains the licensee's name and license number. License certificates will indicate the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will also indicate the date that the license expires, unless it is renewed. The board shall have a method to indicate the new expiration date of a license which has been renewed. The license certificate will also include any specialty recognition or supervisory status, if applicable.

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

§781.217. *Fees.*

(a) The following are the board's fees:

(1) application fee for all licenses, approved supervisory status, waiver of the experience requirement for independent practice recognition, or specialty recognition--\$20;

(2) - (7) (No change.)

(8) fee for late renewal:

(A) (No change.)

(B) 91 days, but less than one year--renewal fee plus fee equal to the current contracted examination fee rounded to the nearest dollar amount; [-]

(9) inactive status conversion or reactivation from inactive status--\$30;

(10) [~~(9)~~] inactive status renewal fee--\$30 biennially;

(11) [~~(10)~~] returned check fee--\$25;

(12) [~~(11)~~] written license verification fee--\$10 per verification copy;

(13) [~~(12)~~] specialty license verification fee--\$10 per verification copy;

(14) [~~(13)~~] student loan default reinstatement fee--\$35;

(15) [~~(14)~~] continuing education provider [sponsor] application fee--\$50 annually;

(16) [~~(15)~~] delinquent child support administrative fee--\$35;

(17) [~~(16)~~] legislatively mandated fees per licensee for the operation of the Office of Patient Protection per application and renewal as legislatively established;

(18) [~~(17)~~] legislatively mandated fees per licensee for the boards participation in the Texas On-line per application and renewal as legislatively established;

(19) [~~(18)~~] board approved supervisor fee--\$25 annually;

(20) ~~[(19)]~~ AMEC participant administrative fee--Fee equal to the current contract examination fee;

(21) ~~[(20)]~~ Petition for re-examination fee--\$20 per petition; and

(22) ~~[(21)]~~ Temporary license fee--\$30.

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

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

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

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

Proposed date of adoption: November 28, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §§781.301 - 781.304, 781.306, 781.313, 781.314

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.301. *Qualifications for Licensure.*

(a) The following education and experience is required for the specified licenses and specialty recognitions:

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

(4) Licensed Baccalaureate Social Worker (LBSW).

(A) (No change.)

(B) Passing score on the basic or Bachelors exam administered nationally by ASWB.

(b) Only a person who is licensed and has been recognized by the board as follows is qualified to provide clinical and non-clinical social work services in employment or independent practice settings. ~~[for independent practice is qualified for the independent practice of social work.]~~

(1) A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting. A LCSW may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(2) A LMSW-AP may provide any non-clinical social work services in either an employment or an independent practice

setting. A LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(3) A LBSW or LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. A LBSW or LMSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(4) ~~[(2)]~~ A ~~[An LMSW-AP]~~ LBSW or LMSW recognized for independent practice and a LMSW-AP must restrict his or her independent practice to the provision of non-clinical social work services.

(c) ~~[(3)]~~ After August 1, 2007, a ~~[A]~~ licensee that had not submitted an application for Independent Practice Recognition and an application for waiver of supervised experience requirements, along with the appropriate fees and supporting documentation and whose application is still pending must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions ~~[definitions]~~) without being licensed and recognized by the board unless the person is licensed in another profession and acting solely within the scope of that license. If engaged in professional practice under another license, the ~~[The]~~ person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or independent practice recognition.

(d) ~~[(4)]~~ After August 1, 2007, a LBSW or LMSW ~~[A licensee]~~ who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services such as in home health care or the use of telephones or other electronic media to provide services in an emergency.

(e) After August 1, 2007, a LBSW or LMSW who is not recognized for independent practice or is not exempt under subsection (c) of this section, may only practice for remuneration in a direct employment or agency setting and can not work under contract, bill directly to patients or to third party payers, unless the LBSW or LMSW is under a formal supervision plan approved by the board.

(f) ~~[(e)]~~ Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§781.302. *Clinical Supervision for LCSW and Non-Clinical Supervision for ~~[or]~~ LMSW-AP and Independent Practice Recognition.*

(a) A person who has obtained only the temporary license may not begin the supervision process toward independent non-clinical practice or independent clinical practice until the issuance of the regular license.

(b) An ~~[A]~~ LMSW who plans to apply for the LCSW or LMSW-AP must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision. If the LMSW fails to submit a supervisory plan, then the LMSW's supervisor must provide to the supervisee who in turn ~~[LMSW]~~ will need to submit to the board documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW submits a clinical/non-clinical supervision verification form ~~[makes application for the LCSW or LMSW-AP];~~

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an AP or LCSW, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors. Only one supervisory plan may be in place at any time.

{(5) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.}

(c) A LBSW or an LMSW who plans to apply for the Independent Practice Recognition must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision. If the LBSW or LMSW fails to submit a supervisory plan, then the supervisor for the LBSW or LMSW must provide to the supervisee who in turn will need to submit to the board documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW submits a non-clinical supervision verification form;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the LBSW or LMSW intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the LBSW or LMSW in the setting;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for independent practice recognition, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors. Only one supervisory plan may be in place at any time.

(d) A licensee who is required to be supervised as a condition of initial or continued licensure must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should

continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(e) A licensee who is required to be supervised as a result of disciplinary action must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director/designee within 30 days of initiating supervision;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead or submit a copy of the contract or appointment under which the licensee intends to work, along with a statement from their potential supervisor that he or she has reviewed the contract and is qualified to supervise the licensee in the setting;

(3) ensure that their supervisor submits reports to the board at the schedule determined by the board. In each report, the supervisor must report on the status of the supervisee's performance, adherence to statutes and rules, address any special circumstances that led to the imposition of supervision, and recommend whether the supervisee should continue licensure. If the supervisor does not recommend the supervisee for continued licensure, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) notify the board immediately if there is a break in the supervisory relationship and submit a new supervisory plan within 30 days of the break. Only one supervisory plan may be in place at any time.

(f) A LBSW or an LMSW who has been approved for a probationary license under supervision while participating in the AMEC program must follow the application and supervision requirements in §781.313 of this title (relating to Alternate Method of Examining Competency).

§781.303. *Independent Practice Recognition.*

(a) A LBSW or LMSW who seeks to obtain board approval for the recognition of independent practice shall meet requirements and parameters set by the board.

(1) To qualify for the recognition of independent practice, as a LBSW, an individual, after licensure, shall obtain 3000 hours of Board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(2) To qualify for the recognition of independent practice, as a LMSW, an individual, after licensure, shall obtain 3000 hours of Board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(3) To qualify for independent practice the licensee must complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board approved supervisor. A licensee who plans to apply for independent practice recognition shall:

(A) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the licensee fails to submit a supervisory plan, then the licensee will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the licensee makes application for the upgrade.

(B) submit a current job description from the agency the social worker is employed in with a verification of authenticity from the agency director or their designee on agency letterhead.

(C) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an independent practice, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee.

(D) submit a new supervisory plan within 30 days of changing supervisors.

(E) An individual providing supervision to a LBSW shall be a LBSW, LMSW, LMSW-AP or LCSW. An individual providing supervision to a LMSW shall be a LMSW, LMSW-AP or LCSW. In addition to the required licensure, the supervisor shall be board-approved and have attained the recognition of independent practice.

(4) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

(5) The board may use the twenty common law factors developed by the Internal Revenue Service (IRS) as part of their determination process regarding whether a worker is an independent contractor or an employee.

(A) No instructions to accomplish a job.

(B) No training by the hiring company.

(C) Others can be hired by the independent contractor (sub-contracting).

(D) Independent contractor's work is not essential to the company's success or continuation.

(E) No time clock.

(F) No permanent relationship between the contractor and company.

(G) Independent contractors control their own workers.

(H) Independent contractor should have enough time available to pursue other jobs.

(I) Independent contractor determines location of work.

(J) Independent contractor determines order of work.

(K) No interim reports.

(L) No hourly pay.

(M) Independent contractor often works for multiple firms.

(N) Independent contractor is often responsible for own business expenses.

(O) Own tools.

(P) Significant investment.

(Q) Services available to the public by having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(R) Profit or loss possibilities.

(S) Can't be fired.

(T) No compensation if the job isn't done.

(b) A LBSW or LMSW who seeks to obtain a waiver of the supervision and experience requirement for independent practice recognition as set forth by the board in subsection (a)(1) - (3) of this section must submit an application for licensure/upgrade/specialty recognition and the Special Application For Waiver of Supervision and Experience Requirements, along with required documentation and the application fees no later than August 1, 2007. An application for waiver will be evaluated and either approved or denied. No partial credit will be given toward the supervised experience requirement, if an application for the waiver is denied. In order to be granted the waiver, the LBSW or LMSW must fully meet the following requirements and parameters set by the board:

(1) two years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed social worker (LCSW, LMSW-AP, LMSW, LBSW);

(2) three years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed mental health professional (LCSW, LMSW-AP, LMSW, LBSW, LMFT, LPC, LCDC, Psychologist, Psychiatrist, Psychiatric Nurse or other mental health professional accepted by the board);

(3) four years full time (paid or voluntary) social work experience in an agency setting with or without supervision the supervision of a licensed mental health professional; or

(4) four years full time (paid or voluntary) social work experience without supervision in a setting that meets the criteria in subsection (a)(5) of this section.

(c) An applicant may appeal staff decision regarding their qualifications toward the waiver to the appropriate board committee within 30 days of receipt of staff decision. The decision of the board committee is final.

(d) A LBSW or LMSW who applies for the independent practice recognition and the waiver of experience requirements before August 1, 2007, must cease and desist independent practice immediately if his or her application for the waiver of the supervised experience requirement is finally denied. An LBSW or LMSW whose application has been denied may practice independently when a supervision plan for independent practice has been approved by the board.

§781.304. Recognition as a Board [am] Approved Supervisor and Supervision Process.

A person who wishes to be a board [am] approved supervisor must file an application, and pay the applicable fee [a request with the board].

(1) A board approved supervisor must:

(A) - (D) (No change.)

(E) submit the required documentation and fee to the board for approval; [am]

(F) pay the annual Board Approved Supervisor fee as listed in §781.217 of this title (relating to Fees); and [-]

(G) when approved as a supervisor by the board, the licensees may perform supervisory functions indicated:

(i) a LCSW may supervise clinical experience toward the LCSW, Non-clinical experience toward the Advanced Practice, non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(ii) an LMSW-AP may supervise non-clinical experience toward the Advanced Practice, non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iii) an LMSW with the Independent Practice Recognition may supervise non-clinical experience toward the Independent Practice Recognition, a licensee under probationary initial or continued licensure, board ordered probated suspension, probationary license holders under the AMEC program;

(iv) an LMSW who does not hold the independent practice recognition may only supervise probationary license holders under the AMEC program;

(v) a LBSW with the Independent Practice Recognition may supervise a LBSW's non-clinical experience toward the Independent Practice Recognition, a LBSW under probationary initial or continued licensure, board ordered probated suspension, probationary LBSW license holders under the AMEC program; or

(vi) a LBSW who does not hold the independent practice recognition may only supervise probationary LBSW license holders under the AMEC program.

(2) On receipt of the application to be a board approved supervisor, fee [request] and verification of qualifications, the board will issue a letter notifying the licensee of approval as ~~a~~ a board approved [qualified] supervisor.

(3) On receipt of the approved supervisor fee, the board will issue a letter certifying that the individual is an approved supervisor. A licensee who is approved as a supervisor remains approved as a supervisor until the licensee requests to be removed as a supervisor.

(4) An approved supervisor must renew their approved supervisor status annually. An approved supervisor who fails to renew their approved supervisor status must reapply and meet the current requirements for approved supervisor status.

(5) [~~3~~] A supervisor must maintain the qualifications described in paragraph (1) [~~subsection (a)~~] of this section while he or she is providing supervision.

(6) [~~4~~] Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(A) There can be no more than six individuals in a supervision group.

(B) There may be:

(i) no fewer than four hours of supervision shall occur each calendar month;

(ii) no fewer than two supervisory sessions shall occur each month;

(iii) each supervisory session shall be at least one hour in duration;

(iv) no more than 10 hours of supervision is allowed during any calendar month.

~~[(B) Supervision shall be spread out over the experience of the supervisee.]~~

~~[(C) Supervision shall be accomplished in one or two hour blocks not exceeding 10 hours per month.]~~

(7) A calendar month is creditable only if the supervision began no later than the first work day of the month and ended no sooner than the last calendar day of the month.

(8) [~~8~~] Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director of the board or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(9) [~~5~~] Supervision must extend over a full 3000 hours. [Supervision must average one hour per 30-40 hours of social work services over the full period. Individuals who work less than 30 hours per week will be credited for experience and supervision in proportion to the average hours worked per week.]

(10) [~~6~~] A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the board.

(11) [~~7~~] A board-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(12) [~~8~~] The supervisor must be responsible for establishing all conditions of exchange with the clients served by her or his supervisee.

(13) [~~9~~] Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time the supervision plan or verification is submitted to the board.

(14) [~~10~~] A supervisor may not be "employed by" or "under the employment supervision of" the person whom he or she is supervising.

(15) [~~11~~] A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(16) [~~12~~] During the period of supervised experience, a supervisee may be employed on a salary basis or volunteer within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(17) [~~13~~] All supervision submitted in fulfillment of the board's requirements must have been on a formal basis arranged prior to the period of supervision. Supervisory arrangements must include all specific conditions agreed to by the supervisor and supervisee.

(18) [~~14~~] No payment for services will be made directly by a client to the supervisee.

(19) [(15)] Client records are the responsibility of the agency and shall remain the property of the agency and not the property of the supervisee.

(20) [(16)] A supervisor shall submit billing reflective of the services provided and the provider of that service. All billing documents for services provided by the supervisee shall reflect the license held by the supervisee and that the licensee is under supervision.

(21) Supervision received during time when either the supervisor or supervisee has an expired license will be accepted only on approval by the board of an appeal.

§781.306. *Required Documentation of Qualifications for Licensure.*

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

(c) Experience verification.

(1) Experience required for licensure or for specialty recognition must meet the requirements of §781.301 of this title (relating to Qualifications for Licensure). [~~Private, independent practice within the scope of the definition of professional social work practice will not be counted as experience in this subsection.~~] Required written documentation includes:

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

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

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

§781.313. *Alternate Method of Examining Competency (AMEC) Program.*

(a) An applicant who has taken an examination within the previous 12 months and who has failed the examination on two or more occasions by no more [~~fewer~~] than five points may submit a written petition to the board for a probated license as a LBSW, or LMSW. The last examination must be within the past 12 months. The applicant must complete the application for participation, pay the administrative fee and submit the memorandum of understanding and the findings of facts documentation to the board for consideration.

(b) The board will consider the interest of the public in its review of the petition and will issue its decision in writing within [~~with in~~] 90 days of receiving all required materials from the applicant.

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

(e) The AMEC program must be completed in no less than [~~then~~] 12 consecutive calendar months and no more than [~~then~~] 24 consecutive calendars months from the date of agreed order issued by the board unless prior approval is received from the board or its designee.

(f) An AMEC participant must remain under the supervision of a board approved supervisor until the board has reviewed the required documents submitted and issued a final order regarding the issuance of a regular license by the board. Continued reports from the supervisor may be required at the discretion of the board or its designee.

(g) (No change.)

§781.314. *Issuance of License Certificates* [~~Licenses~~].

(a) The board issues license certificates [~~licenses~~] indicating the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board. The license certificate will indicate the date that the license expires, unless it is renewed. The board shall have a method to indicate the new expiration date of a license which has been renewed. The license certificate will also include any specialty recognition or supervisory status, if applicable.

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

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

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.402, 781.405, 781.409, 781.413, 781.414

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.402. *The [Standards of] Practice of Professional Social Work.*

(a) Practice of Baccalaureate Social Work--The application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is basic generalist practice that includes interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, supervision, consultation, education, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(b) Practice of Clinical Social Work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. The practice of Clinical Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice and Master's Social Work Practice. Treatment methods include the provision of individual, marital, couple, family, and group therapy mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of

Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities. The practice of Clinical Social Work may include independent clinical practice and the provision of clinical supervision.

(c) Practice of Master's Social Work--is the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. The Practice of Master's Social Work may include the Practice of Clinical Social Work under clinical supervision. The practice of Master's Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice.

(d) Independent Non-Clinical Practice [~~Independent Practice~~]-The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients.

(e) Independent Clinical Practice [~~Private Practice~~]-The provision of clinical social work in independent practice wherein the practitioner is solely responsible for the welfare of the client and the services rendered.

§781.405. *Sexual Misconduct.*

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

(h) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person who is or has been a recipient of professional services from the licensee for the purpose of engaging in the practice of baccalaureate, clinical or master's social work services in an agency or independent [~~or private~~] practice setting:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature[;] and; [;]

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

(2) - (13) (No change.)

§781.409. *Client Records and Record Keeping.*

Following applicable statutes, the licensee shall:

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

(6) comply with the requirements of Texas Health and Safety Code, Chapters 161 and 611; Texas Family Code, Chapter 261; and other applicable state law [~~Chapter 611;~~] concerning confidentiality of protected health information and the release of mental health records; and

(7) (No change.)

§781.413. *Assumed Names.*

(a) An independent clinical practice or an independent non-clinical [~~individual~~] practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.

(b) (No change.)

§781.414. *Consumer Information.*

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter:

(1) on each registration form, application, or written contract for services;

(2) on a sign prominently displayed in each [~~the primary~~] place of business; or

(3) in a bill for services provided.

(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.

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Chair

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SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.508, 781.511 - 781.514, 781.516, 781.517

STATUTORY AUTHORITY

The proposed amendments and new sections are authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments and new sections affect Occupations Code, Chapter 505.

§781.508. *Hour Requirements for Continuing Education.*

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

(e) On petition by a licensee, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee an additional period of time in which to complete all continuing education requirements. In all cases, the decision of the executive director may be appealed to the appropriate board committee [~~Professional Development Committee of the board~~]. Should the committee overturn the decision of the executive director, the committee may elect to waive the late fees accrued or determine that the late fees should be paid by the licensee. Should the decision of the executive director be upheld by the committee and the licensee be denied in the appeal, all late fees accrued will apply.

§781.511. *Requirements for* [~~Approval of~~] *Continuing Education Providers* [~~Sponsor~~].

(a) A provider [sponsør] must be approved under this section to offer continuing education programs.

(b) A person seeking approval as a continuing education provider [sponsør] shall file an application on board forms and include the continuing education provider [sponsør] application fee. Governmental agencies shall be exempt from paying this fee.

(c) (No change.)

(d) The applicant shall certify on the application that:

(1) all programs offered by the provider [sponsør] for credit hours from the board will comply with the criteria in this section; and

(2) the provider [sponsør] will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (k) of this section.

(e) A program offered by a provider [sponsør] for credit hours from the board shall:

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

(f) The provider [sponsør] must document each program's compliance with this section [subsection (d) of this section] and maintain that documentation for a period of three years.

(g) Department staff shall ~~[The executive director will]~~ review the continuing education provider [sponsør] application and notify the applicant of any deficiencies or grant approval and indicate the continuing education provider [sponsør] approval number to be noted on all certificates of attendance.

(h) Each continuing education program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the provider [sponsør] by mail. The provider [sponsør] and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The provider [sponsør] shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) The provider, as part of the renewal process or upon request will provide a listing of subcontractors utilized. [An approved sponsør may subcontract with individuals or organizations to provide continuing education programs. The sponsør must insure that the subcontractor meets all requirements of this section. The Sponsør will provide a listing of subcontractors utilized as part of the renewal process.]

(j) To maintain approval as a provider [sponsør], each provider [sponsør] shall submit to the board annually an application for renewal of the approved provider status and an [a] application fee if applicable.

(k) It shall be the responsibility of a provider [sponsør] to provide each participant in a program with a legible certificate of attendance following the completion of a course. The certificate of attendance shall contain:

(1) the name of the provider [sponsør] and approval number;

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

(6) the signature of the provider [sponsør] or its representative; and

(7) (No change.)

(l) The provider [sponsør] shall maintain attendance records for a period of three years [not less than two years].

(m) The provider [sponsør] shall be responsible for assuring that no licensee receives continuing education credit for time not actually spent attending the program.

(n) Upon the failure of a provider [sponsør] to comply with any of the requirements of this section, the board, after notice to the provider [sponsør] and a due process hearing, may revoke the provider's [sponsør's] approval status.

(o) The board may evaluate any provider [approved sponsør] or applicant at any time to ensure compliance with requirements of this section.

(p) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director.

§781.512. Evaluation [Removal] of Continuing Education Providers [Sponsorship Status].

(a) The board may evaluate any approved provider or applicant at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved continuing education providers on a regular basis and shall report the audit results to the appropriate committee of the board. During the audit, staff shall request documentation from the continuing education provider regarding compliance with §781.511 of this title (relating to Requirements for Continuing Education Providers).

(c) Department staff shall notify a continuing education provider of the results of an audit. If the continuing education provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) The appropriate committee of the board shall review the approval status of continuing education providers that are not in compliance and that have not taken corrective action.

(e) ~~[(a)] Upon the recommendation of the appropriate committee of the board, the [The] board may rescind [retains the right to remove] the approval status of a continuing education provider [sponsør].~~

~~[(b) The board may remove a sponsør who is not in compliance with board requirements at the time of renewal.]~~

(f) Complaints regarding continuing education programs offered by approved continuing education providers may be submitted in writing to the executive director. Complaints may result in an audit of a continuing education provider and may be referred to the appropriate committee of the board appropriate action.

(g) ~~[(e)] A provider whose approval status has been rescinded [sponsør removed] by the board may reapply for approval the 91st day following the board action. The provider must provide documentation that corrective action has been taken and that the provider's programs will be presented in compliance with §781.511 of this title. An appropriate committee of the board shall review reapplication by a formerly denied continuing education provider.~~

~~[(d) The executive director shall review complaints regarding the compliance with board requirements of a continuing education sponsør for possible action.]~~

~~[(e) Sponsors removed or denied may request a review by the Professional Development Committee.]~~

(h) ~~[(f)] Continuing education hours received from a provider whose approval has been rescinded [sponsør who has been removed]~~

or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use of renewal of the social worker license.

(i) ~~[(g)]~~ Continuing education hours received from providers ~~[sponsors]~~ who failed to meet the renewal requirements of the board shall not be acceptable for use in the renewal of the social worker's license.

(j) ~~[(h)]~~ Fees paid by a provider whose approval has been rescinded ~~[sponsor who has been removed]~~ or denied are non-refundable.

~~[(i)]~~ The Professional Development Committee shall review reapplication by a formerly approved or denied sponsor.]

§781.513. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A licensee may request in writing that the board consider approval of continuing education hours provided by a non-approved provider. The licensee shall submit documentation as specified in §781.511(e) of this title (relating to Requirements for [Approval of] Continuing Education Providers [Sponsor]) for the board to review and a fee equal to the continuing education provider [sponsor] application fee.

(b) The executive director will review the documentation and notify the licensee in writing whether the program(s) are acceptable as credit hours. In all cases, the decision of the executive director may be appealed to the appropriate board committee [Professional Development Committee of the board].

§781.514. Credit Hours Granted.

The board will grant the following credit hours toward the continuing education requirements for license renewal.

(1) (No change.)

(2) Credit may be earned, post-licensure, through successfully completing postgraduate training programs (e.g., intern, residency, or fellowship programs) or successfully completing social work related courses which are part of the curriculum of a graduate school of social work at a rate of five credit hours per each semester hour or its equivalent not to exceed 10 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a)(~~2~~) of this title (relating to Hour Requirements for Continuing Education) only through a course specifically designated as an ethics course.

(3) Credit may be earned for teaching social work courses in an accredited college or university. Credit will be applied at the rate of five credit hours for every course taught, not to exceed 15 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a)(~~2~~) of this title only through teaching a course specifically designated as an ethics course.

(4) (No change.)

(5) A presenter of a continuing education program or an author of a published work, which imparts social work knowledge and skills, may be granted five credit hours for each original or substantially revised presentation or publication, not to exceed 20 [40] credit hours per renewal period.

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. With the exception of persons residing outside the United States, a maximum of 20 [40] credit hours for independent study programs will be accepted per renewal period.

(7) (No change.)

(8) For all licenses renewed between January 1, 2007, and December 31, 2008, the jurisprudence training course must be completed in order to renew the license. Completion of the jurisprudence training course shall count as three hours of the continuing education requirement in professional ethics and social work values, as referenced in §781.508(b) of this title.

§781.516. Requirements of Supervisor Training Course Providers.

(a) A supervisor training course provider must be an approved continuing education provider or exempt under §781.511 of this title (relating to Requirements for Continuing Education Providers) to apply for approval as a supervisor training course provider.

(b) A supervisor training course provider must be approved under this section to offer supervisor training courses.

(c) A provider seeking approval as a supervisor training course provider shall file an application on board forms. The board shall maintain a list of supervisor training course providers and make the list available to licensees on the board's web site.

(d) The applicant shall certify on the application that:

(1) all supervisor training courses offered by the supervisor training course provider for credit from the board will comply with the criteria in this section; and

(2) the supervisor training course provider will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (j) of this section.

(e) A supervisor training course offered for credit from the board shall:

(1) provide the recipient of the training with the professional skills and knowledge necessary to for the recipient to fulfill the supervision duties expected by the board in supervisory roles authorized by the board;

(2) be developed and presented by persons who are appropriately knowledgeable in the subject matter of the program and training techniques; and

(3) specify the course objectives, course content, and teaching methods to be used.

(f) The supervisor training course provider must document each course's compliance with subsection (d) of this section and maintain that documentation for a period of three years.

(g) A board committee will review the supervisor training course provider application, notify the applicant of any deficiencies or grant approval, and indicate the supervisor training course provider approval number to be noted on all certificates of attendance. In order to be approved, an applicant must demonstrate compliance with the committee's course content guidelines.

(h) Each supervisor training course shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the supervisor training course provider by mail. The supervisor training course provider and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The supervisor training course provider shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) A supervisor training course provider maintains approval by the board until the provider elects to be removed as an approved provider, as long as the provider has maintained status as a continuing

education provider, or is exempt, and as long as the provider's approval status has not been rescinded by the board.

(j) It shall be the responsibility of a supervisor training course provider to provide each participant in a program with a legible certificate of attendance following the completion of the course. The certificate of attendance shall contain:

- (1) the name of the supervisor training course provider and approval number;
- (2) the name of the participant;
- (3) the title of the program;
- (4) the date and place of the program;
- (5) the signature of the supervisor training course provider or its representative; and
- (6) board contact information.

(k) The supervisor training course provider shall maintain attendance records for not less than three years.

(l) The supervisor training course provider shall be responsible for assuring that no licensee receives credit unless the participant actually attended the program and demonstrated competency in the training objectives.

§781.517. Evaluation of Supervisor Training Course Providers.

(a) The board may evaluate any approved supervisor training provider at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved supervisor training courses on a regular basis and shall report the audit results to a board committee. During the audit, staff shall request documentation from the supervisor training provider regarding compliance with §781.516 of this title (relating to Requirements of Supervisor Training Course Providers).

(c) Department staff shall notify supervisor training providers of the results of the audit. If the supervisor training provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) A board committee shall review the approval status of supervisor training providers that are not in compliance and that have not taken corrective action.

(e) Upon the recommendation of the appropriate board committee, the board may rescind the approval status of a supervisor training provider.

(f) Complaints regarding supervisor training courses offered by approved supervisor training providers may be submitted in writing to the executive director. Complaints may result in an audit of a supervisor training course provider and may be referred to the appropriate board committee for appropriate action.

(g) A supervisor training course provider whose approval status has been rescinded by the board may reapply the 91st day following the board action. The provider must provide documentation that the corrective action has been taken and that the provider's courses will be presented in compliance with §781.516 of this title.

(h) Supervisory Training received from a provider whose approval status has been rescinded or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use

toward the requirements of §781.304 of this title (relating to Recognition as a Board Approved Supervisor and Supervision Process).

(i) Supervisory training received from a provider shall not be acceptable toward the requirements of §781.304 of this title if the provider has not maintained approval status with the board.

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

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

Proposed date of adoption: November 28, 2006

For further information, please call: (512) 458-7111 x6972



SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §781.604, §781.605

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendments affect Occupations Code, Chapter 505.

§781.604. Ethics Committee Meetings and Policy.

(a) The Ethics Committee will meet on a regular basis to review and recommend action on complaints filed against social workers. Additionally, the committee will hold informal hearings to review previous committee actions at the request of a respondent [party to a complaint].

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

(f) All parties to a complaint will be notified of the findings and recommendations of the committee. The respondent [Any party] to a [the] complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§781.605. Informal Hearing Meetings.

(a) Informal hearings will be scheduled for the next meeting of the Ethics Committee [complaints committee] meeting consistent with public notice requirements. All parties to the complaint will be notified of the date and location of the informal hearing and of their right to be heard at that meeting or to submit relevant material to the committee for their review.

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

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

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Jeannie McGuire, LBSW
Chair
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SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §781.806

STATUTORY AUTHORITY

The proposed amendment is authorized by Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

The proposed amendment affects Occupations Code, Chapter 505.

§781.806. *Probation.*

If probation is ordered or agreed to, the following terms may be required.

(1) General Conditions. There are 12 general conditions of probation. They appear in all disciplinary orders of the social work board that place a licensee [Heensee's] on probation and they are presented below:

(A) - (L) (No change.)

(2) Special Conditions. There are 13 special conditions of probation. At the discretion of the board, one or more of these conditions may appear in a disciplinary order of the board that places a licensee on probation. The following conditions presented below are suggested wording for disciplinary orders.

(A) - (I) (No change.)

(J) Supervision of the Licensee's Practice. Within (example: 30) days of the effective date of this order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more proposed supervisors and a plan by each such supervisor by which the licensee's practice would be supervised. Each proposed supervisor shall be licensed in good standing and be [as an LCSW who is] a board approved supervisor with expertise in the licensee's field of practice. The supervisor shall submit written reports to the board on a quarterly basis verifying that supervision has taken place as required and including an evaluation of the licensee's performance. It shall be the licensee's responsibility to assure that the required reports are filed in a timely fashion. The licensee shall give the supervisor access to the licensee's fiscal and client records. The supervisor shall be independent, with no current or prior business, professional or personal relationship with the licensee. The licensee shall not practice until the licensee has received notification that the board has approved the li-

ensee's choice as a supervisor. If the supervisor quits or is otherwise no longer available, the licensee shall not practice until the board has approved a new supervisor. All costs of supervision shall be borne by the licensee. Supervision shall consist of at least one hour per week in individual face-to-face meetings.

(K) - (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.

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Jeannie McGuire, LBSW
Chair
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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 133. GENERAL MEDICAL PROVISIONS

SUBCHAPTER B. HEALTH CARE PROVIDER BILLING PROCEDURES

28 TAC §133.10

The Texas Department of Insurance, Division of Workers' Compensation proposes amendments to §133.10, concerning Required Billing Forms/Formats. These amendments are necessary to revise the effective dates for the use of nationally standardized pharmacy billing forms for paper billings.

Subsection (b) is amended to change the implementation date for use of the National Council for Prescription Drug Programs (NCPDP) Universal Claim Form (UCF) from January 1, 2007 to January 1, 2008. The use of Division form DWC-66 is proposed to be extended through December 31, 2007. Until that time, the DWC-66 is required to be used for paper billings.

The amendments extend the date on which pharmacists and pharmacy processing agents are required to begin using the UCF for paper billings in order to make it consistent with the implementation date of the electronic medical billing requirements recently adopted by the Division. This will allow a longer period of transition for health care providers and insurance carriers to integrate these forms into their processes.

Allen McDonald, Deputy Commissioner, Workplace and Medical Services, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the amended rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Mr. McDonald has also determined that for each year of the first five years the amendments are in effect, the public benefits anticipated as a result of the proposed amendments will be to provide additional time for health care providers and insurance carriers to integrate the NCPDP Universal Claim Form into their processes.

The amendments postpone the implementation date for use of the NCPDP Universal Claim Form. Use of this form will put into effect the concepts of §413.011 regarding health care reimbursement policies that reflect standardized reimbursement structures in other health care delivery systems and assists in the transition to electronic billing.

The Public Benefit/Cost Note contained in the proposal preamble for this section, published in the February 10, 2006, issue of the *Texas Register* (31 TexReg 798), remains accurate for the section.

The proposed amendments only change the implementation date for use of the NCPDP Uniform Claim Form and gives health care providers and carriers additional time to transition their process and integrate the NCPDP Uniform Claim Form into their system. There are no additional costs required to comply with the amendments because the amendments merely provide additional time for health care providers and carriers to comply with the existing rule. Any costs to comply with the existing rule result directly from the enactment of House Bill 7 and are not a result of the adoption, enforcement, or administration of §133.10. Because there are no additional costs as a result of the proposed amendments, there is no differential impact between small, large, and micro-businesses to comply with the proposed amendments. There will be no difference in the cost of compliance between a large and small business as a result of the proposed section. Therefore, it is neither legal nor feasible to waive compliance with the provisions of the proposed section for small or micro-businesses.

To be considered, written comments on the proposal must be received no later than 5:00 p.m. on October 30, 2006. Comments may be submitted via the Internet through the Department's Internet website at <http://www.tdi.state.tx.us/wc/proposedrules/toc.html> or by mailing or delivering your comments to Victoria Ortega, Legal and Compliance, MS-4D, Division of Workers' Compensation, Texas Department of Insurance, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744. Any request for a public hearing must be submitted separately to the Office of General Counsel by 5:00 p.m. on October 30, 2006. If a hearing is held, written and oral comments presented at the hearing will be considered.

The amendments are proposed under the Labor Code §§401.024, 406.010, 408.025, 408.0251, 408.027, 413.007, 413.011, 413.0111, 413.015, 413.053, 402.00111, and 402.061. Section 401.024 authorizes the Commissioner by rule to permit or require the transmission of information through electronic means. Section 406.010 authorizes the Commissioner to adopt rules necessary to specify the requirements for insurance carriers to provide claims service. Section 408.025 requires the Commissioner to adopt requirements for reports and records required to be filed within the Workers' Compensation System. Section 408.0251 requires the Commissioner to adopt rules regarding the electronic submission and processing of medical bills. Section 408.027 establishes the timeframe for a health care provider's claim submission, the timeframes for an insurance carrier's processing of a claim including requests for additional documentation and audit, the reimbursement during

the pendency of an audit, and the section's applicability to all delivered health care whether or not subject to a workers' compensation health care network. Section 413.007 requires the Division to maintain a statewide database of medical charges, actual payments, and treatment protocols. Section 413.011 requires the Commissioner to adopt the most current reimbursement methodologies, models, and values or weights used by the federal Centers for Medicare and Medicaid Services, including applicable payment policies relating to coding, billing, and reporting, and may modify documentation requirements as necessary to meet other statutory requirements. Section 413.0111 provides for the contractual use of agents and assignees by pharmacies to process claims and act on behalf of the pharmacies. Section 413.015 permits an insurance carrier to contract with another entity to forward payments for medical services. Section 413.053 authorizes the Commissioner to establish standards for reporting and billing, governing both form and content. Section 402.00111 provides that the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under the Texas Workers' Compensation Act. Section 402.061 authorizes the Commissioner to adopt rules necessary to administer the Texas Workers' Compensation Act.

The following sections are affected by this proposal: §§401.024, 406.010, 408.025, 408.0251, 408.027, 413.007, 413.011, 413.0111, 413.015, 413.053,

§133.10. Required Billing Forms/Formats.

(a) (No change.)

(b) Pharmacists and pharmacy processing agents shall submit bills using the current National Council for Prescription Drug Programs (NCPDP) Universal Claim Form (UCF) for health care provided on or after January 1, 2008 [~~January 1, 2007~~]. Pharmacists and pharmacy processing agents shall use the Division form DWC-66 for health care provided on or before December 31, 2007 [~~December 31, 2006~~].

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

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

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

TRD-200605164

Norma Garcia

General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 804-4715

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.9

The Texas Parks and Wildlife Department proposes an amendment to §53.9, concerning Falconry Permits. The proposed amendment would clarify that the fee for a falconry permit is to be prorated if the department opts to issue a falconry permit with an annual or two-year period of validity. Under the provisions of §65.264, relating to Applications and Permits, the department may issue a falconry permit for any period of time up to three years. Because of difficulties in obtaining required reports in a timely fashion from some classes of falconers, the department has initiated a policy of issuing one-year permits to apprentice falconers. This has led to some confusion as to the fee amounts that must be paid for the initial permit and subsequent renewals. Under current §53.9, the fee for an apprentice permit is \$60 and the fee for a renewal is also \$60. It was not the department's intent to impose a \$60 fee for issuance or renewal if the permit was issued for less than three years. Therefore, the amendment is necessary to make clear that the falconry permit fees established in the §53.9 are to be prorated based on the period of validity of the permit.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years that the amendment as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the amendment.

Mr. Macdonald also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the amendment as proposed will be clear and accurate regulations.

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

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

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

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

Comments on the proposed amendment may be submitted to Jennifer Brennan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4481 (e-mail: jennifer.brennan@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §49.014, which authorizes the department to prescribe eligibility requirements and fees for any falconry, raptor propagation, or nonresident trapping permit.

The proposed amendment affects Parks and Wildlife Code, Chapter 49.

§53.9. *Falconry Permits.*

(a) apprentice falconer's: [—\$60;]

(1) one-year--\$20;

(2) two-year--\$40; and

(3) three-year--\$60;

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

(d) falconer's renewal: [—\$60;]

(1) one-year--\$20;

(2) two-year--\$40; and

(3) three-year--\$60;

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

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

Filed with the Office of the Secretary of State on September 15, 2006.

TRD-200605128

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: October 29, 2006

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



31 TAC §53.15

The Texas Parks and Wildlife Department (the department) proposes an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits.

Under the provisions of Parks and Wildlife Code, §66.015, no person may place any species of fish, shellfish, or aquatic plant into the public water of the state without a permit issued by the department. In a proposed rulemaking published elsewhere in this issue of the *Texas Register*, the department proposes to create an offshore aquaculture permit, which would be required of any person engaging in offshore aquaculture in Texas state waters. The fee for a permit or permit renewal would be \$1,500. Under current rule there is no fee for a one-time permit to introduce fish, shellfish, or aquatic plants, because review of such applications is perfunctory and rare. However, the department wishes to acknowledge that fact by listing the permit and the fact that it is a free permit. Under Parks and Wildlife Code, §11.027, the commission by rule may establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code. The review process for an offshore aquaculture permit is estimated by the department to cost approximately \$1,500, which consists of the cost of staff time to perform necessary research and analysis of facility plans, contingency plans, sources of stock, verification of genetic ancestry, and site inspection.

Robin Riechers, Director of Science and Policy, has determined that for each year of the first five years that the proposed amendment is in effect, there will be no additional costs to state or local governments as a result of administering or enforcing the proposed amendment, since the fee is being implemented to recoup expenses to the agency.

Mr. Riechers also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the

amendment is the collection of fees to recoup the administrative costs of reviewing applications.

There will be an adverse economic effect on small businesses, micro businesses, and persons required to comply with the amendment as proposed, which will be the \$1,500 fee per permit. The cost of compliance is the same for all businesses, irrespective of size. The department is unable to compare the cost of compliance for the small businesses to the cost of compliance for the largest business affected by the proposed amendment, since offshore aquaculture is in its infancy in the United States and never has been practiced in Texas. Consequently there is no data available for purposes of analysis. The department assumes that most offshore aquaculture enterprises will be small or micro businesses; therefore, for a small or micro business the maximum cost per employee would be \$1,500 (one employee). The department is unable to make comparisons based on labor costs or sales volumes, since, as noted earlier, offshore aquaculture is not established in the United States; thus, such estimates would be in the realm of the conjectural, given the variables of facility design, employee skill level, workforce size, potential cultivars, market demand, and prices.

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

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

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

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

The amendment is proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code.

The proposed amendment affects Parks and Wildlife Code, §11.027.

§53.15. *Miscellaneous Fisheries and Wildlife Licenses and Permits.*

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

(g) Miscellaneous fees:

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

(4) permit to introduce fish, shellfish, or aquatic plants--no

fee;

(5) offshore aquaculture permit or renewal--\$1,500;

(6) [~~4~~] oyster lease application--\$200;

(7) [~~5~~] oyster lease rental--\$6 per acre of location per

year;

(8) [~~6~~] oyster lease renewal/transfer/sale--\$200; and

(9) [~~7~~] double-crested cormorant control permit--\$12.

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 September 15, 2006.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

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CHAPTER 57. FISHERIES
SUBCHAPTER A. HARMFUL OR
POTENTIALLY HARMFUL EXOTIC FISH,
SHELLFISH AND AQUATIC PLANTS

31 TAC §57.125

The Texas Parks and Wildlife Department proposes an amendment to §57.125, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants.

Triploid grass carp are an effective method of aquatic plant control, but can only be used under a permit issued by the department. Under current rules, there is a \$15 fee for a triploid grass carp permit and an additional fee of \$2 per fish. The current rule also provides for the waiver of the \$15 fee if the fish are released in public water. The proposed amendment would waive the \$2 per fish stocking fee for triploid grass carp stocked in public waters. The intent of the department is to facilitate increased efforts to control noxious vegetation in the public freshwater of the state by waiving the stocking fee as well as the application fee. The amendment also clarifies that the department issues permits for the stocking of triploid grass carp in public as well as private waters.

Robert Macdonald, Regulations Coordinator, has determined that for each year of the first five years that the amendment as proposed is in effect, there will be fiscal implications to state government as a result of enforcing or administering the amendment. If the proposal is adopted, the department will no longer realize revenue from the \$2 per fish stocking fee. For the period from 2001 - 2006, the department realized an average of \$19,318 per fiscal year (FY) in fee revenue from triploid grass carp releases in public waters. Because the demand for grass carp permits is fluid, the department has no way to estimate how many permits will be issued in future years; however, using the five-year average as an indicator suggests that the cost to the department will be approximately \$20,000 per fiscal year. There will be no fiscal implications for units of local government.

Mr. Macdonald also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the amendment as proposed will be an incentive for more vigorous efforts to control noxious plants in public freshwater, which in turn will result in better aquatic habitat, more robust fish populations, and greater opportunity for anglers.

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

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

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

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

Comments on the proposed amendment may be submitted to Earl Chilton, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4652 (e-mail: earl.chilton@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §11.027, which authorizes the commission to establish and provide for the collection of a fee to cover costs associated with the review of an application for a permit required by the Parks and Wildlife Code, and §66.007, which requires the commission to promulgate rules governing the release of harmful or potentially harmful fish, shellfish, or aquatic plants.

The proposed amendment affects Parks and Wildlife Code, Chapters 11 and 66.

§57.125. *Triploid Grass Carp Permit; Application, Fee.*

(a) The department may issue a triploid grass carp permit [to private individuals] for stocking of triploid grass carp in private or public waters.

(b) To be considered for a triploid grass carp permit, the applicant shall:

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

(3) remit to the department the sum of the cost of the triploid grass carp permit application fee and the triploid grass carp user fee, if required.

(c) The department shall charge a triploid grass carp permit application fee in the amount of the sum of a \$15 application flat fee plus \$2.00 for each triploid grass carp requested on the triploid grass carp permit application form. In the case of permit denial, the triploid grass carp permit application flat fee is not refundable. All fees shall [The \$15 flat fee will] be waived in the case of applications to stock triploid grass carp in public water.

(d) (No change.)

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

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SUBCHAPTER C. INTRODUCTION OF FISH,
SHELLFISH AND AQUATIC PLANTS

The Texas Parks and Wildlife Department (the department) proposes the repeal §§57.251 - 57.257 and new §§57.251 - 57.259, concerning Introduction of Fish, Shellfish and Aquatic Plants.

Parks and Wildlife Code, §12.015, requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state. Under Parks and Wildlife Code, §66.015, the department is required to adopt rules governing the issuance of permits for the introduction of fish, shellfish, and aquatic plants into public waters. Additionally, Agriculture Code, Chapter 134, requires the department to adopt rules to carry out its duties under that chapter.

The proposed new sections replace existing rules that treated the introduction of aquatic organisms as permanent releases. The proposed new rules preserve the current function while adding additional regulatory provisions to govern offshore aquaculture.

The permanent introduction of fish, shellfish, and aquatic plants to the public waters is generally authorized for extremely limited reasons, and only when the department has determined that the introduction will not conflict with management policies or objectives and does not have the potential to result in negative biological impacts to existing ecosystems. For instance, an introduction permit might be issued to a university researcher returning stock to the wild following research activities. Because the introduction permit is so rarely used, there is no fee.

The proposed new sections would create an offshore aquaculture permit. Although offshore aquaculture is being practiced elsewhere in the world, it is in its infancy in the United States in general and the Gulf of Mexico specifically. In 2005 and 2006, federal legislation was introduced that directed the National Oceanic and Atmospheric Administration (NOAA) to establish procedures for the development of an offshore aquaculture industry in the Exclusive Economic Zone (EEZ), which is the federal jurisdiction extending from the seaward boundary of state waters (nine miles) out to 200 miles. The proposed legislation prompted several inquiries concerning the development of offshore aquaculture in Texas state waters.

The proposed new rules would allow offshore aquaculture activities, prescribe the permit procedures and conditions required to operate an offshore aquaculture facility, implement the department's responsibilities under Agriculture Code, Chapter 134, and provide protection for marine resources in the wild, including endangered species.

The regulation of offshore aquaculture involves both state and federal jurisdictions. With respect to state agencies, the Texas Department of Agriculture (TDA) is the primary agency responsible for regulating aquaculture, the Texas Commission on Environmental Quality (TCEQ) has primary responsibility for establishing and enforcing water quality standards, the Texas General Land Office (GLO) is responsible for managing state-owned submerged lands, the Texas Animal Health Commission (TAHC) is responsible for management of animal disease necessary to protect agriculture, and the Texas Department of State Health Services (TDSHS) is the primary agency for protecting human health and safety, including seafood safety.

The United States Corps of Engineers (COE) and the United States Coast Guard (USCG) are responsible for establishing maritime navigation standards and the identification, marking, and mitigation of navigational hazards.

The department's statutory responsibility is to protect the health and viability of native populations of fish, shellfish, and aquatic life in state waters, including endangered species. In general, the proposed new rules prescribe the conditions under which marine species may be introduced into an offshore aquaculture facility without damaging surrounding water and marine resources. It is the intent of this proposal that individuals applying to the various agencies for their necessary permissions be able to do so simultaneously so that the many needed reviews, inspections and other activities can be accomplished in the minimal amount of time. However, the proposal also intends that all of these permissions be provided before the permit for is approved by the Texas Parks and Wildlife Department.

Proposed new §57.251, concerning Definitions, would establish words and terms necessary to carry out the provisions of the subchapter and allow for efficient enforcement and administration. The definition of 'aquaculture' is necessary to broadly describe one activity regulated by the subchapter. The definition of 'aquatic plant' is necessary to delineate the types of vegetative life the cultivation of or introduction into public waters of which is subject to regulation under the subchapter. The definition of 'disease condition' is necessary to create an unambiguous criterion for departmental actions to protect aquatic animal life in public waters. The definition of 'enclosure' is necessary to create a term for the specific infrastructure within which aquaculture may take place and to which provisions of the subchapter apply. The definition of 'fishing' is necessary to clearly distinguish the recreational pursuit, take, and possession of aquatic life from similar activities undertaken for commercial purposes within an aquaculture facility. The definition of 'native species' is necessary because the proposed new rules do not allow for the introduction or cultivation of exotic species; therefore, the rule must define native species in order to establish the species of aquatic life for which a permit may be issued. The definition of 'offshore aquaculture facility' is necessary to acknowledge that in addition to the enclosures where stock is kept there may be ancillary equipment and structures used in the aquacultural process, and to include such infrastructure in the applicability of the subchapter. The definition of 'outside waters' is necessary to identify the broad geographical area in which offshore aquaculture operations are lawful. The definition of 'shellfish' is necessary to create a description of a class of organisms the cultivation of which is subject to regulation under the subchapter. The definition of 'stock' is necessary to create a term that functions to differentiate native species of fish that are possessed under a permit from native species that are the property of the people of the state. The definition of 'waste' is necessary to create a term for the purposes of regulating the production of chemical compounds that constitute the biological effluvia produced within an offshore aquaculture facility.

Proposed new §57.252, concerning General Provisions, would restrict permit issuance to individuals, restrict offshore aquaculture to specific geographic areas and genetically indigenous stock; establish the period of validity for permits issued under the subchapter; and delineate the conditions under which the department may order the removal of stock from an offshore aquaculture facility. The proposed new rule would restrict the issuance of permits to named individuals only. The department has determined that the most efficient method of administering,

monitoring, and enforcing the subchapter is to link one person to one permit for the life of the permit. The proposed new rule would limit the operational area for permitted activities to a specific Outer Continental Shelf (OCS) Block. The provision is necessary for effective biological and compliance monitoring and to delimit the geographical boundaries of permitted operations. The department does not intend for an offshore aquaculture permit to authorize the operation of an unlimited number of enclosures. The intent of limiting permitted activities to an OCS block is to provide enough space for viable operation of an offshore aquaculture facility while at the same time limiting the dispersion of permitted activities in order to provide for efficient monitoring efforts. The department has determined that it is necessary to restrict aquacultural cultivation in offshore waters to fish, shellfish, and aquatic plants that are genetically descended from species native to the Gulf of Mexico. The marine life in the Gulf of Mexico has evolved over many thousands of years in response to the unique environmental characteristics. The introduction of individuals from the same species but from another part of the world is, in effect, the introduction of an exotic genotype that may have the potential to interact with native species in unpredictable ways, affecting life-cycle factors such as hardiness, reproductive potential, food competition, and biodiversity. Therefore, the department has chosen to use a precautionary approach to management of offshore aquaculture facilities. By restricting aquaculture activities to native organisms, the potential for unforeseen genetic consequences is reduced and probably eliminated.

The proposed new section also would establish the period of validity for both the one-time introduction and offshore aquaculture permits issued under the subchapter. Permits for one-time introductions would be valid for 60 days or until the introduction is completed, whichever comes first. Introduction permits authorize a one-time instance of release, and the 60-day period is believed to provide sufficient time for a permittee to conduct the activities authorized under a permit. The offshore aquaculture permit would be valid for a period of up to one year, depending on the date of issuance. Because offshore aquaculture is a new technology and the variety of potential impacts is unknown, the department wishes to authorize aquaculture activities on a year-to-year basis in order to better monitor and analyze its effects.

The proposed new section also would authorize the department to inspect enclosures, infrastructure, and vessels used to engage in offshore aquaculture. The proposed provision is necessary to ensure compliance with applicable statutes, regulations, and permit provisions.

The proposed new section also would authorize the department to order the removal of stock from an offshore aquaculture facility upon determining the existence of disease conditions or upon certain enforcement actions by a state or federal agency that result in revocation or suspension of a permit, approval, or clearance. Offshore aquaculture inherently implicates an array of regulatory arenas such as environmental quality and navigation. As part of the application process set forth in proposed new §57.253, concerning Permit Application, the department would require proof that the applicant possesses all necessary approvals, clearances, and permits required by other state and federal agencies with regulatory jurisdiction over an aspect of the applicant's prospective operations. Having required such proof as a condition of permit issuance, it follows that revocation or suspension by a regulatory agency of a permit, approval, or clearance would mean the permittee no longer satisfies the

department's requirements for permit issuance. The department believes that in some cases it might be necessary to order the removal of stock and the cessation of operations in order to protect native populations.

The proposed new section would also prohibit the sale or transfer of an offshore aquaculture permit. The provision is necessary to avoid confusion resulting from chains of possession. The department has determined that the most efficient method of administering, monitoring, and enforcing the subchapter is to link one person to one permit for the life of the permit.

Proposed new §57.253, concerning Permit Application, would set forth the requirements for and content of an application for a permit to be issued under the subchapter. Introduction permits authorize a one-time instance of release, and the 30-day period is in the department's view the minimum time needed for the department to evaluate a proposal. For the offshore aquaculture permit a somewhat longer time period is necessary, since aquaculture is a much more involved and complex process than a simple introduction. With respect to the information required on an application for an offshore aquaculture permit, the department has determined that the following types of information should be required: evidence of compliance with other laws and rules; particulars of facility design; timelines for proposed activities; contingency plans; and evidence that all stock be native Gulf of Mexico genotypes. The department believes it would be inappropriate to issue an offshore aquaculture permit to any person not in compliance with all other applicable laws. A discussion of the rationale for this occurs earlier in this preamble.

The proposed new section also would require an application to include a clear and concise facility design and operating plan, including plans and schematics, sufficient to prevent the escape of stock or the entry into the facility of wild aquatic animal resources and to protect wildlife resources from disease transmission, waste discharge, and injurious interaction with enclosures and infrastructure. These provisions are necessary to ensure that practical measures have been taken to ensure that wildlife resources outside the proposed facility are protected from negative effects resulting from flaws in design and planning. The three areas of greatest concern are interaction between wild and cultivated populations, water quality impacts, and physical contact by wild organisms with enclosures and infrastructure. The department believes that it is reasonable to require design and planning sufficient to mitigate preventable conditions that could lead to unwanted developments with respect to wildlife resources, and to contemplate contingency actions for implementation in the event that circumstances beyond the control of the permittee create conditions for heightened threats to wildlife resources.

The proposed new section also would require an application to include a timeline for proposed activities, which is necessary for the department to monitor and evaluate offshore aquaculture activities and to ensure that unauthorized releases or augmentations do not occur. For instance, if a permittee's application indicates that one thousand fingerlings are to be introduced to an enclosure on a certain date, to be harvested three months later, the department would be able to determine at any point in time whether all activities had taken place as authorized.

The proposed new section would also require an application to include a plan for the removal of all stock from a facility. As previously discussed, the nature of offshore aquaculture creates the potential for the existence of circumstances that could require the removal of stock, for instance, the discovery in an enclosure of a pathogen that threatened wildlife resources. The depart-

ment believes it is sensible and prudent to require a contingency plan for such an event.

The proposed new section also would require an application to include a statement that the ancestry of all stock will be exclusively from Gulf of Mexico genotypes. The rationale for this requirement has been discussed earlier in this preamble.

The proposed new section also would require that a facility inspection be performed by the department as a prerequisite for permit issuance. The new provision is necessary in order to ensure that enclosures and associated infrastructure are consistent with the description and depictions contained in the permit application, and that the facility is anchored appropriately.

Proposed new §57.254, concerning Denial, would prescribe the conditions under which the department would automatically refuse to issue a permit or a permit renewal or authorize an amendment to a permit. The new section is necessary because there are certain circumstances under which the department would not authorize new or continued activities, such as a proposed activity that is inconsistent with the department's stocking policy or management objectives, or, in the case of an offshore aquaculture permit, an application that is not complete. The department's oversight of introductions to the wild is delineated by rule in the department's stocking policy (31 TAC Chapter 52). Additionally, various management plans and research activities are required by statute for various marine species (Texas Parks and Wildlife Code, §66.018-Crabs; §66.217-Fin-fish; §76.301-Oysters; §77.007-Shrimp). Taken together, the rules and policies represent the department's efforts to execute its duties to protect and manage wildlife resources. Clearly, the proposed new rules should be consistent with the overall direction and tenor of these efforts. Thus, the provisions of the proposed new section constitute a reasonable safeguard for wildlife resources.

Proposed new §57.255, concerning Renewal, would establish the process by which a person could renew an offshore aquaculture permit. The proposed new rule would require that the applicant for renewal have been in compliance with the provisions of the subchapter for the one-year period prior to application for renewal, and that the facility be in compliance with all applicable standards. Additionally, the proposed new section would stipulate that the department will not renew an expired permit. The proposed new rule is necessary to provide for the operation of an offshore aquaculture facility on a year-to-year basis without interruption, provided the applicant and the facility are in compliance with all applicable laws and regulations. The provision stipulating that an expired permit cannot be renewed is necessary because once a permit has expired, any further operation of a facility is unlawful. Obviously, the department would not desire to issue a permit for a facility that was operating illegally.

Proposed new §57.256, concerning Amendment, would prescribe the process for amending an existing permit to allow for changes in operation or stock. The amendment is necessary because any type of animal husbandry is by nature a dynamic process subject to changes; therefore, the department desires to provide a mechanism by which a permittee may adjust or alter a facility or stock within a facility, provided the changes do not conflict with the provisions of the subchapter.

Proposed new §57.257, concerning Reporting and Recordkeeping, would require offshore aquaculture permittees to maintain records of all stock introduced or removed and submit an annual report to the department within 14 days following the expiration of

a permit even if the original permit has been renewed. The proposed rule would also require permittees to furnish such records upon request of a department employee acting within the scope of official duties. The proposed new rule is necessary to allow the department to monitor offshore aquaculture activities.

Proposed new §57.258, concerning Prohibited Acts, sets forth general and specific actions and conditions that are prohibited. The proposed new section would make it unlawful to violate a condition of a permit. The department reasons that when a permit is issued to an individual, it is under the expectation that the permittee understands and intends to obey all applicable legal provisions. The proposed provision is necessary to explicitly acknowledge that expectation.

The proposed new section also would prohibit the addition or removal of stock without at least three days' advance notice to the department. The proposed provision is necessary to allow the department to monitor activities involving the actual transfer of live fish, shellfish, or aquatic plants to or from an offshore aquaculture facility. The department believes that the three-day requirement is reasonable.

Proposed new §57.259, concerning Violations and Penalties, would prescribe the potential penalty for a violation of the subchapter or a provision of a permit issued under the subchapter. The proposed new section is necessary to stipulate the punishment for conviction for a violation of the subchapter.

Robin Riechers, Director of Science and Policy, has determined that for each year of the first five years that the proposed rules are in effect, there will be additional costs to state government as a result of administering or enforcing the proposed rules. Since a fee is being implemented to recoup the costs of administration of the offshore aquaculture permit, it is believed the net costs to the agency will be zero. There will be no costs to units of local government.

Mr. Riechers also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules is the protection of the aquatic ecosystem in Texas waters. The rules will help to ensure that the current environment and species will not be negatively impacted by aquaculture facilities established in Texas waters. An additional benefit is the potential economic activity associated with aquaculture facilities off the coast of Texas. These benefits could accrue in the form of jobs and sales revenue in the local and state economy and the benefits that may accrue to the consumer in terms of the quality and quantity of seafood product landed in the state.

There will be an adverse economic effect on small businesses, micro businesses, and persons required to comply with the rules as proposed, which will be the \$1,500 fee per permit, which is addressed in a separate rulemaking elsewhere in this issue. The cost of compliance is the same for all businesses, irrespective of size. The department is unable to compare the cost of compliance for the small businesses to the cost of compliance for the largest business affected by the proposed rules, since offshore aquaculture is in its infancy in the United States and never has been practiced in Texas waters beyond experimental trials.

The department assumes that most offshore aquaculture enterprises will be small or micro businesses; therefore, for a small or micro business the maximum cost per business would be \$1,500 per aquaculture facility permit. Assuming the smallest business would have only one employee the maximum cost per employee would also be \$1,500 per aquaculture facility permit. If any small

businesses had more than one aquaculture site permitted the additional cost per site would be \$1,500. The department is unable to make comparisons based on labor costs or sales volumes, since, as noted earlier, offshore aquaculture has not been attempted in Texas waters and there is little data available to consider on the costs of production and sales on a commercial viable scale.

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

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

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

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

31 TAC §§57.251 - 57.257

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

The repeal is proposed under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The proposed repeal affects Parks and Wildlife Code, Chapters 12, 61, and 66, and Agriculture Code Chapter 134.

§57.251. *Definitions.*

§57.252. *Prohibited Acts.*

§57.253. *Permit Exemptions.*

§57.254. *Permit Application; Validity.*

§57.255. *Permit Denial.*

§57.256. *Appeal.*

§57.257. *Penalties.*

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 September 15, 2006.

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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

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31 TAC §§57.251 - 57.259

The new sections are proposed under Parks and Wildlife Code, §12.015, which requires the department to regulate the introduction and stocking of fish, shellfish, and aquatic plants into the public water of the state; §66.015(c), which requires the department to establish rules related to the issuance of permits for the introduction of fish, shellfish, or aquatic plants into the public water of the state; and Agriculture Code, §134.005, which requires the commission to adopt rules necessary to carry out its responsibilities under that chapter to regulate aquaculture.

The proposed new sections affect Parks and Wildlife Code, Chapters 12, 61, and 66, and Agriculture Code Chapter 134.

§57.251. Definitions.

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

- (1) Aquaculture--The business of producing and selling cultured species raised in private facilities.
- (2) Aquatic plant--All plants whose seeds germinate in either the water phase or the substrate of a body of water and which must spend part of the life cycle in water (Reid, G.K., and R.O. Wood 1976, Ecology of Inland Waters and Estuaries).
- (3) Disease condition--
 - (A) The presence of contagious pathogens or injurious parasites known or clinically suspected of constituting a threat to the health of native species of aquatic organisms; or
 - (B) A mortality rate of five percent or more occurring within a period of seven days in a single enclosure.
- (4) Enclosure--A structure in public water that is capable of preventing the escape of the stock confined within it and the entry of aquatic animal life from surrounding waters.
- (5) Fishing--Taking or attempting to take aquatic life by any means.
- (6) Native species--All fish, shellfish, or aquatic plants documented by the department to live, spawn, or reproduce in Texas offshore waters and whose first documented occurrence in Texas offshore waters was not the result of direct or indirect importation by man.
- (7) Offshore aquaculture facility--All enclosures and associated infrastructure used to produce, hold, propagate, transport, or sell stock under authority of an offshore aquaculture permit.
- (8) Outside waters--All the salt water of the state contiguous to and seaward from the shoreline of the state, along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the gulf of Mexico from the shoreline extending outward nine nautical miles.
- (9) Shellfish--Aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, and crabs of all varieties.
- (10) Stock--Native species of fish, shellfish, or aquatic plants intended for use in, being transported to, or contained within an offshore aquaculture facility under the terms of an offshore aquaculture permit.
- (11) Waste--As defined in Water Code, §26.001.

§57.252. General Provisions.

(a) A permit issued under this subchapter shall be issued to a named individual only and not in the name of a corporation, company, or other entity.

(b) An offshore aquaculture permit authorizes permitted activities in a specific Outer Continental Shelf Block.

(c) The offshore aquaculture permit shall be issued only for the cultivation of native species whose genetic provenance can be proven to the department's satisfaction to consist exclusively of individuals:

- (1) obtained from the Gulf of Mexico; or
- (2) descended solely from individuals obtained from the Gulf of Mexico.

(d) A one-time introduction permit is valid for 60 days from the date of issuance or until the permitted introduction has been completed, whichever comes first.

(e) An offshore aquaculture permit shall be valid from the date of issuance until the first day of the immediately following year.

(f) The department may inspect:

- (1) any enclosure or infrastructure used to engage in offshore aquaculture; or
- (2) vessel used to transport stock and equipment to and from an offshore aquaculture facility.

(g) The department may order the removal of all stock from an enclosure upon:

- (1) a determination that a disease condition exists; or
- (2) an enforcement action by a federal or state agency resulting in the suspension or revocation of a clearance, permit, or authorization that is required under §57.253 of this title (relating to Permit Application).

(h) The department may sample stock to determine genetic heritage.

(i) A permit issued under this subchapter may not be sold or transferred.

§57.253. Permit Application.

(a) An applicant for a permit under this subchapter shall complete and submit an application to the department on a form supplied by the department, accompanied by the fee prescribed by §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits).

(b) Except for applications for offshore aquaculture permits, an application must be received by the department at least 30 days before the proposed introduction.

(c) An application for an offshore aquaculture facility:

(1) must be received by the department at least 90 days prior to the proposed deployment of any enclosure or infrastructure;

(2) must include:

(A) The name, address, and telephone number of the owner(s) of the facility and all stock;

(B) proof that the applicant has obtained:

(i) a valid license issued by the Texas Department of Agriculture to operate an aquaculture facility (Agriculture Code, Chapter 134);

(ii) all applicable state and/or federal permits or authorizations relating to water quality standards;

(iii) all applicable state and federal permits, authorizations, or clearances related to navigational hazards; and

(iv) approval from the General Land Office to anchor the facility;

(C) a clear and concise facility design, including scale plans and schematics of all infrastructure that, as determined by the department, is sufficient to:

(i) prevent the escape of stock from the facility; and

(ii) protect wildlife resources adjacent to the facility from:

(I) disease transmission from stock;

(II) the discharge of pollutants produced from feed or waste materials into public waters, including discharges resulting directly or indirectly from extreme weather conditions or physical collision; and

(III) the escape of stock from the facility as a result of extreme weather conditions or physical collision; and

(IV) death or injury from ensnarement, entanglement, collision, or other physical interactions with enclosures or facility infrastructure;

(D) a clear and concise operations plan, which shall include best management practices that minimize potentially harmful discharges into public waters from the facility;

(E) a prospective timeline of proposed activities, by species, from the time of introduction to the time of harvest or removal;

(F) a plan for removing all stock from the facility within 72 hours of notice from the department under §57.252 of this title (relating to General Provisions); and

(G) a statement that all stock meets the requirements of §57.252 of this title.

(d) An offshore aquaculture permit will not be issued unless the department has conducted an inspection of all enclosures and infrastructure and found such to be consistent with the information provided in the application.

§57.254. Denial.

A permit, permit renewal, or permit amendment under this subchapter will be denied if:

(1) a proposed introduction does not meet the requirements of §§52.101 - 52.401 of this title (concerning Stocking Policy);

(2) the proposed introduction is not consistent with management objectives of the department; or

(3) the application is for an offshore aquaculture facility and does not contain or inadequately addresses the requirements of §57.253(c) of this title (relating to Permit Application).

§57.255. Renewal.

(a) The department may renew a current offshore aquaculture permit, provided:

(1) the applicant has complied with all requirements of this subchapter and permit provisions during the one-year period immediately preceding renewal;

(2) the facility is in compliance with all operational and facility standards as reflected in the current permit (including amendments);

(3) the applicant has completed and submitted an application for permit renewal; and

(4) the applicant has paid the fee prescribed by §53.15 of this title (relating to Miscellaneous Fisheries and Wildlife Licenses and Permits).

(b) The department will not renew an expired permit.

§57.256. Amendment.

(a) An offshore aquaculture permit may be amended, provided the applicant:

(1) has complied with all requirements of this subchapter and permit provisions during the one-year period immediately preceding the date of the application for amendment;

(2) has complied with all applicable requirements of §57.253 of this title (relating to Permit Application);

(3) has completed and submitted an application for permit amendment; and

(4) the amendment is not extensive enough to merit an additional facility inspection. An amendment extensive enough to warrant an additional facility inspection shall be treated as an application for a new permit and the provisions of §57.253 of this title shall apply.

(b) A permit amendment must be approved by the department prior to any of the following:

(1) the introduction of new species of stock to a facility;

(2) the discontinuance of any species of stock in a facility;

(3) any change in the source of stock;

(4) any modification of methods, procedures, facility design, or facility infrastructure affecting:

(A) the physical components of the facility;

(B) the prevention of escape of stock from the facility;

or

(C) the discharge of pollutants from the facility; or

(5) a change to the physical structure or components of an enclosure.

(c) An application for a permit amendment must be submitted within 10 days of any change in ownership of the facility or stock.

(d) The department will not amend an expired permit.

§57.257. Reporting and Recordkeeping.

(a) An offshore aquaculture permittee shall maintain and keep current an accurate daily record of all stock introduced or removed from each enclosure within a facility, including mortalities.

(b) An offshore aquaculture permittee shall complete and submit an annual report to the department on a form supplied by the department by no later than January 15.

(c) While performing any permitted activity within or in transit to or from an offshore aquaculture facility, a person must physically possess a legible copy of the offshore aquaculture permit under which the activity is being performed.

(d) The records required by this section shall be made available to the department upon the request of a department employee acting within the scope of official duties.

§57.258. Prohibited Acts.

Except as provided in this subchapter, it is an offense if:

(1) a person holding a permit under this section fails to notify the department at least three calendar days prior to the placing of any fish, shellfish, or aquatic plant into public water;

(2) a person holding a permit under this section fails to notify the department at least three calendar days prior to removing any fish, shellfish, or aquatic plant from an offshore aquaculture facility;

(3) a person holding a permit under this section fails to notify the department immediately upon discovering that a disease condition exists within an offshore aquaculture facility;

(4) a person holding a permit under this section fails to notify the department immediately upon determining that an offshore aquaculture facility has been damaged and the threat of the unintentional release of stock exists;

(5) any person to whom the department has issued an offshore aquaculture permit fails to remove all enclosures and associated infrastructure from public waters within 10 calendar days of permit expiration or revocation.

§57.259. Violations and Penalties.

(a) A person who violates a provision of this subchapter or a provision of a permit issued under this subchapter commits an offense punishable by the penalty prescribed by the Parks and Wildlife Code, §66.012.

(b) A permit issued under this section is not a defense to prosecution for any conduct not specifically authorized by the permit.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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



SUBCHAPTER M. ARTIFICIAL REEFS

31 TAC §§57.950 - 57.955

The Texas Parks and Wildlife Department proposes new §§57.950 - 57.955, concerning Artificial Reefs. In general, the new sections would establish a mechanism to govern the deployment of artificial reef materials in coastal waters by private individuals, groups, or associations.

Under Parks and Wildlife Code, Chapter 89, the department is required to promote, develop, maintain, monitor, and enhance the artificial reef potential in the navigable water of Texas and water of the federal fisheries conservation zone adjacent to Texas water. Chapter 89 also requires artificial reefs to: enhance and conserve fishery resources to the maximum extent practicable; facilitate access and use by Texas recreational and commercial fishermen; minimize conflicts among competing uses of water

and water resources; minimize environmental risks and risks to personal and public health and property; be consistent with generally accepted principles of international law and national fishing law; not create any unreasonable obstruction to navigation; and use the best scientific information available. Additionally, Chapter 89 requires the department to develop and maintain an artificial reef plan and requires all artificial reefs constructed in the state to conform to the plan. The Texas Artificial Reef Fishery Management Plan was adopted by the Texas Parks and Wildlife Commission in 1990.

Since the inception of the program in 1990, the department has created 54 artificial reefs. In 2005, the Texas Legislature enacted House Bill 883, which authorized the department to promulgate rules governing the placement of donated reef materials in a permitted zone by third-party entities.

Proposed new §57.950, concerning General Provisions, establishes various requirements and obligations necessary to the proper function of the subchapter. Proposed subsections (a) and (b) would prohibit any person from constructing an artificial reef unless the person had entered into a valid Public Reefing Agreement (PRA) with the department. The proposed subsections are necessary to establish the Public Reefing Agreement as the mechanism for the creation of artificial reefs by entities other than the department.

Proposed new §57.950(c) would establish that the department may inspect and approve reef units for deployment, verify the location of reef units, and board vessels involved in any activity under a PRA. The provisions are necessary to provide for the proper oversight of the reef construction process. The department must, if necessary, be able to conduct physical and visual inspections of prospective reef materials at any point in the process in order to verify concordance with information submitted in an application for a PRA. Similarly, the department must be able to verify that an artificial reef has been deployed at the location authorized by the PRA.

Proposed new §57.950(d) would require that only department-approved reef units would be allowed to be deployed. The provision is necessary to prevent the deployment of unapproved reef materials.

Proposed new §57.950(e) would stipulate that the department will determine the deployment locations for all artificial reefs. The provision is necessary because the department has determined those areas of seabed that are biologically appropriate for artificial reef construction.

Proposed new §57.950(f) would create a requirement that deployment of artificial reefs take place only during daylight hours. The provision is necessary primarily because verification of reef materials is much easier in daylight, but also because navigation is much safer in daylight.

Proposed new §57.950(g) would require transport vessels to monitor a specific frequency during transport and deployment activities. The provision is necessary to ensure that the department is able to communicate with vessels during operations under a PRA.

Proposed new §57.951, concerning Definitions, would establish meanings for specific terms and phrases used in the subchapter. The proposed new section is necessary to establish unambiguous meanings for terms and phrases in order to avoid confusion and misunderstandings.

Proposed new §57.952, concerning Applicability of Other Law, would clearly state that a PRA does not authorize a person to violate any law, statute, or regulation. The proposed new section is necessary to ensure that prospective PRA cooperators understand that a PRA is not a defense to prosecution.

Proposed new §57.953, concerning PRA Application, would prescribe an application process and authorize the department to refuse a PRA on the basis of the failure of proposed reef material to meet criteria established in proposed new §57.955 or a history of noncompliance. The new section is necessary to create an efficient method for administering the application process.

Proposed new §57.954, concerning Terms of Public Reefing Agreement (PRA), would set forth the elements that must be included in a PRA.

Proposed new §57.954(a)(1) would require an applicant to identify the material to be used in a prospective artificial reef. The proposed provision is necessary because the department must ensure that unsuitable materials are not deployed. The best way to accomplish this goal is to require the applicant to identify the reef material in a written document.

Proposed new §57.954(a)(2) would require the applicant to identify the staging area (the exact location where the prospective reef material will be immediately prior to departure for deployment). The proposed provision is necessary because the department must inspect and approve all reef material prior to deployment. The most efficient way to do this is to require the applicant to identify in writing a location where the reef material is located.

Proposed new §57.954(a)(3) would require the applicant to describe the methods and procedures to be employed in the preparation and deployment of reef materials. The proposed provision is necessary in order for the department to ensure that impacts to the natural environment as a result of preparation and deployment are consistent with standards established by state and federal guidelines for the construction of artificial reefs. The most effective and efficient way to accomplish this goal is to require the applicant to specify, in writing, the methods and procedures to be used.

Proposed new §57.954(a)(4) would require the applicant to specify the dates and times of all preparation and transport activities. The proposed provision is necessary so the department can effectively inspect and monitor activities to ensure compliance with the PRA, as well as state and federal laws and guidelines.

Proposed new §57.954(a)(5) would allow for a 90-day period of validity and a one-time, 90-day extension for activities under a PRA. The provision would also allow a PRA to be amended. The proposed provision is necessary to create a specific timeframe for the accomplishment of reef construction, but to allow the flexibility for reasonable modifications.

Proposed new §57.954(a)(6) would require notification of the department within 72 hours prior to the departure for deployment activities, to include the identities of all vessels, departure times, routes to the reef site, and estimated time of arrival. The proposed provision is necessary so the department can effectively inspect and monitor activities to ensure that activities under the PRA, as well as state and federal laws and guidelines.

Proposed new §57.954(a)(7) would require the submission of Global Positioning System (GPS) coordinates of all deployment sites to the department within five days of deployment. The pro-

posed provision is necessary in order for the department to verify compliance with the PRA and to maintain an accurate database of all reef deployments made or authorized by the department.

Proposed new §57.954(a)(8) would require an applicant for a PRA to attest to reading and understanding the provisions of the subchapter and the department publication entitled "The Texas Public Reef Building Program; Standard Operating Protocol and Guidelines." The proposed provision is necessary to preclude any misunderstandings or confusion surrounding an applicant's obligations and responsibilities with respect to artificial reef construction.

Proposed new §57.954(a)(9) would allow the department to include other stipulations, restrictions, or conditions as necessary in a PRA. The provision is necessary because the wide variety of materials, procedures, methods, and processes that could be used or employed in artificial reef construction may create situations in which generic or blanket approval is impossible.

Proposed new §57.954(b) would allow the department to require a PRA applicant to supply a reasonable performance bond. The proposed provision is necessary to provide at least partial payment of costs associated with mitigation, restoration, or remediation activities occurring as a result of a failure to abide by a PRA.

Proposed new §57.955, concerning Reef Material Criteria, would require all prospective reef material to be free of pollutants or toxins in accordance with applicable laws, of a composition, density, and weight sufficient to prevent disassociation or movement, and configured in a manner that prevents the reef material from trapping marine life when deployed. The proposed new section is necessary to ensure that only clean, safe, and appropriate materials are deployed, that they possess physical characteristics that prevent migration, and that they not pose a physical threat to marine life. The purpose of artificial reefs is to provide habitat enhancement and encourage marine biodiversity. Obviously, the deployment of structures containing pollutants is counterproductive to that purpose, as is the placement of structures that function to entrap marine organisms. Additionally, structures must be heavy and dense enough to prevent easy movement, which could cause the reef to become a navigation hazard.

Paul Hammerschmidt, Coastal Fisheries Division Director of Strategic Planning, has determined that for each year of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules. The department is required by statute to "promote, develop, maintain, monitor, and enhance the artificial reef potential" in public waters and currently employs personnel and operates a program for that purpose. The proposed new rules will be administered by current personnel. All deployments will be at sites that have been approved by the department for future reef construction, whether by the department or other entities.

Mr. Hammerschmidt also has determined that for each year of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be increased recreational opportunity resulting from enhanced habitats and increased biodiversity.

There may be adverse economic effects on small businesses, micro businesses, or persons affected by the rules as proposed. The rules provide for a new program. Participation in the program created by the rules is voluntary. The department's intent in this rulemaking is to create a mechanism allowing entities other

than the department to prepare and deploy artificial reef material (units) as a donation to the people and wildlife resources of this state. There will be some administrative costs to small and micro businesses for entering into a reefing agreement with the department. These administrative costs are anticipated to be minimal and will be the same for small and micro businesses as for larger businesses. Because of the department's responsibility regarding this program, these cannot be reduced or eliminated.

Costs associated with acquiring, preparing, and deploying artificial reef units depend on a variety of factors, including the types of materials used, the location of the deployment site, weather, and fuel costs. The estimated cost for reefing the smallest, acceptable type of artificial reef unit would be approximately \$1,000 for the construction, deployment, and siting of one unit. As the volume of reef material increases, the cost of construction, deployment, and siting increase proportionally to a point where costs can be characterized by the ton. Recent reef building activities by the department have cost approximately \$95/ton for quantities greater than 1,500 tons. As mentioned, the types of reef material and transportation costs can influence the final cost of deployment. Materials used in the program thus far include singular units (called reef balls) and larger volumes of other material such as concrete poles. Thus, if a person chooses to donate these materials the range of cost for an individual could range from \$1,000 up to \$95/ton for quantities as great as 1,500 tons.

Under certain circumstances there could be costs in addition to these obvious and expected costs, such as additional preparation of reef material to achieve compliance with state and federal requirements for the deposit of reef material into the Gulf of Mexico, which are beyond the scope of this rulemaking.

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

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

Comments on the proposed rules may be submitted to Paul Hammerschmidt, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650 (e-mail: paul.hammerschmidt@tpwd.state.tx.us).

The new sections are proposed under Parks and Wildlife Code, Chapter 89, which authorizes the commission to adopt rules and guidelines as necessary to implement the chapter, and to authorize a person to place a donation of reef materials in a permitted zone in accordance with the chapter and commission rules and guidelines.

The new sections affect Parks and Wildlife Code, Chapter 89.

§57.950. General Provisions.

(a) No person may construct or attempt to construct an artificial reef in the coastal waters of this state unless the person has entered into a Public Reefing Agreement (PRA) with the department as described in §57.954 of this title (relating to Terms of Public Reefing Agreement (PRA)) for that purpose.

(b) A PRA is not valid unless it has been signed by the applicant and an employee of the department authorized to approve a PRA.

(c) The department may:

(1) inspect and approve any reef units (on land or at sea) identified in a PRA;

(2) verify the location and composition of any deployed reef unit; and

(3) come aboard or accompany any vessel while the vessel is being used to deploy reef materials under a PRA.

(d) Only units approved by the department may be deployed.

(e) The deployment locations for artificial reefs shall be determined by the department.

(f) Deployment activities are to be conducted only during daylight hours.

(g) Transport vessel must monitor VHF channel 16 throughout transport and deployment activities.

§57.951. Definitions.

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

(1) Agent--A person authorized by an applicant to act on behalf of the applicant. For the purposes of this subchapter, the use of the term "applicant" also includes the applicant's agent.

(2) Applicant--Any person applying for a PRA.

(3) Approved Reef Unit--A reef unit which meets all standards, criteria and requirements established in this subchapter and Parks and Wildlife Code, Chapter 89.

(4) Coastal waters--The navigable salt water of Texas and water of the federal exclusive economic zone adjacent to Texas water.

(5) Deployment--The act of placing approved materials and reef units onto an approved artificial reef site.

(6) Person--Any person, firm, partnership, association, corporation, or entity.

(7) Reef Unit--Those materials to be deployed as an artificial reef that constitute a single approved item or multiple items that are permanently linked together.

(8) Staging Area--A physical location where all reef units are stored for inspection.

(9) Vessel--Any watercraft or barge used to transport materials for the construction of artificial reefs.

§57.952. Applicability of Other Law.

(a) This subchapter may not be construed as authorizing or allowing a person to act in violation of any state or federal law, rule, or regulation.

(b) A PRA issued under this subchapter is not a defense to prosecution for conduct not specifically authorized by the agreement.

§57.953. PRA Application.

(a) A person seeking a PRA from the department for the construction of an artificial reef in the coastal waters of this state shall complete and submit an application to the department on a form supplied by the department.

(b) The department may refuse to authorize a PRA based on the following determinations:

(1) the reef units described in the application fail to meet criteria described in §57.955 of this title (relating to Reef Material Criteria).

- (2) the applicant's noncompliance with previous PRAs; or
- (3) failure of reef units to meet criteria set forth herein.

(c) Following evaluation of the application the department may authorize a PRA for the applicant.

§57.954. Terms of Public Reefing Agreement (PRA).

(a) A PRA shall include provisions for:

- (1) the material to be used in the reef construction;
- (2) the staging area of the material identified in paragraph (1) of this subsection;
- (3) the methods and procedures to be employed in the preparation and deployment of the reef materials;
- (4) the dates and times of all activities involving the movement or deployment of reef materials;
- (5) a period of validity, not to exceed 90 days, with the option of a one-time, 90-day extension of the PRA upon receipt of a written request explaining the need for an extension. The PRA may be amended based on the reasons for the extension and/or a renewal of a PRA.
- (6) notification of the department no less than 72 hours prior to the departure of reef materials for deployment, to include:
 - (A) the vessel registration number of each vessel;
 - (B) the date and time of departure of each vessel; and
 - (C) the estimated time of arrival at the deployment site;
- (7) the submission of the GPS coordinates of all deployments to the department within five business days following deployment;
- (8) a statement attesting that the applicant has read and understands the provisions of this subchapter and the contents of the most current version of the department publication entitled "The Texas Public Reef Building Program; Standard Operating Protocol and Guidelines;" and
- (9) any other stipulations, restrictions, or conditions determined by the department to be necessary, based on the particulars of the application.

(b) A PRA may include provisions for a reasonable performance bond which is to be returned to the applicant when the reef material has been deployed and all requirements of the PRA have been fulfilled to the satisfaction of the department.

§57.955. Reef Material Criteria.

All materials employed in artificial reef construction must:

- (1) be of such construction and material type so as not to break apart or disassociate; be of sufficient density and weight to ensure that the material will remain fixed at its final deployment location;
- (2) be free of pollutants and toxins in accordance with U.S. Coast Guard, U.S. Environmental Protection Agency, and Texas Commission on Environmental Quality, or other legally binding standards; and
- (3) be configured and deployed in such a manner that the materials will not function to trap marine life when deployed.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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



CHAPTER 65. WILDLIFE

SUBCHAPTER K. RAPTOR PROCLAMATION

31 TAC §65.269

The Texas Parks and Wildlife Department proposes an amendment to §65.269, concerning the Raptor Proclamation.

The proposed amendment to §65.269, concerning Trapping Seasons and Collecting Area, would eliminate the prohibition on trapping activities in seven counties in far west Texas (Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, and Terrell). The prohibition was originally implemented in 1982 to protect endangered, threatened, and recovering species such as the peregrine falcon, golden eagle, and zone-tailed hawk from accidental trapping mortality. In reviewing the rule, the department has determined that because the number of falconers is so small (fewer than 200 persons) and the likelihood of trapping mortality is remote, there is no danger of biological harm to existing populations by allowing permitted falconers to trap raptors in those counties.

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

Mr. Macdonald also has determined that for each year of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the amendment as proposed will be greater opportunity for permitted falconers to trap raptors for falconry purposes.

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

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

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

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

Comments on the proposed amendment may be submitted to Jennifer Brennan, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4481 (e-mail: jennifer.brennan@tpwd.state.tx.us).

The amendment is proposed under Parks and Wildlife Code, §49.014, which authorizes the department to prescribe rules for the taking, capture, possession, propagation, transportation, export, import, and sale of raptors, time and area from which raptors may be taken or captured, and species that may be taken or captured, including rules governing annual reporting requirements and procedures.

The proposed amendment affects Parks and Wildlife Code, Chapter 49.

§65.269. *Trapping Seasons and Collecting Area.*

(a) (No change.)

{(b) Except as expressly authorized in writing by the department, raptors shall not be trapped at any time in Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Presidio, or Terrell Counties.}

(b) [(e)] No eggs may be taken from raptor nests.

(c) [(d)] Eyasses shall be taken only by a general or master falconer. No person shall take more than two eyasses during the season for taking eyasses.

(d) [(e)] Only American kestrels (*Falco sparverius*) and great-horned owls (*Bubo virginianus*) may be taken when over one year old.

(e) [(f)] Any raptor other than an endangered species taken under a federal depredation (or special purpose depredation) permit may be used for falconry by a general or master falconer. Endangered species taken under a depredation permit shall not be released to the wild without prior department approval of the release site.

(f) [(g)] Nonresidents in possession of a valid Nonresident Trapping Permit may trap raptors from the wild according to the terms of the permit.

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

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Ann Bright

General Counsel

Texas Parks and Wildlife Department

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, Chapter 101, of the rules of the Department of Assistive and Rehabilitative Services, by repealing and amending the rules set forth below in Subchapters F and H of Chapter 101. The rules and divisions to be repealed are:

Chapter 101, Subchapter F, Division 5: §§101.3803, 101.3805, 101.3809, 101.3813, 101.3815, 101.3817, 101.3819, 101.3821, 101.3823, 101.3825, 101.3827, 101.3829, 101.3831, 101.3833, 101.3835, 101.3837, 101.3841, 101.3843, 101.3845 and 101.3847.

Chapter 101, Subchapter H, Division 1: §§101.4301, 101.4303, 101.4305, 101.4307, 101.4309, 101.4311 and 101.4313.

Chapter 101, Subchapter H, Division 13: §101.5203.

Chapter 101, Subchapter H, Division 14: §§101.5215, 101.5217, 101.5219, 101.5221, 101.5223, 101.5225, 101.5227, 101.5229, 101.5237, 101.5239, 101.5389, 101.5391, 101.5393 and 101.5395.

Chapter 101, Subchapter H, Division 15: §§101.5451, 101.5453, 101.5455, 101.5457, 101.5459, 101.5461 and 101.5463.

In addition to the foregoing rules, in Chapter 101, Subchapter H, Division 15 will be repealed and will not be replaced.

The repealed rules will be replaced by new rules which are being proposed elsewhere in this issue of the *Texas Register* contemporaneously herewith, in a new Subchapter C, Purchase of Goods and Services, in Chapter 104 of Title 40; and in a new Chapter 105 of Title 40, General Contracting Rules.

The Texas Health and Human Services Commission also proposes amendments to:

Chapter 101, Subchapter G, Division 1: §101.4013.

Chapter 101, Subchapter J, Division 1: §101.5803; and §101.5825.

The repeals, replacements, and amendments are being proposed to consolidate separate administrative and purchasing rules from the four legacy agencies of DARS, the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Council on Early Childhood Intervention, into agency-wide administrative rules for the purchase of goods and services and general contracting applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER F. ADMINISTRATIVE RULES
AND PROCEDURES PERTAINING TO BLIND
SERVICES

DIVISION 5. PURCHASE OF GOODS AND
SERVICES BY THE COMMISSION

**40 TAC §§101.3803, 101.3805, 101.3809, 101.3813,
101.3815, 101.3817, 101.3819, 101.3821, 101.3823, 101.3825,
101.3827, 101.3829, 101.3831, 101.3833, 101.3835, 101.3837,
101.3841, 101.3843, 101.3845, 101.3847**

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.3803. *Scope.*

§101.3805. *Procurement Objectives.*

§101.3809. *Definitions.*

§101.3813. *Compliance with State Requirements.*

§101.3815. *Best Value Factors.*

§101.3817. *Solicitation.*

§101.3819. *Competitive Procurement Methods.*

§101.3821. *Competitive Bidding Standards.*

§101.3823. *Negotiated Procurement Standards.*

§101.3825. *Noncompetitive Procurements.*

§101.3827. *Noncompetitive Negotiation Standards.*

§101.3829. *Cooperative Purchasing Methods.*

§101.3831. *Streamlined Purchasing Standards.*

§101.3833. *Multiple Award, Task/Order Delivery and Blanket Contract Standards.*

§101.3835. *Multiple Year Awards.*

§101.3837. *Enrollment Contracts.*

§101.3841. *Standards of Conduct for Contracted Vendors and Suppliers.*

§101.3843. *Record Keeping and Audit Requirements.*

§101.3845. *Contents of Procurement Record for Procurements of \$25,000 or Less.*

§101.3847. *Audit of Purchases by State Auditor.*

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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SUBCHAPTER G. ADMINISTRATIVE
RULES AND PROCEDURES PERTAINING TO
REHABILITATION SERVICES

DIVISION 1. GENERAL RULES

40 TAC §101.4013

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.4013. *Standards for Facilities and Providers of Services.*

(a) Facilities and providers of services used by the department [~~commission~~] in providing vocational rehabilitation services are required to satisfy the following minimum standards.

~~[(1) Staff providing services shall be competent, professionally ethical, and qualified for positions held. Qualifications of staff shall meet all requirements established by recognized professional groups and/or state certification regulations. The facility or provider shall assure that all staff meet minimum qualifications; staff credentials supporting those qualifications shall be on file at the time of hire; and staff credentials shall be made available to any commission monitors.]~~

(1) ~~[(2)]~~ The facility shall include among the staff, or shall obtain the services of, individuals able to communicate in the native language of applicants and clients who have limited English speaking ability; and ensure that appropriate modes of communication are used for all applicants and clients.

(2) ~~[(3)]~~ Providers of vocational rehabilitation services shall take affirmative action to employ and advance in employment qualified individuals with disabilities.

~~[(4) The facility shall provide for such fiscal control and fund accounting as may be necessary to assure proper disbursement and accounting of funds provided by the commission and in accordance to program policy.]~~

~~[(5) The facility shall observe client personnel policies and practices which focus on the needs and goals of the individual.]~~

{(6) The facility shall maintain accurate and complete records and prepare and distribute reports necessary to the achievement of its goals.}

{(7) Any facility in which services are provided must be:}

{(A) such that the safety and health of the staff and clients are protected;}

{(B) accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act.}

(b) The department [~~commission~~] does not operate, license, certify, or register facilities or providers under the Human Resource Code, §48.036, but does assure that services provided comply with standards set by the department [~~commission~~].

(c) Any additional standards the department [~~commission~~] publishes for facilities and providers will be made available to the public.

{(d) All services provided to clients of the ~~commission~~ are monitored by the agency.}

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

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SUBCHAPTER H. PURCHASE OF GOODS AND SERVICES FOR REHABILITATION SERVICES

DIVISION 1. GENERAL

40 TAC §§101.4301, 101.4303, 101.4305, 101.4307, 101.4309, 101.4311, 101.4313

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.4301. Purpose.

§101.4303. Scope.

§101.4305. Authority.

§101.4307. Texas Rehabilitation Commission Procurement Objectives.

§101.4309. Definitions.

§101.4311. Compliance with Federal Requirements.

§101.4313. Compliance with State Requirements.

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

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Sylvia F. Hardman
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DIVISION 13. MISCELLANEOUS REQUIREMENTS

40 TAC §101.5203

(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 Assistive and Rehabilitative Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.5203. Standards of Conduct for Contracted Vendors and Suppliers.

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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Sylvia F. Hardman
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DIVISION 14. CONTRACT ADMINISTRATION

40 TAC §§101.5215, 101.5217, 101.5219, 101.5221, 101.5223, 101.5225, 101.5227, 101.5229, 101.5237, 101.5239, 101.5389, 101.5391, 101.5393, 101.5395

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

- §101.5215. *General Requirements for Contractors.*
- §101.5217. *Cancellation or Suspension of Solicitation.*
- §101.5219. *Recoupment of Improper Payments.*
- §101.5221. *Settling Disagreements.*
- §101.5223. *Adverse Actions.*
- §101.5225. *Contract Termination.*
- §101.5227. *Access to Contractor Facilities and Records.*
- §101.5229. *Independent Audits.*
- §101.5237. *Monitoring Financial Compliance.*
- §101.5239. *Corrective Action Plan.*
- §101.5389. *Debarment and Suspension of Current and Potential Contractor Rights.*
- §101.5391. *Causes for and Conditions of Debarment.*
- §101.5393. *Causes for and Conditions of Suspension.*
- §101.5395. *Proof Required for Debarment or Suspension.*

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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General Counsel
Department of Assistive and Rehabilitative Services
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DIVISION 15. APPEALS

40 TAC §§101.5451, 101.5453, 101.5455, 101.5457, 101.5459, 101.5461, 101.5463

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

- §101.5451. *Appeals.*
- §101.5453. *Claim for Breach of Contract.*
- §101.5455. *Negotiation.*

§101.5457. *Partial Resolution of Claim.*

§101.5459. *Payment of Claim from Appropriated Funds.*

§101.5461. *Incomplete Resolution.*

§101.5463. *Mediation.*

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 September 18, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050



SUBCHAPTER J. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO DEAF AND HARD OF HEARING SERVICES

DIVISION 1. GENERAL PROVISIONS

40 TAC §101.5803, §101.5825

The amendments are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§101.5803. *Definitions.*

The following words and terms, when used in the chapters, subchapters, or sections of the Office for Deaf and Hard of Hearing Services (DHHS) [~~Texas Commission for the Deaf and Hard of Hearing~~], shall have the following meanings, unless the context clearly indicates otherwise.

~~{(1) Act--Texas Human Resource Code, Chapter 81 and amendments.}~~

(1) ~~{(2)}~~ BEI--The Board of Evaluation of Interpreters.

(2) ~~{(3)}~~ Board--The Board for evaluation of Interpreters.

~~{(4) Certificate--A license, issued by the board and commission which includes the whole part of any agency permit, certificate, approval, registration, charter, membership, statutory exemption, or similar form of permission required by state law.}~~

~~{(5) Certification--The commission and board process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, or conditioning of a certificate.}~~

(3) ~~{(6)}~~ Certified interpreter--An interpreter for the deaf who holds a valid certification or license issued by the BEI or a professional interpreting association. ~~[has been evaluated to determine a~~

particular skill level or one who has met requirements or qualifications for a particular skill level and has been so certified to practice interpreting in the State of Texas by the board and commission, or other professional interpreting association.]

{(7) Chairperson--The member of the commission so designated by the governor, pursuant to Texas Human Resources Code, §81.005.}

{(8) Commission--The Texas Commission for the Deaf and Hard of Hearing.}

{(9) Commissioner--Any one of the nine duly appointed members of the commission, including the chairperson.}

{(10) Contract--Any written document (or series of documents) which obligates the commission to pay money to a person or entity for goods or services rendered from that person or entity, or which obligates the commission to provide goods or services to a person or entity in exchange for money.}

{(11) Contractor--An agency, organization, individual, or entity of any character representing the interests of the persons with which the commission contracts for implementation of services or programs or provisions of services to individuals who are deaf and hard of hearing.}

{(12) Council--Agency, organization, or individual with which the Texas Commission for the Deaf and Hard of Hearing contracts for the provision of services to individuals who are deaf or hard of hearing.}

{(13) Deaf or deaf persons--A natural person or individual who has a hearing impairment without regard to degree, and regardless of whether the person also has speech impairment, that such deafness or hearing impairment inhibits the person's comprehension of or communication with others.}

(4) DHHS--Office for Deaf and Hard of Hearing Services.

{(14) Entity--An association, organization, governmental or business body, or existing body or class of persons that is chartered or organized for representing the interest of persons.

{(15) Executive Director--The chief administrative officer appointed by the commission to execute such duties, powers, and authority as may be conferred by the commission subject to the provisions of the Act or these rules.}

{(16) Hard of Hearing or hard of hearing person--A natural person or individual who has a hearing impairment that results in a loss of hearing function but the individual relies on residual hearing and may depend on visual methods to communicate.}

{(17) Person--Any person, partnership, corporation, association, governmental subdivision or agency, or public or private entity of any character.}

{(18) Program--Commission activities designed to deliver services or benefits provided by statute.}

{(19) Qualified interpreter--An interpreter for the deaf who holds a valid certification or license issued by the BEI or a professional interpreting association. [A certified interpreter or an interpreter for the deaf whose qualifications have been approved by the commission.}

{(20) Service provider--An entity or a person that is awarded a contract from DHHS [the commission] to provide services under a contract.

{(21) TCDHH--The Texas Commission for the Deaf and Hard of Hearing.}

§101.5825. Services for Deaf and Hard of Hearing Individuals.

{(a) Description of services. The Office of Deaf and Hard of Hearing Services (DHHS) [Texas Commission for the Deaf and Hard of Hearing] is responsible for developing and providing quality services to deaf and hard of hearing individuals through contracts with agencies, organizations, or individuals, with assistance from the DHHS staff [Texas Commission for the Deaf and Hard of Hearing office]. These services include communication access services, interpreter training, information and referral services, services to elderly deaf and hard of hearing persons, services to hard of hearing persons [individuals], DHHS resource specialist services and Camp SIGN. It is the intent of the commission to establish programs and activities for the purpose of assisting deaf and hard of hearing persons to achieve and maintain [in maintaining their] independence and self-sufficiency.

(1) Communication access services. The communication access services offered are designed to bridge the existing communication gap between deaf and hard of hearing individuals and the general community. Through the provision of these services, deaf and hard of hearing individuals are better able to gain and maintain personal independence, improve their personal functioning, and obtain legal, medical, and economic services. These services include interpreter related services and Computer Assisted Real-time Transcription (CART).

(2) Interpreter Training. Training at advanced levels is offered to interpreters to enable them to maintain present certification and to develop skills leading towards higher levels of certification. This training is offered through workshops and mentor projects.

(3) Information and referral services. Under the information and referral activity, the contractor provides information to deaf and hard of hearing citizens regarding services and programs available.

(4) Services to elderly deaf or hard of hearing persons. This activity of providing services to elderly deaf or hard of hearing persons has been designed and established to provide services to individuals who are, or who have recently become, deaf or hard of hearing, and who are 60 years of age or older. Its primary objective is to aid individuals in maintaining or increasing self-sufficiency and to reduce the necessity of long-term care facility placement.

(5) Services to hard of hearing individuals. Programs and services of the agency are to include focus on the needs of individuals who are hard of hearing.

(6) DHHS resource specialist services. This program outreaches statewide to provide specialized services to individuals who are deaf or hard of hearing, as well as assisting agencies and other service providers to serve these consumers. This program assists consumers in getting the services they need from state and local government, service organizations, employers and private entities while advocating within the communities to remove communication barriers to render more access to the targeted groups.

(7) [(6)] Camp SIGN. This is an outdoor training program designed for children who are deaf or hard of hearing between the ages of 8 and 17.

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

{(1) Commission--Texas Commission for the Deaf and Hard of Hearing.}

{(2) Contractor--Agency, organization, or individual with which the Texas Commission for the Deaf and Hard of Hearing con-

tracts for the provision of services to deaf and hard of hearing individuals.]

{(3) Deaf individual—Individual who is a Texas resident and has a significant hearing impairment which inhibits comprehension of proceedings or communication with others.}]

{(4) Hard of hearing individual—Individual who is a Texas resident and has a hearing impairment that results in a loss of hearing function but relies on residual hearing and may depend on visual methods to communicate.}]

{(5) Service provider—Person designated by the contractor to be responsible for work and/or supervision of work with deaf and hard of hearing clients.}]

{(e) Eligibility for services. In order to be eligible for services, the deaf or hard of hearing individual must:}]

{(1) be a resident of the State of Texas; and}]

{(2) have a significant hearing impairment which inhibits comprehension of proceedings or communication with others.}]

{(d) Contract eligibility. An eligible contractor may be a public or private agency or organization, a non-profit or for-profit agency or organization, or any individual who is capable of delivering services through provision of the commission contract.}]

{(e) Contracting procedures. The commission will prepare and publish guidelines requesting proposals for the establishment of programs and services for deaf and hard of hearing persons.}]

{(f) Contractor Selection. The commission will review all timely submitted proposals, select, and contract with the contractor(s) which most nearly meet published guidelines and can provide such services with the amount of funding available.}]

{(g) Program guidelines. Guidelines for delivery of services programs will provide assurances that each contractor will, as a minimum:}]

{(1) be an agency, organization, or individual who is willing to provide a given service to its local deaf and hard of hearing community;}]

{(2) provide a location and description of the intended headquarters to be used in the delivery of services;}]

{(3) show an anticipated number of persons willing to utilize the services;}]

{(4) be willing to cooperate with the commission regarding its goals, standards, requirements, and recommendations;}]

{(5) be capable of selecting the area of services most needed within a fiscally conservative budget, and submit such budget to the commission for review;}]

{(6) possess the necessary skills, knowledge, and expertise for the planning, development, and implementation of needed services;}]

{(7) designate a service provider for the activity;}]

{(8) utilize, to the highest degree possible, local, community, and state resources;}]

{(9) furnish the commission with reports, as required, in the format prescribed by the commission; and}]

{(10) establish and maintain a method to secure and maintain the confidentiality of records and services relating to clients in ac-

cordance with any and all applicable state and federal laws, rules and regulations.}]

{(h) Proposal evaluation criteria. Proposals will be evaluated by the commission on the basis:}]

{(1) submission of the proposal on or before the established deadline;}]

{(2) operation of the program within commission authority;}]

{(3) submission of proposal addressing all required areas;}]

{(4) respondent's program plan;}]

{(5) respondent's ability to provide a high-quality program aimed at meeting the individual needs of the client;}]

{(6) letters of endorsement and/or cooperation; and}]

{(7) ability to implement program upon receiving notification from the commission on award of contract.}]

{(i) Reimbursement. Unit costs that the commission will reimburse contractor(s) for rendered services will be as follows:}]

{(1) Communication access services. The contractor will be reimbursed on a monthly basis for approved and appropriately billed services.}]

{(A) Interpreter services. The contractor will be reimbursed in accordance with the commission interpreter fee schedule. Finder's fees and administrative costs for services provided as a result of interpreter services will be reimbursable.}]

{(B) CART services. It is recommended that CART be provided only by those who are certified through Texas or the National Court Reporters' Association.}]

{(2) Information and referral services. The contractor will be reimbursed for each unit of recorded information and referral activity submitted to the commission and approved on a monthly basis.}]

{(3) Services to elderly deaf persons. The contractor will be reimbursed monthly for administrative costs on the basis of allocation.}]

{(j) Contract awards and allocations. The commission will announce the contract awards at the last Commission meeting held before a new fiscal year, with contractor services beginning on September 1. Contracts may be awarded for two fiscal years, and may include amendments for additional funds or reallocation of funds during the contract period. Funding will be determined by the commission using a commission-approved formula in the distribution of monies among selected and approved contractors.}]

{(1) The distribution formula will be reviewed and approved by the Commission during each biennium.}]

{(2) The distribution formula as approved by the Commission is the general population of each region as defined by HHSC multiplied by 8.8% which is the estimated population of individuals that are deaf and hard of hearing as defined by Gallaudet University. Appropriated funds are then multiplied by this same percentage to determine the total amount available to each region.}]

{(3) Multiple contracts may be awarded in each region which outline specific areas of a region to be served.}]

{(4) Multiple awards will have the same percentages applied to the amounts awarded based on the specific areas that are to be served by that award.}]

~~{(k) Conditions for termination of contract: A contract may be terminated if the contractor fails to comply with the contract requirements.}~~

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

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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 104. PURCHASE OF GOODS AND SERVICES BY THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

SUBCHAPTER C. PURCHASE OF GOODS AND SERVICES

40 TAC §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261, 104.263

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, of the rules of the Department of Assistive and Rehabilitative Services, by proposing new §§104.251, 104.253, 104.255, 104.257, 104.259, 104.261 and 104.263, in Title 40, Chapter 104, in new Subchapter C, Purchase of Goods and Services. The new rules are proposed to replace rules in Chapters 101 and 108 of Title 40, which are contemporaneously proposed herewith in this issue of the *Texas Register* for repeal.

The repeals and new rules are being proposed to consolidate separate administrative and purchasing rules from the four legacy agencies of DARS, the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Council on Early Childhood Intervention, into agency-wide administrative rules for the purchase of goods and services and general contracting applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission

has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§104.251. Purpose.

Title 1, Texas Administrative Code, Part 15, Chapter 391, governs the purchase of goods and services by all health and human services agencies, including the Department of Assistive and Rehabilitative Services. This chapter supplements criteria contained in Chapter 391.

§104.253. Authority.

The Department of Assistive and Rehabilitative Services (DARS) is delegated purchasing authority for goods and services from Government Code, Chapter 2155. DARS contracts with other state agencies in accordance with the Interagency Cooperation Act (Government Code §§771.001 et seq.). DARS contracts with the local governmental agencies in accordance with the Interlocal Cooperation Act (Government Code §§791.001, et seq.).

§104.255. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), have the following meanings, unless the context clearly indicates otherwise:

(1) Award--The act of communicating acceptance of a bid or offer to the bidder or offeror, thereby forming a contract. The term also applies to the act of communicating acceptance of a grant proposal.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Competition--The effort or action of two or more entities to gain commercial advantage and thereby obtain the same business from the state. For purposes of state contracts, competition must be open, equitable and just as between competitors. Competition also refers to a contract or purchasing action in which two or more qualified or responsible vendors, acting independently, may be solicited to supply goods or services on acceptable terms and under a procedure that allows the simultaneous, comparative evaluation of bids, proposals, offers, quotes, or other suitable expressions of interest by a vendor.

(4) Contract--A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term also encompasses the written document that describes the terms of the agreement. For state contracting purposes, it generally describes the terms of a purchase of goods and/or services from a vendor or service provider; however, the term also encompasses grant arrangements.

(5) Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or sub-recipient holding a written agreement with a grantor or sub-recipient to carry out all or part of a program.

(6) DARS--The Department of Assistive and Rehabilitative Services

(7) Goods--A transportable article of trade or commerce that can be bartered or sold. Goods do not include services or real property. For health and human services agencies, goods does not include:

(A) goods within the definition of "automated information system" under Chapter 2157, Government Code;

(B) goods obtained under an Interagency Contract or an Interlocal Contract; or

(C) goods used in support of a health and human services agency's health care programs and acquired under §2155.144, Government Code.

(8) HHSC--Health and Human Services Commission.

(9) Notice of Provider Enrollment (NPE)--Notice announcing the availability of a provider enrollment opportunity.

(10) Offer--A proposal by one party to another that invites the other party to accept. An offer may consist of a proposal to sell something, buy something, take some action, or refrain from doing something. If the offer is accepted and there is an exchange of consideration, a contract is created.

(11) Procurement--The acquisition of goods or services. Procurement can refer to the act of obtaining something through effort, and therefore does not necessarily involve the exchange of consideration or create a contract. The term is broader than purchasing, which has the connotation of an exchange of consideration (i.e., buying), but the terms are generally used interchangeably.

(12) Provider--An individual or business entity that supplies goods or services to a purchasing entity under an agreement or contract to provide such goods or services.

(13) Proposal--Binding offer submitted by a respondent in response to a Request for Proposals (RFP).

(14) Purchase Order--A written document issued by DARS to accept a bid or an offer, thereby creating an agreement between the bidder or offeror and DARS.

(15) Solicitation--A document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications. May also apply to grant arrangements.

(16) Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and materials required in the original contract.

§104.257. Procurement Objectives.

In addition to procurement objectives prescribed by Title 1, Texas Administrative Code, Part 15, Chapter 391, the procedures and requirements of this chapter are established to accomplish the following objectives:

(1) Support small businesses and businesses that are at least 51% owned by minority group members, women, and persons with disabilities in having equal opportunity to compete for and to be selected for the award of contracts. DARS will take all necessary affirmative steps to ensure that such businesses have an opportunity to obtain DARS business. In addition, DARS will assist its contractors to take such affirmative steps.

(2) Prevent discrimination on the basis of race, color, religion, sex, national origin, age, disability, or veteran status in the procurement of goods and services.

§104.259. Compliance with State Requirements.

In addition to Title 1, Texas Administrative Code, Part 15, Chapter 391, this section applies to the purchase of the following:

(1) goods or services, if the purchase is for special technical goods and services from another state agency as defined in Government Code, Chapter 771; and

(2) goods and services from a local government as defined in Government Code, Chapter 791.

§104.261. Cancellation or Suspension of Solicitation.

The Department of Assistive and Rehabilitative Services (DARS) has the right to accept or reject all or any part of any bids, offers, or proposals submitted in response to a solicitation as specified in DARS policy. DARS may cancel or suspend a solicitation for any of the following reasons:

(1) Specifications and costs in the Invitation for Bid (IFB), Request for Offer (RFO), or Request for Proposal (RFP) were inadequate, ambiguous, or otherwise deficient;

(2) Goods or services are no longer required;

(3) Bids, offers, or proposals received indicated that the services requested can be purchased by a different, less expensive method;

(4) All bids, offers, and proposals received are considered unreasonable;

(5) Staff has good reason to believe during the course of procurement that the bids, offers, or proposals are fraudulent or submitted in bad faith; or

(6) DARS determines that cancellation or suspension is in the State's best interest.

§104.263. Memoranda of Understanding with State Agencies.

The Department of Assistive and Rehabilitative Services may enter into a Memorandum of Understanding in accordance with Government Code, Chapter 531.

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



CHAPTER 105. GENERAL CONTRACTING RULES

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, of the rules of the Department of Assistive and Rehabilitative Services, by proposing the following as new rules:

Chapter 105, Subchapter A, §105.1001 and §105.1003, concerning General Contracting Information;

Chapter 105, Subchapter B, §§105.1011, 105.1013, 105.1015 and 105.1017, concerning Contractor Requirements;

Chapter 105, Subchapter C, §105.1101, concerning Records;

Chapter 105, Subchapter D, §§105.1201, 105.1203, 105.1205 and 105.1207, concerning Audits, Monitoring and Reviews;

Chapter 105, Subchapter E, §§105.1301, 105.1305, 105.1307, 105.1309, 105.1311, 105.1313, 105.1315 and 105.1317, concerning Adverse Actions;

Chapter 105, Subchapter F, §105.1401, concerning Claims for Breach of Contract; and

Chapter 105, Subchapter G, §105.1501, concerning Contract Termination.

The new rules are proposed to replace rules in 40 TAC Chapters 101 and 108, which are being proposed for repeal contemporaneously in this issue of the *Texas Register*.

The repeals and new rules are being proposed to consolidate separate administrative and purchasing rules from the four legacy agencies of DARS, the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Council on Early Childhood Intervention, into agency-wide administrative rules for the purchase of goods and services and general contracting applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the rules will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the rules will be in effect, the public benefit anticipated as a result of adopting the proposed rules will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed rules will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER A. GENERAL CONTRACTING INFORMATION

40 TAC §105.1001, §105.1003

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1001. Purpose.

The purpose of this chapter is to establish general contracting rules for consumer goods and services contracts with the Department of Assistive and Rehabilitative Services.

§105.1003. Definitions.

The following words and terms, when used in this chapter and Chapter 101 of this title (relating to Administrative Rules and Procedures), shall have the following meanings, unless the context clearly indicates otherwise.

(1) Amendment--A formal revision or addition to a contract.

(2) Bid--An offer to contract with the state submitted in response to a bid invitation.

(3) Commission--Health and Human Services Commission.

(4) Commissioner--The Chief Administrative Officer of the Department of Assistive and Rehabilitative Services.

(5) Contract--A promise, or a set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty. It is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. The term also encompasses the written document that describes the terms of the agreement. For state contracting purposes, it generally describes the terms of a purchase of goods and/or services from a vendor or service contractor; however, the term also encompasses grant arrangements.

(6) Contractor--An entity or person holding a written agreement with a purchasing entity to provide goods and services; or a recipient or sub-recipient holding a written agreement with a grantor or sub-recipient to carry out all or part of a program.

(7) Contractor records--All financial and programmatic records, supporting documents, papers, statistical data, or any other written or electronic materials that are pertinent to each specific contract instrument.

(8) Corrective Action Plan--Specific steps to be taken by a contractor to resolve identified deficiencies and/or to address concerns that the contracting agency has regarding the contractor's compliance with contract terms or other applicable laws, rules or regulations. The corrective action plan may also focus on improving contractor performance (as it relates to service delivery, reporting and/or financial stability).

(9) Effective Date--The date of complete execution of the contract or the date upon which the parties agree the contract shall take effect.

(10) Entity--An association, organization, governmental or business body, or existing body or class of persons that is chartered or organized for representing the interest of persons.

(11) Grant--An award of financial assistance, including cooperative agreements, in the form of money, property in lieu of money, or other financial assistance paid or furnished by the state or federal government to an eligible grantee to carry out a program in accordance with rules, regulations and guidance provided by the grantor agency.

(12) Interlocal Contract--A contract made under Government Code, Chapter 791, and involving one or more local governments.

(13) Memorandum of Understanding (MOU)--A written document evidencing the understanding or agreement of two or more parties regarding the subject matter of the agreement. Because the underlying agreement may or may not be legally binding and enforceable in and of itself, a memorandum of understanding may or may not constitute a contract. It is generally considered a less formal way of evidencing an agreement, and is ordinarily used in state government

only between or among state agencies or other government entities. The term is used interchangeably with "memorandum of agreement."

(14) Program--DARS activities designed to deliver services or benefits provided by statute.

(15) Subcontract--A written agreement between the original contractor and a third party to provide all or a specified part of the goods, services, work, and/or materials required in the original contract.

(16) Vendor Hold--A suspension of payments to a contractor by the contracting state agency due to the contractor's failure to comply with the terms of the contract.

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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General Counsel

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SUBCHAPTER B. CONTRACTOR REQUIREMENTS

40 TAC §§105.1011, 105.1013, 105.1015, 105.1017

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1011. General Information.

This chapter does not supersede any Department of Assistive and Rehabilitative Services program rules for the provision of goods and services for consumer use or benefit.

§105.1013. General Requirements for Contracting.

(a) To contract with the Department of Assistive and Rehabilitative Services (DARS) the contractor must:

- (1) meet eligibility requirements for contracting;
- (2) if applicable, have and maintain the appropriate license(s);
- (3) submit all documents and information required by DARS;
- (4) comply with all applicable DARS and Texas Health and Human Services Commission rules and policies and terms of the contract with DARS;
- (5) comply with all local, state and federal regulations that are applicable to the contract;
- (6) if applicable, be authorized by the secretary of state to conduct business in the state of Texas;

(7) if applicable, certify in writing that the contractor's corporate taxes are current;

(8) ensure staff providing services are competent, professionally ethical, and qualified for positions held. Qualifications of staff must meet all requirements established by state policy and/or state regulations. The contractor must ensure that all staff meet minimum qualifications; staff credentials supporting those qualifications must be on file at the time of hire; and staff credentials must be made available to DARS staff upon request;

(9) provide for such fiscal control and fund accounting as may be necessary to assure proper disbursement and accounting of funds provided by DARS and in accordance to program policy;

(10) maintain accurate and complete records and prepare and distribute reports according to the terms of the contract;

(11) ensure any contractor facility in which services are provided is:

(A) such that the safety and health of the staff and consumers is protected; and

(B) accessible to individuals receiving services and must comply with the requirements of the Architectural Barriers Act of 1968, the Uniform Accessibility Standards and the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act.

(12) have adequate operating funds available for conducting business on the effective date of the contract;

(13) have adequate staff to provide services on the effective date of the contract;

(14) notify DARS in writing of changes to contract information according to the requirements of their contract. Unless otherwise specified in the contract, the contractor must notify DARS:

(A) within 10 calendar days after any address change, which includes the location of the agency's office, physical address, and/or mailing address;

(B) immediately of any change in administrator or director; and

(C) within seven working days of any change in the contact telephone number designated in the contract; and

(15) report suspected violation of rules or laws to the appropriate investigative authority. This includes reporting abuse, neglect, and exploitation issues to the Texas Department of Family and Protective Services (DFPS) or to the appropriate Texas Department of Aging and Disability Services (DADS) licensing staff.

(b) In order to provide services, a contractor must maintain adequate:

(1) funding for provision of services; and

(2) staff for the provision of services.

(c) A contractor or potential contractor may not offer, give, or agree to give any employee anything of value.

(d) A contractor or potential contractor may not engage in any activity that presents a real or apparent conflict of interest.

(e) A former DARS employee may not represent or receive compensation from any person concerning any contractual matter in which the former employee participated during his or her employment with the state.

(f) DARS may choose not to enter into a contract;

(1) when, in DARS' opinion, the contractor, potential contractor or a controlling party has a prior unsatisfactory history in contracting with DARS or with another Health and Human Services agency.

(2) if the contractor or potential contractor:

(A) subcontracts any direct care services without specific authorization from DARS; and/or

(B) assigns or transfers the contract without written approval of DARS.

(3) when DARS determines it is not in the best interest of DARS.

(g) DARS assigns the effective date of a contract.

(h) Any services purchased or reimbursed by DARS may be monitored at the discretion of DARS.

(i) DARS may require corrective action, suspend consumer referrals and/or impose an adverse action against a contractor for any failure to comply with the terms of the contract and/or DARS rules, policies and procedures.

§105.1015. Complaints.

Upon request from the consumer the contractor must notify the consumer of the name, mailing address, and telephone number of the Department of Assistive and Rehabilitative Services (DARS) for the purpose of directing complaints.

§105.1017. Corrective Action Plan.

The contractor must prepare and implement a corrective action plan in response to findings of deficiencies by the Department of Assistive and Rehabilitative Services or other federal or state oversight authorities. The corrective action plan must be negotiated to the satisfaction of DARS. DARS may subsequently monitor and document the contractor's compliance with the corrective action plan.

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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Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER C. RECORDS

40 TAC §105.1101

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1101. Record Requirements.

(a) The contractor must maintain all financial and contract-related records:

(1) according to recognized fiscal and accounting practices such as Generally Accepted Accounting Principles (GAAP); and

(2) in accordance with the Department of Assistive and Rehabilitative Services (DARS) contract requirements, rules, policies and procedures.

(b) When required by DARS, the contractor must use the official DARS form to document services delivered.

(c) The contractor must maintain all records pertaining to the services provided to individuals in any programs administered by DARS as required per each contract from the date the services were provided. If any litigation or claim involving these records is still ongoing at the conclusion of the required time the contract specifies to maintain the records, the contractor must maintain the records until all litigation or claims are resolved.

(d) The contractor must maintain all work papers and records supporting information reported on cost reports, budgets, or other cost surveys for the duration stated in the contract after the end of the fiscal year in which the services were provided. If any litigation or claim involving these records is still ongoing at the conclusion of the required time the contract specifies to maintain the records, the contractor must maintain the records until all litigation or claims are resolved.

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

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SUBCHAPTER D. AUDITS, MONITORING AND REVIEWS

40 TAC §§105.1201, 105.1203, 105.1205, 105.1207

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1201. Access to Contractor Facilities and Records.

(a) Contractors must allow the Department of Assistive and Rehabilitative Services and all appropriate federal and state agencies or their representatives access to contractor facilities to examine and copy contract records and supporting documents pertaining to services provided. The Contractors and subcontractors must make the records available at reasonable times and for reasonable periods.

(b) If a contractor is terminating business operations, the contractor must ensure that:

(1) records are stored and accessible; and

(2) that someone is responsible for adequately maintaining the records.

§105.1203. Independent Audits.

(a) Contractors receiving operating funds through grants, cost-reimbursement contracts, or other contracts with the Department of Assistive and Rehabilitative Services (DARS) are required to have an independent audit as specified in the contract terms. Copies of these independent audit reports must be submitted to DARS for review. Independent audit work papers may also be reviewed at the discretion of DARS.

(b) The contractors are audited for compliance with federal and state laws and regulations, DARS policies and standards, and the terms of the contract.

§105.1205. Compliance Monitoring.

(a) Any service purchased or reimbursed by the Department of Assistive and Rehabilitative Services (DARS) may be monitored at the discretion of DARS.

(b) DARS conducts monitoring reviews of the contractor's services to determine if the contractor is in compliance with the contract and with program rules and requirements. These reviews are conducted at the location where the contractor is providing the services unless DARS specifies a different location. DARS will assess contractor performance based on contract standards.

(c) During the monitoring review, the contractor must provide:

- (1) adequate working space for reviewing the records;
- (2) every record DARS requests for review; and
- (3) copies, or access for DARS staff to make needed copies, of documents.

(d) During the monitoring review, DARS may:

- (1) review a sample of consumer records to determine the contractor's compliance with contract requirements;
- (2) interview consumers and staff;
- (3) observe consumers and staff;
- (4) consult with others, as appropriate; and
- (5) conduct other activities, as appropriate.

(e) DARS may expand a compliance monitoring review period or the review sample at any time.

§105.1207. Fiscal Monitoring.

(a) Fiscal monitoring is the review of documentation that supports the contractor's billing, as it exists at the time Department of Assistive and Rehabilitative Services (DARS) staff conducts the review of the billing documentation. DARS may recoup payment if the service delivery documentation does not support the contractor's billing.

(b) DARS may conduct a fiscal monitoring review:

- (1) in conjunction with a compliance monitoring review;
- (2) independent of a compliance monitoring review;
- (3) when a contract is terminated;
- (4) as a result of a complaint; or
- (5) at other times as deemed necessary by DARS.

(c) Fiscal monitoring is designed to ensure that:

- (1) DARS received the goods or services paid for;

(2) The total amount paid by DARS was allowable under the contract; and

(3) The contractor maintained the financial records and internal controls necessary to adequately account for claims under the contract.

(d) DARS may use sampling methods in monitoring and auditing contracts.

(e) The contractor has the burden of proof in establishing entitlement to payments made under the contract.

(f) The contractor must provide the same accommodations as defined in §105.1205 of this title (relating to Compliance Monitoring).

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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Sylvia F. Hardman

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Department of Assistive and Rehabilitative Services

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SUBCHAPTER E. ADVERSE ACTIONS

40 TAC §§105.1301, 105.1305, 105.1307, 105.1309, 105.1311, 105.1313, 105.1315, 105.1317

The new rules are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1301. Adverse Actions.

(a) The Department of Assistive and Rehabilitative Services (DARS) may impose an adverse action when the contractor fails to follow the terms of the contract and/or fails to comply with program rules, policies, and procedures. DARS may impose adverse actions for reasons including but not limited to:

(1) DARS' determination that consumer health and safety is jeopardized;

(2) the contractor's failure to comply with its corrective action plan;

(3) the contractor's failure to follow an agreed-upon audit resolution payment plan;

(4) the contractor's failure to submit an acceptable cost report, if applicable;

(5) the contractor's failure to comply with the contract and/or program requirements;

(6) the contractor's failure to maintain a current required license or the contractor allowing the expiration of any required license, if applicable;

(7) the contractor's relocation to a new facility address that does not have the appropriate license, if applicable;

(8) the contractor's exclusion from contracting with DARS or with any Health and Human Services program;

(9) validated report(s) of abuse, neglect, or exploitation when the perpetrator is an owner, employee, or volunteer who has direct access to consumers;

(b) Types of adverse actions may include:

(1) Recoupment. DARS collects money the contractor owes as the result of overpayments and/or other billing irregularities.

(2) Vendor hold. DARS withholds the contractor's contract payments. DARS may put one or all of the contractor's contracts on vendor hold. The vendor hold is released when DARS determines the contractor has resolved the reason(s) for the hold. In addition to the reasons listed in subsection (a) of this section, DARS may place a vendor hold on the contractor's contract(s):

(A) to recoup overpayments made to the contractor; or

(B) to recover any audit exceptions assessed against the contractor.

(3) Denial of claim. DARS denies payment in whole or part for a claim filed within program time limits.

(4) Suspension of subcontractor's participation or payments; termination of subcontract. DARS directs a contractor to suspend a subcontractor's participation, suspend a subcontractor's payments or terminate a subcontract.

(5) Involuntary contract termination. DARS may terminate a contract for cause by citing the contractor's failure to comply with the terms of the contract or with DARS program rules, policies, and procedures.

(6) Suspension. DARS temporarily suspends the contractor's right to conduct business with DARS. The causes for and conditions of suspension are described in §105.1309 of this title (relating to Causes for and Conditions of Suspension).

(7) Debarment. DARS does not allow a contractor to conduct business with DARS, in any capacity, for a certain period of time. The causes for and conditions of debarment are described in §105.1307 of this title (relating to Causes for and Conditions of Debarment).

§105.1305. Debarment and Suspension of Current and Potential Contractor Rights.

(a) Requirements in this section are applicable to all types of contracts with the Department of Assistive and Rehabilitative Services (DARS).

(b) Debarment is the termination of rights to continue an existing contract, to receive a new contract, to participate as a contractor or manager, or to make a bid, offer, application, or proposal for a DARS contract. The debarment is for a specified time commensurate with the seriousness of the violation, the extent of the violation, prior impositions of sanctions or penalties, willingness to comply with program rules and directives, and other pertinent information. Generally, debarment will not exceed six years. Where conditions warrant, a longer period may be imposed.

(c) Suspension is the temporary suspension of a contractor's or potential contractor's rights to conduct business with DARS. A suspension is in effect until an investigation, hearing, or trial is concluded and DARS can make a determination about:

(1) the contractor's future right to contract or subcontract;
or

(2) a potential contractor's future right to have DARS consider its offer, bid, proposal, or application.

(d) For purposes of both debarment and suspension of contractual rights, DARS may impute the conduct of an individual, corporation, partnership, or other association to the contractor, potential contractor, or the responsible entity of the contractor or potential contractor with whom the individual, corporation, partnership, or other association is employed or otherwise associated. Even though the underlying conduct may have occurred while an individual, corporation, partnership, or other association was not associated with the contractor or potential contractor, suspension of contractual rights or debarment may be imposed. Remedial actions taken by the responsible officials of the contractor or potential contractor will be considered in determining whether either suspension of contractual rights or debarment is warranted.

§105.1307. Causes for and Conditions of Debarment.

(a) The Department of Assistive and Rehabilitative Services (DARS) may remove contractual rights from an individual, a corporation, a partnership, or a division of a contractor or legal entity for causes including, but not limited to, the following:

(1) being found guilty, pleading guilty, pleading nolo contendere, or receiving a deferred adjudication in a criminal court, relating to:

(A) obtaining, attempting to obtain, or performing a public or private contract or subcontract;

(B) embezzlement, theft, forgery, bribery, falsification or destruction of records, any form of fraud, receipt of stolen property, or any other offense indicating moral turpitude or a lack of business integrity or honesty;

(C) dangerous drugs, controlled substances, or other drug-related offense;

(D) violation of federal antitrust statutes arising from the submission of bids or proposals;

(E) any physical or sexual abuse or neglect offense;

(2) being debarred from contracting by any unit of the federal government or any unit of a state government;

(3) violating DARS contract provisions including failing to perform according to the terms, conditions, and specifications or within the time limit(s) specified in DARS contract, including, but not limited to, the following:

(A) failing to abide by applicable federal and state statutes, such as those regarding persons with disabilities and those regarding civil rights;

(B) having a record of failure to perform or of unsatisfactory performance according to the terms of one or more contracts or subcontracts, if that failure or unsatisfactory performance has occurred within five years preceding the determination to debar. Application of this subsection will be made only for actions occurring after the effective date of these rules. Failure to perform and unsatisfactory performance includes, but is not limited to, the following:

(i) failing to correct contract performance deficiencies after receiving written notice about them from DARS or its authorized agents;

(ii) failing to repay or make and follow through with arrangements satisfactory to DARS to repay identified overpayments or other erroneous payments, or assessed liquidated damages or penalties;

(iii) failing to meet standards that are required for licensure or certification, or that are required by state or federal law, DARS rules, or DARS policy concerning DARS contractors;

(iv) failing to execute contract amendments required by DARS;

(v) billing for services or merchandise not provided to the consumer;

(vi) submitting cost reports containing costs not associated with and/or not covered by the contract or DARS rules and instructions. Intent to increase individual or statewide rates or fees by submission of unallowable costs must be shown for a single cost report, but intent may be inferred when a pattern of submitting cost reports with unallowable costs is shown;

(vii) submitting a false report or misrepresentation which, if used, may increase individual or statewide rates or fees;

(viii) charging consumer or patient fees contrary to DARS rules or policy;

(ix) failing to notify and reimburse DARS or its agents for services DARS paid for when the contractor received reimbursement from a liable third party;

(x) failing to disclose or make available, upon demand, to DARS or its representatives (including appropriate federal and state agencies) any records the contractor is required to maintain;

(xi) failing to provide and maintain services within standards required by statute, regulation, or contract; or

(xii) violating the Human Resources Code provisions applicable to the contract or any rule or regulation issued under the Code;

(4) submitting an offer, bid, proposal, or application that contains a false statement or misrepresentation or omits pertinent facts or documents that are material to the procurement;

(5) engaging in any abusive or neglectful practice that results in or could result in death or injury to the consumer served by the contractor; or

(6) knowingly and willfully using a debarred person or legal entity as an employee, independent contractor, or agent to perform a contract with DARS.

(b) Individuals, parts of entities, and entities that have been debarred may not:

(1) receive a contract;

(2) be allowed to retain a contract which has been awarded before debarment;

(3) bid or otherwise make offers to receive a contract or subcontract;

(4) participate in DARS programs which do not require the contractor to sign a contract or agreement; or

(5) either personally or through a clinic, group, corporation, or other association bill to or receive payment from DARS for any services or supplies provided by the debarred entity on or after the effective date of the debarment. Additionally, DARS will not pay for any services ordered, prescribed, or delivered by the debarred entity for DARS recipients after the date of debarment. No costs associated

with a debarred entity, including the salary, fringe, overhead, payments to, or any other costs associated with an employee, owner, officer, director, board member, independent contractor, manager, or agent who was debarred may be included in a DARS cost report or any other document which will be used to determine an individual payment rate, a statewide payment rate, or a fee.

(c) Debarment may be applied against an individual, a corporation, a partnership, a division of a contractor, or an entire legal entity, or a specified part of a legal entity.

(d) Even a single occurrence of a violation may result in debarment or suspension if it is severe. Other adverse actions may be taken if the violation is isolated or less severe.

§105.1309. Causes for and Conditions of Suspension.

(a) The Department of Assistive and Rehabilitative Services (DARS) may place a contractor's or potential contractor's contractual rights in suspension whenever DARS finds that there is a reasonable basis to believe that grounds for debarment exist. Suspension may be imposed immediately following DARS' notification to a contractor or potential contractor. In addition, suspension may be imposed on a potential contractor if he has an outstanding indictment or DARS has information about an offense that is grounds for indictment.

(b) Conditions of Suspension.

(1) DARS may withhold payments, in whole or in part, to the affected contractor during the period of suspension.

(2) DARS may refuse to accept a bid, offer, application, or proposal from, or to award a contract to, the affected potential contractor during the period of suspension.

(3) DARS may cease referrals of additional consumers to the suspended entity and may transfer existing consumers to other contractors.

(c) If DARS determines that the underlying reasons for suspension have been resolved in favor of the contractor, DARS must, if applicable:

(1) pay the withheld payments for any services that were provided during the suspension and that met the terms of an existing contract; and

(2) resume contract payments and consumer referrals.

(d) If DARS determines that underlying reasons for the suspension have not been resolved in favor of the contractor, DARS will institute debarment proceedings.

(e) Individuals and entities whose contractual rights have been placed in suspension may not:

(1) receive a contract; or

(2) submit an offer, bid, application, or proposal for a contract.

(f) A suspension may be applied against an individual, an entire legal entity, or a specified part of a legal entity.

§105.1311. Evidence for Debarment or Suspension.

The sufficiency of evidence required depends on the cause of the suspension or debarment.

(1) If there is evidence that the contractor or potential contractor has been found guilty, pled guilty, pled no contest, or received a deferred adjudication in criminal court relating to an activity prohibited in this chapter, that is sufficient evidence to suspend or debar. If the decision that caused debarment is reversed on appeal, the contractor must provide written proof of the reversal to have its contract

rights restored. The Department of Assistive and Rehabilitative Services (DARS) restores contract rights unless the contractor is also debarred or suspended on other grounds.

(2) If the cause is debarment from contracting by any unit of the federal government or any unit of a state government, it is sufficient to offer official notice from the other state or federal agency that the entity has been debarred. The notice may be addressed to either DARS or the debarred entity.

(3) Other causes of debarment or suspension may be established by evidence of failure to meet contracting terms or standards, including evidence of the severity or recurrence of violations of performance requirements.

§105.1313. Notice Requirements for Suspension and Debarment.

Written notices of suspension or debarment must include the following, as applicable:

- (1) the grounds for the action;
- (2) the length of the debarment;
- (3) the conditions that might cause a suspension to be released;
- (4) a statement explaining the effect of the suspension or debarment; and
- (5) a statement of whether the suspension or debarment is in effect throughout the Department of Assistive and Rehabilitative Services (DARS) or just in a particular DARS program.

§105.1315. Appeals.

(a) A contractor has the right to appeal any adverse action imposed by the Department of Assistive and Rehabilitative Services (DARS).

(b) To appeal an adverse action, the contractor, hereinafter referred to as the appellant, must ensure DARS receives a written request for an appeal within 30 days of the contractor's receipt of the notice of adverse action.

(c) The appellant must ensure that the request for an appeal:

- (1) clearly states that the purpose of the letter is to appeal DARS' adverse action;
- (2) is received by DARS at the address provided in the notice of adverse action letter;
- (3) is received by DARS according to timeframes provided in this section; and
- (4) includes all required information and documentation as outlined in this section.

(d) To be considered, the appeal must include the following:

- (1) A statement of facts describing how a decision, action, or inaction by DARS deviated from contract terms, published policy or state or federal laws or regulations.
- (2) The appellant's claim, including pertinent contract sections;
- (3) A statement of the issue(s) in dispute;
- (4) A brief statement as to why DARS' decision is wrong;
- (5) Copies of evidence or documentation supporting the appeal; and
- (6) The action requested.

(e) In the request for an appeal letter, the appellant may also request a meeting with DARS. This request should include a description of any special accommodations needed for the appellant, witnesses, or representatives. At the meeting, the appellant:

(1) may be represented by a person of his or her selection;
and

(2) will be provided with an opportunity to present evidence and information to support his or her position.

(f) If the appeal does not meet the requirements of this chapter, DARS will notify the appellant that their request for an appeal is denied because it did not meet requirements.

(g) DARS will provide a written decision to the appellant within 30 days after conclusion of the meeting, or if no meeting is held, within 45 days after DARS receives the appeal, unless the appropriate DARS representative extends the time.

§105.1317. Request for Reconsideration.

(a) After the Department of Assistive and Rehabilitative Services (DARS) issues a decision on an appeal, the appellant may submit in writing a request for reconsideration.

(b) An appellant may submit a request for reconsideration only if the appellant's request for an appeal met the requirements set out in §105.1315 of this title (relating to Appeals).

(c) Requests for reconsideration must be addressed to the DARS Commissioner and must be received by DARS within 20 days after DARS issues the decision on the appeal.

(d) The DARS Commissioner may designate a representative(s) to receive the request for reconsideration and issue a decision on behalf of DARS.

(e) The request for reconsideration must:

- (1) clearly state the purpose of the letter is to request reconsideration of DARS' decision on an appeal;
- (2) specifically point out any errors in the appeal decision;
- (3) specify all relief requested; and
- (4) state all reasons why the relief should be granted.

(f) DARS will issue a decision on the request for reconsideration no later than 45 days after receipt of the request for reconsideration. The decision may affirm, reverse or modify the adverse action previously imposed by DARS.

(g) The decision on the request for reconsideration is the final decision of DARS. However, if the contractor believes DARS breached the contractor, the contractor may pursue further action according to Government Code, Chapter 2260.

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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Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
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SUBCHAPTER F. CLAIMS FOR BREACH OF CONTRACT

40 TAC §105.1401

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1401. Claims.

The Department of Assistive and Rehabilitative Services will resolve claims for breach of contract according to Government Code, Chapter 2260.

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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Department of Assistive and Rehabilitative Services

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SUBCHAPTER G. CONTRACT TERMINATION

40 TAC §105.1501

The new rule is proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§105.1501. Termination Procedures.

(a) The Department of Assistive and Rehabilitative Services (DARS) may terminate a contract for the following reasons:

(1) Failure to comply with the terms of the contract and/or DARS' rules, policies or procedures;

(2) Lack of funding;

(3) Mutual agreement;

(4) Convenience;

(5) Making a false certification that is a material breach of contract; or

(6) Other reasonable cause.

(b) The letter of notification will be sent by DARS to the contractor.

(c) When a contract is terminated, a review is conducted to determine any overpayment or underpayment. Settlement of claims

under terminated contracts may be made by a negotiated agreement or as determined by DARS. The contractor is responsible for the prompt settlement of the termination claims.

(d) When a grant or cost reimbursement contract is terminated, equipment and supplies purchased under the contract may be subject to disposition as determined by DARS in accordance with the terms of the contract.

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

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CHAPTER 108. EARLY CHILDHOOD INTERVENTION SERVICES

SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §108.41, §108.45

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

The Texas Health and Human Services Commission proposes amendments to Title 40, Part 2, Chapter 108, of the rules of the Department of Assistive and Rehabilitative Services, by repealing §108.41 and §108.45. The repealed rules will be replaced by new rules which are being proposed elsewhere in this issue of the *Texas Register* contemporaneously herewith, in a new Chapter 105 of Title 40, General Contracting Rules.

The repeals and replacements are being proposed to consolidate separate administrative and purchasing rules from the four legacy agencies of DARS, the Texas Commission for the Blind, Texas Rehabilitation Commission, Texas Commission for the Deaf and Hard of Hearing, and the Council on Early Childhood Intervention, into agency-wide administrative rules for the purchase of goods and services and general contracting applicable to the entire Department of Assistive and Rehabilitative Services.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that for each year of the first five years that the repeals will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that for each year of the first five years the repeals will be in effect, the public benefit anticipated as a result of adopting the proposed repeals will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no

material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code §2001.022, the Health and Human Services Commission has determined that the proposed repeals will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§108.41. *Dispute Resolution and Formal Hearing Procedures.*

§108.45. *Purchasing and Contract Management.*

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

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For further information, please call: (512) 424-4050



CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services, Deaf and Hard of Hearing Services, in Title 40, Part 2, Chapter 109, Subchapter B, concerning the Board for Evaluation of Interpreters and Interpreter Certification, by repealing Divisions 1 through 6 of Subchapter B: Division 1, Definitions and Board Operations, §§109.201, 109.203, 109.205, 109.209, 109.211, 109.213, 109.217, 109.219, 109.221, 109.223, 109.225, 109.229, 109.231, and 109.233; Division 2, Board Certification Evaluation, §§109.301, 109.313, 109.317, 109.323, 109.325, 109.327, 109.329, 109.339, 109.341, 109.343, 109.347, 109.349, 109.357, 109.359, 109.361, 109.363, 109.365, 109.369, 109.371, 109.373, and 109.375; Division 3, Standards of Ethical Behavior for Interpreters, §109.501 and §109.505; Division 4, Denial, Suspension, or Revocation of a Certificate, §§109.701, 109.705, 109.707, and 109.711; Division 5, Fees, §§109.771, 109.773, 109.775, and 109.777; Division 6, Publications, §§109.801, 109.803 and 109.805 and replacing with new Division 1, Definitions and Board Operations, §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.221, 109.223, 109.225, 109.231, 109.233, 109.235, 109.241, 109.243, and 109.245. Divisions 2 through 6 of Chapter 109, Subchapter B, will not be replaced. The repeals and replacements are being proposed to conform

the rules concerning the Board for Evaluation of Interpreters and Interpreter Certification to current provisions of the Human Resources Code, Chapter 81, as amended through the 78th Legislative Session and as currently implemented following consolidation of the former Texas Commission for the Deaf and Hard of Hearing into the Department for Assistive and Rehabilitative Services; to provide updated information necessary to consumers to help them participate in programs for the Deaf and Hard of Hearing; and to remove procedures from rule that indirectly serve clients and providers but do not affect service delivery or rights and responsibilities and do not involve client or provider participation.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that, for each year of the first five years that the repeal and replacement will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that, for each year of the first five years the repeal and replacement will be in effect, the public benefit anticipated as a result of the proposed repeals and replacements in Title 40, Chapter 109, Subchapter B, will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code, §2001.022, the Health and Human Services Commission has determined that the proposal will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §§109.201, 109.203, 109.205, 109.209, 109.211, 109.213, 109.217, 109.219, 109.221, 109.223, 109.225, 109.229, 109.231, 109.233

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.201. *Purpose.*

§109.203. *Statutory Requirements.*

§109.205. *Severability.*

- §109.209. *Definitions.*
- §109.211. *Board Function.*
- §109.213. *Board Decisions.*
- §109.217. *Board Membership.*
- §109.219. *Impartiality.*
- §109.221. *Compensation.*
- §109.223. *Location and Maintenance of Records and Public Information Access.*
- §109.225. *Officers and Their Duties*
- §109.229. *Contracted Evaluators.*
- §109.231. *Contracted Evaluators Fee Schedule for Services Rendered.*
- §109.233 *Impartiality.*

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 September 18, 2006.

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 Sylvia F. Hardman
 General Counsel
 Department of Assistive and Rehabilitative Services
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 For further information, please call: (512) 424-4050



DIVISION 2. BOARD CERTIFICATION EVALUATION

40 TAC §§109.301, 109.313, 109.317, 109.323, 109.325, 109.327, 109.329, 109.339, 109.341, 109.343, 109.347, 109.349, 109.357, 109.359, 109.361, 109.363, 109.365, 109.369, 109.371, 109.373, 109.375

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

- §109.301. *General.*
- §109.313. *Forfeiture of Application and Fees.*
- §109.317. *Passing Scores.*
- §109.323. *Certification Process.*
- §109.325. *Retaking Evaluation.*
- §109.327. *Reciprocity.*
- §109.329. *Certificate Comparisons.*
- §109.339. *Certificate Information.*
- §109.341. *Examples of Interpreting Situations Recommended for Each Skill Level.*

- §109.343. *Maintenance Requirements.*
- §109.347. *Certificate Reinstatement.*
- §109.349. *Changes of Name or Address of Certificate Holders.*
- §109.357. *Recertification Process.*
- §109.359. *Continuing Education and Other Experiences Earned.*
- §109.361. *Extension of Certification Pending Recertification.*
- §109.363. *Continuing Education Requirements.*
- §109.365. *Failure To Comply with Recertification Requirements.*
- §109.369. *Inactive Status of Certificate Holders.*
- §109.371. *Emeritus Certification.*
- §109.373. *Office and Board Action and Notice Thereof.*
- §109.375. *Petition for Reconsideration.*

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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 Sylvia F. Hardman
 General Counsel
 Department of Assistive and Rehabilitative Services
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DIVISION 3. STANDARDS OF ETHICAL BEHAVIOR FOR INTERPRETERS

40 TAC §109.501, §109.505

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

- §109.501. *Code Source.*
- §109.505. *Code of Ethics.*

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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 Sylvia F. Hardman
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DIVISION 4. DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE

40 TAC §§109.701, 109.705, 109.707, 109.711

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.701. *Grounds of Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application.*

§109.705. *Certificate Holders' Rights to Information Regarding Revocation and Suspension.*

§109.707. *Probation.*

§109.711. *Certification of Felons.*

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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Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
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DIVISION 5. FEES

40 TAC §§109.771, 109.773, 109.775, 109.777

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.771. *Collection and Application of Fees.*

§109.773. *Fees.*

§109.775. *Proration, and Refund of Fees.*

§109.777. *Returned Checks.*

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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Sylvia F. Hardman
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DIVISION 6. PUBLICATIONS

40 TAC §§109.801, 109.803, 109.805

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.801. *Registry.*

§109.803. *Program Information.*

§109.805. *Other Publications.*

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 September 18, 2006.

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Sylvia F. Hardman
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DIVISION 1. DEFINITIONS AND BOARD OPERATIONS

40 TAC §§109.201, 109.203, 109.205, 109.207, 109.209, 109.211, 109.221, 109.223, 109.225, 109.231, 109.233, 109.235, 109.241, 109.243, 109.245

The new sections are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.201. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. (Authority: Human Resources Code, §81.006(b)(3).)

(1) Department--the Department of Assistive and Rehabilitative Services (DARS).

(2) Office--the Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services.

§109.203. Obtaining Documents and Information from the Office.

Documents and other information identified in these rules as being available from the Office, may be obtained by making a request to the Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd, Austin, Texas 78751, 512-407-3250 (V) or 512-407-3251 (TTY), or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115. (Authority: Human Resources Code, §81.006(b)(3).)

§109.205. Registry of Qualified Interpreters.

The Office maintains a registry of available qualified interpreters for persons who are deaf or hard of hearing. The registry is updated at least quarterly and is available to interested persons at cost. Copies may be obtained from the Office. (Authority: Human Resources Code, §81.006(a)(4).)

§109.207. Guidelines Concerning Qualification of Interpreters.

The Office has developed guidelines to clarify the circumstances under which interpreters certified by the Office are qualified to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Copies of the guidelines may be obtained from the Office. (Authority: Human Resources Code, §81.006(a)(8).)

§109.209. Fees for Interpreter Training.

The Office has established fees to charge interpreters for training to defray the cost of conducting training. Charges are set forth in announcements of training opportunities which are issued by the Office. (Authority: Human Resources Code, §81.006(b)(5).)

§109.211. Trilingual Interpreter Services.

The Office has developed guidelines for trilingual interpreter services, and provides information about training programs for persons who provide trilingual interpreter services. Copies of the guidelines and information about the training programs may be obtained from the Office. (Authority: Human Resources Code, §81.006(b)(6)-(7).)

§109.221. Board for Evaluation of Interpreters.

(a) The Board for Evaluation of Interpreters is an advisory board of seven persons appointed by the Executive Commissioner of HHSC, or his designee, to assist in administering the program for the certification of interpreters who have reached varying levels of proficiency in communication skills necessary to facilitate communication between persons who are deaf or hard of hearing and persons who are not deaf or hard of hearing. (Authority: Human Resources Code, §81.007(a)-(b).)

(b) Subject to approval of the Office, the board prescribes qualifications for each of several levels of certification based on proficiency and evaluates and certifies interpreters using these qualifications. (Authority: Human Resources Code, §81.007(c).)

(c) The Office charges fees for written and performance examinations, for annual certificate renewal, and for recertification, in an

amount sufficient to recover the costs of the certification program. (Authority: Human Resources Code, §81.007(e).)

(d) The Office may waive any prerequisite to obtaining a certificate for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certificate issued by another jurisdiction that has certification requirements substantially equivalent to those of this state. (Authority: Human Resources Code, §81.007(f).)

(e) Copies of the qualifications and prerequisites to obtaining a certificate, and information about the certification process, waivers of prerequisites, location and schedule for interpreter examinations, and fees for written and performance examinations, may be obtained from the Office. (Authority: Human Resources Code, §§81.006(b)(3), 81.007(i).)

§109.223. Provisional Certificate.

(a) The Office may issue a provisional certificate to an applicant currently certified in another jurisdiction who seeks a certificate in this state and who:

(1) has been certified in good standing as an interpreter for at least two years in another jurisdiction, including a foreign country, that has certification requirements substantially equivalent to the requirements of this chapter;

(2) has passed a national or other examination recognized by the Office relating to the practice of interpretation for people who are deaf or hard of hearing; and

(3) is sponsored by a person certified by the Office with whom the provisional certificate holder will practice during the time the person holds a provisional certificate.

(b) The Office may waive the requirement of subsection (a)(3) of this section for an applicant if the Office determines that compliance with that subsection would be a hardship to the applicant.

(c) A provisional certificate is valid until the date the Office approves or denies the provisional certificate holder's application for a certificate. The Office will issue a certificate to the provisional certificate holder if:

(1) the provisional certificate holder is eligible to be certified under §109.221(d) of this title (relating to Board for Evaluation of Interpreters); or

(2) the provisional certificate holder passes the part of the examination prescribed by the Office that relates to the applicant's knowledge and understanding of the laws and rules relating to the practice of interpretation for people who are deaf or hard of hearing in this state, and:

(A) the Office verifies that the provisional certificate holder meets the academic and experience requirements for a certificate under this chapter; and

(B) the provisional certificate holder satisfies any other certification requirements under this chapter.

(d) The office must approve or deny a provisional certificate holder's application for a certificate not later than the 180th day after the date the provisional certificate is issued. The office may extend the 180-day period if the results of an examination have not been received by the office before the end of that period.

(e) The office has established a fee for provisional certificates in an amount reasonable and necessary to cover the cost of issuing the certificate. The amount of the current fee for provisional certificates may be obtained from the Office.

(f) Authority: Human Resources Code, §81.0074.

§109.225. Compensation of Evaluators.

The Office has established a fee schedule for compensation of evaluators. Copies of the current fee schedule may be obtained from the Office. (Authority: Human Resources Code, §81.007(k).)

§109.231. Validity of Certificates and Recertification.

(a) Certificates are valid for a five-year period, subject to the certificate holder's payment of an annual certificate renewal fee. After expiration of the five-year period, an interpreter must be recertified by the Office. (Authority: Human Resources Code, §81.007(g).)

(b) Interpreters may be recertified who receive specified continuing education credits, or who achieve an adequate score on a specified examination. Information on current recertification requirements may be obtained from the Office. (Authority: Human Resources Code, §81.007(g).)

§109.233. Certificate Renewal.

(a) A person who is otherwise eligible to renew a certificate may renew an unexpired certificate by paying the required renewal fee to the Office before the expiration date of the certificate. A person whose certificate has expired may not engage in activities that require a certificate until the certificate has been renewed.

(b) A person whose certificate has been expired for 90 days or less may renew the certificate by paying to the Office a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c) A person whose certificate has been expired for more than 90 days but less than one year may renew the certificate by paying to the Office a renewal fee that is equal to two times the normally required renewal fee.

(d) A person whose certificate has been expired for one year or more may not renew the certificate. The person may obtain a new certificate by complying with the requirements and procedures, including the examination requirements, for obtaining an original certificate.

(e) A person who was certified in this state, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certificate without reexamination. The person must pay to the Office a fee that is equal to two times the normally required renewal fee for the certificate.

(f) Not later than the 30th day before the date a person's certificate is scheduled to expire, the Office will send written notice of the impending expiration, and certificate renewal instructions, to the person at the person's last known address according to the records of the Office.

(g) Authority: Human Resources Code, §81.0073.

§109.235. Continuing Education Programs.

The Office recognizes, prepares, and/or administers continuing education programs for its certificate holders. A certificate holder must participate in the programs to the extent required by the office to keep the person's certificate. Current requirements for continuing education, and announcements of current training opportunities, may be obtained from the Office. (Authority: Human Resources Code, §81.007(1).)

§109.241. Revocation or Suspension of Certificate.

(a) The Office, based on the recommendation of the Board for Evaluation of Interpreters, may revoke or suspend a certificate or place a certificate holder on probation for a violation of a statute, rule, or policy of the department. If a certificate holder is placed on probation, the Office may require the practitioner:

(1) to report regularly to the Office on matters that are the basis of the probation;

(2) to limit practice to those areas prescribed by the Office;

or

(3) to continue or renew professional education until a satisfactory degree of skill has been attained in those areas that are the basis of the probation.

(b) If the Office proposes to suspend or revoke a certificate or place a certificate holder on probation, the certificate holder is entitled to a hearing before the Office or a hearings officer appointed by the Office. All final decisions to suspend or revoke a certificate or place a certificate holder on probation shall be made by the Office.

(c) Authority: Human Resources Code, §81.0072.

§109.243. Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate.

(a) The Office may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation a certificate holder for any of the following causes:

(1) conviction of a felony or any offense involving theft or controlled substances. In determining if the criminal conviction has a direct bearing on whether the interpreter or applicant should be entrusted to serve the public, the Office considers the particular facts and circumstances of each case to include evidence of those matters required by Texas Revised Civil Statutes, Articles 6252-13c and 13d. The crimes having such a direct bearing include criminal conduct of homicide, rape, sexual abuse, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, perjury, and those relating to controlled substances;

(2) use or under the influence of drugs or intoxicating liquors to an extent that affects his or her professional competence. This includes: the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, whether or not controlled, to an extent that is dangerous to the interpreter or applicant, or any other members of the public; the use or under the influence of drugs or intoxicating liquors during an interpreting assignment, to the extent that such use impairs the interpreter's or applicant's ability to perform the work of interpreting in a competent and responsible manner;

(3) impersonating another person who holds an interpreter certification from the office;

(4) allowing another person to use their interpreter certification;

(5) representing oneself or another interpreter as having a level of certification different from the actual level of certification awarded by the office, in excess of the actual level of certification;

(6) using fraud, deception or misrepresentation in an application for certification;

(7) willfully violating or aiding in the violation of the CODE OF PROFESSIONAL CONDUCT described in §109.245 of this title (relating to Code of Professional Conduct);

(8) being grossly incompetent or grossly negligent in performing the duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of their duties;

(9) being adjudicated mentally incompetent by a court of competent jurisdiction;

(10) intentionally harassing, abusing, or intimidating, either physically or verbally a board member, evaluator, or any staff of the Department;

(11) intentionally divulging any aspect of confidential information relating to the certification evaluation including content, topic, vocabulary, identity of individuals involved in the tests, skills, written test questions, and any other testing materials deemed confidential;

(12) failure to meet requirements for certification maintenance;

(13) engaging in the practice of interpreting while certification is suspended;

(14) falsification of re-certification documents by altering original letters, certificates issued through continuing education, or attendance verification; or

(15) violation of a statute, rule, or policy of the Office or Department.

(b) Authority: Human Resources Code, §81.007(h).

§109.245. Code of Professional Conduct.

The CODE OF PROFESSIONAL CONDUCT of the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf, Inc. (RID), shall govern the professional conduct of interpreters/transliterators certified by the Office. Willful violation of the CODE OF PROFESSIONAL CONDUCT is grounds for suspension or revocation of certification under §109.243(7) of this title (relating to Grounds for Denying, Suspending or Revoking an Interpreter's Certificate). The NAD-RID CODE OF PROFESSIONAL CONDUCT may be obtained from the National Association of the Deaf or from the Registry of Interpreters for the Deaf, Inc., and copies may be obtained from the Office. (Authority: Human Resources Code, §81.006(b)(3) and §81.007(h).)

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

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TRD-200605152

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 424-4050



CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

The Texas Health and Human Services Commission proposes amendments to the rules of the Department of Assistive and Rehabilitative Services, Deaf and Hard of Hearing Services, in Title 40, Part 2, Chapter 109, Subchapter B, Division 7, concerning Certified Court Interpreters, by repealing Division 7, §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929, and 109.931 and replacing with new §§109.401, 109.403, 109.405, 109.411, 109.413, 109.415, 109.421, 109.423, 109.425, 109.427, 109.429, 109.431,

109.433, 109.435, 109.437, 109.439, 109.441, 109.451, 109.453, 109.461, 109.463, 109.465, 109.467, 109.471, and 109.475 in new Title 40, Part 2, Chapter 109, Subchapter C, Certified Court Interpreters.

The repeals and replacements are being proposed to conform the rules concerning Certified Court Interpreters to current provisions of the Human Resources Code, Chapter 81, as amended through the 78th Legislative Session and as currently implemented following consolidation of the former Texas Commission for the Deaf and Hard of Hearing into the Department for Assistive and Rehabilitative Services; to provide updated information necessary for persons seeking to obtain and persons holding certification as court interpreters; and to remove details of program administration from rule that do not generally affect applicants for and holders of court interpreter certification. In addition, as Government Code, §57.027(a) provides that a person commits an offense if the person violates a rule adopted under Government Code, Chapter 57, Subchapter B, the replacement rules clearly identify which of the rules are adopted under Government Code, Chapter 57, Subchapter B and subject to §57.027(a). Finally, the replacement rules establish a new requirement that an individual may not interpret a court proceeding or deposition unless properly qualified as court interpreter for that particular case, by presenting to the judge presiding, or to the court reporter at a deposition, proper evidence of court interpreter certification by either the Department or by the Registry of Interpreters for the Deaf. This new requirement is identified in the replacement rules as being adopted under Government Code, Chapter 57, Subchapter B.

Bill Wheeler, Chief Financial Officer, Department of Assistive and Rehabilitative Services, estimates that, for each year of the first five years that the repeal and replacement will be in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler also estimates that, for each year of the first five years the repeal and replacement will be in effect, the public benefit anticipated as a result of the proposed repeals and replacements in Title 40, Chapter 109, Subchapter C, will be the agency's compliance with House Bill 2292, 78th Legislature, Regular Session, and other existing provisions of law pertaining to provision of health and human services in Texas. There should be no material economic cost to persons who are required to comply with the rules as proposed. There should be no material effect to small or micro businesses. In accordance with Government Code, §2001.022, the Health and Human Services Commission has determined that the proposal will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Department of Assistive and Rehabilitative Services, 4800 North Lamar Boulevard, Suite 300, Austin, Texas 78756.

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

DIVISION 7. CERTIFIED COURT INTERPRETERS

40 TAC §§109.901, 109.903, 109.905, 109.907, 109.909, 109.911, 109.913, 109.915, 109.917, 109.919, 109.921, 109.923, 109.925, 109.927, 109.929, 109.931

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

The repeals are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.901. *Scope.*

§109.903. *Grandfathering of Current Court Interpreters.*

§109.905. *List of CART Providers.*

§109.907. *Court Certification Equivalency.*

§109.909. *Court Interpreter Services Fees for the Deaf and Hard of Hearing.*

§109.911. *Licensing Requirements--Examinations.*

§109.913. *Training and Qualifications to Take Examination.*

§109.915. *Approval of Courses of Instruction and Mentors.*

§109.917. *Licensing Requirements; Renewal.*

§109.919. *Responsibilities of Certified Court Interpreter--General.*

§109.921. *Fees for Court Interpreters.*

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

§109.925. *Actions Against Persons not Certified as Court Interpreters.*

§109.927. *Disciplinary Actions.*

§109.929. *Disciplinary Guidelines.*

§109.931. *Continuing Education for Court Interpreters.*

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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General Counsel

Department of Assistive and Rehabilitative Services

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For further information, please call: (512) 424-4050



SUBCHAPTER C. CERTIFIED COURT INTERPRETERS

40 TAC §§109.401, 109.403, 109.405, 109.411, 109.413, 109.415, 109.421, 109.423, 109.425, 109.427, 109.429, 109.431, 109.433, 109.435, 109.437, 109.439, 109.441, 109.451, 109.453, 109.461, 109.463, 109.465, 109.467, 109.471, 109.475

The new sections are proposed under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with

the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

§109.401. Definitions.

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

(1) Certified court interpreter--means an individual who is a qualified interpreter as defined in Article 38.31, Code of Criminal Procedure, or §21.003, Civil Practice and Remedies Code, or certified under Subchapter B of this chapter by the Department of Assistive and Rehabilitative Services to interpret court proceedings for a hearing-impaired individual.

(2) Department--the Department of Assistive and Rehabilitative Services (DARS).

(3) Commissioner--means the commissioner of the Department of Assistive and Rehabilitative Services.

(4) Hearing-impaired individual--an individual who has a hearing impairment, regardless of whether the individual also has a speech impairment, that inhibits the individual's comprehension of proceedings or communication with others.

(5) Office--the Office for Deaf and Hard of Hearing Services, Division for Rehabilitation Services.

(6) Real-time translation services--real-time captioning, provided by individuals who are certified as specialists by the Court Reporters Certification Board.

(7) Court proceeding--includes an arraignment, deposition, mediation, court-ordered arbitration, or other form of alternative dispute resolution.

§109.403. Requirements for Interpreting Court Proceedings in Courts of the State of Texas.

(a) The provisions of this subchapter apply to all proceedings of Texas courts, including county, municipal, and justice courts. They do not apply to federal court proceedings.

(b) Until September 1, 2006, a person interpreting court proceedings in Texas courts must hold a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master's Comprehensive Skills Certificate, or Legal Skills Certificate issued by the Registry of Interpreters for the Deaf or a current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(c) Effective September 1, 2006, a person interpreting court proceedings in Texas courts must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(d) Source: Civil Practice and Remedies Code, §21.003; Code of Criminal Procedure, Art. 38.31(g). (Authority: Government Code §§57.026, 57.027(a), 57.027(b).)

§109.405. Responsibilities of Certified Court Interpreters.

(a) A certified court interpreter must provide the following written notification to the court: "Certified by the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of

Hearing Services. Complaints about the services provided by this person may be presented to the Office at P.O. Box 12904, Austin, Texas 78711." The notification shall also be included on all contracts and invoices for court interpreter services.

(b) In addition to the presentation of an individual's court interpreter certification card which is required for qualification as a court interpreter for a particular case under §109.423 of this title (relating to Qualifications of Certified Court Interpreters), a certified court interpreter shall present their court interpreter certification card upon the request of a court or an officer of the court.

(c) A certified court interpreter shall notify the Office, in writing, within thirty (30) days of any change in the certified court interpreter's name, address, or telephone number.

(d) Until September 1, 2006, a Level III, IV or V certified interpreter, or Registry of Interpreters for the Deaf certified CSC, IC/IT, RSC, or MCSC interpreter who is not a certified court interpreter who interprets in court shall inform the court.

(e) Failure by certified court interpreters to satisfactorily fulfill these responsibilities may be grounds for administrative sanctions by the Department under Government Code §57.022(b)(8).

(f) Authority: Government Code, §§57.021(a), 57.022(b)(8), 57.027(b).

§109.411. Obtaining Documents and Information from the Office.

Documents and other information concerning court interpreter certification that are identified as being available from the Office, may be obtained from the Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751-2399, or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115. (Authority: Human Resources Code, §81.006(b)(3).)

§109.413. Lists of Qualified Court Interpreters and Providers of Communication Access Real-time Translation Services.

(a) The department maintains lists of certified court interpreters and other persons the department has determined are qualified to act as court interpreters, and of persons identified by the Texas Court Reporters Association as being certified and qualified to provide communication access real-time translation services for a hearing-impaired individual in a court proceeding. Copies of these lists will be provided by the Office upon request.

(b) The lists of certified court interpreters and other persons the department has been determined are qualified to act as court interpreters, are sent by the Office to each state court.

(c) Authority: Government Code, §57.021(c),(d).

§109.415. Gifts, Grants, or Donations.

The department may accept gifts, grants, or donations from private individuals, foundations, or other entities to assist in administering the court interpreter certification program. Contact the Director, Office for Deaf and Hard of Hearing Services, Department of Assistive and Rehabilitative Services, 4900 N. Lamar Blvd., Austin, Texas 78751, 512-407-3250 (V) or 512-407-3251 (TTY). (Authority: Government Code, §57.021(e).)

§109.421. Certification.

The department will certify an applicant who passes the appropriate examination prescribed by the department and who possesses the other qualifications required by the rules in this subchapter. (Authority: Government Code, §57.022(a).)

§109.423. Qualifications of Certified Court Interpreters.

(a) In each civil case, deposition, or criminal action in Texas courts for which an individual will interpret testimony, the individual must be qualified as court interpreter for that particular case before commencing to interpret testimony.

(b) An individual shall not interpret a court proceeding or deposition unless properly qualified under this subsection as court interpreter for that particular case.

(1) Prior to September 1, 2006, in order to be qualified as court interpreter for a particular case, the individual must be certified by the Department of Assistive and Rehabilitative Services or by the Registry of Interpreters for the Deaf (RID), and must present to the judge presiding, or to the court reporter at a deposition, either:

(A) an unexpired card issued by the Texas Board for Evaluation of Interpreters, Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, stating that the individual is certified as a Level III Interpreter, a Level IV Interpreter, or a Level V Interpreter; or

(B) a current membership card issued in the name of the individual by the Registry of Interpreters for the Deaf, Inc., 333 Commerce Street, Alexandria, VA 22314, carrying the designations "Certified," and "Specialty Certificate: Legal."

(2) Effective September 1, 2006, in order to be qualified as court interpreter for a particular case, the individual must be certified by the Department of Assistive and Rehabilitative Services and must present to the judge presiding, or to the court reporter at a deposition, an unexpired card issued by the Texas Board for Evaluation of Interpreters, Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services, stating that the individual is certified as a Court Interpreter.

(c) Except as provided in subsection (d) of this section, an applicant to become a Court Interpreter must hold a BEI Level III (including Oral:Comprehensive) or higher certificate, or certification through RID as a CSC, CI/CT, RSC, CDI, or MCSC, and pass an examination on legal and court procedure skills and knowledge.

(d) Court Certification Equivalency. Until September 1, 2006, an interpreter who holds a valid Specialty Certification: Legal (SC:L) from the Registry of Interpreters for the Deaf (RID) may apply and receive court certification upon submission of proof of RID legal specialty certification, application and required fee.

(e) Training and Qualifications to Take Examination.

(1) Prior to taking the court interpreter examination, an applicant must provide to the office proof that the applicant has completed instruction in court interpretation in one of the following methods:

(A) Completion of approved courses of instruction in courtroom interpretation knowledge and skills with not less than 120 hours of classroom instruction;

(B) Mentoring for not less than 120 hours of actual practice by a certified court interpreter who has been approved to act as a mentor; or

(C) A combination of instruction and mentoring totaling 120 hours.

(2) The current list of approved courses of instruction in courtroom interpretation skills and training programs for interpreters applying for Court Interpreter Certification or certified court interpreters needing continuing education unit credits, may be obtained from the Department of Assistive and Rehabilitative Services, Office

for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751-2399, or by calling the DARS Inquiries Unit, toll-free, 1-800-628-5115.

(f) Authority: Government Code, §§57.022(b)(1), 57.027(a), 57.027(b).

§109.425. Training Programs for Certified Court Interpreters Managed by the Department or by Public or Private Educational Institutions.

(a) Approval of Courses of Instruction and Mentors.

(1) A person intending to teach court interpretation must submit to the office a written course outline and materials to be used in the course of instruction to the office.

(2) The office will review the proposed course outline and materials and make a determination on whether it should be approved.

(3) Instructors must hold either Court Interpreter Certification issued by the department or be a licensed attorney or paralegal, or be otherwise found to be qualified as an instructor by the Office.

(4) A person intending to be a mentor shall apply to the office on a form to be provided by the office.

(5) To be a mentor for court interpreting, the person shall have the following qualifications:

(A) Until September 1, 2006, meet the requirements for and hold Court Interpreter Certification issued by the department or RID CSC, SC:L, CI/CT, RSC, CDI, or MCSC for a period of not less than one year;

(B) Effective September 1, 2006, meet the requirements for and hold Court Interpreter Certification issued by the department or RID SC:L for a period of not less than one year;

(C) Pass an examination on legal and court procedure skills; and

(D) Not have been subject to disciplinary action in the previous two years.

(6) Mentors shall conform to a course of training prescribed by the office.

(b) The department may contract with public or private educational institutions, and other entities, to administer training programs. In accordance with Government Code, §57.021(b), the department will suspend training offered by an institution if the training fails to meet the requirements established by the department.

(c) Authority: Government Code, §§57.021(b), 57.022(b)(2), 57.027(a), 57.027(b).

§109.427. Administration of Examinations.

(a) General.

(1) In accordance with Government Code, §57.023, the department will prepare examinations under this subchapter that test an applicant's knowledge, skill, and efficiency in the field in which the applicant seeks certification.

(2) A person who fails an examination may apply for reexamination at the next examination scheduled after the date the person failed the original examination.

(3) Examinations will be offered in the state at least twice a year at times and places designated by the department. The current schedule of times and places for examinations may be obtained from the Office.

(b) Examination on legal and court procedure skills and knowledge.

(1) A passing grade on the examination is 80%.

(2) The examinations will be administered to applicants with content and format determined by the office.

(3) Subject to the following provisions, an applicant may request an accommodation in accordance with the Americans with Disabilities Act.

(A) The request must be in writing.

(B) Proof of disability and the limiting factors of the disability may be required.

(4) An applicant who does not attend a scheduled examination will forfeit the examination fee. An applicant may attend a future examination without payment of additional fee upon proof of the following:

(A) Illness of the person or of an immediate family member who the person is required to attend; or

(B) Documented evidence that the applicant was unable to attend the examination due to reasons beyond their control.

(5) Certification is effective for a period of 5 years from the date of certification.

(6) Cheating on an examination is grounds for denial, suspension, or revocation of a certification and/or an administrative penalty.

(c) Authority: Government Code, §§57.022(b)(3), 57.023, 57.027(a), 57.027(b).

§109.429. Form for Certificates.

Upon successful completion of all requirements for certification and approval by the office, the applicant shall be issued a card evidencing certification as a court interpreter. (Authority: Government Code, §§57.022(b)(4), 57.027(a), 57.027(b).)

§109.431. Procedures for Renewal of a Certificate.

(a) A complete application for certification renewal and all required fees must be filed by the expiration date, or the application will be considered late and the certification will expire.

(b) Non-receipt of a certification renewal notice from the office does not exempt a person from any requirements of this chapter.

(c) A person with an expired certification shall not perform work requiring a certification under Chapter 57 of the Texas Government Code.

(d) A certification that has expired for a period of less than one year may be reissued upon meeting the conditions of a certification renewal, as outlined in this section, and payment of required fees, including the renewal fee and the late renewal fee.

(e) Authority: Government Code, §§57.022(b)(4), 57.027(a), 57.027(b).

§109.433. Fees for Training, Examinations, Initial Certification, and Certification Renewal.

The Office has established fees to charge interpreters for training, examinations, initial certification, and certification renewal to defray the cost of conducting these activities. The current schedule of charges is published on the web site of the office, <http://www.dars.state.tx.us/dhhs/index.shtml>, and is available in hard copy from the office. All fees are non-refundable. (Authority: Government Code, §§57.022(b)(5), 57.027(a), 57.027(b).)

§109.435. Continuing Education Programs Required for Court Interpreter Initial Certification or Certification Renewal.

The Office recognizes, prepares, and/or administers continuing education programs for certified interpreters. A certified interpreter must participate in the programs to the extent required by the office to keep the person's certificate. Current requirements for continuing education, and announcements of current training opportunities, may be obtained from the Office. (Authority: Government Code, §§57.022(b)(6), 57.027(a), 57.027(b).)

§109.437. Instructions for the Compensation of a Certified Court Interpreter and Designation of the Party or Entity Responsible for Payment of Compensation.

(a) In accordance with Civil Practice and Remedies Code, §21.006 and H.B. No. 2292, 78th Legislature (RS), section 1.21, the court interpreter in civil cases and depositions shall be paid a reasonable fee determined by the court after considering the recommended fees of the Department of Assistive and Rehabilitative Services. If the interpreter is required to travel, the interpreter's actual expenses of travel, lodging, and meals relating to the case shall be paid at the same rate provided for state employees. The interpreter's fee and expenses shall be paid from the general fund of the county in which the case was brought.

(b) In accordance with Code of Criminal Procedure, Article 38.31(f), and H.B. No. 2292, 78th Legislature (RS), section 1.21, interpreters appointed in criminal actions, to include arraignments, hearings, examining trials, and trials, are entitled to a reasonable fee determined by the court after considering the recommendations of the Department of Assistive and Rehabilitative Services. When travel of the interpreter is involved all the actual expenses of travel, lodging, and meals incurred by the interpreter pertaining to the case he is appointed to serve shall be paid at the same rate applicable to state employees.

(c) Under the authority of the Texas Code of Criminal Procedure Art. 38.31(f), Texas Government Code §57.022(b)(7), and the Civil Practice and Remedies Code §21.006, the office establishes recommended fees for the payment of interpreter services for persons who are deaf or hard of hearing which must be provided in proceedings of state agencies; state, county, and municipal civil and criminal courts; and political subdivisions.

(d) These fees may be reviewed and/or revised as deemed necessary by the office. The schedule of fees and any changes will be posted on the office website and are available upon request.

(e) A court's funding jurisdiction is required to pay for the interpreter services utilized for all court proceedings.

(f) The parties to either a civil or criminal proceeding may not be assessed the costs of court interpreter services. The cost of interpreter services shall not be charged to the individual or individuals requesting or requiring the court interpreter services.

(g) Authority: Government Code, §§57.022(b)(7), 57.027(a), 57.027(b).

§109.439. Administrative Sanctions Enforceable by the Department.

If a person violates any provision of Title 2, Texas Government Code, chapter 57, the provisions of Texas Human Resources Code, chapter 81 (relating to the Texas Commission for the Deaf and Hard of Hearing), any provision of Subchapter B of this chapter, or any provision of an order of the Director or Office, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with Texas Human Resources Code, chapter 81 or Texas Government Code, chapter 57. (Authority: Government Code §§57.022(b)(8), 57.027(b).)

§109.441. Code of Professional Conduct.

The CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS of the Division for Rehabilitation Services, Office for Deaf and Hard of Hearing Services, shall govern the professional conduct of court interpreters certified under this subchapter. Willful violation of the CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS is grounds for suspension or revocation of certification under §109.243(a) and §109.451 of this title. Copies of the CODE OF ETHICS AND PROFESSIONAL RESPONSIBILITY OF CERTIFIED COURT INTERPRETERS may be obtained from the Office. (Authority: Human Resources Code, §§81.006(b)(3) and 81.007(h).)

§109.451. Denial, Suspension, or Revocation of Certificate.

(a) The grounds for denying, suspending, or revoking a court interpreter's certificate, are the same grounds as for denying, suspending, or revoking an interpreter's certificate pursuant Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services procedures set forth in §109.243 of this title (relating to Grounds for Denying, Suspending, or Revoking an Interpreter's Certificate).

(b) The department may revoke or suspend certification under this subchapter only after a hearing. The department may reissue a certificate to a person whose certificate has been revoked if the person applies in writing to the department and shows good cause to justify re-issuance of the certificate. Copies of procedures for hearings to revoke and suspend certificates, and for submitting applications for re-issuance after revocation of a certificate, may be obtained from the Office.

(c) Authority: Government Code, §57.025.

§109.453. Disciplinary Actions.

(a) The office shall take disciplinary action against a certificate holder who is found to be in violation of a law or rule of the office. A disciplinary action may be composed of any one or combination of the following listed in paragraphs (1) - (6) of this subsection:

- (1) revocation of a certification;
- (2) suspension of a certification;
- (3) probation of a suspended certification;
- (4) refusal to renew a certification;
- (5) issuance of a formal or informal reprimand; or
- (6) assessment of an administrative penalty under the law.

(b) All disciplinary actions issued by the office will take the form of a office order. All disciplinary actions shall be permanently recorded and made available upon request as public information. Except for an informal reprimand, all disciplinary actions may be released in a press release, and shall be transmitted to the RID.

(c) A court interpreter whose certification has expired for non-payment of renewal fees continues to be subject to all provisions of the Act and office rules governing certified court interpreters until the certification is revoked by the office or becomes non-renewable under the law.

(d) Criminal convictions shall be handled as shown in paragraphs (1) - (3) of this subsection:

(1) The office shall follow the requirements of Texas Occupations Code §53.021, and shall revoke the certification of any court interpreter incarcerated as a result of a felony conviction, or violation of felony probation or parole, or revocation of mandatory supervision subsequent to being certified as a certified court interpreter.

(2) The office may take any of the actions set out in subsection (a) of this section when a court interpreter is convicted of a misdemeanor or a felony without incarceration if the crime directly relates to the certification holder's duties and responsibilities as a certified court interpreter.

(3) Any court interpreter whose certification has been revoked under the provisions of this subsection may apply for a new certification upon release from incarceration, but the application shall be subject to additional scrutiny relating to the incarceration. Such scrutiny shall be in accordance with Texas Occupations Code §53.021.

(e) Authority: Government Code, §57.022(b)(8).

§109.461. Prohibited Acts.

(a) Until September 1, 2006, a person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master's Comprehensive Skills Certificate, or Legal Skills Certificate issued by the Registry of Interpreters for the Deaf or a current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(b) Effective September 1, 2006, a person may not interpret for a hearing-impaired individual at a court proceeding or advertise or represent that the person is a certified court interpreter unless the person holds a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters of the Department of Assistive and Rehabilitative Services.

(c) Violation of the prohibitions in this section is a Class A misdemeanor offense under Government Code, §57.027(a), and may, in addition subject the violator to an administrative penalty assessed by the department under Government Code, §57.027(b) and §109.439 of this title (relating to Administrative Sanctions Enforceable by the Department). (Authority: Government Code, §57.026.)

§109.463. Enforcement.

The commissioner shall investigate allegations of violations, and shall enforce, this subchapter. Allegations concerning violations of this subchapter should be forwarded, in writing, to Director, Office for Deaf and Hard of Hearing Services, 4900 North Lamar Blvd., Austin, Texas 78751. (Authority: Government Code, §57.024.)

§109.465. Criminal Offense.

(a) Government Code §57.027(a) provides that a person commits an offense if the person violates Government Code Chapter 57, Subchapter B, pertaining to court interpreters for hearing impaired individuals, or a rule adopted under the subchapter. An offense under Government Code §57.027(a) is a Class A misdemeanor.

(b) Sections §§109.403, 109.423 thru 109.437, and 109.461 of this title are adopted under the provision of law described in subsection (a) of this section, and violations are subject to criminal penalties. In addition, violations of the provisions of §109.403 and §109.461 of this title (relating to Requirements for Interpreting Court Proceedings in Courts of the State of Texas and Prohibited Acts) would constitute direct violations of Government Code §57.026, and would also be subject to criminal penalties under Government Code §57.027(a).

(c) Authority: Government Code, §57.027(a).

§109.467. Actions Against Persons not Certified as Court Interpreters.

The office shall investigate complaints and take action against a person alleged to perform court interpretation without certification or authorization as provided by this subchapter. The following investigative

process and resulting action listed in paragraphs (1) - (3) of this section will be followed by the office to ensure affected individuals are afforded due process of law.

(1) Upon receipt of a formal or staff initiated complaint, the information will be evaluated to determine if the evidence provides sufficient probable cause that a violation may have occurred.

(2) If sufficient probable cause does not exist, an investigation will not be initiated.

(3) If sufficient probable cause is found, then an investigation will be initiated by the office staff to determine if a violation of law has occurred. The office's investigative process will be as follows.

(A) The individual or firm will be advised of the complaint and the specific section of the Act which appears to be violated. If the initial evidence is sufficiently strong, the director may offer the respondent a consent order that, if accepted, will be presented to the office for acceptance or rejection. The consent order shall include an administrative penalty not inconsistent with §109.439 of this title (relating to Sanctions) and a compliance requirement. The respondent shall be fully informed of the range of penalties allowed under criminal, civil and administrative proceedings.

(B) The respondent will be afforded the opportunity to respond to the complaint to show that the actions which precipitated the complaint are not in violation of the Act, or to accept the consent order.

(C) If, after evaluation of the respondent's response a violation appears evident, the respondent will be afforded the opportunity to resolve the allegations informally in the same manner prescribed for certification holders in §109.453 of this title (relating to Disciplinary Actions).

(D) Any office action under this paragraph which is not informally disposed by agreement or consent order, will be considered a contested case and will be handled in accordance with applicable law and office rules.

(4) Authority: Government Code, §57.022(b)(8).

§109.471. Court Interpreter Qualifications in Civil Cases or Depositions Pursuant to Civil Practice and Remedies Code.

(a) Until September 1, 2006, a court interpreter in a civil case or deposition in Texas courts must hold a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master's Comprehensive Skills Certificate, or Legal Skills Certificate issued by the Registry of Interpreters for the Deaf or a current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters.

(b) Effective September 1, 2006, a court interpreter in a civil case or deposition in Texas courts must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters in the Department of Assistive and Rehabilitative Services.

(c) Source: Civil Practice and Remedies Code, §21.003.

§109.475. Court Interpreter Qualifications in Criminal Actions Pursuant to Code of Criminal Procedure.

(a) Until September 1, 2006, a qualified interpreter in criminal actions in Texas courts, to include arraignments, hearings, examining trials, and trials, for a person who has a hearing impairment that inhibits the person's comprehension of the proceedings or communication with others, must hold a current Reverse Skills Certificate, Comprehensive Skills Certificate, Master's Comprehensive Skills Certificate, or Legal Skills Certificate issued by the Registry of Interpreters for the Deaf or a

current Level III, IV, or V Certificate issued by the Board for Evaluation of Interpreters.

(b) Effective September 1, 2006, a qualified interpreter in criminal actions in Texas courts, to include arraignments, hearings, examining trials, and trials, for a person who has a hearing impairment that inhibits the person's comprehension of the proceedings or communication with others, must hold a current legal certificate issued by the Registry of Interpreters for the Deaf or a current court interpreter certificate issued by the Board for Evaluation of Interpreters at the Department of Assistive or Rehabilitative Services.

(c) Source: Code of Criminal Procedure, Art. 38.31(g).

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

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For further information, please call: (512) 424-4050



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 801. LOCAL WORKFORCE DEVELOPMENT BOARDS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

40 TAC §801.33

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 801, relating to Local Workforce Development Boards:

Subchapter B, One-Stop Service Delivery Network, §801.33

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed new Chapter 801 rule is to implement Senate Bill (SB) 998, enacted by the 79th Texas Legislature, Regular Session (2005), which amends Texas Government Code §2308.264(e)(4) to allow entities that contract with Local Workforce Development Boards (Boards) to use, display, and advertise their business names when providing one-stop workforce services for a Board.

SB 998 directs the Commission to adopt rules that are applicable to any existing and future contracts for one-stop workforce services to ensure that any entity contracting with a Board may use, display, and advertise its business name when providing one-stop workforce services for the Board. Each contractor is

responsible for determining if they want to use, sell, or advertise their business name. It is not the Board's responsibility to modify any written material to include the business names of its contractors. Boards must require, through local policy, that each contractor notify the Board of its intent to use, display, or advertise its business name when providing one-stop workforce services.

Texas Government Code Chapter 2308 and this chapter govern Boards. The Commission proposes to add new §801.33, relating to Advertising, to Chapter 801, Subchapter B, One-Stop Service Delivery Network.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. ONE-STOP SERVICE DELIVERY NETWORK

The Commission proposes the following new section:

§801.33. Advertising.

Section 801.33(a) requires that within 120 days of the effective date of this rule or within three Board meetings, Boards must develop policies that specify the limitations and restrictions regarding the use, display, and advertising of contractors' business names when providing one-stop workforce services for the Boards. These policies will be applicable only in the event that a contractor or prospective contractor requests to advertise.

Section 801.33(a)(1) states that a Board's policies must address the requirement that a contractor's business name be displayed in a subordinate position to the Board's name in terms of size, placement, stature, and location.

Section 801.33(a)(1)(A) states that a Board's policies must address the advertising medium to be used, such as the Internet, radio, television, and print.

Section 801.33(a)(1)(B) states that a Board's policies must address the design of the advertising medium.

Section 801.33(a)(2) requires a Board to develop a local policy that requires contractors and prospective contractors to provide the Board advance written notice of their intent to use, display, or advertise their business name. For example, a Board may require contractors to provide 30-days written notice if they intend to use, display, or advertise their business name. In addition, a Board may include a provision in a Request for Proposals that prospective contractors state their intent to advertise in the proposal.

Section 801.33(a)(3) requires Boards to develop policies prohibiting a contractor's or prospective contractor's business-name recognition from being a factor in evaluating a proposal for services.

Section 801.33(a)(4) states that a Board's policies must address the limitations necessary to avoid potential confusion of employers and job seekers attempting to access one-stop workforce services. Boards, as well as the entire Texas workforce system, maintain a vested interest in controlling and protecting the business relationships developed with local employers and the goodwill developed with job seekers and the public. An advertising strategy that creates customer confusion potentially makes one-stop workforce services inaccessible to employers and job seekers--if customers cannot find your business, they cannot access your services. Among other things, customer confusion prevents an efficient and effective labor exchange between employers and job seekers, thus undermining a critical, core mission of the Texas workforce system. When developing policies

to address contractor advertising, Boards also should consider events such as contractor turnover, which may create a significant negative impact on the continuity of a Board's image if the contractor's brand dominates to the detriment of the Board brand. A Board's advertising policy:

--may direct how contractor staff outreaches and communicates with employers;

--will establish parameters that align with its branding strategy; and

--may allow a contractor's business name to be advertised in print material only, by limiting greetings or introductions to the Board's brand.

Section 801.33(a)(5) states that a Board's policies must address the methods of holding contractors accountable. A Board may include a provision on adherence to its advertising policies in existing and future contracts for one-stop workforce services.

Section 801.33(a)(6) states that a Board's policies must address how a contractor or prospective contractor will address the requirement that Commission-contracted funds must not be used for advertising. The Board's policies must require the contractor or prospective contractor to disclose the source of funds to be used for advertising. The Board's policies must also require an attestation from the contractor or prospective contractor that no Commission-contracted funds will be used for advertising.

Section 801.33(b) requires that Commission-contracted funds must not be used for costs associated with advertising the contractor's business name. Boards and contractors are prohibited from using these funds to pay for costs such as displaying the contractor's business name on materials used in performing contracted duties; replacing the contractor's unused advertising materials; and removing the contractor's business name from signs remaining on a Texas Workforce Center's premises.

Section 801.33(c) allows Boards to charge an outgoing contractor for the cost of replacing unused materials containing the outgoing contractor's business name and the cost of removing the outgoing contractor's business name from signs remaining on a Texas Workforce Center's premises.

Section 801.33(d) requires Boards to be the final decision-making authority related to Boards' policies on contractor advertising. As a result, there will be no appeal to the Commission.

PART III. IMPACT STATEMENTS

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

There are no additional estimated costs to the state and local governments expected as a result of enforcing or administering the rule.

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

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule.

There are no anticipated economic costs to persons required to comply with the rule.

There is no anticipated adverse economic impact on small or micro businesses as a result of enforcing or administering the rule.

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

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

Luis M. Macias, Director, Workforce Development Division, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be to ensure that public funds are not used to replace unused materials containing an outgoing contractor's business name or used to remove an outgoing contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.

PART IV. COORDINATION ACTIVITIES

In the development of the rule for publication and public comment, the Commission considered all information gathered in order to develop a rule that provides clear and concise direction to all parties involved. Additionally, the Commission provided the policy concept to the Boards for consideration and review.

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

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

The proposed new rule affects Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Government Code Chapter 2308.

§801.33. Advertising.

(a) Boards shall ensure that, within 120 days of the effective date of this rule (or within three Board meetings, whichever is later), policies are developed regarding the limitations and restrictions on the use, display, and advertising of contractors' and prospective contractors' business names when providing one-stop workforce services for the Boards. These policies shall only be applicable in the event a contractor or prospective contractor requests to advertise. At a minimum, Board policies shall address:

(1) the requirement that the use or display of the contractors' business names be in a subordinate manner or position to the Board's name in terms of size, placement, stature, and location and include restrictions specifically relating to:

(A) the advertising medium to be used, including, but not limited to, Internet, radio, television, and print; and

(B) the design of the advertising medium;

(2) the requirement that contractors and prospective contractors provide the Board advance written notice of their intent to use, display, or advertise their business name;

(3) the prohibition on a contractor's or prospective contractor's business-name recognition from being a factor in evaluating a proposal for services;

(4) limitations necessary to avoid potential confusion of employers and job seekers attempting to access one-stop workforce services;

(5) the method of holding contractors accountable in conforming to the policies;

(6) methods to comply with subsection (b) of this section, disclosure of the source of funds to be used for advertising, and the requirement of an attestation that no Commission-contracted funds will be used to cover the cost of advertising.

(b) Commission-contracted funds shall not be used for costs associated with advertising a contractor's business name. Specifically, Boards and contractors are prohibited from using Commission-contracted funds to pay for costs associated with:

(1) displaying a contractor's business name on materials used in performing contracted duties, including materials that a Board requires a contractor to purchase;

(2) replacing unused materials that contain a contractor's business name, such as pamphlets describing one-stop workforce services; and

(3) removing the contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.

(c) Boards shall charge an outgoing contractor for the costs associated with:

(1) replacing unused materials that contain the outgoing contractor's business name, such as pamphlets describing one-stop workforce services; and

(2) removing the outgoing contractor's business name from signs designed to remain on the premises of a Texas Workforce Center.

(d) Boards shall be the final decision-making authority related to Boards' policies on contractor advertising. There will be no appeal to the Commission.

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

Filed with the Office of the Secretary of State on September 12, 2006.

TRD-200605081

Reagan Miller

Deputy Director for Workforce and UI Policy

Texas Workforce Commission

Earliest possible date of adoption: October 29, 2006

For further information, please call: (512) 475-0829



WITHDRAWN RULES

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

TITLE 1. ADMINISTRATION

PART 7. STATE OFFICE OF ADMINISTRATIVE HEARINGS

CHAPTER 159. RULE OF PROCEDURE FOR ADMINISTRATIVE LICENSE SUSPENSION HEARINGS

1 TAC §§159.1, 159.3 - 159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33

The State Office of Administrative Hearings withdraws the proposed new §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, and 159.33 and the proposed amendments to 159.1, 159.3, and 159.4 which appeared in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3128).

Filed with the Office of the Secretary of State on September 15, 2006.

TRD-200605132

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Effective date: September 15, 2006

For further information, please call: (512) 475-4931

1 TAC §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33, 159.35, 159.37, 159.39, 159.41

The State Office of Administrative Hearings withdraws the proposed repeals to §§159.5, 159.7, 159.9, 159.11, 159.13, 159.15, 159.17, 159.19, 159.21, 159.23, 159.25, 159.27, 159.29, 159.31, 159.33, 159.35, 159.37, 159.39, and 159.41 which appeared in the April 14, 2006, issue of the *Texas Register* (31 TexReg 3134).

Filed with the Office of the Secretary of State on September 15, 2006.

TRD-200605136

Cathleen Parsley

General Counsel

State Office of Administrative Hearings

Effective date: September 15, 2006

For further information, please call: (512) 475-4931

TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

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

10 TAC §313.14

Proposed repeal of §313.14, published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1564), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 14, 2006.

TRD-200605065

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 §25.41

Proposed amended §25.41, published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1565), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 12, 2006.

TRD-200605066

TITLE 34. PUBLIC FINANCE

**PART 12. STATE EMPLOYEE
CHARITABLE CAMPAIGN**

**CHAPTER 329. ELIGIBILITY CRITERIA FOR
STATEWIDE FEDERATIONS/FUNDS AND
AFFILIATED ORGANIZATIONS**

34 TAC §329.1

Proposed amended §329.1, published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1621), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 12, 2006.

TRD-200605067



**CHAPTER 330. ELIGIBILITY CRITERIA FOR
LOCAL FEDERATIONS/FUNDS, AFFILIATED
ORGANIZATIONS, AND LOCAL CHARITABLE
ORGANIZATIONS**

34 TAC §330.1

Proposed amended §330.1, published in the March 10, 2006, issue of the *Texas Register* (31 TexReg 1622), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on September 12, 2006.

TRD-200605068



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 22. EXAMINING BOARDS

PART 39. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS

CHAPTER 851. TEXAS BOARD OF PROFESSIONAL GEOSCIENTISTS LICENSING RULES

SUBCHAPTER A. LICENSING

22 TAC §851.80

The Texas Board of Professional Geoscientists (TBPG) adopts an amendment to §851.80, concerning fees for the registration and renewal of sole-proprietorships. The amendment is adopted without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4828) and will not be republished.

The adopted amendment reduces the fees for registration and renewal of sole-proprietorships. This clarification is based on feedback from our licensees who felt the regular firm registration and renewal fees would be too burdensome for an individual practicing as a sole-proprietor.

There were no public comments that were received regarding adoption of this amendment.

The amendment is adopted under the Texas Occupations Code, §1002.152, which authorizes the Board to set reasonable and necessary fees, and §1002.351 which authorizes the TBPG to register firms that practice geoscience before the public.

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 September 14, 2006.

TRD-200605105

Frank Knapp

Attorney, Office of the Attorney General

Texas Board of Professional Geoscientists

Effective date: October 4, 2006

Proposal publication date: June 16, 2006

For further information, please call: (512) 936-4405



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 37. MATERNAL AND INFANT HEALTH SERVICES

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§37.211 - 37.218 and the repeal of §§37.219 - 37.222, concerning the provision of epilepsy services in this state without changes to the proposed text as published in the June 16, 2006, issue of the *Texas Register* (31 TexReg 4828) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The repeals and amended sections are necessary to comply with Health and Safety Code, Chapter 40, which authorizes the department to establish a program to provide epilepsy diagnostic, treatment, and support services to eligible individuals. Epilepsy Services provides access to seizure-related services for individuals whose incomes do not exceed 200% of the Federal Poverty Level residing in Texas who cannot obtain the same care through other funding sources or programs.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 37.211 - 37.222 have been reviewed, and the department has determined that reasons for adopting §§37.211 - 37.218 continue to exist because rules on this subject are needed. The department also has determined that §§37.219 - 37.222 are no longer needed, and that the sections should be repealed.

SECTION-BY-SECTION SUMMARY

Sections 37.211 - 37.218 have been amended to incorporate the current department and program names to be consistent with current terminology used by the department.

Amendments to §37.211 delete definitions no longer relevant to the subchapter.

An amendment to §37.212 clarifies language regarding client eligibility for services in coordination with the department's Children With Special Health Care Needs Program (CSHCN). The amendment does not extend benefits to additional clients, but clarifies that Epilepsy Services eligibility will not be denied if a client has been determined eligible for CSHCN services, but has been placed on the waiting list to receive CSHCN services. Other amendments to §37.212 delete language regarding fair hearings in order to better organize all language on this subject in one place in the subchapter.

Amendments to §37.213 and the proposed repeal of §§37.220 - 37.222 delete detailed provisions concerning program contractors that are more appropriate for inclusion in a policy manual.

Amendments to §37.217 delete language concerning administration of contracts with providers of program services that need not be adopted as rules. Additionally, §37.217 has been amended to clarify and simplify the process for suspension and termination of contracts.

Amendments to §37.218 replace language describing a procedure for reconsideration of a notice of intent with new language concerning fair hearings in order to clarify and simplify the process.

Section 37.219 has been repealed because the subject of "Notice and Fair Hearings" have been included in §§37.217 - 37.218 to improve clarity.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comment received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenter was the Epilepsy Foundation of Central and South Texas, an organization that contracts with the department to provide epilepsy services to eligible clients. The commenter was in favor of the proposed rules language.

Comment: Concerning the rules in general, the commenter expressed support for the proposed rules and stated that the changes are positive and appropriate.

Response: The commission appreciates the comment. No change was made as a result of this comment.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the rules, as adopted, have been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

SUBCHAPTER K. EPILEPSY SERVICES

25 TAC §§37.211 - 37.218

STATUTORY AUTHORITY

The amendments are adopted under Health and Safety Code, §40.003, which authorizes the department to adopt rules necessary to administer Health and Safety Code, Chapter 40; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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

TRD-200605166

Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 8, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 458-7111 x6972



25 TAC §§37.219 - 37.222

STATUTORY AUTHORITY

The repeals are adopted under Health and Safety Code, §40.003, which authorizes the department to adopt rules necessary to administer Health and Safety Code, Chapter 40; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

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

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

TRD-200605167
Cathy Campbell
General Counsel
Department of State Health Services
Effective date: October 8, 2006
Proposal publication date: June 16, 2006
For further information, please call: (512) 458-7111 x6972



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL SUBCHAPTER C. STANDARDS FOR STATE FIRE MARSHAL INSPECTIONS

28 TAC §34.303

The Commissioner of Insurance adopts an amendment to §34.303 concerning standards for state fire marshal inspections. The amended section is adopted with changes to the proposed text as published in the April 7, 2006, issue of the *Texas Register* (31 TexReg 3005).

The amended section is necessary to update the currently adopted Life Safety Code, which is used by the state fire marshal as standards for inspection of buildings and premises pursuant to Government Code, §417.008. The adoption of the most recent Life Safety Code is necessary because, as the technology for fire protection and prevention develops, the minimum standards of inspection also change. This results in better protection of the public from fire by the application of the most recent standards and recommendations for inspection.

Additionally, other units of government in Texas are adopting these standards; and uniformity of standards enables both the fire protection industry and the public to know what standards are applicable in all jurisdictions.

The section adopts by reference the most recent version of the National Fire Protection Association's Life Safety Code with the exception of the new Chapter 43 regarding the adaptive reuse of existing buildings. Previous editions of the Code required compliance with provisions for new construction and will remain effective in lieu of the Chapter 43 provisions.

In response to a written comment and after further internal analysis by staff, the Department is adopting this section with some changes which eliminate adoption of the new Chapter 43 dealing with existing buildings undergoing repairs, renovation, addition, reconstruction, or a change of use or occupancy classification. The comment noted that the adoption of Chapter 43 in the proposed 2006 Life Safety Code would pose a burden on building owners and designers as well as code enforcement authorities by introducing a new complex process, unfamiliar to all, which would result in added expenses and delays. The Department agrees that the new Chapter 43 appearing in the 2006 Life Safety Code would have introduced a confusing and exhaustive analytical process prior to any determination of the fire safety requirements and ultimately lead to uneven application and enforcement. The National Fire Protection Association has already proposed emergency tentative interim amendments to Chapter 43 which are subject to revision and clarification. Previous editions of the Code and the currently adopted provisions appearing in Sections 4.6.7 (Additions) and 4.6.8 (Modernization and Renovation) of the 2003 Life Safety Code, regarding modifications to existing buildings, have proven to be effective and efficient, essentially requiring modification to existing buildings to be in compliance with provisions for new construction. The Department ultimately believes that, by keeping the existing processes and standards in place, the fire protection industry and the public receive the benefits of sound fire safety policy and avoid the complicated processes contemplated by the Chapter 43 provisions.

The University of Texas at Austin Fire Marshal filed the only written comment on the proposed rules as published and indicated their objection to the adoption of Chapter 43.

The amended section is adopted pursuant to the Government Code, §417.008 and the Insurance, Code §36.001. Government Code, §417.008 allows the commissioner to adopt by rule any appropriate standard developed by a nationally recognized standards-making association under which the state fire marshal may enforce this section regarding right of entry and examination and correction of dangerous conditions. Insurance Code, §36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance and other laws of this state.

§34.303. Adopted Standards.

The Commissioner adopts by reference: NFPA Life Safety Code 101-2006, except for Chapter 43, and NFPA 101-203, Sections 4.6.7 (Additions) and 4.6.8 (Modernization and Renovation). These copyrighted standards and recommendations are adopted, except to the extent they are in conflict with sections of this chapter or any Texas statutes or federal law. The standards are published by and are available from the National Fire Protection Association, Quincy, Massachusetts.

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 September 15, 2006.

TRD-200605127

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: October 5, 2006

Proposal publication date: April 7, 2006

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER A. PROGRAM PLANNING

37 TAC §87.1

The Texas Youth Commission (the commission) adopts an amendment to §87.1, concerning case planning, without changes to the proposed text as published in the July 7, 2006, issue of the *Texas Register* (31 TexReg 5442).

The amendment establishes new schedules for reviewing and updating individual case plans which correspond to each youth's classification and placement restriction level. Youth in high restriction placements will have case plans updated every 90 days instead of every 30 days. The amended section will allow case managers to spend more time with each youth.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.076, which provides the commission with the authority to require a child to participate in correctional training and activities.

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 September 12, 2006.

TRD-200605058

Dwight Harris

Executive Director

Texas Youth Commission

Effective date: October 2, 2006

Proposal publication date: July 7, 2006

For further information, please call: (512) 424-6014



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 101. ADMINISTRATIVE RULES AND PROCEDURES

The Texas Health and Human Services Commission adopts the repeal of four sections and the amendment of an additional five sections of Title 40, Part 2, Chapter 101, Subchapter I, of the rules of the Department of Assistive and Rehabilitative Services, pertaining to the Early Childhood Intervention Services. The four sections to be repealed are: §§101.5601, 101.5603, 101.5605, and 101.5607, concerning Division 1, Conduct of Board Meetings. The five sections to be amended are: §§101.5751, 101.5753, 101.5755, 101.5757, and 101.5759, concerning Division 3, Relationship With Private Donors.

The repeal and amendments are adopted without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5257) and will not be republished.

The repeals and amendments are adopted to conform the rules pertaining to Early Childhood Intervention Services to the organizational and operational requirements of H. B. No. 2292, 78th Legislature, Regular Session, and to conform nomenclature used in the rules to that resulting from consolidation of Health and Human Services Agencies under the Texas Health and Human Services Commission.

No comments were received regarding adoption of the repeal and new sections.

SUBCHAPTER I. ADMINISTRATIVE RULES AND PROCEDURES PERTAINING TO EARLY CHILDHOOD INTERVENTION SERVICES DIVISION 1. CONDUCT OF BOARD MEETINGS

40 TAC §§101.5601, 101.5603, 101.5605, 101.5607

The repeals are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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

TRD-200605138

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: October 8, 2006

Proposal publication date: June 30, 2006

For further information, please call: (512) 424-4050



DIVISION 3. RELATIONSHIP WITH PRIVATE DONORS

40 TAC §§101.5751, 101.5753, 101.5755, 101.5757, 101.5759

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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

TRD-200605139

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: October 8, 2006

Proposal publication date: June 30, 2006

For further information, please call: (512) 424-4050



CHAPTER 108. EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission adopts the repeal and the amendment of the following sections of Title 40, Part 2, Chapter 108, of the rules of the Department of Assistive and Rehabilitative Services, pertaining to the Early Childhood Intervention Services.

The following sections were amended: §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43, 108.57, 108.59, 108.61, 108.63, 108.65, 108.85, 108.87, 108.89, 108.91, 108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233, 108.261, 108.263, 108.265, concerning Early Childhood Intervention Services.

The following section was repealed: §108.237, concerning Reviews and Administrative Hearings.

Sections 108.21, 108.23, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43, 108.57, 108.59, 108.61, 108.63, 108.65, 108.85, 108.89, 108.221, 108.223, 108.225, 108.227, 108.229, 108.231, 108.233, 108.261, 108.263, 108.265 are adopted without changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5259) and will not be republished.

Sections 108.25, 108.87 and 108.91 are adopted with changes to the proposed text as published in the June 30, 2006, issue of the *Texas Register* (31 TexReg 5259).

The changes are addressed as follows:

Section 108.25, Service Delivery Requirements for Comprehensive Services. As discussed below, the Coalition for Nurses in Advanced Practice commented on §108.25 of the proposed rules. The Coalition had two concerns: the professional title for advanced practice nurse should be updated; and the restriction to pediatric advanced practice nurse should be reviewed as it seems to inappropriately exclude some types of advanced practice nurses who provide health care for infants and children. As a result of this comment, the proposed text in §108.25(4)(A) the

title for advanced practice nurse has been updated and the restriction has been removed. Physicals from advanced practice nurses will be accepted as long as they are within their scope of practice.

Section 108.87, Size, Composition, and Terms of Office. Changes to the proposed text in subsections (a), (b)(1)(E), and (b)(1)(G) of this section accomplish 2 modifications: (1) eliminate appointment by designee and (2) change the composition of the committee by eliminating 3 positions: the DARS position; The Texas Workforce Commission position and the public health professional position. Also, the change adds a position for the Office of Coordinator Education of Homeless Children and Youth. The reason for these changes is to comply the appointment and composition requirements of the recent IDEA Reauthorization of 2004. The representative of the Department of Family and Protective Services will meet the IDEA requirements for a representative of the state agency responsible for child care and the state agency responsible for foster care. Therefore the requirement for a representative of the Texas Workforce Commission is no longer needed and is eliminated. The committee retains the authority to appoint ad hoc members as needed.

Section 108.91. Advisory Committee Procedures. The proposed text for subsection 108.91(i), which was proposed for addition to this section, regarding ineligible members, has been removed. The reason for this changes is that further study is needed.

The repeal and amendments are adopted to conform the rules pertaining to Early Childhood Intervention Services to the organizational and operational requirements of H. B. No. 2292, 78th Legislature, Regular Session, and to conform nomenclature used in the rules to that resulting from consolidation of Health and Human Services Agencies under the Texas Health and Human Services Commission.

As noted above, the Coalition for Nurses in Advanced Practice commented on Section 108.25 of the proposed rules. The Coalition had two concerns: the professional title for advanced practice nurse should be updated; and the restriction to pediatric advanced practice nurse should be reviewed as it seems to inappropriately exclude some types of advanced practice nurses who provide health care for infants and children. In the rules as adopted, the title for advanced practice nurse has been updated and the restriction has been removed. Physicals from advanced practice nurses will be accepted as long as they are within their scope of practice. No other comments on the proposed changes were received.

SUBCHAPTER A. EARLY CHILDHOOD INTERVENTION SERVICE DELIVERY

40 TAC §§108.21, 108.23, 108.25, 108.27, 108.29, 108.31, 108.33, 108.35, 108.37, 108.39, 108.43

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.25. *Service Delivery Requirements for Comprehensive Services.*

Programs that receive Early Childhood Intervention (ECI) funds for comprehensive services must have written policies and procedures which are implemented and evaluated in each of the following areas.

(1) Client eligibility. The comprehensive program must have written criteria for determining infants and toddlers with disabilities and accepting them into the program.

(A) A child is eligible for ECI comprehensive services if the child is under three years of age including Native American children residing on reservations geographically located in Texas and those children authorized for services as visually or auditorially impaired children as defined by the Texas Education Code.

(B) A child is eligible for ECI comprehensive services if the child is documented as developmentally delayed or has a medically diagnosed condition that has a high probability of resulting in developmental delay.

(C) Determination of eligibility shall be as follows.

(i) Children whose development is delayed in one or more of the following areas: cognitive, physical development including vision and hearing, communication development, social-emotional development, or adaptive development must be determined eligible by:

(I) determination of the specific level of delay by test performance; or

(II) determination of delayed or atypical development by a qualified professional (i.e., psychologist, occupational therapist, speech therapist, physical therapist, physician, etc.) in one of the following ways:

(-a-) observation of delayed or abnormal development during the administration of an assessment device;

(-b-) observation of one or more of the atypical behaviors; or

(-c-) use of nonstandardized assessment devices (i.e., Brazelton, CRIB, etc.).

(ii) Children who have a medically diagnosed physical or mental condition that has a high probability of resulting in developmental delay must be determined eligible by identification of specific conditions with known etiologies and developmental consequences that are included in the list of covered medical conditions approved by the Department.

(2) Referral and intake. The program must have procedures for receiving and sending referrals, using all primary referral sources.

(3) Assessment and evaluation. The assessment and evaluation for comprehensive services must be in accordance with the following criteria and procedures.

(A) Prior to any assessment or evaluation, parents must be fully informed and give permission regarding the following:

(i) disciplines or staff to be involved in conducting assessments and evaluations;

(ii) family's role;

(iii) measures to be used;

(iv) when and how the information obtained will be synthesized and shared; and

(v) who will have access to the information obtained.

(B) If a parent refuses participation in a specific area of an assessment or evaluation, services may not be denied in other areas.

(C) At no cost to the family, the program must provide a comprehensive, interdisciplinary assessment and evaluation for each child, including assessment activities related to the family.

(D) All assessments and evaluations of the child or family including tests and other evaluative methods and procedures must be:

- (i) conducted by personnel trained to use appropriate methods and procedures;
- (ii) administered in the native language of the parents and child or other mode of communication, unless it is clearly not feasible to do so;
- (iii) nondiscriminatory in regard to race or culture;
- (iv) reviewed on an ongoing basis and updated at a frequency recommended by the interdisciplinary team and parents must be notified that an annual assessment and evaluation is available to them if they request it;
- (v) based on informed clinical opinion; and
- (vi) based on appropriate use of multiple methods and procedures which ensure that no single criterion is utilized to determine delay or atypical development.

(E) Child assessments and evaluations must include the following:

- (i) a review of the child's health and medical history and any other pertinent records including records of previous examinations and immunizations;
- (ii) an evaluation of the child's level of functioning in the following developmental areas:
 - (I) cognitive development;
 - (II) physical development, including vision and hearing, gross and fine motor skills, and nutrition status;
 - (III) communication development;
 - (IV) social-emotional development; and
 - (V) adaptive development or self-help skills;
- (iii) an assessment of the child's unique strengths as well as needs in each of the developmental areas;
- (iv) the identification of services appropriate to meeting those needs; and
- (v) parental input.

(F) Identification of the family's concerns, priorities, and resources must be voluntary. If a family agrees, the identification must:

- (i) be family directed and designed to determine the concerns, priorities, and resources of the family related to enhancing the child's development; and
- (ii) be based on information provided by the family.

(4) Health admission requirement for comprehensive services.

(A) Each child must have an examination by a physician, physician assistants, an advanced practice nurse, or a registered nurse in a public health clinic.

(B) If the child has received a physical examination in accordance with the periodicity schedule of the American Academy

of Pediatrics, an additional examination is not required for admission. If the child has not received an examination as recommended in the American Academy of Pediatrics schedule, a physical exam must be conducted within 90 days prior to enrollment or prior to the implementation of direct services.

(C) Children who will be participating in any ECI group activities must have immunizations appropriate to the child's age as recommended by the Texas Department of State Health Services (DSHS). If medical or religious reasons contraindicate immunization requirements, documentation to that effect must be maintained by the program and the family must be notified that their infant could be excluded from group activities if a contagious outbreak occurs.

(5) Individualized family service plan (IFSP). An IFSP must be developed for each child eligible for comprehensive services and the child's family. Services must be delivered in conformity with an IFSP.

(A) Procedures for development, review, and evaluation.

(i) The IFSP must be written within 45 days of referral and be developed jointly by the family and appropriate qualified personnel. The IFSP must be based on assessment and evaluation information and include services necessary to enhance the development of the child and the capacity of the family to meet the child's special needs. No IFSP shall be implemented without prior written consent from the parent(s). The contents and the implementation of the IFSP must be fully reviewed with the parent(s) prior to obtaining their consent.

(ii) If services are delivered by more than one provider, services must be jointly coordinated.

(iii) Reviews of the IFSP must be conducted every six months (or more frequently if conditions warrant or the family requests such a review). The review may be carried out by a meeting or by other means acceptable to the parents and other participants. The purposes of the review are to determine:

- (I) the degree to which progress toward achieving the outcomes is being made; and
- (II) whether modification or revision of the outcomes or services is necessary.

(iv) An annual meeting must be conducted to evaluate the IFSP for the child and family, and, as appropriate, to revise its provisions. Evaluation results and other information available from the ongoing assessment of the child and family may be used in determining what services are needed and will be provided.

- (v) IFSP meetings must be conducted:
 - (I) in settings and at times that are convenient to families; and
 - (II) in the native language or mode of communication used by the family.

(vi) Meeting arrangements must be made with, and written notice provided to, the family and other participants early enough before the meeting date to ensure that they will be able to attend.

(B) IFSP participants. An interdisciplinary team must meet to establish eligibility and develop the initial IFSP. The interdisciplinary team must include the following participants:

- (i) the parent(s) of the child;

(ii) other family members or child care persons, when requested by the parent;

(iii) an advocate or person outside the family, when requested by the parent; and

(iv) a minimum of two professionals from different disciplines. The team must include the service coordinator who has been working with the family since the initial referral or who has been responsible for implementing the IFSP and a professional directly involved in conducting the evaluations and assessments; and

(v) as appropriate, persons who will be providing services to the child or family.

(C) Required early intervention comprehensive services. Individualized intervention services, as determined by the interdisciplinary team, must be provided under public supervision in all geographic areas of the state to meet the developmental needs of the child, and to address the resources, priorities, and concerns of the family related to enhancing the child's development. All services identified as needed for the child by the interdisciplinary team must be addressed in the IFSP. With concurrence of the family, all services identified as needed by the family may be addressed in the IFSP. The array of services must include, but is not limited to, the following:

- (i) service coordination services;
- (ii) early identification, screening, and assessment services, and the other early intervention services;
- (iii) medical services only for diagnostic or evaluation purposes;
- (iv) developmental services;
- (v) family education;
- (vi) home visits;
- (vii) speech and language therapy;
- (viii) audiology;
- (ix) occupational therapy;
- (x) assistive technology devices and assistive technology services;
- (xi) physical therapy;
- (xii) psychological services;
- (xiii) family counseling;
- (xiv) social work services;
- (xv) health services necessary to enable the child to benefit from the other early intervention services;
- (xvi) nursing services;
- (xvii) transportation;
- (xviii) nutrition services;
- (xix) vision services; and
- (xx) other services.

(D) Types of services. For the purpose of this chapter the following types of services apply.

- (i) The service of audiology includes:
 - (I) identification of children with auditory impairment, using at-risk criteria and appropriate audiologic screening techniques;

(II) determination of the range, nature, and degree of hearing loss and communication functions, by use of audiologic evaluation procedures;

(III) referral for medical and other services necessary for the habilitation or rehabilitation of children with auditory impairment;

(IV) provision of auditory training, aural rehabilitation, speech reading and listening device orientation and training, and other services;

(V) provision of services for prevention of hearing loss; and

(VI) determination of the child's need for individual amplification, including selecting, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.

(ii) Service coordination includes activities carried out by a service coordinator to an eligible child and the child's family to assist and empower the family to receive the provisions, procedural safeguards, and services authorized to be provided by this chapter. Activities include but are not limited to:

- (I) coordinating the performance of evaluations and assessments;
- (II) facilitating and participating in the development, review, and evaluation of the IFSP;
- (III) assisting families in identifying available service providers;
- (IV) coordinating and monitoring the delivery of available services;
- (V) informing families of the availability of advocacy services;
- (VI) coordinating with medical and health providers; and
- (VII) facilitating the development of a transition plan to preschool services, if appropriate.

(iii) Family education, counseling, and home visits include services provided, as appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an eligible child in understanding the special needs of the child and enhancing the child's development.

(I) Family education is activities designed to improve the knowledge and skills of parents and other family members in matters related to growth, development, and learning of their child.

(II) Counseling is assistance provided to the parents by qualified personnel.

(III) Home visits are all services provided in the child's home.

(iv) Health services include services necessary to enable a child to benefit from the other early intervention services during the time that the child is receiving the other early intervention services.

- (I) The term "health services" includes:
 - (-a-) such services as cleaning intermittent catheterization, tracheostomy care, tube feeding, the changing of dressings or colostomy collection bags, and other health services; and

(-b-) consultation by physicians with other service providers concerning the special health care needs of eligible children that will need to be addressed in the course of providing other early intervention services.

(II) The term "health services" does not include services that are:

(-a-) surgical in nature (such as cleft palate surgery, surgery for club foot, or the shunting of hydrocephalus); or

(-b-) purely medical in nature (such as hospitalization for management of congenital heart ailments, or the prescribing of medicine or drugs for any purpose);

(-c-) provision of devices necessary to control or treat a medical condition; or

(-d-) medical-health services (such as immunizations and regular "well-baby" care) that are routinely recommended for all children unless a child needs these services and they are not otherwise available.

(v) Medical services only for diagnostic or evaluation purposes include services provided by a licensed physician to determine a child's developmental status and need for early intervention services.

(vi) Nursing services include:

(I) the assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems;

(II) the provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and

(III) the administration of medications, treatments, and regimens prescribed by a licensed physician.

(vii) Nutrition services include:

(I) conducting individual assessments in:

(-a-) nutritional history and dietary intake;

(-b-) anthropometric, biochemical, and clinical variables;

(-c-) feeding skills and feeding problems; and

(-d-) food habits and food preferences;

(II) developing and monitoring appropriate plans to address the nutritional needs of eligible children; and

(III) making referrals to appropriate community resources to carry out nutrition goals.

(viii) Occupational therapy services include services to address the functional needs of a child related to adaptive development, adaptive behavior and play, and sensory, motor, and postural development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings, and include:

(I) identification, assessment, and intervention;

(II) adaptation of the environment, and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and

(III) prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

(ix) Physical therapy services are services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and mo-

tor development, cardiopulmonary status and effective environmental adaptations. These services include:

(I) screening, evaluation, and assessment of infants and toddlers to identify movement dysfunction;

(II) obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems;

(III) providing individual or group services or treatment to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and

(IV) services to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaptation.

(x) Psychological services include:

(I) administering psychological and developmental tests, and other assessment procedures;

(II) interpreting assessment results;

(III) obtaining, integrating, and interpreting information about child behavior, and child and family conditions related to learning, mental health, and development; and

(IV) planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(xi) Social work services include:

(I) making home visits to evaluate a child's living conditions and patterns of parent-child interaction;

(II) preparing a social and emotional developmental assessment of the child within the family context;

(III) providing individual and family-group counseling with parents and other family members, and appropriate social skill-building activities with the child and parents;

(IV) working with those problems in a child's and family's living situation (home, community, and any center where early intervention services are provided) that affect the child's maximum utilization of early intervention services; and

(V) identifying, mobilizing, and coordinating community resources and services to enable the child and family to receive maximum benefit from early intervention services.

(xii) Developmental services include:

(I) the design of learning environments and activities that promote the child's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction;

(II) curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the child's IFSP;

(III) providing families with information, skills, and support related to enhancing the skill development of the child; and

(IV) working with the child to enhance the child's development.

(xiii) Speech-language pathology services include:

(I) identification of children with communicative or oropharyngeal disorders and delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills;

(II) referral for medical or other professional services necessary for the habilitation or rehabilitation of children with communicative or oropharyngeal disorders and delays in development of communication skills; and

(III) provision of services for the habilitation, rehabilitation, or prevention of communicative or oral pharyngeal disorders and delays in development of communication skills.

(xiv) Transportation and related costs include the coverage of cost of travel (e.g., mileage, or travel by taxi, common carrier, or other means) and other costs (e.g., tolls and parking expenses) that are necessary to enable an eligible child and the child's family to receive early intervention services.

(xv) Vision services include:

(I) evaluation and assessment of visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities;

(II) referral for medical or other professional services necessary for the habilitation or rehabilitation of visual functioning disorders or both; and

(III) communication skills training, orientation, and mobility training for all environments, visual training, independent living skills training, and additional training necessary to activate visual motor abilities.

(xvi) Assistive technology device means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities. Assistive technology service means a service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

(I) evaluating the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(II) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices used by children with disabilities;

(III) selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(IV) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(V) training or technical assistance for a child with disabilities or, if appropriate, that child's family; and

(VI) training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

(E) Service options. Each program must provide options for instruction or intervention, based upon consideration of the medical, social, educational, and developmental needs of the child and

the resources, priorities, and concerns of the family as stated in the IFSP. These options include:

(i) individual services in the home or center or other locations;

(ii) group services delivered at a site with other children;

(iii) to the maximum extent appropriate to the needs of the child, early intervention services must be provided in natural environments, including home and community settings in which children without disabilities participate. Natural environments mean settings that are natural or normal for the child's age peers who have no disabilities;

(iv) flexible hours in programming which allow options for parents to participate (i.e., working parents);

(v) variable degrees of family involvement in services, as determined by the family.

(F) Availability of services.

(i) The provider must demonstrate the capacity to provide instruction and treatment for a minimum of 48 weeks of each year.

(ii) The provider must demonstrate the capacity to deliver a minimum of one hour of services per week for each child whose IFSP indicates such a need.

(G) Service coordination. Service Coordination services means assistance and services provided by a service coordinator to an eligible child and the child's family that are in addition to the functions and activities of this section and enable the child and the child's family to receive the rights, procedural safeguards, and services provided under this part.

(i) One service coordinator must be identified for each eligible child and the child's family.

(I) An initial service coordinator must be assigned at the time of referral. A new service coordinator may be assigned at the time the IFSP is developed or the original service coordinator may be retained, if appropriate. The parents must be given the name of their assigned service coordinator and told how to contact them.

(II) The service coordinator assigned by the interdisciplinary team must be from the profession most relevant to the child's or child's family's needs, or who is otherwise qualified to carry out all applicable responsibilities.

(III) The service coordinator assigned may not be the parent. In some instances a staff person may share service coordination responsibilities with a parent.

(IV) A new service coordinator must be appointed if a parent requests.

(ii) The service coordinator is responsible for coordinating all services within the program and between agencies including:

(I) coordinating the performance of evaluations and assessments;

(II) facilitating and participating in development, review, and evaluation of the IFSP and assisting parents of eligible children in gaining access to the early intervention services and other services identified in the IFSP;

(III) monitoring the provision of services to ensure timely delivery of services;

(IV) facilitating the development of a transition plan to other services, including but not limited to preschool services when a child leaves the program;

(V) continually seeking appropriate services and situations necessary to benefit the development of each child being served for the duration of the child's eligibility; and

(VI) coordinating the provision of early intervention services and other services (such as medical services for other than diagnostic and evaluation purposes) that the child needs or is being provided.

(iii) The service coordinator must serve as the single contact point for parents to help the families with services including:

(I) addressing identified needs and ongoing service requests;

(II) identifying resources and helping parents to choose among and to access these resources;

(III) informing families of advocacy services; and

(IV) informing families of complaint procedures.

(iv) The local program must ensure that all persons functioning as service coordinators are:

(I) knowledgeable about infants and toddlers who are developmentally delayed or at risk of delay;

(II) knowledgeable of Part C of the Individuals with Disabilities Education Act; and

(III) knowledgeable about the nature and scope of services available under the Early Childhood Intervention Program on the state and local levels, including eligibility.

(H) Contents of the plan. Programs which receive funds from the Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention Services must have a written IFSP for each child developed jointly by the interdisciplinary team including the child's parents.

(i) The IFSP must include an integrated summary of all assessments and evaluations of the child's present levels of physical development (including gross and fine motor skills, nutrition, vision, hearing, and health status), cognitive development, communication development, social-emotional development, and self-help skills or adaptive development. This integrated summary must be based on professionally acceptable criteria. A description of the child's strengths and needs must be included in the IFSP.

(ii) With the concurrence of the family, the IFSP must include an integrated summary of the family's concerns, priorities, and resources related to enhancing the development of the child.

(iii) The IFSP must include a statement of the major outcomes expected to be achieved for the child and family, strategies to be implemented and the criteria, procedures, and timelines used to determine:

(I) the degree to which progress toward achieving the outcomes is being made; and

(II) whether modifications or revisions of the outcomes or services are necessary.

(iv) The IFSP must address the specific early intervention comprehensive services necessary to meet the unique needs of the child and the family to achieve the outcomes identified in the plan, including:

(I) the frequency, intensity, location, and method of delivering the service;

(II) a statement of the natural environments in which early intervention services shall be provided, including the justification of the extent, if any, to which the services will not be provided in a natural environment;

(III) the payment arrangements, if any, for all services provided, including those provided by the ECI program.

(v) To the extent appropriate, the IFSP must include:

(I) medical and other services that the child needs, but that are not required in accordance with subparagraphs (C) and (D) of this paragraph; and

(II) the funding sources to be used in paying for those services.

(vi) The IFSP must include the projected dates for initiation of intervention services and the expected duration of those services.

(vii) The IFSP must identify the service coordinator who will be responsible for implementation of the IFSP and coordination with other agencies and persons.

(I) Transition. The IFSP must include the steps to be taken to support the transition of the child to public school preschool services (Part B of the Individuals with Disabilities Education Act), upon reaching the age of three, or to other services that may be available, if appropriate. The steps required include:

(i) discussions with, and training of, parents regarding future placements and other matters related to the child's transition;

(ii) procedures to prepare the child for changes in service delivery, including steps to help the child adjust to, and function in, a new setting;

(iii) with parental consent, the transmission of information about the child to the local educational agency or other service provider, to ensure continuity of services, including evaluation and assessment information, and copies of IFSPs that have been developed; and

(iv) with the approval of the family, the convening of a conference among the local ECI provider, the family, and the local educational agency at least 120 days, but no more than 270 days, before the child's third birthday, or, if earlier, the date on which the child is eligible for the preschool program under Part B of the Individuals with Disabilities Education Act to:

(I) review the child's program options for the period from the child's third birthday through the remainder of the school year; and

(II) establish a transition plan.

(J) Interim IFSP. Early intervention comprehensive services for an eligible child and the child's family may commence before the completion of the evaluation and assessment if the following conditions are met:

(i) parental consent is obtained;

(ii) an interim IFSP is developed that includes:

(I) the name of the service coordinator who will be responsible for implementation of the interim IFSP and coordination with other agencies and persons; and

(II) the early intervention services that have been determined to be needed immediately by the child and the child's family; and

(iii) the evaluation and assessments are completed within 45 days of referral.

(K) Responsibility and accountability. Each agency or person who has a direct role in the provision of early intervention comprehensive services is responsible for making a good faith effort to assist each eligible child in achieving the outcomes in the child's IFSP. However, no agency or person can be held accountable if an eligible child does not achieve the growth projected in the child's IFSP.

(L) Reimbursement for comprehensive service.

(i) All programs will be required to establish third-party billing systems, determine client eligibility for all third-party reimbursement sources, and complete and submit reimbursement requests to corresponding third-party sources, in accordance with clause (iii) of this subparagraph. Third parties include, but are not limited to, health maintenance organizations (HMOs), private insurance, Medicaid programs (Texas Health Steps and Targeted Case Management), Children's Health Insurance Program and the Children with Special Health Care Needs Program.

(ii) Certain services must be available at no cost to families, including, but not limited to, child find, evaluation and assessment, service coordination, and administration and coordination related to the development, review, and evaluation of IFSPs. The determination of the duration, scope, and nature of the services provided will not be based on parental consent to the use of funding resources for which they may be eligible.

(iii) No child may be denied comprehensive services because of the family's inability to pay, or unwillingness to consent to third-party billing. Informed parental consent is required prior to billing private insurers. Billing third-party insurers must be at no cost to families. All programs will be required to discuss with families the implications of billing private insurance.

(iv) Programs will be required to encourage the family to apply for all applicable funding resources for which they are potentially eligible including, but not limited to, Medicaid and CHIP. No child may be denied services because of the family's refusal to apply for Medicaid or other funding resources for which they may be eligible.

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 September 18, 2006.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: October 8, 2006
Proposal publication date: June 30, 2006
For further information, please call: (512) 424-4050



SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.57, 108.59, 108.61, 108.63, 108.65

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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Sylvia F. Hardman
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Department of Assistive and Rehabilitative Services
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SUBCHAPTER C. EARLY CHILDHOOD INTERVENTION ADVISORY COMMITTEE

40 TAC §§108.85, 108.87, 108.89, 108.91

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.87. *Size, Composition, and Terms of Office.*

(a) Size. The advisory committee shall consist of 24 members which the governor shall appoint.

(b) Composition. The advisory committee shall be composed as follows.

(1) Official members must include:

(A) at least seven parents, including minority parents of infants or toddlers with developmental disabilities or delays or children with developmental disabilities or delays aged 12 or younger, with knowledge of, or experience with, programs for infants and toddlers with developmental disabilities. At least one such member shall be a parent of an infant or toddler with a developmental disability or delay or a child with a developmental disability or delay aged six or younger, and no parent may be an employee of an early childhood intervention funded program;

(B) at least five public or private providers of early childhood intervention services, one of whom is a preschool specialist and a provider of birth to three services in an educational service center;

(C) at least one representative from the Texas Legislature;

(D) at least one person involved in personnel preparation;

(E) at least one representative from each of the following agencies and public program: the Health and Human Services Commission, the Department of Aging and Disability Services, the Department of State Health Services, the Department of Family and Protective Services; the Texas Education Agency; the Texas Department of Insurance; the Office of Coordination for Education of Homeless Children and Youth; and Head Start. The representative must have sufficient authority to engage in policy planning and implementation on behalf of his or her agency. The Texas Education Agency representative must be responsible for preschool services to children with disabilities;

(F) a physician, preferably a pediatrician who deals with children with developmental disabilities; and

(G) a professional advocate of the rights of young children with developmental disabilities.

(2) Ex officio members may be appointed by the department to perform specific, time-limited tasks as needed. The department determines voting status of ex officio members.

(c) Terms of office. Official advisory committee members shall serve staggered six-year terms of office, with the terms of eight members expiring February 1 of each odd number year.

(d) Chairperson. The advisory committee shall appoint the chairperson of the advisory committee.

§108.91. Advisory Committee Procedures.

(a) Notice, frequency, and location of meetings.

(1) All advisory committee meetings are subject to the Government Code, Chapter 551. Written notice of the date, time, place, and subject of each meeting shall be posted with the Texas Register Division, secretary of state's office, as required by the Code.

(2) The Assistant Commissioner shall send a copy of the notice of each meeting to each advisory committee member at least one week prior to the meeting.

(3) Meetings will be held at least quarterly and generally will be held in Austin.

(b) Robert's Rules of Order. All meetings will be conducted according to Robert's Rules of Order, except that:

(1) the chairperson may vote on any action as any other advisory committee member, and in case of a tie vote the chairperson's vote will be the tiebreaker; and

(2) all actions taken by the advisory committee must be approved by a majority vote of the members present at the meeting.

(c) Public participation. All requests from the public to participate in advisory committee meetings must be submitted to the chairperson.

(d) Absence of chairperson. If the chairperson will be absent from a meeting, he/she may designate another member to act as chairperson and to have all powers and responsibilities of the chairperson for that meeting.

(e) Compensatory per diem. Official and ex officio members who attend meetings may be reimbursed for expenses for meals, lodging, and transportation as established in the current Texas State Appropriations Act, Article IX. The official and ex officio members who are parents are entitled to reimbursement for child care. All official and ex officio members are entitled to reimbursement for attendant care.

(f) Interpreters. Interpreters for persons who are deaf and other necessary services must be provided at the advisory committee meeting, both for advisory committee members and participants.

(g) Conflict of interest. No advisory committee members may vote on any subject at a meeting which would provide direct financial benefit to that member or otherwise give the appearance of a conflict of interest.

(h) Absences from meetings. The Department of Assistive and Rehabilitative Services may recommend to the governor the removal of any advisory committee member who is absent from more than half of the regularly scheduled meetings of the advisory committee that the member is eligible to attend during each calendar year or is absent from more than two consecutive regularly scheduled meetings that the member is eligible to attend.

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 September 18, 2006.

TRD-200605142
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: October 8, 2006
Proposal publication date: June 30, 2006
For further information, please call: (512) 424-4050



**SUBCHAPTER D. GENERAL PROVISIONS
FOR CASE MANAGEMENT SERVICES
FOR INFANTS AND TODDLERS WITH
DEVELOPMENTAL DISABILITIES**

**40 TAC §§108.221, 108.223, 108.225, 108.227, 108.229,
108.231, 108.233**

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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

TRD-200605143
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: October 8, 2006
Proposal publication date: June 30, 2006
For further information, please call: (512) 424-4050



40 TAC §108.237

The repeal is adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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

TRD-200605144

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: October 8, 2006

Proposal publication date: June 30, 2006

For further information, please call: (512) 424-4050



**SUBCHAPTER E. DEVELOPMENTAL
REHABILITATION SERVICES**

40 TAC §§108.261, 108.263, 108.265

The amendments are adopted under the Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of the Health and Human Services Commission with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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

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

TRD-200605145

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: October 8, 2006

Proposal publication date: June 30, 2006

For further information, please call: (512) 424-4050



TRANSFERRED RULES

The Government Code, §2002.058, authorizes the Secretary of State to remove or transfer rules within the Texas Administrative Code when the agency that promulgated the rules is abolished. The Secretary of State will publish notice of rule transfer or removal in this

section of the *Texas Register*. The effective date of a rule transfer is the date set by the legislature, not the date of publication of notice. Proposed or emergency rules are not subject to administrative transfer.

Texas Building and Procurement Commission

Rule Transfer

Through the enactment of Senate Bill 452 and Senate Bill 727, 79th Legislature, 2005, the Governor and the Legislature have transferred the duties of the Texas Building and Procurement Commission (commission) under the public information law to the Office of the Attorney General. The statutory mandates and activities, as well as administrative rulemaking authority relating to the powers and duties of the commission under the public information law, Chapter 552, Texas Government Code, is transferred to the Office of the Attorney General.

The commission's rules regulating charges for copies of public information are currently located under Title 1, Part 5, Chapter 111, Subchapter C, of the Texas Administrative Code. These rules are transferred and reorganized under Title 1, Part 3, Chapter 70, of the Texas Administrative Code.

This transfer is effective September 1, 2005.

Please refer to the conversion chart that outlines the rule transfer from the Texas Building and Procurement Commission to the Office of the Attorney General.

Figure: 1 TAC Part 5, Chapter 111, Subchapter C

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

TRD-200605198



Office of the Attorney General

Rule Transfer

Through the enactment of Senate Bill 452 and Senate Bill 727, 79th Legislature, 2005, the Governor and the Legislature have transferred the duties of the Texas Building and Procurement Commission (commission) under the public information law to the Office of the Attorney General. The statutory mandates and activities, as well as administrative rulemaking authority relating to the powers and duties of the commission under the public information law, Chapter 552, Texas Government Code, is transferred to the Office of the Attorney General.

The commission's rules regulating charges for copies of public information are currently located under Title 1, Part 5, Chapter 111, Subchapter C, of the Texas Administrative Code. These rules are transferred and reorganized under Title 1, Part 3, Chapter 70, of the Texas Administrative Code.

This transfer is effective September 1, 2005.

Please refer to the conversion chart that outlines the rule transfer from the Texas Building and Procurement Commission to the Office of the Attorney General.

Figure: 1 TAC Part 5, Chapter 111, Subchapter C

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

TRD-200605199



Figure: 1 TAC Part 5, Chapter 111, Subchapter C

Current Rules from Title 1, Part 5 Texas Building and Procurement Commission Chapter 111. Executive Administration Division Subchapter C. Cost of Copies of Public Information		Transferred to Title 1, Part 3 Office of the Attorney General Chapter 70. Cost of Copies of Public Information	
Section	Heading	Section	Heading
§111.61	Purpose	§70.1	Purpose
§111.62	Definitions	§70.2	Definitions
§111.63	Charges for Providing Copies of Public Information	§70.3	Charges for Providing Copies of Public Information
§111.64	Requesting an Exemption	§70.4	Requesting an Exemption
§111.65	Access to Information Where Copies Are Not Requested	§70.5	Access to Information Where Copies Are Not Requested
§111.66	Format for Copies of Public Information	§70.6	Format for Copies of Public Information
§111.67	Estimates and Waivers of Public Information Charges	§70.7	Estimates and Waivers of Public Information Charges
§111.68	Processing Complaints of Overcharges	§70.8	Processing Complaints of Overcharges
§111.69	Examples of Charges for Copies of Public Information	§70.9	Examples of Charges for Copies of Public Information
§111.70	The Texas Building and Procurement Commission Charge Schedule	§70.10	The Texas Building and Procurement Commission Charge Schedule
§111.71	Informing the Public of Basic Rights and Responsibilities under the Public Information Act	§70.11	Informing the Public of Basic Rights and Responsibilities under the Public Information Act

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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 Department of Agriculture

Notice of Acceptance of Applications for the Livestock Assistance Grant Program

In accordance with clause (3) of Section 32 of the Agricultural Adjustment Act of August 24, 1935, the Farm Service Agency of the United States Department of Agriculture (FSA) has provided a block grant under the Livestock Assistance Grant Program (LAGP) to the Texas Department of Agriculture (TDA) to distribute to eligible livestock producers who suffered forage production losses due to certain drought conditions during 2006. On **September 29, 2006**, TDA will begin accepting LAGP applications from eligible livestock producers.

Eligibility Criteria. To be eligible for LAGP funds the livestock producer must meet the following criteria:

1. Must have suffered livestock forage production losses from drought conditions during the period beginning March 7, 2006, and ending on August 31, 2006 (eligibility period);
2. Must have raised eligible livestock for commercial use as part of a farming operation during the eligibility period; and
3. Must have had a livestock operation that suffered forage production losses during the eligibility period and was located in an eligible Texas county, as designated by USDA.

The following Texas counties have been designated by USDA as eligible counties for purposes of the LAGP: Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Brewster, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, Erath, Falls, Fannin, Fayette, Floyd, Foard, Franklin, Freestone, Frio, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Hutchinson, Irion, Jack, Jackson, Jasper, Jeff Davis, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasas, La Salle, Lavaca, Lee, Leon, Limestone, Lipscomb, Live Oak, Llano, Lubbock, McCulloch, McLennan, McMullen, Madison, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Morris, Motley, Navarro, Newton, Nolan, Nueces, Ochiltree, Oldham, Orange, Palo Pinto, Parker, Parmer, Pecos, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, San Patricio, San Saba, Schleicher, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Throckmorton, Titus, Tom Green, Travis, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Young, Zapata and Zavala.

Eligible Livestock. "Eligible Livestock" means: (i) adult beef cattle two years of age and older during the eligibility period and (ii) sheep one year of age and older during the eligibility period. Livestock must have been owned by the livestock producer for at least 30 days.

Compensation. Funds will be paid on a per head basis to compensate eligible livestock producers for drought-related forage production losses incurred for eligible livestock during the eligibility period. Forage production losses may include: cost of lost forage, supplemental feeding costs, costs of relocating livestock to new feed supplies, increased feed transportation costs, and the cost of emergency water supplies. The amount of compensation received by a livestock producer may not exceed the amount of forage production losses incurred during the eligibility period.

Livestock producers that apply in multiple states cannot receive more than \$10,000 in total compensation. In the case of a general partnership or joint venture, the total amount of compensation that may be provided to the general partnership or joint venture shall not exceed \$10,000 for each member of the general partnership or joint venture. The same losses cannot be claimed in more than one state.

Submitting an Application. Applications will be accepted beginning **September 29, 2006**. Applications will be available on TDA's website at: www.agr.state.tx.us, at all TDA offices, and at local Texas Cooperative Extension (TCE) and Farm Service Agency (FSA) offices in the eligible counties. Applications must be mailed to TDA headquarters in Austin addressed to: **Livestock Assistance Grant Program, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711** and postmarked by the deadline provided below.

Deadline for Submission of Applications. The postmark deadline for mailing LAGP applications to TDA is **November 13, 2006**. **Incomplete applications and applications postmarked after the November 13, 2006, deadline will not be considered.**

Due to the number of applications anticipated and the amount of funds available, payment will be limited and may not entirely cover all the forage production losses incurred by each producer. Payment will be made on a per head basis. Per head payment rates will be determined by the total number of eligible livestock claimed by the applicants and will differ for cattle and sheep based on standard animal units. The per head payment rate cannot be determined until all applications are received and processed by TDA.

Further Information. Additional information about the LAGP and the application process can be found on TDA's website. In addition, livestock producers may contact TDA's Governmental Affairs Division at (512) 463-2459 or TELL-TDA (1-800-835-5832) or ga@agr.state.tx.us, for more information.

TRD-200605229

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: September 20, 2006

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Office of the Attorney General

Public Information Cost Rules Partial Exemptions

The Office of the Attorney General makes the following report pursuant to Texas Government Code, Chapter 552, §552.262(d). In Fiscal Years 2006 and 2007 (to date), the following state and local governmental bodies were granted exemptions to part of the rules for determining the cost of providing copies of public information:

Bandera County Clerk's Office
Bosque County Clerk's Office
Gregg County Clerk's Office
Guadalupe County Appraisal District
Harris County
Johnson County Clerk's Office
Liberty County Appraisal District
Nueces County Appraisal District
Texas General Land Office
Texas State Board of Public Accountancy
Texas Water Development Board

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

TRD-200605162
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: September 18, 2006



Texas Building and Procurement Commission

Request for Proposal

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Insurance/Division of Workers' Compensation/Office of Injured Employee Counsel (TDI/DWC/OIEC), announces the issuance of Request for Proposals (RFP) #303-7-10150. TBPC seeks a 5 year lease of approximately 11,469 square feet of office space in the Dallas, Dallas County, Texas.

The deadline for questions is September 28, 2006 and the deadline for proposals is October 10, 2006 at 3:00 P.M. The award date is October 24, 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/bid_show.cfm?bidid=67148.

TRD-200605104
Ingrid K. Hansen
General Counsel
Texas Building and Procurement Commission
Filed: September 14, 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 projects during the period of September 8, 2006, through September 14, 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 September 20, 2006. The public comment period for these projects will close at 5:00 p.m. on October 20, 2006.

FEDERAL AGENCY ACTIONS:

Applicant: Blackberry Island, LP; Location: The project is located approximately 0.5 mile south of Texas State Highway 185, south of Maple Street, between 7th and 2nd Streets in the Commerce Street right-of-way (ROW), along the Gulf Intracoastal Waterway (GIWW), in Port O'Connor, Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port O'Connor, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 754000; Northing: 3149000. Project Description: The applicant proposes to modify Department of the Army (DA) Permit 22348 to temporarily impact 0.35 acre of wetlands during the enhancement/construction of a wetland polishing system. The wetlands polishing system would be used as storm water management/drainage for the Town of Port O'Connor and the Caracol Subdivision. In addition, the applicant proposes to place fill material into 0.13 acre of wetlands for landscaping, the construction of a privacy fence and residential lots within the Commerce Street ROW. Additional environmental and engineering studies have determined that the original drainage plan in DA Permit 22348 could be modified to alleviate some of the water quality and drainage issues currently affecting Port O'Connor. By combining the County drainage with the drainage from the project, storm water could be handled better in a portion of the Commerce Street ROW by utilizing a wetland polishing/drainage system that would discharge into the canals and improve the quality of water and dissolved oxygen (DO) levels within the canals. The applicant proposes to make drainage improvements to the Commerce Street ROW which encompasses an area of approximately 2.08 acres. The lots facing Maple Street to the north drain into the Commerce Street ROW which has no outfall to Matagorda Bay or the GIWW. The Calhoun County Commissioner has offered the Commerce Street ROW between 2nd and 3rd Streets as a location to develop an additional storm water management site which would include a wetland polishing area to entrap sediments and sequester pollutants. The wetland collection and polishing system would incorporate 0.35 acre of herbaceous wetlands which would be enhanced (after being temporarily impacted through regrading) and 0.44 acre of constructed wetland from uplands. The final wetland would be a 0.79 acre salt marsh wetland. The created/enhanced 0.79 acre wetland as the improved storm water management feature would be regraded approximately 1 to 1.5 feet below grade with pipes situated to release overflow into the canal system. The wetlands would be densely vegetated with the plant species listed in the project plans. These species have the capacity to reduce velocity of inflow, entrap sediments, sequester pollutants, and augment DO levels within the canals. The applicant proposes to monitor monthly surface and bottom DO levels. Should

such levels fail to meet the permitted limits the applicant would construct a circulation conduit. Lastly, the applicant proposes an additional row of lots fronting 7th Street. Currently 7th Street has open-cut drainage ditches with no outfall to the Bay or GIWW. Based on current conditions and projects similar to the current canal subdivision, the applicant's engineers have proposed a drainage system that empties directly into the canal. To allow future resident access to and drainage of their lots, an open-cut drainage conveyance is proposed as the applicant states that based on engineering studies (elevation gradients), draining these lots north toward Maple Street into the wetland polishing area would be problematic. CCC Project No.: 06-0389-F1; Type of Application: U.S.A.C.E. permit application #22348(01) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Brownsville Navigation District; Location: The project is located at 13001 R. L. Ostos Road in Brownsville, Cameron County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: East Brownsville, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 662560; Northing: 2871950. Project Description: The applicant proposes to construct a new heavy lift/multi-purpose cargo dock at the Port of Brownsville. A 60-foot-wide by 600-foot-long dock would be constructed adjacent to a proposed ship berth. The berth would be hydraulically dredged to a depth of -45 feet mean low tide and would accommodate ships up to 1,000 feet in length. A temporary construction berm consisting of approximately 7,500 cubic yards of upland soils would be installed in front of a proposed bulkhead at the back of the proposed dock. The temporary berm would be approximately 750 feet in length and have a top width of 20 feet. Once the dock structure has been completed the berm material would be excavated and disposed of at an off-site upland location. As an alternative disposal method, the applicant proposes the placement of the berm material in the ship channel area to be dredged as part of this same project so that the material can be discharged into the proposed disposal areas.

Approximately 230,000 cubic yards of material, including possibly the material from the temporary berm, would be dredged and placed in either PA 5A, 5B or 7, all located east of the project site. Rubble or pre-cast articulated concrete blocks would be installed along the side slopes and a portion of the adjacent drainage canal for a total approximate length of 550 linear feet. The stabilization material would be placed in a band approximately 30 feet wide. A mooring structure would be installed to the east of the proposed dock. The applicant has also requested a 10-year time frame for maintenance dredging with maintenance dredging to occur approximately every 7 to 10 years, and approximately 12,000 cubic yards to be removed over the 10-year period. CCC Project No.: 06-0404-F1; Type of Application: U.S.A.C.E. permit application #24245 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

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-200605165

Larry L. Laine
Chief Clerk/Deputy Land Commissioner
Coastal Coordination Council
Filed: September 18, 2006

◆ ◆ ◆
Comptroller of Public Accounts

Notice of Award

Pursuant to Chapter 2254, Subchapter D, §402.0212, and Chapter 403, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces this notice of award for Outside Counsel Services to Foster, Malish, Blair & Cowan, LLP, 1403 West Sixth Street, Austin, Texas 78703. The total amount of the contract shall not exceed \$50,000.00. The term of the contract is from August 7, 2006 to December 31, 2006.

TRD-200605163
Pamela Smith
Deputy General Counsel, Contracts
Comptroller of Public Accounts
Filed: September 18, 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, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/25/06 - 10/01/06 is 18% for Consumer¹/Agricultural/Commercial²/credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 09/25/06 - 10/01/06 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/06 - 10/31/06 is 8.25% for Consumer/Agricultural/Commercial/credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 10/01/06 - 10/31/06 is 8.25% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200605191
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: September 18, 2006

◆ ◆ ◆
Credit Union Department

Applications to Amend Articles of Incorporation

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Associated Credit Union of Texas, Deer Park, Texas to amend its Articles of Incorporation relating to place of business.

An application for a name change was received from Access Credit Union, Amarillo, Texas. The credit union is proposing to change its name to Access Community Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200605207
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 20, 2006



Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from TexasOne Community Credit Union, Houston, Texas to expand its field of membership. The proposal would permit persons who live, work or attend school in, worship in, and businesses within a ten mile radius of branch offices located at: 12811 Northwest Freeway, Houston, Texas 77040; 17337 Spring-Cypress, Suite E, Cypress, Texas 77429; 5201 Highway 6, Suite 650, Missouri City, Texas; 13730 Alice Road, Suite A, Tomball, Texas 77377, to be eligible for membership in the credit union.

An application was received from Resource One Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit individuals who work or reside in Harris County, Texas, excluding persons eligible for primary membership in an occupation or association based credit union with less than 20,000 members as of the date of this amendment, having an office within this area, to be eligible for membership in the credit union.

An application was received from MemberSource Credit Union, Houston, Texas to expand its field of membership. The proposal would permit employees of Southwest Impreglon, Inc., and their subsidiaries, affiliates or successors, who work in, are paid or supervised from Houston, Texas, to be eligible for membership in the credit union.

An application was received from the Lone Star Credit Union, Dallas, Texas to expand its field of membership. The proposal would permit people who live and/or work in and business entities within a 10 mile radius of Lone Star Credit Union main office location of 7508 Ferguson Road, Dallas, Texas 75228, to be eligible for membership in the credit union.

An application was received from the Concho Valley Credit Union, San Angelo, Texas to expand its field of membership. The proposal would permit persons who live, work, or worship in Tom Green County, Texas, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at <http://www.tcup.state.tx.us/applications.html>. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the

merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200605208
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 20, 2006



Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

InvesTex Credit Union (Conditional), Houston, Texas - See *Texas Register* issue dated May 27, 2005.

Smart Financial Credit Union (Conditional), Houston, Texas - See *Texas Register* issue dated December 30, 2005.

Members Choice Credit Union, Houston, Texas - See *Texas Register* issue dated June 30, 2006.

CTECU (#1), Houston, Texas - See *Texas Register* issue dated June 30, 2006.

CTECU (#2), Houston, Texas - See *Texas Register* issue dated June 30, 2006.

Application(s) for a Merger or Consolidation - Approved

USECO Credit Union (Dallas) and New Mount Zion Baptist Church Credit Union (Dallas) - See *Texas Register* issue dated May 26, 2006.

Articles of Incorporation - 50 Years to Perpetuity -- Approved

Dallas Cotton Belt Employees Credit Union, Dallas, Texas

Galleria Credit Union, Dallas, Texas

Reed Credit Union, Houston, Texas

The Education Credit Union, Amarillo, Texas

LibertyOne Credit Union, Dallas, Texas

EECU, Fort Worth, Texas

Kraft America Credit Union, Garland, Texas

United Energy Credit Union, Houston, Texas

Pollock Employees Credit Union, Dallas, Texas

Smart Financial Credit Union, Houston, Texas

U.S. Employees Credit Union, The Woodlands, Texas

Galveston Government Employees Credit Union, Galveston, Texas

St. Joseph's Credit Union, San Antonio, Texas

TRD-200605209
Harold E. Feeney
Commissioner
Credit Union Department
Filed: September 20, 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 **October 30, 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 October 30, 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: Air Products, L.P.; DOCKET NUMBER: 2006-0903-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN100222215; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: industrial gas manufacturing; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.115(c), Air Permit Number 35873, Special Condition Number 1, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; PENALTY: \$4,160; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Ut Nguyen dba Anns Tailors; DOCKET NUMBER: 2006-1170-DCL-E; IDENTIFIER: RN104964606; LOCATION: Katy, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$948; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Austin; DOCKET NUMBER: 2006-0670-MWD-E; IDENTIFIER: RN102806635; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: municipal wastewater system with a treatment plant; RULE VIOLATED: 30 TAC §305.125(1) and (17), Texas Pollutant Discharge Elimination System Permit Number WQ0013318001, Interim I Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with the permitted effluent limits and by failing to timely submit the annual sludge report; PENALTY: \$3,266; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE:

1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4) COMPANY: BP Amoco Chemical Company; DOCKET NUMBER: 2006-0616-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 TAC §116.715(a), Permit Number 7278, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emission of 956 pounds (lbs) of hexene and 235 lbs of octene; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chy Lee, Corporation dba Jiffy Cleaners 1, Jiffy Cleaners 2, and Comet Cleaners; DOCKET NUMBER: 2006-0817-DCL-E; IDENTIFIER: RN100730332, RN104093802, and RN100691377; LOCATION: Dallas and Seagoville, Dallas County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registration by completing and submitting the required registration forms; PENALTY: \$2,133; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2006-0706-AIR-E; IDENTIFIER: RN101619179; LOCATION: Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 5920A/PSD-TX-103M2, Special Condition Number 1, Air Permit Number 49140, Special Condition Number 12, 40 Code of Federal Regulations (CFR) §63.1563(b) and §63.1564(a)(1)(i), and THSC, §382.085(b), by failing to maintain an emission rate below the maximum allowable emission limits and by failing to comply with the permitted emission rate of one lb of particulate matter per 1,000 lbs of coke burned-off; and 30 TAC §101.201(a)(1) and THSC, §382.085(b), by failing to submit the initial notification within 24 hours of discovery; PENALTY: \$91,808; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Edinburg; DOCKET NUMBER: 2006-0899-WQ-E; IDENTIFIER: RN102080603; LOCATION: Edinburg, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; 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 wastewater activities; PENALTY: \$1,144; ENFORCEMENT COORDINATOR: Brent Hurta, (512) 239-6589; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(8) COMPANY: Equistar Chemicals, LP; DOCKET NUMBER: 2006-0713-AIR-E; IDENTIFIER: RN103773206; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), Air Permit Number 4157A, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions during a scheduled start-up activity; and 30 TAC §101.211(c) and THSC, §382.085(b), by failing to submit a final record no later than two weeks after the end of the scheduled start-up activity; PENALTY: \$5,746; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Grapeland Propane and Fuel, Inc. dba Grapeland Fuel; DOCKET NUMBER: 2006-0660-PST-E; IDENTIFIER: RN103060877; LOCATION: Grapeland, Houston County, Texas;

TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to amend the registration within 30 days of any change to reflect the current status of the underground storage tank (UST) system; 30 TAC §334.8(c)(5)(A)(i) and (B)(ii), by failing to make available to a common carrier a valid, current TCEQ delivery certificate and by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; 30 TAC §334.10(b), by failing to maintain all UST records and make them available for inspection; and 30 TAC §334.45(e)(2)(D), by failing to ensure that all fill pipes are equipped with a removable or permanent factory-constructed drop tube extending to within 12 inches of the tank bottom; PENALTY: \$3,200; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: Lake South Water Supply Corporation; DOCKET NUMBER: 2006-1026-PWS-E; IDENTIFIER: RN103040879; LOCATION: Conroe, Montgomery County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1)(G) and (h)(1) and §290.46(n)(1), by failing to prepare and submit to the TCEQ for review the "as-built" plans for the facility; PENALTY: \$84; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Lide Industries, Inc.; DOCKET NUMBER: 2006-0905-AIR-E; IDENTIFIER: RN101698439; LOCATION: Mexia, Freestone County, Texas; TYPE OF FACILITY: storage tank manufacturing; RULE VIOLATED: 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent nuisance conditions from paint overspray; 30 TAC §122.121 and §122.130(b)(1) and THSC, §382.054 and §382.085(b), by failing to obtain a Title V Federal Operating Permit; 30 TAC §116.110(a) and THSC, §382.085(b) and §382.0518(a), by failing to meet Permit by Rule §106.433 requirements to not exceed the six lbs per hour volatile organic compound emission rate for outdoor surface coating operations; and 30 TAC §116.115(c), Permit Number 75952, Special Condition 11B, and THSC, §382.085(b), by failing to keep records of actual hours of operation and by failing to keep records of cleaning solvents; PENALTY: \$22,016; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Marfel Corporation dba A-1 Dry Cleaners; DOCKET NUMBER: 2006-1206-DCL-E; IDENTIFIER: RN100711233; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$504; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Mohan & Mohan Enterprises Inc. dba Fossil Creek Cleaners and dba Vogue Cleaners; DOCKET NUMBER: 2006-0767-DCL-E; IDENTIFIER: RN104094461 and RN104094446; LOCATION: Fort Worth and Haltom City, Tarrant County, Texas; TYPE OF FACILITY: dry cleaner drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registrations by completing and submitting the required registration forms for the facilities; PENALTY: \$1,422; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(14) COMPANY: New Horizons Ranch and Center, Inc.; DOCKET NUMBER: 2004-1750-PWS-E; IDENTIFIER: Public Water Supply

Number 1670009, RN101278471; LOCATION: Goldthwaite, Mills County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(6)(A) and (s)(1), by failing to employ at least one operator who possessed a valid Class "B" or higher water operator license and by failing to calibrate all flow measuring devices and rate-of-flow controllers; PENALTY: \$626; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Richard Davis dba Sundance Enterprises; DOCKET NUMBER: 2006-0635-MLM-E; IDENTIFIER: RN102934767; LOCATION: Fannin County, Texas; TYPE OF FACILITY: property; RULE VIOLATED: 30 TAC §330.15(c) and the Code, §26.121(a), by failing to prevent the disposal of municipal solid waste at an unauthorized site; and 30 TAC §111.201 and THSC, §382.085(b), by failing to comply with the prohibition on outdoor burning; PENALTY: \$2,940; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(16) COMPANY: Texas Business Networks Inc. dba Country Store II; DOCKET NUMBER: 2005-2044-PST-E; IDENTIFIER: RN102716875; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(a)(1)(A) and (b)(2)(A)(i)(III) and the Code, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release and by failing to test the line leak detector for performance and reliability; 30 TAC §334.7(d)(3), by failing to provide a notice of change of information to the agency; and 30 TAC §334.8(c)(5)(B)(ii), by failing to timely renew a previously issued TCEQ delivery certificate by submitting a properly completed UST registration and self-certification form; PENALTY: \$3,600; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(17) COMPANY: Torres Ready-Mix, Inc.; DOCKET NUMBER: 2006-1141-AIR-E; IDENTIFIER: RN102451044; LOCATION: Dunlay, Medina County, Texas; TYPE OF FACILITY: concrete batch plant; RULE VIOLATED: 30 TAC §101.221(a) and THSC, §382.085(b), by failing to maintain emissions capture and abatement equipment; PENALTY: \$880; ENFORCEMENT COORDINATOR: John Muennink, (361) 825-3100; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(18) COMPANY: Ronnie Riley dba Travel Plaza; DOCKET NUMBER: 2006-1538-PST-E; IDENTIFIER: RN104488069; LOCATION: Somervell County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(d)(1)(B), by failing to implement inventory control methods; PENALTY: \$1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: James W. Weaver dba Val-U Cleaners; DOCKET NUMBER: 2006-0739-DCL-E; IDENTIFIER: RN103967311 and RN103967378; LOCATION: Arlington, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning and/or drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration from for Facility one and two; PENALTY: \$1,659; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Ann Vaughn; DOCKET NUMBER: 2006-0704-PST-E; IDENTIFIER: RN104896436; LOCATION: Wichita Falls,

Wichita County, Texas; TYPE OF FACILITY: automotive repair shop; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance; and 30 TAC §334.7(a)(1) and the Code, §26.346, by failing to register with the commission a UST in existence on or after September 1, 1987; PENALTY: \$1,200; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

TRD-200605196

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 19, 2006



Enforcement Orders

An agreed order was entered regarding City of Hempstead, Docket No. 2004-0371-MWD-E on September 13, 2006 assessing \$5,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ennis West End, Inc. dba Tiger Mart 23, Docket No. 2004-1499-PST-E on September 13, 2006 assessing \$2,400 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 Kash 'N' Karry, Inc. dba Magic Texaco, Docket No. 2004-1842-PST-E on September 13, 2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Alfred Oloko, 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 Lakhani Ashraf dba Easy Shop, Docket No. 2005-0178-PST-E on September 13, 2006 assessing \$3,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-1873, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kamal Chowdhury dba Prime Stop 1, Docket No. 2005-0203-PST-E on September 13, 2006 assessing \$7,000 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 the Estate of Robert Walker, Docket No. 2005-0418-AGR-E on September 13, 2006 assessing \$6,300 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 Jose R. Garcia dba Joe's Texaco, Docket No. 2005-0530-PST-E on September 13, 2006 assessing \$3,150 in administrative penalties with \$630 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.

A default order was entered regarding Metroplex Lucky Star, LLC dba Coastal 1, Docket No. 2005-0649-PST-E on September 13, 2006 assessing \$11,000 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 Paul Leggett dba Country Lake Water Supply, Docket No. 2005-0657-PWS-E on September 13, 2006 assessing \$1,830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Timpson Independent School District, Docket No. 2005-0778-PST-E on September 13, 2006 assessing \$6,375 in administrative penalties with \$1,275 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 East Tawakoni, Docket No. 2005-0886-MWD-E on September 13, 2006 assessing \$9,680 in administrative penalties with \$1,936 deferred.

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.

An agreed order was entered regarding City of Rhome, Docket No. 2005-0902-MWD-E on September 13, 2006 assessing \$29,165 in administrative penalties.

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.

A default order was entered regarding A. K. S. Construction L.P., Docket No. 2005-0966-AIR-E on September 13, 2006 assessing \$15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding McCarty Road Landfill TX, LP, Docket No. 2005-1225-MSW-E on September 13, 2006 assessing \$50,076 in administrative penalties with \$10,015 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward 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 Pat Hornsby dba Pat's Place, Docket No. 2005-1350-PWS-E on September 13, 2006 assessing \$1,980 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 Kelly Williamson, Docket No. 2005-1381-PST-E on September 13, 2006 assessing \$2,500 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 YFZ Land, LLC, Docket No. 2005-1430-MLM-E on September 13, 2006 assessing \$14,140 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 Sand & Gravel, Inc., Docket No. 2005-1509-WQ-E on September 13, 2006 assessing \$1,050 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.

A default order was entered regarding World Class Enterprises, Inc. dba MS-2 Express, Docket No. 2005-1546-PST-E on September 13, 2006 assessing \$3,150 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 AJMM, Inc. dba E-Z Food Store, Docket No. 2005-1553-PST-E on September 13, 2006 assessing \$7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Osama Azzam dba Super Stop 3, Docket No. 2005-1581-AIR-E on September 13, 2006 assessing \$1,020 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.

A default order was entered regarding Sylvia Cervantes dba PDS General Store, Docket No. 2005-1645-PST-E on September 13, 2006 assessing \$2,140 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas

Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Albert Rivera, Docket No. 2005-1689-LII-E on September 13, 2006 assessing \$625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pirafzal Corporation dba Star Stop 4, Docket No. 2005-1690-PST-E on September 13, 2006 assessing \$2,400 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.

A default order was entered regarding Saira & Rizwan, Inc. dba Salt Grass Kountry 1, Docket No. 2005-1789-PWS-E on September 13, 2006 assessing \$2,363 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mark Curnutt, Staff Attorney at (512) 239-0624, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sona Stores, Inc. dba Sunshine Groceries, Docket No. 2005-1796-PST-E on September 13, 2006 assessing \$3,600 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 AAA Industrial Chromium Company, Docket No. 2005-1916-IHW-E on September 13, 2006 assessing \$44,459 in administrative penalties with \$8,892 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel LaCaille, 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 Robert Pine dba Willow Manor Mobile Home Park, Docket No. 2005-2003-PWS-E on September 13, 2006 assessing \$2,480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pine, Robert, Docket No. 2005-2003-PWS-E on September 13, 2006 assessing \$2480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deanna Sigman, Staff Attorney at (512) 239-0619, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding NASIB, Inc. dba Discount Food Mart, Docket No. 2006-0192-PST-E on September 13, 2006 assessing \$7,600 in administrative penalties with \$1,520 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 Exxon Mobil Corporation, Docket No. 2006-0233-AIR-E on September 13, 2006 assessing \$44,600 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 ConocoPhillips Company, Docket No. 2006-0252-AIR-E on September 13, 2006 assessing \$96,296 in administrative penalties.

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 Ellinger Sewer and Water Supply Corporation, Docket No. 2006-0255-MWD-E on September 13, 2006 assessing \$9,450 in administrative penalties with \$1,890 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 Ronnie Butler dba Butler and Perry, Docket No. 2006-0258-PST-E on September 13, 2006 assessing \$13,125 in administrative penalties with \$2,625 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 BP Products North America Inc., Docket No. 2006-0262-AIR-E on September 13, 2006 assessing \$90,000 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 National Oilwell Varco, L.P., Docket No. 2006-0285-AIR-E on September 13, 2006 assessing \$85,625 in administrative penalties with \$17,125 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 Houston, Docket No. 2006-0286-MWD-E on September 13, 2006 assessing \$6,660 in administrative penalties with \$1,332 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 Commerce, Docket No. 2006-0298-MWD-E on September 13, 2006 assessing \$10,024 in administrative penalties with \$2,005 deferred.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at (512) 239-4571,

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. 2006-0310-AIR-E on September 13, 2006 assessing \$40,000 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 FMC Technologies, Inc., Docket No. 2006-0320-IWD-E on September 13, 2006 assessing \$9,480 in administrative penalties with \$1,896 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 City of Eagle Pass, Docket No. 2006-0323-PWS-E on September 13, 2006 assessing \$2,565 in administrative penalties.

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 Cal Farley's Boys Ranch, Docket No. 2006-0331-MWD-E on September 13, 2006 assessing \$2,500 in administrative penalties with \$500 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 Mike Moyers dba Sandy Creek Farm, Docket No. 2006-0354-AGR-E on September 13, 2006 assessing \$5,885 in administrative penalties with \$1,177 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 City of Waco, Docket No. 2006-0359-PWS-E on September 13, 2006 assessing \$1,595 in administrative penalties with \$319 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 Chevron Pipe Line Company, Docket No. 2006-0366-AIR-E on September 13, 2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nadia Hameed, Enforcement Coordinator at (713) 767-3629, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Darryl Wheeler dba Magnolia Lake RV Park, Docket No. 2006-0389-PWS-E on September 13, 2006 assessing \$2,923 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-

3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kennedale, Docket No. 2006-0396-MWD-E on September 13, 2006 assessing \$4,000 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 Huntsman Petrochemical Corporation, Docket No. 2006-0399-AIR-E on September 13, 2006 assessing \$19,608 in administrative penalties.

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 T.O.P. Ministries, Inc., Docket No. 2006-0412-PWS-E on September 13, 2006 assessing \$2,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 490-3096, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Kempenaar Real Estate, Ltd. dba Still Meadow Dairy, Docket No. 2006-0415-AGR-E on September 13, 2006 assessing \$5,265 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.

An agreed order was entered regarding Phillip P. Hamer, Docket No. 2006-0460-LII-E on September 13, 2006 assessing \$525 in administrative penalties with \$105 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 Chil L. Baldrige dba Lou's All Season Market, Docket No. 2006-0473-PST-E on September 13, 2006 assessing \$4,600 in administrative penalties with \$920 deferred.

Information concerning any aspect of this order may be obtained by contacting Tom 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 City of Brazoria, Docket No. 2006-0502-MWD-E on September 13, 2006 assessing \$6,390 in administrative penalties with \$1,278 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 KDGG Investments Partners, Ltd. dba LT Country Market, Docket No. 2006-0544-PST-E on September 13, 2006 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-0577, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Alex Addy dba USA Truck Stop, Docket No. 2006-0552-PWS-E on September 13, 2006 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elvia Maske, Enforcement Coordinator at (512) 239-0789, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Burnet, Docket No. 2006-0598-PWS-E on September 13, 2006 assessing \$665 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 490-3095, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DDC Construction, Inc., Docket No. 2006-0599-WQ-E on September 13, 2006 assessing \$1,050 in administrative penalties with \$210 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 Carbon Silica Partners, L.P. dba Diamond Fiberglass Fabrications, Docket No. 2006-0615-AIR-E on September 13, 2006 assessing \$2,500 in administrative penalties with \$500 deferred.

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 Meador Chrysler-Plymouth dba Meador Chrysler Jeep, Docket No. 2006-0622-PST-E on September 13, 2006 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Christina Martinez, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A field citation was entered regarding Clarence Jolly, Docket No. 2006-0900-WQ-E on September 13, 2006 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation 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.

A field citation was entered regarding Arlamar LLC dba Kwik Kar Lube, Docket No. 2006-0922-PST-E on September 13, 2006 assessing \$1,750 in administrative penalties.

Information concerning any aspect of this citation 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.

A field citation was entered regarding Robert C. Manning, Docket No. 2006-0928-PWS-E on September 13, 2006 assessing \$210 in administrative penalties.

Information concerning any aspect of this citation 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-200605223

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 20, 2006



Extension of Deadline for Comments (Chapter 116)

In the August 25, 2006, issue of the *Texas Register* (31 TexReg 6616), the Texas Commission on Environmental Quality (commission) published proposed new §§116.1500, 116.1510, 116.1520, 116.1530, and 116.1540 of 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification, and corresponding revisions for the state implementation plan (SIP). The preamble to the proposed rules stated that the comment period closed September 25, 2006. The commission has extended the deadline for receipt of written comments to October 9, 2006, for these proposed sections.

Written comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. All comments should reference Rule Project Number 2006-022-116-EN. The comment period closes October 9, 2006. For further information, please contact Margaret Earnest, Air Quality Division, (512) 239-4581.

TRD-200605200

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: September 19, 2006



Notice of District Petition

Notice mailed September 14, 2006

TCEQ Internal Control No. 07202006-D07; Northpark 109, LTD., a Texas limited partnership, Woodbridge 268, LTD, a Texas limited partnership, and TVMS Land Investment, Inc., a Texas corporation (Petitioners), filed a petition for creation of Woodridge Municipal Utility District of Montgomery County with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are ten lien holders including Robin G. Stanford, Individually and as Independent Executrix of the Estate of John P. Stanford, Jr., Deceased; Ray Eastridge, Jr.; James Turner McIntyre; Jessie Randolph McIntyre, Jr.; Wilson Wayne King, Independent Executor of the Will of Jessie Elise King, Deceased; J. Phillip Davis, Jr.; Patsy D. Freeman; and Janet D. Stautz; JP Morgan Chase Bank, N.A. and the Ann K. Grace Charitable Lead Annuity Trust on the property to be included in the proposed District; (3) the proposed District will contain approximately 602.04

acres located within Montgomery County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas. The Petitioner has provided the TCEQ with a certificate evidencing its consent to the creation of the proposed District and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2006-117, effective February 7, 2006, the City of Houston, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioners conducted a preliminary investigation to determine the cost of the project and from the information available at the time, the cost of the project is estimated to be approximately \$62,800,000

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on a petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

The Executive Director may approve a petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of the notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team at 1-512-239-4691. Si desea información en Español, puede llamar al 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200605225

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 20, 2006



Notice of Public Hearing on Proposal to Substitute Certain Transportation Control Measures Contained in the Dallas-Fort Worth State Implementation Plan

The Texas Commission on Environmental Quality (commission), in coordination with the North Central Texas Council of Governments (NCTCOG), serving as the Metropolitan Planning Organization (MPO) for the Dallas-Fort Worth metropolitan area (DFW), proposes

to substitute certain transportation control measures (TCM) contained in the DFW state implementation plan (SIP). As provided by commission rules, the commission and the NCTCOG have initiated a process to approve substitute TCMs for the DFW SIP. Documentation regarding each proposed substitute TCM is available for public review at the commission Web site located at <http://www.tceq.state.tx.us/implementation/air/sip/jan2004tcm.html>. Documentation may also be obtained from David Jodray, Principal Transportation Planner, North Central Texas Council of Governments, P.O. Box 5888, Arlington, Texas 76005-5888, or at (817) 640-3028.

The commission will hold a public hearing on this proposal on September 28, 2006, at 6:30 p.m., at the North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas in the third floor Transportation Board Room. The hearing will be structured for the receipt of oral and/or written comments from interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact David Jodray at (817) 640-3300. Requests for special accommodations should be made as far in advance as possible. Comments may be submitted to Koy Howard, Texas Commission on Environmental Quality, Air Quality Section, MC 164, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-1500. All comments should reference Transportation Control Measure Substitution for the DFW area. Comments must be received by 5:00 p.m., September 29, 2006. For further information, please contact Mr. Koy Howard of the Air Quality Division at (512) 239-2306.

TRD-200605204
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 19, 2006



Notice of Request for Nominations for Appointment to Serve on the Irrigator Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for three individuals to serve on the Irrigator Advisory Council (council). Two of the individuals must be an irrigator licensed to work in Texas and the third individual represents the public. Council members will be asked to serve a six-year term beginning in 2007.

The Texas Occupations Code, Title 12, Chapter 1903, Subchapter D, provides the structure of the nine-member council appointed by the TCEQ. The council is comprised of six licensed irrigators that are residents of Texas, are experienced in the irrigation business, and familiar with irrigation methods and techniques; and three public members.

The council provides valuable feedback and suggestions to improve landscape irrigation in Texas. The council members are required to attend half of the annual meetings. The council members generally meet for one day in Austin in March, July, and November of each year. Council members are not paid for their services but are eligible for reimbursement of travel expenses at state rates as appropriated by the legislature.

To nominate an individual: 1) ensure the individual is qualified for the position for which he/she is being considered; 2) submit a brief biographical summary which includes work experience; and 3) provide

the nominee a copy of this request. The nominee must submit a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received by 5:00 p.m., October 13, 2006. The appointment will be considered by the TCEQ at a future agenda. Please mail all correspondence to Candice Garrett, Texas Commission on Environmental Quality, Compliance Support Division, MC 178, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-6390. Questions regarding the council can be directed to Ms. Garrett at (512) 239-1451, or e-mail: cgarrett@tceq.state.tx.us. Additional information regarding the council is available at the following Web site: http://www.tceq.state.tx.us/compliance/compliance_support/regulatory/regulatory/irrigation/irr_advisory.html.

TRD-200605213
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: September 20, 2006



Notice of Water Quality Applications

The following notices were issued during the period of September 14, 2006.

The following require the applicants to publish notice in the newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

A&D CORLEY ENTERPRISES, LTD. has applied for a renewal of Permit No. 13401-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 5,000 gallons per day via surface irrigation of 3.5 acres of non-public access landscape. This permit will not authorize a discharge of pollutants into waters in the State. TCEQ received this application on May 4, 2006. The facility and disposal site are located at 914 Country Club Road, Argyle, Texas, approximately 1.25 miles northeast of the intersection of U.S. Highway 377 and Country Club Road in Denton County, Texas. The facility and disposal site are located in the drainage basin of Lake Lewisville in Segment No. 0823 of the Trinity River Basin.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 14263-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day. The facility is located approximately 2,500 feet southwest of the intersection of State Highway 114 and John Day Road in Denton County, Texas.

EAST CEDAR CREEK FRESH WATER SUPPLY DISTRICT has applied for a renewal of Permit No. 13874-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via surface irrigation of 137 acres of agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 15,700 feet south of the intersection of State Highway 198 and State Highway 334 in Henderson County, Texas.

ELAN DEVELOPMENT, L.P. has applied for a new permit, proposed TPDES Permit No. WQ0014694001, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 1,000,000 gallons per day. The facility is located approximately 4,300 feet east and 1,500 feet north of the intersection of Farm-to-Market Road 1314 and Calhoun Road in Montgomery County, Texas. The

treated effluent is discharged to an on-site drainage channel; thence to a pumped detention pond; thence to a drainage channel which crosses under Old Houston Road; thence to a series of drainage ditches; thence to Dry Creek; thence to Caney Creek in Segment No. 1010 of the San Jacinto River Basin.

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 167 has applied for a major amendment to TPDES Permit No. 12834-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 294,000 gallons per day to a daily average flow not to exceed 490,000 gallons per day through outfall 001 and not to exceed 490,000 gallons per day through outfall 002 for a combined daily average flow not to exceed 980,000 gallons per day in the final phase. The facility is located 1.25 miles north of the intersection of Barker-Cypress Road and Clay Road and approximately 1 mile southwest of the intersection of Gummert Road and Barker-Cypress Road in Harris County, Texas.

MAW MAGNOLIA, LP has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014717001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility will be located approximately 6,400 feet north and 2,200 feet west of the intersection of Farm-to-Market Road 1774 and Sanders Cemetery Road in Montgomery County, Texas.

CITY OF RHOME has applied for a renewal of TPDES Permit No. 10701-002, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 150,000 gallons per day. The facility is located approximately 150 feet east of the intersection of County Road 4651 and Oates Branch in Wise County, Texas.

CITY OF RUSK has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. 10447-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located approximately 0.35 mile west of Farm-to-Market Road 752 and approximately 1.5 miles south of mid-town Rusk in Cherokee County, Texas.

CITY OF TYLER has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010653002, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 9,000,000 gallons per day. The facility is located 1.5 miles northwest of the intersection of U.S. Highway 69 and Farm-to-Market Road 2813 and approximately 3.4 miles south-southwest of the intersection of State Loop 323 and U.S. Highway 69 in Smith County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605226

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 20, 2006



Notice of Water Rights Application

Notice issued September 14, 2006

APPLICATION NO. 12047; HRC Cherokee Tree Farm LP, Applicant, 2100 McKinney Avenue, Suite 700, Dallas, Texas 75201, has applied for a Water Use Permit to authorize construction and maintenance of two (2) dams and reservoirs impounding a combined total of 3,849.5 acre-feet of water and having a combined surface area of 385 acres on Flat Creek, Neches River Basin for in-place recreational purposes in Cherokee County. The application and fees were received on May 10, 2006, and additional information received on June 28, 2006. The application was declared administratively complete and accepted for filing with the Office of the Chief Clerk on August 9, 2006. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200605224

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: September 20, 2006



State Superfund Update

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Texas

Health and Safety Code, Chapter 361 (the Act) to identify, to the extent feasible, and evaluate facilities which may constitute an imminent and substantial endangerment to public health and safety or to the environment due to a release or threatened release of hazardous substances into the environment. The first registry identifying these sites was published in the January 16, 1987 issue of the *Texas Register* (12 TexReg 205). In accordance with the Act, §361.181, the commission must update the state Superfund registry annually to add new facilities proposed for listing in accordance with the Act, §361.184(a) and listed in accordance with §361.188(a)(1) (see also 30 Texas Administrative Code (TAC) §335.343) or to delete facilities in accordance with the Act, §361.189 (see also 30 TAC §335.344). The current notice also includes facilities where state Superfund action has ended, or where cleanup is being adequately addressed by other means.

In accordance with the Act, §361.188, the state Superfund registry identifying those facilities that are listed and have been determined to pose an imminent and substantial endangerment in descending order of hazard ranking system (HRS) scores are as follows.

1. Col-Tex Refinery. Located on both sides of Business Interstate 20 (U.S. 80) in Colorado City, Mitchell County: tank farm and refinery.
2. J.C. Pennco Waste Oil Service. Located at 4927 Higdon Road, San Antonio, Bexar County: waste oil and used drum recycling.
3. Precision Machine and Supply. Located at 500 West Olive Street, Odessa, Ector County: chrome plating and machine shop.
4. Sonics International, Inc. Located north of Farm Road 101, approximately two miles west of Ranger, Eastland County: industrial waste injection wells.
5. Maintech International. Located at 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning and equipment hydroblasting.
6. Federated Metals. Located at 9200 Market Street, Houston, Harris County: magnesium dross/sludge disposal, inactive landfill.
7. Niagara Chemical. Located west of the intersection of Commerce Street and Adams Avenue, Harlingen, Cameron County: pesticide formulation.
8. International Creosoting. Located at 1110 Pine Street, Beaumont, Jefferson County: wood treatment.
9. McBay Oil & Gas. Located approximately three miles northwest of Grapeland on Farm Road 1272, Houston County: oil refinery and oil reclamation plant.
10. Materials Recovery Enterprises. Located about four miles southwest of Ovalo, near U.S. 83 and Farm Road 604, Taylor County: Class I industrial waste management.
11. Toups. Located on the west side of Texas 326, 2.1 miles north of its intersection with Texas 105, in Sour Lake, Hardin County: fencepost treating facility and municipal waste.
12. Harris Sand Pits. Located at 23340 South Texas 16, approximately 10.5 miles south of San Antonio at Von Ormy, Bexar County: commercial sand and clay pit.
13. JCS Company. Located north of Phalba on County Road 2415, approximately 1.5 miles west of the intersection of County Road 2403 and Texas 198, Van Zandt County: lead-acid battery recycling.
14. Jerrell B. Thompson Battery. Located north of Phalba on County Road 2410, approximately one mile north of the intersection of County Road 2410 and Texas 198, Van Zandt County: lead-acid battery recycling.

15. Hayes-Sammons Warehouse. Located at Miller Avenue and East Eighth Street, Mission, Hidalgo County: commercial grade pesticide storage.

16. Jensen Drive Scrap. Located at 3603 Jensen Drive, Houston, Harris County: scrap salvage.

17. State Highway 123 PCE Plume. Located near the intersection of State Highway 123 and Interstate Highway 35 in San Marcos, Hays County: contaminated groundwater plume.

18. Baldwin Waste Oil Company. Located on County Road 44 approximately 0.1 mile west of its intersection with Farm Road 1889, Robstown, Nueces County: waste oil processing.

19. Hall Street. Located north of the intersection of 20th Street East with California Street, north of Dickinson, Galveston County: waste disposal and landfill/open field dumping.

20. Unnamed Plating. Located at 6816 - 6824 Industrial Avenue, El Paso, El Paso County: metals processing and recovery.

21. Tricon America, Inc. Located at 101 East Hampton Road, Crowley, Tarrant County: aluminum and zinc smelting and casting.

Pursuant to the Act, §361.181, those facilities that may pose an imminent and substantial endangerment, and which have been proposed to the state Superfund registry, are set out in descending order of hazard ranking system (HRS) scores as follows:

1. Kingsland. Located in the vicinity of the 2100 and 2400 blocks of Farm-to-Market Road 1431 in the community of Kingsland, Llano County: two groundwater plumes.
2. First Quality Cylinders. Located at 931 West Laurel Street, San Antonio, Bexar County: aircraft cylinder rebuilder.
3. Rogers Delinted Cottonseed - Colorado City. Located near the intersection of Interstate Highway 20 and State Highway 208 in Colorado City, Mitchell County: former cottonseed delinting processing.
4. ArChem Thames/Chelsea. Located at 13013 Conklin Lane, Houston, Harris County: chemical manufacturing and recycling.
5. Hicks Field Sewer Corp. Located approximately 1.8 miles west of the intersection of U.S. Highway 81/287 and Farm-to-Market Road 156, Tarrant County: former sewage treatment facility.
6. Industrial Road/Industrial Metals. Located at 3000 Agnes Street in Corpus Christi, Nueces County: lead acid battery recycling and copper coil salvage.
7. Tenaha Wood Treating. Located at 275 County Road 4382, about a mile and a half south of the city limits and near the intersection of U.S. Highway 96 and County Road 4382, Tenaha, Shelby County: wood treatment.
8. Poly-Cycle Industries, Inc., Tecula. Located northeast of Tecula on the southeast corner of the intersection of Farm-to-Market 2064 and County Road 4216, Cherokee County: lead acid battery recycling.
9. Sherman Foundry. Located at 532 E. King Street in south central Sherman, Grayson County: cast iron foundry.
10. James Barr Facility. Located in the 3300 block of Industrial Road, Pearland, Brazoria County: vacuum truck waste storage facility.
11. Pioneer Oil and Refining Company. Located at 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery.
12. Voda Petroleum Inc. Located at 211 Duncan Street, Clarksville City, Gregg County: waste oil recycling facility.

13. Force Road Oil and Vacuum Truck Company. Located at 1722 County Road 573 (Alloy Road), approximately 1,300 feet east of the Brazoria-Fort Bend County Line, Brazoria County: oily wastewater disposal and oil recovery facility.
14. Marshall Wood Preserving. Located at 2700 West Houston Street, Marshall, Harrison County: wood treatment.
15. Avinger Development Company (ADCO). Located on the south side of Texas 155, approximately 1/4 mile east of the intersection with Texas 49, Avinger, Cass County: wood treatment.
16. Harvey Industries, Inc. Located at the southeast corner of Farm Road 2495 and Texas 31 (One Curtis Mathes Drive), Athens, Henderson County: television manufacturing.
17. Hu-Mar Chemicals. Located north of McGothlin Road, between the old Southern Pacific Railroad tracks and 12th Street, Palacios, Matagorda County: pesticide and herbicide formulation.
18. American Zinc. Located approximately 3.5 miles north of Dumas on U.S. 287 and five miles east on Farm Road 119, Moore County: zinc smelter.
19. El Paso Plating Works. Located at 2422 Wyoming Avenue, El Paso, El Paso County: metal plating.
20. Ballard Pits. Located at the end of Ballard Lane, west of its intersection with County Road 73 approximately 5.8 miles north of Robstown, Nueces County: storage and disposal of hazardous substances.
21. Cass County Wood Treating. Located at 304 Hall Street within the southeastern city limits of Linden, Cass County: wood treatment.
22. Spector Salvage Yard. Located at Jackson Avenue and Tenth Street, Orange, Orange County: military surplus and chemical salvage yard.
23. San Angelo Electric Service Company (SESCO). Located at 926 Pulliam Street in a residential area of northeastern San Angelo, Tom Green County: electric transformer recycling.
24. Tucker Oil Refinery/Clinton Manges Oil & Refining Company. Located on the east side of U.S. Highway 79 in the rural community of Tucker, Anderson County: oil refinery.
25. Dorchester Refining Company. Located in the 1700 block of West First Street on the west border of the city of Mount Pleasant, Titus County: oil refinery.
26. Bailey Metal Processors, Inc. Located one mile northwest of Brady on Highway 87, McCulloch County: scrap metal dealer, primarily conducting copper and lead reclamation.
27. City View Road Groundwater Plume. Located northwest of the intersection of Interstate Highway 20 and State Highway 158, Midland County: groundwater contamination plume.
28. Mineral Wool Insulation Mfg. Co. Located on Shaw Road at the northwest corner of the city limits of Rogers, Bell County: mineral wool manufacturing.
29. Aluminum Finishing Company. Located at 6006 Ardmore Street, Houston, Harris County: metal plating.
30. Poly-Cycle Industries, Jacksonville. Located on the south side of the city at 2505 South Jackson Street, Cherokee County: lead acid battery chips recycler and lead recovery.

Since the last *Texas Register* publication on April 7, 2006 (31 TexReg 3078 - 3080), the TCEQ has determined that one facility, Aluminum Finishing Company, Harris County, may pose an imminent and substantial endangerment to public health and safety or the environment, and pursuant to the Act, §361.184(a) has been added to the list of sites

proposed to the state Superfund registry. No additional sites were proposed to the state Superfund registry.

Also, the TCEQ has determined that two sites, Cox Road Dump Site, Liberty County, and Rogers Delinted Cottonseed Co., Collin County, no longer pose an imminent and substantial endangerment to public health or the environment, and have been deleted pursuant to 30 TAC §335.344(c). Cox Road Dump Site was referred to the Voluntary Cleanup Program.

To date, 40 sites have been deleted from the state Superfund registry in accordance with the Act, §361.189 (see also the Act, §361.183(a) and 30 TAC §335.344): Aztec Ceramics, Bexar County; Aztec Mercury, Brazoria County; Barlow's Wills Point Plating, Van Zandt County; Bestplate, Inc., Dallas County; Butler Ranch, Karnes County; Cox Road Dump Site, Liberty County; Crim-Hammett, Rusk County; Double R Plating Company, Cass County; Gulf Metals Industries, Harris County; Hagerson Road Drum, Fort Bend County; Harkey Road, Brazoria County; Hart Creosoting, Jasper County; Hi-Yield, Hunt County; Higgins Wood Preserving, Angelina County; Houston Lead, Harris County; Houston Scrap, Harris County; Kingsbury Metal Finishing, Guadalupe County; LaPata Oil Company, Harris County; Lyon Property, Kimble County; McNabb Flying Service, Brazoria County; Melton Kelly Property, Navarro County; Munoz Borrow Pits, Hidalgo County; Newton Wood Preserving, Newton County; Old Lufkin Creosoting, Angelina County; Permian Chemical, Ector County; Phipps Plating Co., Bexar County; PIP Minerals, Liberty County; Poly-Cycle Industries, Ellis County; Rio Grande Refinery I, Hardin County; Rio Grande Refinery II, Hardin County; Rogers Delinted Cottonseed Co., Collin County; Sampson Horrice, Dallas County; Solvent Recovery Services, Fort Bend County; South Texas Solvents, Nueces County; State Marine, Jefferson County; Stoller Chemical Company, Hale County; Texas American Oil, Ellis County; Thompson Hayward Chemical, Knox County; Waste Oil Tank Services, Harris County; and Wortham Lead Salvage, Henderson County.

The public records for each of the sites are available for inspection and copying during regular TCEQ business hours at the TCEQ Records Management Center, Building E, North Entrance, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Handicapped parking is available on the east side of Building D, convenient to access ramps that are located between Buildings D and E. There is no charge for viewing the files, however, copying of file information is subject to payment of a fee.

TRD-200605206

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: September 19, 2006

◆ ◆ ◆ Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Lobby Activities Report due January 10, 2006

Anne Culver, 1200 Smith St., Ste. 700, Houston, Texas 77002

John Kroll, 919 Congress Ave., Ste. 1130, Austin, Texas 78701-2157

Deadline: Lobby Activities Report due July 10, 2006

Mike French, 816 Congress Ave., Ste. 940, Austin, Texas 78701

Jack Ogg, 6363 Woodyway, Ste. 870, Houston, Texas 77057

Deadline: Personal Financial Statement due February 13, 2006

Question D. Burge, Jr., 1030 Lake Grove Loop, Midlothian, Texas 76065-5640

Gerald W. La Fleur, 5810 Maple St., Houston, Texas 77074-7845

Anibal Olague, 10204 Montwood Dr., El Paso, Texas 79925-6303

Phillip S. Smart, P.O. Box 217, Ferris, Texas 75125

Deadline: Personal Financial Statement due March 6, 2006

Edward L. Johnson, 1711 San Jacinto Blvd., Austin, Texas 78701-1416

Deadline: Personal Financial Statement due May 1, 2006

J. David Bradley, 2165 North St., Beaumont, Texas 77701-1550

Nora Castaneda, 2806 Becky Lane, Harlingen, Texas 78550

Ralph Diaz, 10610 Gettysburg St., Corpus Christi, Texas 78410-2407

William H. Fleming, III, 5695 Shady River Dr., Houston, Texas 77056-1014

Bill Slomchinski, P.O. Box 197, Leming, Texas 78050

Gerald E. Wilson, 15915 Katy Frwy, Ste. 500, Houston, Texas 77094

Deadline: Personal Financial Statement due June 30, 2006

Shannon T. Carr, 867 Via Alta Lane, El Paso, Texas 79912-6625

Curtis Virgil Flowers, 4361 Harvest Lane, Houston, Texas 77004

TRD-200605107

David A. Reisman

Executive Director

Texas Ethics Commission

Filed: September 15, 2006



List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5800 or (800) 325-8506.

Deadline: Semiannual GPAC/SPAC Report Due July 17, 2006

Tommy J. Azopardi, Texas Horsemen's Partnership Political Action Committee, P.O. Box 142533, Austin, Texas 78714

Tommy J. Azopardi, Texans for Economic Development, 1122 Colorado, Suite 209, Austin, Texas 78701

Leslie J. Baldwin, El Paso Pachyderms Pack Fund, 9455 Viscount Blvd., Apt. 116, El Paso, Texas 79925-7008

Leslie J. Baldwin, Ya Basta Political Action Committee, 9455 Viscount Blvd., Apt. 116, El Paso, Texas 79925-7008

Anthony E. Bond, Irving Citizens for Truth, 4109 W. Northgate, Suite 824, Irving Texas 75062

James S. Bowie, Citizens for Term Limitation, P.O. Box 16855, Houston, Texas 77222-6855

Stanley J. Briers, Plumbing Air Conditioning Mechanical Contractors Assoc. Health & Safety Fund, 219 Whispering Oaks, Taylor Lake Village, Texas 77586

Bill Burdock, Eagle Mountain Political Fund, 1428 New Hope Rd., Boyd, Texas 76023

Noel Candelaria, Ysleta Educators PAC, 1212 N. Yarbrough Dr., Ste. 306, El Paso, Texas 79925-7927

Hassan Chahadeh, University Hospital Systems LLP PAC, One Houston Center, 1221 McKinney St., Suite 3240, Houston, Texas 77010

Sandra Chiquito, El Paso County Democratic Party (CEC), 11108 Sea Foam Way, El Paso, Texas 79936

Daniel M. Chism, EZCORP, Inc. Political Action Committee, 1901 Capital Parkway, Austin, Texas 78746

Jim R. Davisson, Moving Bedford Forward, P.O. Box 12, Bedford, Texas 76095

Gail G. Dinham, Texas Assn. of Mortgage Brokers PAC, 14901 Quorum, Ste. 435, Dallas, Texas 75254

Damon D. Edwards, ANSUN PAC, 13701 Broad Oaks Lane, Rosharon, Texas 77583

Karen J. Estes, Dallas Gay & Lesbian Alliance PAC, P.O. Box 190712, Dallas, Texas 75219

Gloria Garvish, Plainview Area Republican Women, P.O. Box 393, Plainview, Texas 79072

Paul J. Gebolys, Woodlands Voter Information Project, 594 Sawdust Rd., Suite 214, The Woodlands, Texas 77380

Len Goff, Fort Bend Democrats, 602 Texas Parkway, Missouri City, Texas 77489

Laura L. Harden, Concerned Citizens of Venus, 501 W. County Road 109, Venus, Texas 76084

Bryan E. Hartmann, Democratic Texas Political Action Committee, 5811 Santa Fe Dr., Arlington, Texas 76017-2056

Leah A. Hubbard, Republican Club of Sachse PAC, 5915 Fieldcrest Lane, Sachse, Texas 75048

Gregory M. James, Greater Dallas Republicans Political Action Committee, Box 702705, Dallas, Texas 75370

Michael C. Jozwiak, Hobby Airport Area Alliance, 6875 Dillon St., Houston, Texas 77061

Edward C. Lutz, Tarrant County Republican Assembly Political Action Committee, 8400 Trace Ridge Parkway, Fort Worth, Texas 76137

Raul R. Martinez, Combined Metro Police Officers Association, 2251 Hwy. 90, Weimar, Texas 78962-5170

Wendy O. Melton, Texas Democratic Women of Montgomery County PAC, 10721 Timberwagon, The Woodlands, Texas 77380

Pamela Niblett, Cross Timbers Republican Women's Club, 1200 E. Milton Ave., Comanche, Texas 76442

Mary Vela Novark, Walker County Democrat Club, P.O. Box 6744, Huntsville, Texas 77342-6744

Monica McCoy Purdy, The Ten PAC, 6159 Palo Pinto Ave., Dallas, Texas 75214

Chance A. Randel, The Spring Democratic Club, 23431 Prairie Bird, Spring, Texas 77373

Jessie Riojas, Glass, Molders, Pottery, Plastics & Allied Workers Local Union #201, 329 N. Grand, Waxahachie, Texas 75165

Modesto R. Rodriguez III, League of Latino Voters, 3109 Harvard St., Lubbock, Texas 79415

Gary Rowe, Political Action Committee of the Wichita Falls Assn. of Insurance Agents, P.O. Box 1127, Archer City, Texas 76351-1127

Chris J. Sawyer, Regions Financial Corporation PAC, 417 20th Street North, Birmingham, Alabama 35203

Todd M. Smith, Texas Taxpayers Defense Fund, 1001 Congress Ave., Suite 101, Austin, Texas 78701

Todd M. Smith, Citizens for Responsible School Solutions/Taxpayers Defense Fund, 1001 Congress Ave., Suite 101, Austin, Texas 78701

Susan Jo Tipton, Robertson County Republican Women, Rt. 2 Box 630, Hearne, Texas 77859

Barbara Tovar, Milam County Republican Women, 605 Calhoun, Rockdale, Texas 76567

Brian J. Welker, Republican Liberty PAC, 7715 Robin Rd., Dallas, Texas 75209

Wanda Williams, Glass, Molders, Pottery, Plastics & Allied Workers Local #216, 1507 Gleason Avenue, Cleburne, Texas 76033-6737

Darlene M. Wilson, Circle C PAC, 11221 Readvill Lane, Austin, Texas 78739

Deadline: Semiannual JC/OH Report Due July 17, 2006

Isaac Barlow Jr., 6111 Willowbend Blvd. Apt. 903, Houston, Texas 77096-5644

Boyd W. Bauer, P.O. Box 1436, Beeville, Texas 78104-1436

Bill C. Boyd, 2400 Hancock Dr., Austin, Texas 78756-2513

Larry W. Camp, 9916 Farmington Dr., Benbrook, Texas 76126-4105

James A. Cooper, P.O. Box 800052, Houston, Texas 77280-0052

Malcolm Dade, PMB 351, 3521 Oak Lawn Ave., Dallas, Texas 75219-4309

Darlene Ewing, 9330 Amberton Pkwy., Ste. 2200, Dallas, Texas 75243-2138

Darrell R. Grear, P.O. Box 649, Rockdale, Texas 76567-0649

Patrick Edward Heaton, P.E.H. c/o Trinity Center, 304 7th St., Austin, Texas 78701-3202

Michael R. Henderson, 2002 Twin Elms Dr., Arlington, Texas 76012-5637

Andrew Butler Hill, 3933 Bunting Ave., Fort Worth, Texas 76107-2610

Chris J. Hughston, P.O. Box 1121, Los Fresnos, Texas 78566-1121

Brady L. Hutchison, 2616 Merrimac Dr., League City, Texas 77573-4814

Gerald W. LaFleur, 5810 Maple St., Houston, Texas 77074-7845

Jose A. Lopez, 1809 Lane St., Laredo, Texas 78043-2622

Juan J. Maldonado, 105 E. Expy. 83, Suite F, Pharr, Texas 78577-6560

Jessica Reyes Martinez, 629 W. 4th St., Weslaco, Texas 78596-5842

Aaron G. New, 1824 Sandalwood Ln., Grapevine, Texas 76051-7344

Gary D. Pratt, 10541 Kelburn Dr., Houston, Texas 77016-2750

George James Sales III, 6306 Brianna Cir., Corpus Christi, Texas 78414-3685

Phillip S. Smart, P.O. Box 217, Ferris, Texas 75125-0217

Rhett R. Smith, 6900 N. Vandiver Rd. Apt. H206, San Antonio, Texas 78209-4326

Aubrey R. Thoede, P.O. Box 441253, Houston, Texas 77244-1253

Charles P. Urbina-Jones, 8000 Donore Pl. Apt. 65, San Antonio, Texas 78229-2629

Carla C. Vela, 3819 Briar Hollow St., San Antonio, Texas 78247-2719

Monte D. West, P.O. Box 1, Montgomery, Texas 77356-0001

Paul Womack, P.O. Box 774, Georgetown, Texas 78627-0774

Carolyn I. Wright, P.O. Box 222267, Dallas, Texas 75222-2267

TRD-200605189

David Reisman

Executive Director

Texas Ethics Commission

Filed: September 18, 2006

◆ ◆ ◆
Department of State Health Services

Designation of The University of Texas at Arlington Health Center as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as a site serving medically underserved populations: The University of Texas at Arlington Health Center, located at 605 South Street, Arlington, Texas 76010. The designation is based on eligibility as a site serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Brian King, Program Specialist, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200605190

Cathy Campbell

General Counsel

Department of State Health Services

Filed: September 18, 2006

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Licensing Actions for Radioactive Materials

The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Fort Worth	Health Texas Provider Network DBA Baylor Specialty Associates of Fort Worth	L06000	Fort Worth	00	08/29/06
Houston	University General Hospital LP	L06018	Houston	00	09/07/06
Throughout Tx	Integrity Testing & Inspection Inc	L06027	El Paso	00	08/31/06
Throughout Tx	Recon Petrotechnologies Inc	L06026	Fort Worth	00	09/05/06

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Abilene	Cardinal Health	L04781	Abilene	25	08/30/06
Alice	Christus Spohn Health System Corporation DBA Christus Spohn Hospital Alice	L02390	Alice	40	09/11/06
Amarillo	Panhandle Nuclear RX LTD	L04683	Amarillo	19	09/11/06
Austin	Austin Diagnostic Clinic	L05646	Austin	05	09/13/06
Austin	Austin Radiological Association	L00545	Austin	121	09/07/06
Austin	Columbia St Davids Healthcare System LP DBA South Austin Hospital	L03273	Austin	65	09/01/06
Austin	Columbia/St Davids Healthcare System DBA St Davids Medical Center	L00740	Austin	93	09/06/06
Austin	St Davids Healthcare Partnership LP LLP DBA North Austin Medical Center	L04910	Austin	62	09/11/06
Baytown	Baytown Cardiology Associates	L05040	Baytown	09	09/07/06
Beaumont	Health South Diagnostic Center of Texas LP DBA Health South Diagnostic Center of Beaumont	L03888	Beaumont	36	09/01/06
Beaumont	The Goodyear Tire & Rubber Beaumont Chemical Plant	L04006	Beaumont	15	09/13/06
Big Spring	Big Spring Hospital Corporation DBA Scenic Mountain Medical Center	L00763	Big Spring	51	09/11/06
Corpus Christi	Cardinal Health	L04043	Corpus Christi	35	08/30/06
Corpus Christi	Christus Health DBA Christus Spohn Hospital Memorial	L00265	Corpus Christi	81	09/06/06
Corpus Christi	Equistar Chemicals LP Corpus Christi Plant	L02447	Corpus Christi	19	09/08/06
Dallas	Medical City Dallas Hospital DBA Medical City	L01976	Dallas	162	08/31/06
Dallas	North Texas Cardiovascular Associates PA	L05602	Dallas	06	09/08/06
Denton	Texas Oncology PA DBA Texas Cancer Center Denton	L05815	Denton	06	08/29/06
Denton	Trace Life Sciences Inc	L05435	Denton	11	09/07/06
Eagle Lake	Rice District Community Hospital DBA Rice Medical Center	L03408	Eagle Lake	15	09/05/06
El Paso	E+ Pet Imaging XXIV LP DBA Pet Imaging of El Paso	L05981	El Paso	01	09/01/06
Fort Worth	Radiology Associates	L03953	Fort Worth	41	09/05/06
Graham	City of Graham DBA Graham Regional Medical Center	L03271	Graham	20	09/08/06
Groves	Renaissance Hospitals Inc DBA Renaissance Hospital	L02091	Groves	30	09/01/06
Henderson	Henderson Memorial Hospital	L03466	Henderson	20	08/31/06

AMENDMENTS TO EXISTING LICENSES ISSUED: (CONTINUED)

Location	Name	License #	City	Amend-ment #	Date of Action
Houston	Ben Taub General Hospital	L01303	Houston	61	09/06/06
Houston	Columbia/HCA Healthcare Corp DBA Spring Branch Medical Center	L02473	Houston	55	09/13/06
Houston	Memorial MRI and Diagnostic LLC DBA Memorial Nuclear Imaging LP	L05997	Houston	01	09/01/06
Houston	University of Texas Health Science Center at Houston	L03685	Houston	32	08/31/06
Humble	Northeast Hospital Authority DBA Northeast Medical Center Hospital	L02412	Humble	61	09/08/06
Laredo	Laredo Cardiovascular Consultants DBA Laredo Cardiovascular Consultants PA	L04687	Laredo	12	08/30/06
Laredo	Laredo Texas Hospital Company LP DBA Laredo Medical Center	L01306	Laredo	58	09/12/06
Lewisville	Cardiovascular Specialists PA	L05507	Lewisville	08	08/30/06
Livingston	Memorial Hospital of Polk County DBA Memorial Medical Center Livingston	L05552	Livingston	05	09/11/06
Lubbock	Covenant Health System DBA Joe Arrington Cancer Research and Treatment Center	L04881	Lubbock	40	09/11/06
Lubbock	Covenant Health System DBA Covenant Medical Center - Lakeside	L01547	Lubbock	83	09/01/06
Lubbock	Covenant Medical Center	L00483	Lubbock	132	08/30/06
Lubbock	Methodist Diagnostic Imaging DBA Covenant Diagnostic Imaging	L03948	Lubbock	38	08/15/06
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	81	08/31/06
McAllen	Valley Heart Consultants	L05330	McAllen	08	09/12/06
McKinney	Cancer Center Associates DBA Rena Tarbet Cancer Center	L05952	McKinney	01	09/11/06
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	22	09/08/06
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	40	09/12/06
Orange	Cardinal Health 414 Inc DBA Cardinal Health Nuclear Pharmacy Services	L04785	Orange	33	08/30/06
Paris	Advanced Heart Care PA	L05290	Paris	17	08/29/06
Pasadena	The Dow Chemical Company Clear Lake Operations	L05829	Pasadena	04	09/13/06
Plainview	Methodist Hospital Plainview DBA Covenant Hospital Plainview	L02493	Plainview	27	09/05/06
Plano	3T Diagnostic Imaging Center LTD	L05924	Plano	01	09/12/06
Plano	Presbyterian Hospital of Plano	L04467	Plano	41	08/31/06
San Antonio	Cardinal Health	L02033	San Antonio	99	08/30/06
San Antonio	Christus Santa Rosa Health Care	L02237	San Antonio	91	09/05/06
San Antonio	City Public Service	L02876	San Antonio	20	09/07/06
San Antonio	William Craig MD PA	L05378	San Antonio	07	09/05/06
San Marcos	Texas State University	L03321	San Marcos	22	08/31/06
Sugar Land	Methodist Sugar Land Hospital	L05788	Sugar Land	05	08/30/06
Texarkana	J M Hurley MD PA DBA Texarkana Cardiology Associates	L04738	Texarkana	10	08/30/06
Waco	Baylor University	L00343	Waco	17	09/12/06
Waco	Baylor University	L00343	Waco	18	09/13/06
Waco	Baylor University Department of Risk Management	L00400	Waco	24	09/11/06
Waco	Baylor University	L01136	Waco	25	09/11/06
Throughout Tx	Troxler Electronic Laboratories	L01296	Arlington	41	09/13/06
Throughout Tx	ExxonMobil Chemical Company	L01135	Baytown	66	09/07/06
Throughout Tx	Gessner Engineering LLP	L03733	Brenham	17	09/08/06
Throughout Tx	Brazos Valley Inspection Services Inc	L02859	Bryan	52	09/11/06

AMENDMENTS TO EXISTING LICENSES ISSUED: (CONTINUED)

Location	Name	License #	City	Amendment #	Date of Action
Throughout Tx	Cardinal Health	L02048	Dallas	118	09/14/06
Throughout Tx	Professional Service Industries Inc	L04940	Dallas	08	09/06/06
Throughout Tx	IRISNDT Inc	L04769	Deer Park	31	08/31/06
Throughout Tx	Professional Services Industries Inc	L02476	El Paso	20	09/06/06
Throughout Tx	H & H X-Ray Services Inc	L02516	Flint	57	08/31/06
Throughout Tx	Lockheed Martin Corporation Lockheed Martin Aeronautics Company	L05633	Fort Worth	05	09/13/06
Throughout Tx	Mactec Engineering and Consulting Inc	L05490	Fort Worth	07	09/05/06
Throughout Tx	Precision Energy Services Inc	L04286	Fort Worth	63	09/08/06
Throughout Tx	Associated Testing Laboratories Inc	L01553	Houston	25	09/06/06
Throughout Tx	Aviles Engineering Corporation	L03016	Houston	19	09/05/06
Throughout Tx	Baker Hughes Oilfield Operations Inc	L00446	Houston	159	09/14/06
Throughout Tx	Component Sales and Service Inc	L02243	Houston	25	09/05/06
Throughout Tx	Houston City of Department of Health and Human Services	L00149	Houston	72	09/05/06
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	19	09/06/06
Throughout Tx	Material Inspection Technology Inc	L05672	Houston	20	09/11/06
Throughout Tx	METCO	L03018	Houston	162	09/07/06
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	71	08/31/06
Throughout Tx	Petrochem Inspection Services Inc	L04460	Houston	72	09/14/06
Throughout Tx	Professional Service Industries Inc	L00203	Houston	119	08/31/06
Throughout Tx	Radiographic Specialists Inc	L02742	Houston	51	09/12/06
Throughout Tx	RTD Pipeline Services USA LP	L05985	Houston	01	09/13/06
Throughout Tx	Oceaneering International Inc Solus Schall Division	L04463	Ingleside	45	08/31/06
Throughout Tx	Memorial Hermann Hospital System DBA Memorial Hermann Katy Hospital	L03052	Katy	47	09/14/06
Throughout Tx	Enertech Wireline Services LP	L05738	Midland	09	08/29/06
Throughout Tx	Big State X-Ray	L02693	Odessa	54	08/31/06
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	56	09/05/06
Throughout Tx	Desert Industrial X-Ray LP	L04590	Odessa	57	09/13/06
Throughout Tx	Turner Industries Group LLC DBA Pipe Fabrication Division Texas Operations	L05237	Paris	11	09/06/06
Throughout Tx	Texas Gamma Ray LLC	L05561	Pasadena	69	08/31/06
Throughout Tx	Midwest Inspection Services	L03120	Perryton	94	09/01/06
Throughout Tx	INTEC	L05150	San Antonio	09	09/13/06
Throughout Tx	Schlumberger Technology Corporation	L01833	Sugar Land	133	09/14/06
Throughout Tx	Apex Geoscience Inc	L04929	Tyler	26	09/01/06

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Big Spring	ALON USA LP	L04950	Big Spring	09	09/14/06
Columbus	Columbus Community Hospital	L03508	Columbus	15	08/29/06
Dallas	Cooper Medical Imaging LLP	L05138	Dallas	09	09/07/06
Deer Park	Shell Chemical LP	L04933	Deer Park	18	09/14/06
Houston	Advanced Cardiac Care Assoc.	L04936	Houston	16	09/08/06
Houston	Houston Community College System Nuclear Medicine Technology Program	L03099	Houston	17	09/14/06
San Antonio	Andrew J Cottingham Jr MD DBA South Texas Eye Institute	L04282	San Antonio	05	09/12/06
San Antonio	Endocrinology Nuclear Medicine Associates PA	L03343	San Antonio	15	09/07/06
San Antonio	Heart and Vascular Institute of Texas	L04799	San Antonio	15	09/01/06
Throughout Tx	Enprotec Inc	L04266	Abilene	14	09/13/06
Throughout Tx	L A Fuller & Sons Construction LTD	L04170	Amarillo	07	09/08/06
Throughout Tx	Gulf Coast Weld Spec	L05426	Beaumont	47	08/31/06
Throughout Tx	Momentum Design and Construction Inc DBA Soils Mechanics International	L05212	El Paso	04	09/05/06
Throughout Tx	Sunmount Corporation	L03799	Roanoke	14	09/05/06
Throughout Tx	Ruiz Testing Services Inc	L04948	San Antonio	16	09/05/06

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Dallas	Bristol Myers Squibb Medical Imaging Inc DBA Bristol Myers Squibb Medical Imaging Inc	L02481	Dallas	27	09/06/06
League City	Filter Flow Technology Inc	L05835	League City	01	09/13/06
Porter	Pan American Industries Inc	L03669	Porter	09	09/08/06

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of Title 25 Texas Administrative Code (TAC), Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC, Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC, Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200605222
Cathy Campbell
General Counsel
Department of State Health Services
Filed: September 20, 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 Campbell Middle School, 11415 Bobcat Road, Houston, Harris County, Texas 77064, at 6:00 p.m. on October 17, 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, Harris County, Texas. Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to 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-200605197
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Filed: September 19, 2006

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Texas Department of Insurance

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 to change the name in Texas of P5 E.HEALTH SERVICES, INC. to P5 E.HEALTH SERVICES, INC. (using the assumed name of P5 HEALTH PLAN SOLUTIONS) , a foreign third party administrator. The home office is RENO, NEVADA.

Application to change the name in Texas of AMERICAN TRUST ADMINISTRATORS, INC. to AMERICAN TRUST ADMINISTRATORS, INC. (using the assumed name of ATA AMERICA) , a foreign third party administrator. The home office is OVERLAND PARK, KANSAS.

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-200605221
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: September 20, 2006

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Texas Lottery Commission

Instant Game Number 752 "\$3,000,000 Texas Holiday Riches"

1.0 Name and Style of Game.

A. The name of Instant Game No. 752 is "\$3,000,000 TEXAS HOLIDAY RICHES". The play style for Game 1 is "key number match with multiplier". The play style for Game 2 is "key number match with double". The play style for Game 3 is "key symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 752 shall be \$30.00 per ticket.

1.2 Definitions in Instant Game No. 752.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, BELL SYMBOL, \$1.00, \$2.00, \$3.00, \$4.00, \$5.00, \$8.00, \$10.00, \$20.00, \$30.00, \$40.00, \$50.00, \$100, \$200, \$500, \$10,000, \$3MILL, SNOW FLAKE SYMBOL, EAR MUFFS SYMBOL, CAP SYMBOL, DRUM SYMBOL, MITTENS SYMBOL, WREATH SYMBOL, SACK SYMBOL, HORN SYMBOL, JINGLE BELL SYMBOL, SNOWMAN SYMBOL, COOKIE SYMBOL, FIRE SYMBOL, DEER SYMBOL, MUSIC NOTE SYMBOL, ANGEL SYMBOL, BALL SYMBOL and CANDLE 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. 752 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
BELL SYMBOL	WINX10
\$1.00	ONE\$
\$2.00	TWO\$
\$3.00	THREE\$
\$4.00	FOUR\$
\$5.00	FIVE\$

\$8.00	EIGHT\$
\$10.00	TEN\$
\$20.00	TWENTY
\$30.00	THIRTY
\$40.00	FORTY
\$50.00	FIFTY
\$100	ONE HUND
\$200	TWO HUND
\$500	FIV HUND
\$10,000	TEN THOU
\$3MILL	THR MILL
CANDLE SYMBOL	DBL
SNOW FLAKE SYMBOL	SNOW
EAR MUFFS SYMBOL	MUFF
CAP SYMBOL	CAP
DRUM SYMBOL	DRUM
MITTENS SYMBOL	MTTNS
WREATH SYMBOL	WREATH
SACK SYMBOL	SACK
HORN SYMBOL	HORN
JINGLE BELL SYMBOL	JINGLE
SNOWMAN SYMBOL	SNWMAN
COOKIE SYMBOL	COOKIE
FIRE SYMBOL	FIRE
DEER SYMBOL	DEER
MUSIC NOTE SYMBOL	MUSIC
ANGEL SYMBOL	ANGEL
BALL SYMBOL	BALL

E. 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.

F. Mid-Tier Prize - A prize of \$30.00, \$40.00, \$70.00, \$100, \$300 or \$500.

G. High-Tier Prize - A prize of \$2,000, \$10,000 or \$3,000,000.

H. 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.

I. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (752), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 025 within each pack. The format will be: 752-0000001-001.

J. Pack - A pack of "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game tickets contains 25 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 025 while the other fold will show the back of ticket 001 and front of 025.

K. 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.

L. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game No. 752 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 "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game is determined once the latex on the ticket is scratched off to expose 58 (fifty-eight) Play Symbols. For Game 1, if a player matches any of YOUR NUMBERS play symbols to either of the WINNING NUMBERS play symbols, the player wins the prize shown for that number. If a player reveals a "bell" play symbol, the player wins 10 TIMES the prize shown. For Game 2, if a player matches (3) three prize amounts play symbols, the player wins that amount. If a player matches (2) two prize amounts play symbols and reveals a "candle" play symbol, the player wins DOUBLE that amount. For Game 3, if a player matches YOUR SYMBOLS play symbols within a row, the player wins the PRIZE shown for that row. 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 58 (fifty-eight) 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 58 (fifty-eight) 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 58 (fifty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;
17. Each of the 58 (fifty-eight) 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. Although not all prize symbols may be won in all games, they may all appear in each prize spot as non-winning symbols.
- C. GAME 1: No duplicate non-winning YOUR NUMBERS play symbols.
- D. GAME 1: No duplicate WINNING NUMBERS.
- E. GAME 1: No prize amount in a non-winning spot will correspond with the YOUR NUMBER play symbol (i.e. 5 and \$5).
- F. GAME 1: Non-winning prize symbols will never be the same as the winning prize symbol(s) in this game.
- G. GAME 1: The "bell" (win x 10) play symbol will only appear as dictated by the prize structure.
- H. GAME 1: No more than two matching non-winning prize symbols.
- I. GAME 2: No four or more matching prize symbols in a game.
- J. GAME 2: No three pairs in a game.
- K. GAME 2: No three matching non-winning play symbols will be used in the two games.
- L. GAME 2: The "candle" (doubler) play symbol will only appear as dictated by the prize structure.
- M. GAME 3: No duplicate non-winning rows.
- N. GAME 3: No duplicate non-winning prize symbols.
- O. GAME 3: No two matching non-winning play symbols will be used in adjacent rows.

2.3 Procedure for Claiming Prizes.

A. To claim a "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game prize of \$30.00, \$40.00, \$70.00, \$100, \$300 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 \$30.00, \$40.00, \$70.00, \$100, \$300 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 "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game prize of \$2,000 or \$10,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim

is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. To claim a "\$3,000,000 TEXAS HOLIDAY RICHES" top level prize of \$3,000,000, the claimant must sign the winning ticket and present it at Texas Lottery Commission headquarters in Austin, Texas. 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.

D. As an alternative method of claiming a "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

E. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

F. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "\$3,000,000 TEXAS HOLIDAY RICHES" 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 "\$3,000,000 TEXAS HOLIDAY RICHES" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 3,000,000 tickets in the Instant Game No. 752. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 752 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$30	840,000	3.57
\$40	240,000	12.50
\$70	210,000	14.29
\$100	60,000	50.00
\$300	575	5,217.39
\$500	550	5,454.55
\$2,000	75	40,000.00
\$10,000	15	200,000.00
3,000,000	3	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 2.22. 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. 752 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. 752, 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-200605211
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 20, 2006



Instant Game Number 753 "Bah Humbucks"

1.0 Name and Style of Game.

A. The name of Instant Game No. 753 is "BAH HUMBUCKS". The play style is "key number match auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 753 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 753.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, HAT SYMBOL, WREATH SYMBOL \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$25.00, \$50.00, \$250, \$2,500 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. 753 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWV
HAT SYMBOL	AUTO
WREATH SYMBOL	WIN ALL
\$1.00	ONE\$
\$2.00	TWO\$
\$4.00	FOUR\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$25.00	TWY FIV
\$50.00	FIFTY
\$250	TWO FTY
\$2,500	25 HUND
\$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. 753 - 1.2E

CODE	PRIZE
TWO	\$2.00
FOR	\$4.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$200 or \$250.

I. High-Tier Prize - A prize of \$2,500 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 (753), 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: 753-0000001-001.

L. Pack - A pack of "BAH HUMBUCKS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). Tickets 001 and 002 will be on the top page; tickets 003 and 004 on the next page; etc.; and tickets 249 and 250 will be on the last page. Please note the books will be in an A - B configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BAH HUMBUCKS" Instant Game No. 753 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 "BAH HUMBUCKS" 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 SCROOGE NUMBER play symbol, the player wins prize shown for that number. If a player reveals a "HAT" play symbol,

the player wins prize shown instantly. If a player reveals a "WREATH" play symbol, the player wins ALL (10) ten PRIZES instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;
16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No three or more matching non-winning prize symbols on a ticket.

C. Non-winning prize symbols will not match a winning prize symbol on a ticket.

D. No duplicate SCROOGE NUMBERS play symbols on a ticket.

E. No duplicate non-winning YOUR NUMBERS play symbols on a ticket.

F. The "wreath" win all play symbol will only appear on winning tickets as dictated by the prize structure.

G. When the "wreath" win all play symbol appears, there will be no YOUR NUMBERS matching either SCROOGE NUMBER.

2.3 Procedure for Claiming Prizes.

A. To claim a "BAH HUMBUCKS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$200 or \$250, 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, \$200 or \$250 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 "BAH HUMBUCKS" Instant Game prize of \$2,500 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 "BAH HUMBUCKS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "BAH HUMBUCKS" 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 "BAH HUMBUCKS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the

back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 9,000,000 tickets in the Instant Game No. 753. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 753 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	1,143,000	7.87
\$4	621,000	14.49
\$5	108,000	83.33
\$10	117,000	76.92
\$20	36,000	250.00
\$50	36,000	250.00
\$200	6,375	1,411.76
\$250	4,050	2,222.22
\$2,500	35	257,142.86
\$25,000	13	692,307.69

*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 4.34. 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. 753 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. 753, 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-200605212
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 20, 2006

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Instant Game Number 756 "Chili Nights"

1.0 Name and Style of Game.

A. The name of Instant Game No. 756 is "CHILI NIGHTS". The play style is "match 3 of 9 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 756 shall be \$1.00 per ticket.

1.2 Definitions in Instant Game No. 756.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for

dual-image games. The possible black play symbols are: \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100, \$1,000 and STAR 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. 756 - 1.2D

PLAY SYMBOL	CAPTION
\$1.00	ONES\$
\$2.00	TWO\$
\$3.00	THREE\$
\$5.00	FIVE\$
\$10.00	TEN\$
\$20.00	TWENTY
\$50.00	FIFTY
\$100	ONE HUND
\$1,000	ONE THOU
STAR SYMBOL	WIN\$5

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. 756 - 1.2E

CODE	PRIZE
ONE	\$1.00
TWO	\$2.00
THR	\$3.00
FIV	\$5.00
TEN	\$10.00
TWN	\$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$100.

I. High-Tier Prize - A prize of \$1,000.

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 (756), 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: 756-0000001-001.

L. Pack - A pack of "CHILI NIGHTS" Instant Game tickets contains 250 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 and 010 on the next page; etc.; and tickets 246 to 250 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "CHILI NIGHTS" Instant Game No. 756 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 "CHILI NIGHTS" Instant Game is determined once the latex on the ticket is scratched off to expose 9 (nine) Play Symbols. If a player reveals (3) three matching amounts play symbols, the player wins that amount. If a player reveals a "star" play symbol, the player wins \$5 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 9 (nine) 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 9 (nine) 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 9 (nine) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 9 (nine) 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 four or more matching play symbols on a ticket.

C. No more than 2 pairs of matching play symbols on a ticket.

D. The "star" \$5 auto win symbol will only appear on winning tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "CHILI NIGHTS" Instant Game prize of \$1.00, \$2.00, \$3.00, \$5.00, \$10.00, \$20.00, \$50.00 or \$100, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper 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 or \$100 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "CHILI NIGHTS" Instant Game prize of \$1,000, 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 "CHILI NIGHTS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General;
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

- A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;
- B. if there is any question regarding the identity of the claimant;
- C. if there is any question regarding the validity of the ticket presented for payment; or
- D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "CHILI

NIGHTS" 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 "CHILI NIGHTS" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 12,000,000 tickets in the Instant Game No. 756. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 756 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$1	1,296,000	9.26
\$2	576,000	20.83
\$3	384,000	31.25
\$5	48,000	250.00
\$5	48,000	250.00
\$10	72,000	166.67
\$20	48,000	250.00
\$50	24,000	500.00
\$100	1,900	6,315.79
\$1,000	50	240,000.00

*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 4.80. 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. 756 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. 756, 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-200605205
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 19, 2006



Instant Game Number 799 "Instant Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 799 is "INSTANT BINGO". The play style is "bingo with bonus spot".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 799 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 799.

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: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, TWO, THREE, FIVE, TEN, TWENTY, FIFTY, ONEHUN, TRY and PLAY.

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. 799 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
I29	
I30	
N31	
N32	
N33	
N34	
N35	
N36	
N37	
N38	
N39	
N40	
N41	
N42	
N43	
N44	
N45	

G46	
G47	
G48	
G49	
G50	
G51	
G52	
G53	
G54	
G55	
G56	
G57	
G58	
G59	
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62	
63	
64	
65	
66	
67	
68	

69	
70	
71	
72	
73	
74	
75	
FREE	
TWO	DOLLARS
THREE	DOLLARS
FIVE	DOLLARS
TEN	DOLLARS
TWENTY	DOLLARS
FIFTY	DOLLARS
ONEHUN	DOLLARS
TRY	AGAIN
PLAY	AGAIN

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. The possible validation codes are:

Figure 2: GAME NO. 799 - 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 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of Ø, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The 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, \$50.00, \$100, or \$500.

I. High-Tier Prize - A prize of \$1,000 or \$30,000.

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 (799), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 799-0000001-001.

L. Pack - A pack of "INSTANT BINGO" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 001 will be shown on the front of the pack; the back of ticket 125 will be revealed on the back of the pack. All packs will be tightly shrink-wrapped. There will be no breaks between the tickets in a pack. Every other book will reverse i.e., reverse order will be : the back of ticket 001 will be shown on the front of the pack and the front of ticket 125 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "INSTANT BINGO" Instant Game No. 799 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 "INSTANT BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 131 (one hundred thirty-one) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 4 that match the Bingo Numbers and Bonus Numbers on the Caller's Card. Each card has a corresponding prize box. Play-

ers win by matching those same numbers on the four Player's Cards. If the player finds a diagonal, vertical or horizontal straight line, the four corners of the grid, or an X pattern, they win a prize according to the legend of the respective playing grid. Examples of play: If a player matches all bingo numbers plus the Free Space in a complete horizontal, vertical or diagonal line pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers in all four (4) corners pattern in any one card the player wins prize according to the legend of the respective playing card. If the player matches all bingo numbers plus Free Space to make a complete "X" pattern in any one card the player wins prize according to the legend of the respective playing card. In the Instant Bonus play area, if a player reveals a prize amount the player wins prize indicated automatically. The player can win up to four times on any ticket but only once on each "card".

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) 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 131 (one hundred thirty-one) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 131 (one hundred thirty-one) 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. A ticket will win as indicated by the prize structure.

B. A ticket can win up to four times but only once per Card.

C. Adjacent tickets in a pack will not have identical patterns.

D. There will never be more than one win on a single BINGO CARD.

E. No duplicate numbers will appear on the CALLER'S CARD and BONUS NUMBERS.

F. No duplicate numbers will appear on each individual BINGO CARD.

G. Each CALLER'S CARD will have a minimum of four (4) and a maximum of six (6) numbers from each range per letter. The BONUS NUMBERS will have a minimum of one (1) and a maximum of two (2) numbers for each range per letter.

H. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

I. Each Player's Card on the same ticket must be unique.

J. Instant Bonus Game: The Play area consists of one (1) Play Symbol.

K. Instant Bonus Game: Tickets that do not win in the Bonus Area will display one of the non-winning play symbols.

L. Instant Bonus Game: Winning tickets will display a prize amount: TWO DOLLARS, THREE DOLLARS, FIVE DOLLARS, TEN DOLLARS, TWENTY DOLLARS, FIFTY DOLLARS, OR ONEHUNDRED DOLLARS.

2.3 Procedure for Claiming Prizes.

A. To claim a "INSTANT BINGO" Instant Game prize of \$2.00, \$3.00, \$5.00, \$10.00, \$15.00, \$20.00, \$30.00, \$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 \$30.00, \$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 "INSTANT BINGO" Instant Game prize of \$1,000 or \$30,000, 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 "INSTANT BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;
2. delinquent in making child support payments administered or collected by the Attorney General; or
3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;
4. in default on a loan made under Chapter 52, Education Code; or
5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than \$600 from the "INSTANT BINGO" 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 "INSTANT BINGO" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 30,000,000 tickets in the Instant Game No. 799. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 799 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	3,480,000	8.62
\$3	1,320,000	22.73
\$5	1,440,000	20.83
\$10	360,000	83.33
\$15	120,000	250.00
\$20	240,000	125.00
\$30	61,250	489.80
\$50	82,500	363.64
\$100	30,625	979.59
\$500	2,250	13,333.33
\$1,000	65	461,538.46
\$30,000	15	2,000,000.00

*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 4.20. The individual odds of winning for a particular prize level may vary based on sales, distribution, 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. 799 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. 799, 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-200605214
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: September 20, 2006

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North Central Texas Council of Governments

Request for Proposals to Assist in the Development of the Dallas Area Rapid Transit (DART) Transit System Travel Pattern Analysis

CONTRACTOR PROPOSAL REQUEST

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from consultant firms to assist in the development of the Dallas Area Rapid Transit (DART) Transit System Travel Pattern Analysis. The general project scope calls for a consul-

tant to develop a basic understanding of the DART transit system, identify the various travel and rider characteristics to be analyzed, formulate a plan for collecting data, develop the data collection tools, collect data, assure that the data collected meets both quantity and quality standards as identified in the data collection plan, appropriately digitize, geocode, tabulate and analyze the data and report the results of the project. The consultant is expected to formulate a plan for completing the necessary work and detailing the tasks as a part of the submitted proposal. Creativity in the approach to this work effort is important to its success. Consultants are encouraged to propose innovative approaches to the various elements of the project. This project should be completed within ten months of the date of Notice to Proceed, which is anticipated to be issued January 2007. The consultant team will be expected to include a project time line as a part of its proposal. Data collection must be complete before May 26, 2007. The project will be funded through the 2005-2007 Unified Planning Work Program for Regional Transportation Planning. No engineering services will be required on this project.

Due Date

Proposals must be received no later than 5 p.m. Central Daylight Time on Friday, October 27, 2006, to Chad Edwards, Principal Transportation Planner, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011 or P.O. Box 5888, Arlington, Texas 76005-5888. For copies of the Request for Proposals, contact Therese Bergeon, at (817) 695-9267.

Contract Award Procedures

The firm or individual selected to perform these activities will be recommended by a Consultant Selection Committee (CSC). The CSC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the CSC's recommendations and, if found acceptable, will issue a contract award.

Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-200605210

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: September 20, 2006



Texas Parks and Wildlife Department

Notice of Land Acceptance

Notice of Proposed Real Estate Transaction

Acceptance of 265 Acres

Bastrop County

In a meeting on November 2, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the acceptance of 265 acres adjacent to Bastrop State Park in Bastrop County, Texas. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us.

TRD-200605193

Ann Bright

Chief of Staff

Texas Parks and Wildlife Department

Filed: September 18, 2006



Notice of Land Sale

Sale of .60 Acres

Briscoe County

In a meeting on November 2, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider the proposed sale of approximately 0.60 acres at Caprock Canyons Trailway in Briscoe County, Texas, to an adjacent landowner, Cirildo Leal Jr. The meeting will start at 9:00 a.m. at 4200 Smith School Road, Austin, Texas. Before taking action, the Commission will take public comment regarding the proposed transaction. Prior to the date of the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us or in person at time of meeting

TRD-200605192

Ann Bright

Chief of Staff

Texas Parks and Wildlife Department

Filed: September 18, 2006



Notice of Proposed Oil and Gas Lease Nominations

In a meeting on November 2, 2006, the Texas Parks and Wildlife Commission (the Commission) will consider a proposal that a recommendation be forwarded to the Board for Lease at the General Land Office to nominate 4 sites for oil and gas lease. The oil and gas on these sites are owned by TPWD. Before taking action on this matter, the Commission will take public comment regarding the proposed transactions. The sites being recommended for oil and gas leases are as follows: Caddo Lake State Park (Harris County); Reseca de la Palma State Park (Cameron County); Dinosaur Valley State Park (Somervell County); Matador Wildlife Management Area (Cottle County). Prior to the date of the meeting, public comment may be submitted to Corky Kuhlmann, Land Conservation, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744 or by email at corky.kuhlmann@tpwd.state.tx.us.

TRD-200605194

Ann Bright

Chief of Staff

Texas Parks and Wildlife Department

Filed: September 18, 2006



Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 12, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001- 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Universal Cable Holdings, Incorporated for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33188 before the Public Utility Commission of Texas.

Applicant requests to amend its CFA to reflect a name change to Universal Cable Holdings, Incorporated, doing business as Suddenlink Communications.

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 33188.

TRD-200605109

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: September 15, 2006



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on September 12, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Friendship Cable of Texas, Incorporated, doing business as Cebridge Connections for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33189 before the Public Utility Commission of Texas.

Applicant requests to amend its CFA to reflect a name change to Friendship Cable of Texas, doing business as Suddenlink Communications.

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 33189.

TRD-200605110
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on September 12, 2006, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Cox Southwest Holdings, LP., doing business as Cox Communications, Cox Communications Middle America for an Amendment to its State-Issued Certificate of Franchise Authority, Project Number 33190 before the Public Utility Commission of Texas.

Applicant requests to amend its CFA to reflect a name change and a change in ownership to Cebridge Acquisition, L.P., doing business as Suddenlink Communications.

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 33190.

TRD-200605111
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 11, 2006, for a state-issued certificate of franchise authority

(CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33218 before the Public Utility Commission of Texas.

Applicant intends to expand its service area footprint to include all unincorporated areas (excluding federal properties) in Bastrop, Burnet, Caldwell, Hays, Travis, and Williamson Counties.

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 33218.

TRD-200605227
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2006



Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on August 11, 2006, for a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Application of Time Warner Cable for an Amendment to a State-Issued Certificate of Franchise Authority, Project Number 33219 before the Public Utility Commission of Texas.

Applicant intends to expand its service area footprint to include all unincorporated areas (excluding federal properties) in Bell and McLennan Counties.

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 33219.

TRD-200605228
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 20, 2006



Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on September 12, 2006 with the Public Utility Commission of Texas for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Valor Telecommunications of Texas, L.P., doing business as Windstream Communications Southwest for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 33200.

The Application: Valor Telecommunications of Texas, L.P., doing business as Windstream Communications Southwest (Valor or the Applicant) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) Number 40105 for name change only. Applicant stated that Valor's parent, Valor Communications Group, Incorporated, and Alltel's wireline business merged on July 17, 2006. As the surviving entity in the merger, Valor Communications Group, Incorporated has been renamed Windstream Corporation. Windstream Corporation is the parent. Valor seeks to change its name to Windstream Communications Southwest.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 9, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33200.

TRD-200605121
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Application for Amendment to Certificate of Convenience and Necessity for Name Change

Notice is given to the public of an application filed on September 12, 2006 with the Public Utility Commission of Texas for an amendment to a certificate of convenience and necessity for a name change.

Docket Style and Number: Application of Windstream Communications Kerrville, L.P. (formerly Kerrville Telephone, L.P., doing business as Kerrville Telephone Company) for an Amendment to its Certificate of Convenience and Necessity for Name Change. Docket Number 33201.

The Application: Windstream Communications Kerrville, L.P. (formerly Kerrville Telephone, L.P., doing business as Kerrville Telephone Company) (Windstream or the Applicant) filed an application for an amendment to its Certificate of Convenience and Necessity (CCN) Number 40045 for name change only. Applicant stated that the application reflects two events. First, the wireline business of ALLTEL Corporation has been separated and merged into Valor Communications Group, Incorporated, the Applicant's parent company. Valor Communications Group, Incorporated has been renamed Windstream Corporation. Applicant is a wholly-owned subsidiary of Windstream Corporation. Second, as a result of the merger, Applicant, formerly known as Kerrville Telephone, L.P., doing business as Kerrville Telephone Company (Kerrville), has been renamed Windstream Communications Kerrville, L.P. Kerrville seeks to change its name to Windstream Communications Kerrville, L.P.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by October 9, 2006, by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33201.

TRD-200605120

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Atascosa, McMullen, La Salle, and Webb Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 12, 2006, to amend a certificate of convenience and necessity for a proposed transmission line in Atascosa, McMullen, La Salle, and Webb Counties, Texas.

Docket Style and Number: Joint Application of AEP Texas Central Company and South Texas Electric Cooperative, Incorporated to Amend a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Atascosa, McMullen, La Salle, and Webb Counties, Texas. Docket Number 33033.

The Application: AEP Texas Central Company (TCC) and South Texas Electric Cooperative, Incorporated (STEC) (collectively, Applicants) stated that the expected load growth in the Laredo area will exceed the capacity of the current transmission system and additional facilities will be necessary to support area load. The proposed transmission line project will reduce the burden on the existing 345 kV network, resulting in improved transmission transfer capability to and from the south Texas area. The estimated date to energize facilities is April 2010.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 27, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33033.

TRD-200605122
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in Hidalgo County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on September 12, 2006, for a certificate of convenience and necessity for a proposed transmission line in Hidalgo County, Texas.

Docket Style and Number: Application of AEP Texas Central Company to Amend a Certificate of Convenience and Necessity for a Proposed 138/69 kV Double Circuit Transmission Line in Hidalgo County, Texas. Docket Number 32857.

The Application: AEP Texas Central Company (TCC) proposes the construction of an approximately 2 mile section of 69/138 kV transmission line from the existing South McAllen to La Palma 69-kV transmission line into the new 69/138 kV switching station. The estimated date to energize facilities is December 2007.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is October 27, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 32857.

TRD-200605115
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on September 12, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 22, 2006. The area of implementation for these services is in the exchanges formerly served by Contel of Texas, Incorporated.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for Implementation of New Residential Custom Calling Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33193.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33193. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33193.

TRD-200605112
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on September 12, 2006, with the Public Utility Commission of Texas (Commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 22, 2006.

Docket Title and Number: Application of Kerrville Telephone Company for Approval of LRIC Study for Implementation of New Residential Custom Calling Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33194.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33194. Written comments or recommendations should be filed no later than 45 days af-

ter the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33194.

TRD-200605113
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on September 12, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 22, 2006. The area of implementation for these services is in the exchanges formerly served by GTE Southwest, Inc.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for Implementation of New Residential Custom Calling Bundles Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33195.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33195. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33195.

TRD-200605114
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214

Notice is given to the public of the filing on September 14, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 25, 2006. The area of implementation for this service is in the exchanges formerly served by GTE Southwest, Incorporated.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for Repeat Dial Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33203.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket No. 33203. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility

Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33203.

TRD-200605126
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214**

Notice is given to the public of the filing on September 14, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 25, 2006. The area of implementation for this service is in the exchanges formerly served by Contel of Texas, Incorporated.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for Repeat Dial Service Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33204.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33204. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33204.

TRD-200605125
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214**

Notice is given to the public of the filing on September 14, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 25, 2006. The area of implementation for this service is in the exchanges formerly served by GTE Southwest, Incorporated.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for a Second Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33205.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket No. 33205. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY)

may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33205.

TRD-200605124
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



**Notice of Intent to File LRIC Study Pursuant to P.U.C.
Substantive Rule §26.214**

Notice is given to the public of the filing on September 14, 2006, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.214. The Applicant will file the LRIC study on September 25, 2006. The area of implementation for this service are those exchanges formerly served by Contel of Texas, Incorporated.

Docket Title and Number: Application of Valor Telecommunications of Texas for Approval of LRIC Study for a Second Access Line Bundle Pursuant to P.U.C. Substantive Rule §26.214, Docket Number 33206.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 33206. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free 1-800-735-2989. All comments should reference Docket Number 33206.

TRD-200605123
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006



**Notice of Petition for Waiver of Denial of Request for
Additional Resources**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on September 11, 2006, for waiver of denial by the North American Numbering Plan Administration (NANPA) Pooling Administrator (PA) of AT&T's (AT&T) request for a full code of 10,000 numbers to satisfy the request of Doctors Hospital at Renaissance in McAllen, Texas.

Docket Title and Number: Request for Waiver of Denial of Numbering Resources - McAllen Rate Center. Docket Number 33187.

The Application: AT&T requested a new code in the McAllen rate center to satisfy a customer's request.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than October 4, 2006. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33187.

TRD-200605108

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: September 15, 2006

◆ ◆ ◆
Office of the Secretary of State

**Notice of Funding Availability for Voting Access for
Individuals with Disabilities Grant Program**

Introduction:

The Office of the Secretary of State (SOS) announces the availability of federal funds for counties to make polling places accessible and provide the same opportunity for access and participation to individuals with disabilities.

Authority:

The availability of funds is authorized by Title II, Subtitle D, Section 261 of the Help America Vote Act (HAVA) (42 U.S.C. 15461).

Eligible Applicants:

All Texas counties.

Use of Funds:

Making Polling Places Accessible

1. Making pathways more accessible by building or repaving sidewalks.
2. Construction or repair of ramps and threshold ramps.
3. Constructing curb cuts and adding handrails.
4. Establishing accessible parking spaces closer to the accessible entrance.
5. Providing adequate signage showing where accessible parking and entrances are located and indicating that service animals are welcome.
6. Purchasing hardware that will make it easy for persons with limited mobility or grasping ability to open doors.
7. Other projects that improve polling place accessibility deemed reasonable and necessary by the SOS.

Provide the Same Opportunity for Access and Participation to Individuals with Disabilities

1. Magnifiers.
2. Signature guides.
3. Accessible voting booths or tables.
4. Seats to accommodate persons who have difficulty standing for long periods of time.
5. Telephones in order to allow the use of all Relay Texas services including speech-to-speech relay.
6. Informational material to be written in large print and in Braille.
7. Other devices that provide the same opportunity for access and participation to individuals with disabilities deemed reasonable and necessary by the SOS.

Funding Restrictions:

Funds used for permanent improvements such as repaving sidewalks and curb cuts may only be applied to county owned property utilized for a polling location used during a federal election.

Available Funding:

Making Polling Places Accessible

Using polling location statistics for the 2006 March Primary, the COUNTY may apply for funding not to exceed the following amounts:

- a) \$2,000 for COUNTIES with 10 polling locations or less; b) \$4,500 for COUNTIES with 50 polling locations or less; and, c) \$7,000 for COUNTIES with polling locations of more than 50.

Provide the Same Opportunity for Access and Participation to Individuals with Disabilities

Using polling location statistics for the 2006 March Primary, the COUNTY may apply for funding not to exceed the following amounts:

- a) \$1,450 for COUNTIES with 10 polling locations or less; b) \$1,650 for COUNTIES with 50 polling locations or less; and, c) \$1,850 for COUNTIES with polling locations of more than 50.

Funding Period:

Obligations for eligible expenditures must be incurred during the following time period:

January 1, 2005 through December 31, 2007

Funding Requirements:

"A copy of the Americans with Disabilities Act (ADA) Checklist for Polling Places" must be completed and kept on file with the County Clerk or Election Administrator for the COUNTY. A copy of the checklist can be found at <http://www.usdoj.gov/crt/ada/votingck.htm>.

All Texas counties must be in compliance with all applicable federal and state laws and regulations, including the terms and conditions set forth in the acceptance of the grant. The terms and conditions can be viewed at <http://www.sos.state.tx.us/elections/hava/funding.shtml> under the bullets labeled Making Polling Places Accessible and Provide the Same Opportunity for Access and Participation to Individuals with Disabilities Terms and Conditions of Grant Funding.

Requesting the Application:

The county judge, as chief executive officer for the county, must submit a budget via the Texas HAVA online grant system (<http://hava.tamu.edu/>) and be approved by the Secretary of State's Office. The county judge will use the same user ID and password that was used for previous HAVA funding requests (e.g., voting system acquisition funding). For inquiries, contact Dan Glotzer or Jennifer Holliman toll-free at 1-800-252-8683 or e-mail dglotzer@sos.state.tx.us or jholliman@sos.state.tx.us.

Budget Submission Deadline:

Budgets may be submitted via the Texas HAVA online grant system effective immediately and will be accepted through August 31, 2007.

TRD-200605232

Ann McGeehan

Director of Elections

Office of the Secretary of State

Filed: September 20, 2006

◆ ◆ ◆
Texas Department of Transportation

Aviation Division - Request for Proposal for Aviation
Engineering Services

The City of Terrell, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: City of Terrell, Terrell Municipal Airport. TxDOT CSJ No.:0618TEREL. Scope: Provide engineering/design services to reconstruct Taxiway C and construct apron at the Terrell Municipal Airport.

The proposal should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

The DBE goal is set at 10%. TxDOT Project Manager is Alan Schmidt, PE.

Future work items for engineering/design services within the next five years may include demolish portions of existing runway, taxiway, and apron; drainage improvements; relocate windsock and segmented circle; install and update signage, runway marking; construct terminal apron and terminal apron taxiways; and construct hangars.

To assist in your proposal preparation, the most recent Airport Layout Plan and 5010 drawing are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Terrell Municipal Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be e-mailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/forms/aviation/550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. **PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. ATTENTION:** To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Please note:

Five completed, unfolded copies of Form AVN-550 **must be received** by TxDOT, Aviation at 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than October 24, 2006, 4:00 p.m. Electronic facsimiles or forms sent by e-mail will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The Consultant Selection Committee (committee) will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at <http://www.dot.state.tx.us/services/aviation/consultant.htm>. All firms will be notified and the top-rated firm will be contacted to begin fee negotiations. The committee does, however, reserve the right to conduct interviews of the top-rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following the interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Alan Schmidt, PE, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-200605201

Bob Jackson

General Counsel

Texas Department of Transportation

Filed: September 19, 2006

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The University of Texas System

Notice of Intent to Seek Consultant Services

The University of Texas Health Science Center at Houston

In accordance with the provisions of *Texas Government Code* Chapter 2254, The University of Texas Health Science Center at Houston will be seeking Invitation for Offers to hire a consultant to provide a communications audit.

The President of the University of Texas Health Science Center at Houston has made a finding of fact that the consulting services are necessary. The University of Texas Health Science Center at Houston does not currently have the in-house expertise to complete this project.

An award will be made to the proposer that submits the highest ranked proposal based on evaluation criteria developed by the University.

Parties interested in a copy of the Invitation for Offers should contact:

Samantha Lai, C.T.P.

Purchasing Contracts Administrator

Procurement Services

The University of Texas Health Science Center at Houston

1851 Crosspoint, OCB 1.160

Houston, TX 77054

Voice: (713) 500-4723

Email: samantha.b.lai@uth.tmc.edu

The proposal submission deadline will be Friday, October 20, 2006 at 3:00 P.M. Central Prevailing Time.

TRD-200605172

Francie A. Frederick

General Counsel to the Board of Regents

The University of Texas System

Filed: September 18, 2006

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Texas Water Development Board

Request for Applications for Flood Protection Planning

The Texas Water Development Board (Board) requests, pursuant to 31 TAC §355.3, the submission of applications leading to the possible award of contracts to develop flood protection plans for areas in Texas from political subdivisions with the legal authority to plan for and abate flooding and which participate in the National Flood Insurance Program.

Flood protection planning applications may be submitted by eligible political subdivisions from any area of the State and will be considered and evaluated. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. The purpose of the flood protection planning grant program is for the State to assist local governments to develop flood protection plans for entire major or minor watersheds (as opposed to local drainage areas) that provide protection from flooding through structural and non-structural measures as described in 31 TAC §355.2. Planning for flood protection will include studies and analyses to determine and describe problems resulting from or relating to flooding and the views and needs of the affected public relating to flooding problems. Potential solutions to flooding problems will be identified, and the benefits and costs of these solutions will be estimated. From the planning analysis, feasible solutions to flooding problems will be recommended. The flood protection planning study should also include an assessment of the environmental and cultural resources of the planning area as necessary to evaluate the flood control alternatives being considered. Solutions for localized drainage problems are not eligible for grant funding.

Description of Funding Consideration. Up to \$1,000,000 has been initially authorized for Fiscal Year 2007 assistance for flood protection planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a) as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete flood protection planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., December 14, 2006. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, 78701 or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Bill Roberts at the preceding mailing address, or by e-mail at bill.roberts@twdb.state.tx.us or by calling (512) 936-0853. This information can also be found on the Internet at the following address: <http://www.twdb.state.tx.us>.

TRD-200605219

Wendall Corrigan Braniff

General Counsel

Texas Water Development Board

Filed: September 20, 2006



Request for Applications for Regional Water and Wastewater Facility Planning

The Texas Water Development Board (Board) requests, pursuant to 31 Texas Administrative Code (TAC) Chapter 355, Subchapter A, the submission of planning applications leading to the possible award of contracts for regional facility planning. This planning will evaluate and determine the most feasible alternatives to meet water supply and/or wastewater facility needs, estimate the costs associated with implementing feasible water supply and/or wastewater facility alternatives, and identify institutional arrangements to provide water supply and/or wastewater services for areas in Texas. In order to receive a grant, the applicant must have the authority to plan, implement, and operate regional water supply and/or wastewater facilities.

Planning applications may be submitted by eligible political subdivisions from any area of the State. To be eligible for funding at least two political subdivisions must participate in the proposed study and more than one service area must be evaluated for feasibility of regional facilities. In addition, applicants must supply a map of the geographical planning area to be studied.

Description of Planning Purpose and Objectives. Note: Studies related to the development of regional water supply plans, the evaluation of water supply alternatives, and drought response plans as defined in Senate Bill 1, 75th Session, Texas Legislature are not eligible for funding under this Request for Applications. The purpose of this program is for the State to assist local governments to prepare plans that document water supply and/or wastewater service facility needs, identify feasible regional alternatives to meet water supply and/or wastewater facility needs, and present estimates of costs associated with providing regional water supply facilities and distribution lines and/or regional wastewater treatment plants and collection systems. The study should, at a minimum, include the following steps:

*Develop Problem Statement;

*Inventory Existing Conditions and Forecast Future Conditions and Needs;

*Formulate Planning Alternatives;

*Evaluate and Compare Each Planning Alternative; and

*Select Best Planning Alternative.

A water conservation plan and a drought management plan must be developed to ensure that existing and future sources are used efficiently and as a basis for confirming demand projections of future need. The Board's population and water demand projections will be considered in preparing projections. Discrete phases to implement regional water supply and/or wastewater facilities to meet projected needs will be identified. Environmental, social, and cultural factors for possible solutions identified in the plan should be evaluated. Cost estimates will be made for each respective implementation phase to determine the capital, operation, and maintenance requirements for a 30-year planning period. Separate cost estimates will be made for each regional water supply and/or wastewater system component, including the water conservation program.

Description of Funding Consideration. Up to \$1,000,000 has been initially authorized for Fiscal Year 2007 assistance for regional facility planning from the Board's research and planning fund. Up to 50 percent funding may be provided to individual applicants, with up to 75 percent funding available to areas identified in 31 TAC §355.10(a), as amended, as economically disadvantaged. In the event that acceptable applications are not submitted, the Board retains the right to not award contract funds.

Deadline, Review Criteria, and Contact Person for Additional Information. Ten double-sided copies on recycled paper of a complete regional facility planning grant application including the required attachments must be filed with the Board prior to 5:00 p.m., November 30, 2006. Applications can be directed either in person to Ms. Phyllis Thomas, Texas Water Development Board, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas or by mail to Ms. Phyllis Thomas, Texas Water Development Board, P.O. Box 13231 - Capitol Station, Austin, Texas 78711-3231.

Applications will be evaluated according to 31 TAC §355.5, as amended. All potential applicants can contact the Board to obtain these rules and an application instruction sheet. Requests for information, the Board's rules and instruction sheet covering the research and planning fund may be directed to Mr. Bill Roberts at the preceding

mailing address, by e-mail at bill.roberts@twdb.state.tx.us or by calling (512) 936-0853. This information can be found on the Internet at the following address: <http://www.twdb.state.tx.us>.

TRD-200605218
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: September 20, 2006



Request for Proposals for Brackish Groundwater Desalination Demonstration Projects

The Texas Water Development Board (TWDB) invites interested parties to submit proposals for brackish groundwater desalination demonstration projects.

Goals:

To provide tangible examples of the use of water desalination technologies and management strategies that can serve as replicable models for implementing desalination projects. The primary topics of the Request for Proposals are:

*Proven desalination concentrate disposal technologies and/or concentrate management strategies suitable for use with brackish groundwater desalination facilities;

*Cost-effective co-location and/or integrated operation of water-desalination and energy generation facilities; and

*Technological and/or facility management approaches to increase the economic efficiency of desalinating brackish water sources.

Eligible expenses include facility planning, feasibility studies, pilot testing, and plant design or construction. All proposals should include a procedure to document and broadcast the project development and its results as an educational activity for others to learn and benefit from.

Background:

In 2003, the TWDB estimated that there was about 2.7 billion acre-feet of brackish groundwater¹ in the state. To accelerate accessing this valuable resource, the TWDB launched the Brackish Groundwater Desalination Initiative. In 2005, the 79th Texas Legislature appropriated funds to the TWDB to implement brackish groundwater desalination demonstration projects.

The focus of the Brackish Groundwater Desalination Initiative is to provide tangible examples or models of brackish groundwater desalination that illustrate the use of innovative, cost-effective technologies and the solutions to practical issues associated with implementing desalination projects.

Up to \$929,000 may be awarded for selected brackish groundwater desalination demonstration projects under the present solicitation.

¹LBG-Guyton, *Brackish Groundwater Manual for Texas Regional Water Planning Groups*, Texas Water Development Board, Austin, Texas, February 2003.

General Requirements:

Ten complete copies and one electronic reproducible copy of the response to the TWDB Request for Proposals are due no later than 5:00 p.m. on December 7, 2006. Please mail them to:

Phyllis Thomas
Texas Water Development Board
P.O. Box 13231, Capitol Station
Austin, TX 78711-3231

Responses should be limited to no more than five, single 8-1/2 x 11 inch, numbered, single spaced pages printed on one side only; font size shall be no less than 12 point type; margins shall be no less than 3/4 inch around the perimeter of each page. Responses may include appendices and other supporting information; however, supplemental information provided in excess of the five pages will only be considered at TWDB's discretion.

Upon review and ranking of responses received by the stipulated deadline, TWDB staff will request a work plan and a budget from top ranked responses. Contract requirements, including interim and final report standards, will be provided upon request.

The responses must address the following:

1. Project Proponent(s) and Partnerships Affiliated with the Proposal

Identify applicant(s)'s representatives and provide contact information.

If the proposal involves a partnership, identify the roles of each partner and provide contact information for their representatives.

2. Project Description

a. Statement of the problem

b. Technical approach to resolving the problem

c. Map showing the location of the proposed project, and existing and proposed facilities in the vicinity of the proposed project

d. Indicate whether and how the project proposal may be linked to a recommended water management strategy in an approved regional water plan.

3. Anticipated Benefits and Deliverables

a. Describe the anticipated benefits from implementing the proposed project.

b. Explain how the project's design will provide for educational and technology transfer opportunities.

c. Identify and describe specific project deliverables.

4. Qualifications of Proposed Team

Provide a summary of relevant qualifications of the proposed project manager for the project and other key personnel.

5. Support for the Project

Describe endorsement(s) obtained or expected for the proposed project from regional water planning group(s) and potential project beneficiaries.

6. Budget

List key tasks, anticipated task budget, total project cost, and amount requested for TWDB as follows:

Table A

Task #	Description	Budget
	TOTAL PROJECT COST	
	AMOUNT REQUESTED FROM TWDB	

7. Cash and In-kind Contributions

List all project cash and in-kind contributors, as follows:

Table B

Contributing Entity	Contact Person/ Telephone Number	Contributions	
		In-kind	Cash (\$)

8. Project Schedule

- a. Identify key tasks and milestones.
- b. Provide the proposed project implementation schedule.

Please note that top-ranked proposal(s) will be required to complete a TWDB Research and Planning application for financial assistance which includes a detailed Work Plan and Project Budget.

Pre-Submittal Meeting:

There will be a pre-submittal meeting at 10:00 a.m. on October 24, 2006 in Room 513-F, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas for the purpose of reviewing submittal requirements and answering any questions that may be brought to the

attention of the TWDB staff regarding this project. All interested parties are encouraged to attend.

Requests for information relative to the Request for Proposals should be directed to Mr. Jorge Arroyo at jorge.arroyo@twdb.state.tx.us or at the preceding address or by calling (512) 475-3003.

Screening Criteria

TWDB will rely primarily on the following criteria to screen potential demonstration brackish groundwater desalination projects. Top-ranked proposals resulting from the screening will be invited to submit detailed scopes of work for funding consideration.

Table C

Screening Criteria

Item	Pts
<u>A. Technical Approach</u>	25
<u>B. Demonstration Value</u>	25
<u>C. Technical Qualifications of Key Personnel</u>	25
<u>D. In-kind and Cash Contributions</u>	20
<u>E. Project Schedule</u>	5
<u>TOTAL</u>	100

TRD-200605220
Wendall Corrigan Braniff
General Counsel
Texas Water Development Board
Filed: September 20, 2006



Texas Youth Commission

Notice of Consultant Contract Award

Pursuant to provisions of Government Code, Chapter 2254, the Texas Youth Commission (TYC) furnishes this notice of consultant contract award. The consultant will study and advise TYC on conditions of confinement at the Evins Regional Juvenile Center in Edinburg, Texas, and provide recommendations as necessary.

The contract was awarded to Paul DeMuro, 617 Wild Dunes Circle, Wilmington, NC 28411, for an amount not to exceed \$100,000.

The term of the contract is August 26, 2006 through August 31, 2007. Consultant will provide reports in a format directed by TYC at times determined by TYC.

TRD-200605106
Neil Nichols
General Counsel
Texas Youth Commission
Filed: September 15, 2006



How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).