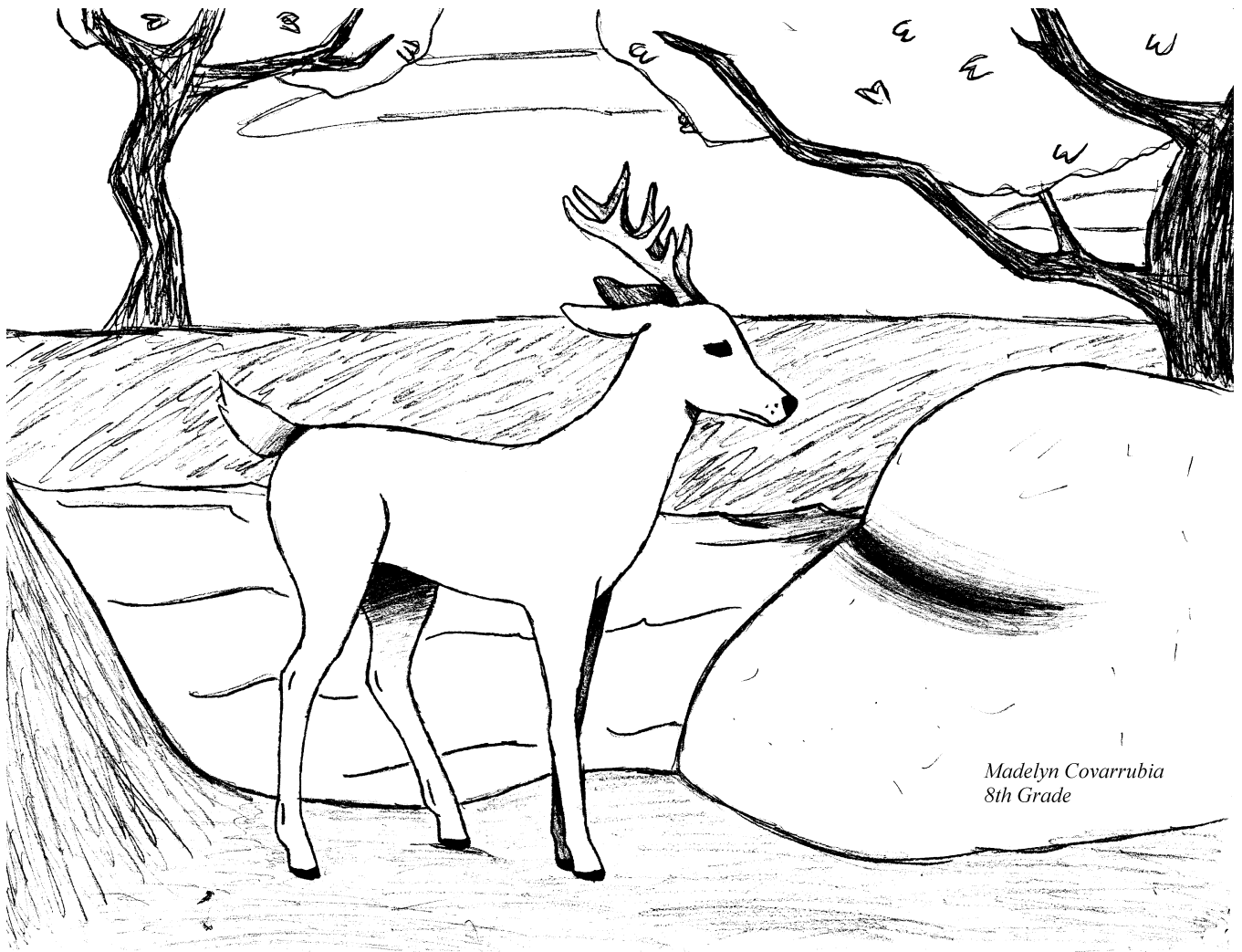

TEXAS REGISTER

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Madelyn Covarrubia
8th Grade

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Open Meetings

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

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

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

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

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

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

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

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

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

...

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

THE ATTORNEY GENERAL

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-0550-GA

Requestor:

The Honorable James H. Owen

Henderson County Attorney

100 East Tyler Street, Room 100

Athens, Texas 75751

Re: Whether district judges may require a county auditor to obtain and fund outside legal counsel for the purpose of responding to requests under the Public Information Act (Request No. 0550-GA)

Briefs requested by December 22, 2006

RQ-0551-GA

Requestor:

The Honorable Royce West

Chair, Committee on Intergovernmental Relations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711

Re: Authority of a county to cremate the remains of an unidentified deceased pauper (Request No. 0551-GA)

Briefs requested by December 22, 2006

RQ-0552-GA

Requestor:

The Honorable Ed Walton

Kaufman County Criminal District Attorney

100 West Mulberry

Kaufman, Texas 75142

Re: Standards under which a commissioners court may hold an "emergency" meeting under the Open Meetings Act, chapter 551, Government Code (Request No. 0552-GA)

Briefs requested by December 22, 2006

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

TRD-200606348

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 21, 2006



Opinions

Opinion No. GA-0482

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 a water rights fee imposed by the Public Utilities Board of the City of Brownsville is an impermissible impact fee under chapter 395 of the Local Government Code (RQ-0468-GA)

S U M M A R Y

A water rights fee imposed solely for the costs of procuring a water supply and not for facility construction costs is not an impermissible impact fee prohibited by chapter 395 of the Local Government Code.

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

TRD-200606351

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 21, 2006



Opinion No. GA-0483

The Honorable Jim Kuboviak

Brazos County Attorney

Brazos County Courthouse

300 East 26th Street, Suite 325

Bryan, Texas 77803

Re: Whether the City of Millican has been dissolved (RQ-0456-GA)

S U M M A R Y

Where a municipality is incorporated under general law and then reincorporated by special law, the municipality becomes a special-law municipality. If, between 1897 and 1925, the special-law City of Millican's population was between 200 and 5,000 at the same time that the municipal offices had been vacant at least ten years, the city was dissolved under an amendment to article 397 of the Revised Civil Statutes that was effective during that same time period.

Opinion No. GA-0484

The Honorable William M. Jennings

Gregg County Criminal District Attorney

101 East Methvin Street, Suite 333

Longview, Texas 75601

Re: Whether motor vehicles excepted from property-tax-remission requirements under Tax Code section 22.01(k) are thereby exempt from taxation (RQ-0476-GA)

S U M M A R Y

House Bill 809, passed in the Seventy-ninth Legislature, codified at section 22.01(k) of the Tax Code, exempts cars and light trucks that are used in the course of the owner's occupation or profession as well as for personal purposes from rendition for taxation, but that legislation did not establish that such personal property is exempt from taxation.

Opinion No. GA-0485

The Honorable Robert E. Talton

Chair, Committee on Urban Affairs

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Tax status of property owned by limited partnerships created by political subdivisions (RQ-0489-GA)

S U M M A R Y

To qualify for a tax exemption under the Texas Constitution and section 11.11(a), Tax Code, property must be both publicly owned and used for public purposes. Property legally owned by a public-private limited partnership might nevertheless be equitably owned by the public entity, and thus tax exempt, when the public entity has the legal right to compel the transfer of title to itself. Whether property is equitably owned by a public entity depends on the facts of a particular situation and cannot be determined in an attorney general opinion.

Opinion No. GA-0486

The Honorable Bruce Isaacks

Denton County Criminal District Attorney

Post Office Box 2850

Denton, Texas 76202

Re: Whether the \$37 filing fee authorized by House Bill 11, Seventy-ninth Legislature, Second Called Session, may be collected in bond forfeiture matters (RQ-0491-GA)

S U M M A R Y

The \$37 filing fee that Local Government Code section 133.154(a) imposes does not apply in bail bond forfeiture matters because no civil suit is filed. The \$4 fee that Local Government Code section 133.105 imposes does not apply in bail bond forfeiture matters because no one is convicted of any offense.

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

TRD-200606376

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: November 28, 2006



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 69. CENTRAL PURCHASING SUBCHAPTER A. PROCEDURES FOR VENDOR PROTESTS OF PROCUREMENTS

1 TAC §69.1, §69.4

The Office of the Attorney General's rules governing Vendor Protests of Procurements (Chapter 69, Subchapter A) are due for review. The Office of the Attorney General's Budget & Purchasing Division is responsible for reviewing these rules and has determined that the agency's reason for adopting the referenced rules continues to exist. The Office of the Attorney General proposes to re-adopt the rules with proposed amendments.

The proposed amendments to §69.1 and §69.4 in part reflect the recent name change of the General Services Commission to the Texas Building and Procurement Commission. The change also eliminates reference to Executive Management in §69.1.

Julie Geeslin, Director of the Budget & Purchasing Division, has reviewed the proposed amendments and determined there will be no fiscal impact on state or local government for each year of the first five-year period. Ms. Geeslin has also determined there will be no fiscal impact to small business and/or individuals and no local employment impact as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to David Liebich, Assistant Division Chief, Budget & Purchasing Division, Office of the Attorney General, P.O. Box 12548, Mail Code 007, Austin, Texas 78711-2548.

The amendments are proposed under the Texas Government Code, Chapter 2155, which authorizes the Office of the Attorney General to develop and adopt rules regarding state agency procurement.

§69.1. Purpose and Definitions.

(a) The purpose of this subchapter is to provide an internal protest procedure to be used by any actual or prospective bidder, offeror, proposer, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract by the Office of the Attorney General from a delegated procurement. The following procedures are available for persons or firms not awarded the contract pursuant to authority delegated to the Office of the Attorney General by the Texas Building and Procurement ~~[General Services]~~ Commission

or by Government Code, Chapters 2155 - 2158. These procedures are consistent with the Texas Building and Procurement ~~[General Services]~~ Commission's rules insofar as such rules are applicable to an internal agency review.

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

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

(4) Interested party--a vendor who has submitted a bid or proposal, as applicable, for the delegated procurement involved ~~[Executive Management--an organizational unit of the Attorney General consisting of the First Assistant Attorney General, the Deputy Attorney General for Litigation, the Deputy Attorney General for Criminal Justice, the Executive Assistant for Administration, and the Office of General Counsel];~~

(5) Delegated procurement or procurement--a procurement delegated to the Attorney General pursuant to the procedures of Government Code, Chapter 2155, Chapter 2156, Chapter 2157, or Chapter 2158; and ~~[Interested party--a vendor who has submitted a bid or proposal, as applicable, for the delegated procurement involved;]~~

(6) Receive/receipt--actual receipt. ~~[Delegated procurement or procurement--a procurement delegated to the Attorney General pursuant to the procedures of Government Code, Chapter 2155, Chapter 2156, Chapter 2157, or Chapter 2158; and]~~

~~[(7) Receive/receipt--actual receipt.]~~

§69.4. Appeal.

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

(c) Upon receipt of a timely appeal that conforms with this subchapter, the First Assistant may designate one or more ~~[other members of the Attorney General's Executive Management or other]~~ employees of the Office of the Attorney General to review the protest, the determination of the Manager, and the appeal with respect to the protest. The designee(s) will prepare and submit to the First Assistant a written recommendation regarding the appeal.

(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 November 27, 2006.

TRD-200606363

Stacey Napier
Deputy Attorney General
Office of the Attorney General

Earliest possible date of adoption: January 7, 2007
For information regarding this publication, contact Lauri Saathoff,
Agency Liaison, at (512) 463-2096.

◆ ◆ ◆
**SUBCHAPTER B. HISTORICALLY
UNDERUTILIZED BUSINESS PROGRAM**

1 TAC §69.25

The Office of the Attorney General's rules governing the Historically Underutilized Business Program (Chapter 69, Subchapter B) are due for review. The Office of the Attorney General's Budget & Purchasing Division is responsible for reviewing these rules and has determined that the agency's reason for adopting the referenced rules continues to exist. The Office of the Attorney General proposes to re-adopt §69.25 with proposed amendments.

Julie Geeslin, Director of the Budget & Purchasing Division, has reviewed the proposed amendments and determined there will be no fiscal impact on state or local government for each year of the first five-year period. Ms. Geeslin has also determined there will be no fiscal impact to small business and/or individuals and no local employment impact as a result of the proposed amendments.

Comments on the proposed amendments may be submitted to David Liebich, Assistant Division Chief, Budget & Purchasing Division, Office of the Attorney General, P.O. Box 12548, Mail Code 007, Austin, Texas 78711-2548.

The amendments are proposed under the Texas Government Code, Chapter 2161, which authorizes the Office of the Attorney General to develop and adopt rules regarding state agency procurement.

§69.25. *Historically Underutilized Business Program.*

The OAG adopts by reference the Texas Building and Procurement Commission's (TBPC) [GSC] rules found at 1 TAC, Title 1 Administration, Part 5 Texas Building and Procurement [General Services] Commission, Chapter 111 Executive Administration Division, Subchapter B Historically Underutilized Business Program, §§111.11 - 111.28, relating to Historically Underutilized Business Program, with the following addition: For the purpose of Subchapter B, §69.25, "Commission" refers to Texas Building and Procurement [General Services] Commission.

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

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

TRD-200606368
Stacey Napier
Deputy Attorney General
Office of the Attorney General

Earliest possible date of adoption: January 7, 2007
For information regarding this publication, contact Lauri Saathoff,
Agency Liaison, at (512) 463-2096.

◆ ◆ ◆
TITLE 19. EDUCATION

**PART 1. TEXAS HIGHER EDUCATION
COORDINATING BOARD**

**CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS**

19 TAC §1.16

The Texas Higher Education Coordinating Board proposes amendments to §1.16 concerning contracts for materials and services. Specifically, this amendment will give the Chair and Vice Chair of the Board the authority to provide final approval of contracts for purchases approved by the Agency Operations Committee or the full Board and to approve requests and contracts for emergency purchases. The amendment will also allow the Commissioner to delegate contract approval authority for contracts equal to or less than \$5,000 or if the Commissioner will be unavailable to approve contracts for more than one business day.

Ms. Jennifer Kaufman, Assistant General, Counsel has determined that, for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Kaufman has also determined that, for each year of the first years the section is in effect, the public benefit anticipated as a result of administering the section will be the more efficient use of agency resources. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jennifer Kaufman, Suite 2.164, 1200 East Anderson Lane, Austin, Texas 78752, Jennifer.Kaufman@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.067, which provides the Coordinating Board with the authority to contract and Texas Education Code, §61.027 which provides the Board with the authority to adopt rules.

The amendment affects Texas Education Code, §61.067.

§1.16. *Contracts for Materials and Services.*

(a) The Board shall approve all requests [contracts] for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is expected to exceed \$750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(b) The Agency Operations Committee shall approve all requests [contracts] for the purchase of materials or services through a vendor other than a state or local governmental entity if the cost for those materials or services is greater than \$100,000.00 but less than or equal to \$750,000.00. After a vendor is selected, the Chair and Vice Chair of the Board shall provide final approval of the contract with the selected vendor.

(c) The Commissioner shall approve all contracts for the purchase of materials or services through a vendor other than a state or

local governmental entity if the contract amount is less than or equal to \$100,000.00. The Commissioner may delegate his approval authority to a deputy, associate, or assistant commissioner if:

(1) The contract amount is less than or equal to \$5,000; or

(2) The Commissioner will be away from the agency and unavailable to approve contracts for more than one business day.

(d) (No change.)

(e) The Chair and Vice Chair of the Board shall have the authority to approve emergency purchase requests and contracts for materials or services over \$100,000 that must be entered into in order to prevent a hazard to life, health, safety, welfare, property or to avoid undue additional cost to the state. Emergency purchase requests and contracts shall be exempt from subsections (a) and (b) of this section.

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

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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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For further information, please call: (512) 427-6114



CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.3

The Texas Higher Education Coordinating Board proposes an amendment to §4.3, concerning definitions for rules applying to all public institutions of higher education in Texas. Specifically, this amendment will delete definitions for College-Readiness Standards and Statewide College-Readiness Vertical Teams and move these definitions for clarification to Chapter 4, Subchapter H, concerning P-16 college-readiness and success.

Lynette Heckmann, Director of Special Projects, Participation and Success, has determined that for the first five-year period the amendment is in effect there will be no cost to state or local government as a result of enforcing or administering the amended rule.

Ms. Heckmann has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amended section will be a clearer understanding of the terms college-readiness standards and statewide college-readiness vertical teams by removing these definitions from §4.3 and moving them to Chapter 4, Subchapter H, concerning P-16 college-readiness and success. There is no effect on small businesses. There are 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 Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §28.008(c), which provides the Coordinating Board with the authority to adopt rules to establish the composition and duties of statewide college-readiness teams.

The amendment affects Texas Education Code, §28.008.

§4.3. Definitions.

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

(1) Active military service--active [~~Active~~] service in the armed forces of the United States or in the National Guard or the Texas State Guard.

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

~~[(8) College-Readiness Standards--The knowledge and skills expected of students to perform successfully in the workplace and in entry-level courses offered at institutions of higher education.]~~

(8) ~~[(9)]~~ Commissioner--The Commissioner of Higher Education.

(9) ~~[(10)]~~ Common calendar--dates and information pertaining to the beginning and ending (and lengths) of academic semesters and sessions, applicable to all Texas public universities and community, technical and state colleges.

(10) ~~[(11)]~~ Consulting or testifying expert witness--any non-fact witness whose name must be disclosed during litigation as required by the Texas Rules of Civil Procedure.

(11) ~~[(12)]~~ Degree program--any grouping of subject matter courses which, when satisfactorily completed by a student, will entitle the student to a degree from an institution of higher education.

(12) ~~[(13)]~~ Faculty or professional staff of an institution of higher education--a non-classified, full-time employee who is a member of the faculty or staff and whose duties include teaching, research, administration or performing professional services, including professional library services.

(13) ~~[(14)]~~ Fiscal year--the State of Texas' fiscal year, September 1 through August 31.

(14) ~~[(15)]~~ Institution of higher education or institution--any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(15) ~~[(16)]~~ Interdisciplinary baccalaureate degrees--the Bachelor of General Studies degree (defined in paragraph (4) of this section) and such general degrees as liberal arts or humanities. These broad-based degrees vary in the amount of prescriptive structure but share the characteristics of flexibility for the student and interdisciplinary course selection.

(16) ~~[(17)]~~ Non-classified--an employee whose position is not controlled by the institution's classified personnel system or a person employed in a similar position if the institution does not have a classified personnel system.

~~(17)~~ [(18)] Religious holy day--a [A] holy day observed by a religion whose places of worship are exempt from property taxation under the Texas Tax Code, §11.20.

~~(19) Statewide Discipline-Based College-Readiness Vertical Teams--Teams composed of public school educators and higher education faculty whose duties are consistent with those provided under §28.008(b) of the Texas Education Code.~~

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

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Bill Franz

General Counsel

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SUBCHAPTER H. P-16 COLLEGE-READINESS AND SUCCESS

19 TAC §4.171, §4.172

The Texas Higher Education Coordinating Board proposes amendments to §4.171 and §4.172 concerning P-16 college-readiness and success which apply to all public institutions of higher education in Texas.

Specifically, these amendments will rearrange previously adopted sections of the rules as a result of new sections proposed in a separate filing that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

Ms. Lynette Heckmann, Director of Special Projects, Participation and Success, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Ms. Heckmann has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering these amendments will be clarification of previously adopted rules and new sections of rules proposed in separate filings. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college-readiness standards, to implement the P-16 college-readiness and success strategic action plan, and to

establish and implement programs to enhance student success in entry-level college courses, respectively.

The proposed sections affect Texas Education Code, §§28.008, 61.0761, and 61.0762.

§4.171. *Purpose.*

The purpose of this subchapter is:

(1) To establish rules, in cooperation with the commissioner of education, for the implementation of the P-16 College-Readiness and Success Strategic Action Plan recommended by the statewide P-16 Council and adopted by the board.

(2) To [tø] establish the composition and duties of the statewide discipline-based college-readiness vertical teams that have the responsibility to develop and recommend college-readiness standards to the commissioner and the commissioner of education; and

(3) To establish the criteria for student participation, public school eligibility, and institutional eligibility for implementing programs to enhance student success.

§4.172. *Authority.*

(a) Texas Education Code, §61.0761 provides the board with the authority to adopt rules to implement the P-16 College-Readiness and Success Strategic Action Plan, in cooperation with the commissioner of education.

(b) Texas Education Code, §28.008 provides the commissioner with the authority to determine, in cooperation with the commissioner of education, the composition of statewide discipline-based college-readiness vertical teams.

(c) Texas Education Code, §61.0762 provides the board with the authority to adopt rules to implement programs to enhance student success.

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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Bill Franz

General Counsel

Texas Higher Education Coordinating Board

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19 TAC §4.173, §4.174

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §4.173 and §4.174 concerning P-16 college-readiness and success which apply to all public institutions of higher education in Texas. Specifically, this repeal will rearrange previously adopted sections of the rules as a result of new sections proposed in a separate filing that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

Ms. Lynette Heckmann, Director of Special Projects, Participation and Success, has determined that there is no cost as a result of enforcing or administering the rules.

Ms. Heckmann has also determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these amendments will be clarification of previously adopted rules and new sections of rules proposed in separate filings. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the repeal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college-readiness standards, to implement the P-16 college-readiness and success strategic action plan, and to establish and implement programs to enhance student success in entry-level college courses, respectively.

The proposed repeal affects Texas Education Code, §§28.008, 61.0761, and 61.0762.

§4.173. Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams.

§4.174. Appointment of Higher Education Faculty to the Statewide Discipline-Based College-Readiness Vertical Teams.

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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19 TAC §§4.173 - 4.177

The Texas Higher Education Coordinating Board proposes new §§4.173 - 4.177, concerning P-16 college-readiness and success which apply to all public institutions of higher education in Texas. Specifically, these new sections will create new definitions for use in P-16 college-readiness and success, describe the purpose of the P-16 college-readiness and success strategic action plan and the initiatives it supports, and establish the criteria for student participation and institutional and public school eligibility for programs to enhance student success that are necessary for implementation of the applicable portions of §5.08 of House Bill 1, Third Called Session 2006.

Ms. Lynette Heckmann, Director of Special Projects, Participation and Success, has determined that, for fiscal year 2007, the

cost will be \$6,425,000; for 2008, the cost will be \$8,550,000; for 2009, the cost will be \$8,675,000; for 2010, the cost will be \$9,025,000; and for 2011, the cost will be \$9,385,000 as a result of enforcing or administering the rules.

Ms. Heckmann has also determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering these sections will be the implementation of specific programs by public institutions of higher education designed to ensure the success of students in entry-level college courses. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lynette Heckmann, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or lynette.heckmann@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§28.008, 61.0761, and 61.0762, which provides the Coordinating Board with the authority to adopt rules to develop and adopt college-readiness standards, to implement the P-16 college-readiness and success strategic action plan, and to establish and implement programs to enhance student success in entry-level college courses, respectively.

The proposed new sections affect Texas Education Code, §§28.008, 61.0761, and 61.0762.

§4.173. Definitions.

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

(1) Closing the Gaps by 2015--The master plan for higher education for the state of Texas that includes strategies and targets for ensuring that Texas closes the gaps between and among ethnic/racial/gender groups in their Participation and Success in higher education, and between and among institutions in similarly situated states in the Excellence of higher education programs and in federal Research funding.

(2) College-readiness assessment--The ACT PLAN and College Board Preliminary SAT or other assessments as determined by the commissioner that serve as early indicators of student college-readiness.

(3) College entrance assessment--The ACT and SAT or other assessments as determined by the commissioner that serve as indicators of student college-readiness.

(4) College-readiness standards--The knowledge and skills expected of students to perform successfully in entry-level courses offered at institutions of higher education and in that part of the workplace requiring similar knowledge and skills.

(5) College-ready student--One who has the knowledge and skills necessary to begin entry-level college courses with a reasonable likelihood of success and does not require developmental education.

(6) Commissioner--The commissioner of higher education.

(7) Faculty--A person who is employed by an institution of higher education on a full- or part-time basis as a member of the faculty or staff and whose duties include teaching, research, administration

(including professional librarians), or the performance of professional services. The term does not include a person employed in a position which is in the institution's classified personnel system, or a person employed in a similar type of position if the institution does not have a classified personnel system.

(8) Institution of higher education or institution--Any public technical institute, public junior college, public senior college or university, medical or dental unit, or other agency of higher education as defined in Texas Education Code, §61.003.

(9) Statewide discipline-based college-readiness vertical teams--Teams composed of public school educators and higher education faculty whose duties are consistent with those provided under §28.008(b) of the Texas Education Code.

§4.174. P-16 College-Readiness and Success Strategic Action Plan.

(a) To increase student success and decrease the number of students enrolling in developmental course work in institutions of higher education, the Board, in cooperation with the Commissioner of Education, shall implement the P-16 College-Readiness and Success Strategic Action Plan as recommended by the statewide P-16 Council pursuant to Texas Education Code, §61.0761(a).

(b) The initiatives and activities to be implemented under the P-16 College-Readiness and Success Strategic Action Plan include the creation of statewide discipline-based vertical teams outlined in Texas Education Code, §28.008, and programs to enhance student success outlined in Texas Education Code, §61.0762.

§4.175. Composition and Duties of Statewide Discipline-Based College-Readiness Vertical Teams.

(a) There shall be a total of four statewide discipline-based college-readiness vertical teams: one each in English/Language Arts, Mathematics, Science, and Social Studies. All teams shall be composed of a minimum of 8 and a maximum of 20 members per subject area who represent the following:

- (1) All levels of public school educators;
- (2) Faculty from higher education to include public junior colleges, public community colleges, public technical institutes, public state colleges, public senior colleges or universities, and private or independent institutions of higher education as defined in Texas Education Code, §61.003;
- (3) A balance between small and large districts;
- (4) Various geographic regions of the state; and
- (5) Overall demographics of the state.

(b) A maximum of 60 percent of the statewide discipline-based college-readiness vertical teams shall be composed of faculty from institutions of higher education.

(c) The statewide discipline-based college-readiness vertical teams shall develop college-readiness standards as defined in Texas Education Code, §28.008(b)(1). The teams may create an interdisciplinary vertical team composed of one public education member and one higher education member from each discipline-based college-readiness vertical team to review the standards and determine commonalities among the disciplines. The statewide discipline-based college-readiness vertical teams shall recommend the college-readiness standards to the commissioner of education and the commissioner.

(d) Upon completion of the development of college-readiness standards, the statewide discipline-based college-readiness vertical teams shall develop recommendations for curriculum alignment with college-readiness standards and other materials as defined in Texas Education Code, §28.008(b)(2) - (5). The teams shall be re-constituted

at that time to ensure that a maximum of 60 percent of each of the re-constituted statewide discipline-based college-readiness vertical teams shall be composed of secondary public education teachers employed full-time in Texas public school districts.

(e) In conjunction with the vertical teams, the Commissioner shall appoint an advisory committee of no fewer than 12 members and no greater than 15 members that include representatives from each of the six targeted cluster industries as defined by the governor, to review and make recommendations regarding development of college-readiness standards in each of the four subject matter areas.

§4.176. Appointment of Higher Education Faculty to the Statewide Discipline-Based College-Readiness Vertical Teams.

(a) The Commissioner shall determine the criteria for selecting faculty from institutions of higher education for appointment to the four statewide discipline-based college-readiness vertical teams.

(b) The Commissioner shall solicit recommendations for appointment from institutions of higher education and appropriate higher education organizations.

(c) Appointments by the Commissioner to the statewide discipline-based college-readiness vertical teams outlined in §4.173(9) of this chapter (relating to Definitions) shall be made no later than December 29, 2006.

(d) Members representing institutions of higher education on the statewide discipline-based college-readiness vertical teams outlined in §4.173(9) of this chapter (relating to Definitions) may be removed or replaced at the discretion of the Commissioner.

§4.177. Criteria for Student Participation and Institutional and Public School Eligibility for Implementing Programs to Enhance Student Success.

(a) Summer higher education bridge programs. The purpose of this program is for institutions of higher education to provide public high school students who are not college-ready with appropriate instruction and other activities during summer programs to ensure eligible students achieve college-readiness.

(1) Only institutions offering summer bridge programs outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement summer bridge programs under this subsection. The focus of these programs shall include mathematics, science, and/or English language arts for the following categories of public high school students:

(A) Exiting 12th grade students, in the summer following their senior year, who have not met the minimum passing standards for college-readiness as outlined under §4.57 of this title (relating to Minimum Passing Standards) or who are not exempt from requirements of the Texas Success Initiative as outlined under §4.54 of this title (relating to Exemptions/Exceptions); or

(B) 10th and 11th grade students, in the summer following their sophomore and junior year, respectively, who have not achieved the predicted score for college-readiness on the Texas Assessment of Knowledge and Skills, or appropriate college-readiness predictors or scores on other assessments of college-readiness as determined by the Commissioner.

(3) Other qualifications or requirements for student participation and institutional eligibility for implementing summer bridge

programs shall be outlined in the request for proposal/application, memorandum of understanding, or other agreement.

(b) Developmental education initiatives. The purpose of this program is to provide incentive funding to institutions who commit to implementing research-based and/or innovative developmental education initiatives.

(1) Only institutions offering developmental education initiatives under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement developmental education initiatives under this subsection. The focus of these programs shall include mathematics, science, and/or English language arts for students who have not met the minimum passing standards for college-readiness as outlined under §4.57 of this title (relating to Minimum Passing Standards) or who are not exempt from requirements of the Texas Success Initiative as outlined under §4.54 of this title (relating to Exemptions/Exceptions).

(c) Financial aid for college-readiness and college entrance assessments. The purpose of this program is to obtain early assessments of college-readiness and preparation of high school students.

(1) Financial aid shall be provided to each eligible high school student on an annual basis as determined by the Commissioner.

(2) Each year for which state appropriations or other funding is available, the commissioner or his/her designee shall determine the college-readiness and college entrance assessments that will be funded under this subsection.

(d) Professional development for higher education faculty. The purpose of this program is to provide higher education faculty with professional development programs or activities on college-readiness standards and the implications of these standards on instruction.

(1) Only institutions offering professional development for faculty outlined under Texas Education Code, §61.0762, shall be subject to this subsection.

(2) Each year for which state appropriations or other funding is available, the Commissioner or his/her designee shall issue a request for proposal/application, memorandum of understanding, or other agreement for institutions to implement activities or programs of professional development for faculty under this subsection. The focus of these programs shall be limited to faculty who have responsibilities for developmental education and entry-level courses and to the knowledge and skills, reflected in the college-readiness standards, that faculty can reasonable expect students to have achieved who are entering those courses from public schools.

(3) Other qualifications or requirements for institutional eligibility for implementing faculty professional development activities and programs shall be outlined in the request for proposal/application, memorandum of understanding, or agreement.

(e) Other programs that support the participation and success goals of Closing the Gaps by 2015. Additional programs may be identified by the Commissioner to address the participation and success goals of Closing the Gaps by 2015. As programs are identified, qualifications and requirements for student participation and institutional or public school eligibility shall be determined by the commissioner or his/her designee.

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

Texas Higher Education Coordinating Board

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CHAPTER 7. PRIVATE AND OUT-OF-STATE PUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS OPERATING IN TEXAS SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.3, 7.6, 7.9

The Texas Higher Education Coordinating Board proposes amendments to §§7.3, 7.6, and 7.9, concerning definition of Board and a minor correction and reference change in the rules.

Specifically, amendments to §7.3, relating to Definitions, expands the definition of Board to include the Commissioner or his designated representatives to clarify that the Board has delegated authority to the Commissioner to administer the chapter; §7.6, relating to Certificate of Authority--Eligibility, Applications, Renewals, and Amendments, corrects an incorrect reference in the rules to another section of the rules; and §7.9, relating to Operation of Branch Campuses, Extension Centers, or Other Off-Campus Units by Exempt Institutions, removes a typographical error in the rules.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Stafford has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the sections will be a greater compliance with quality standards of the Board by institutions offering degrees to Texas citizens. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or joe.stafford@thehb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are adopted under the Texas Education Code, §61.311, which provides the Board with the authority to adopt rules relating to Subchapter G on Regulation of Private Postsecondary Educational Institutions.

The amendments affect Texas Education Code, §§61.301 - 61.319.

§7.3. *Definitions.*

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

(1) (No change.)

(2) Board--The Texas Higher Education Coordinating Board, the Commissioner, and the Commissioner's designated representatives.

(3) - (21) (No change.)

§7.6. *Certificate of Authority--Eligibility, Applications, Renewals, and Amendments.*

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

(e) Authority to represent transferability of course credit. Any institution as defined in §7.3 of this title (relating to Definitions), whether it offers degrees or not, may solicit students for and enroll them in courses on the basis that such courses will be credited to a degree program offered by another institution, provided that:

(1) the other institution is named in such representation, and is accredited by an accrediting agency listed in §7.4(a)(1) of this title (relating to Exemptions, Revocation of Exemptions, and Certificates of Authorization [Definitions]);

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

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

§7.9. *Operation of Branch Campuses, Extension Centers, or other Off-Campus Units by Exempt Institutions.*

(a) Off-Campus Operations

(1) - (8) (No change.)

(9) Any change in location, ownership, governance, administrative personnel, faculty, or facilities [at the] of the branch campus or extension center, or any other changes relevant to the Board's standards for off-campus operations at exempt institutions, shall be reported to the Board within ten days of the change by the chief administrative officer of the institution in order for the Board to determine if such changes adversely affect the conditions under which approval to operate a branch campus, extension center, or other off-campus unit was granted.

(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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General Counsel

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CHAPTER 21. STUDENT SERVICES

SUBCHAPTER X. DETERMINATION OF RESIDENT STATUS AND WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §§21.728, 21.730, 21.731, 21.733

The Texas Higher Education Coordinating Board proposes amendments to §§21.728, 21.730, 21.731, 21.733, and Charts II, III, and IV, concerning Determination of Resident Status and Waiver Programs for Certain Nonresident Persons.

Specifically, the amendments to §21.728(3) removes the reference to core questions previously included as Chart II, indicates the core questions will be made available through the Texas Common Application or via the Coordinating Board web site, and indicates which core questions should be used for enrollments before and after academic year 2008-2009. The amendment to §21.728(9) clarifies that a student's financial need is to be calculated by comparing his or her family resources to the institution's cost of attendance. This process is relevant to three waiver programs described in §21.735 of the rules. The amendments to §21.728(17) and (19) and §21.730(a)(1)(A) are intended to address a legislative public policy pronouncement regarding "nontraditional secondary education." Section 21.728(17) provides a definition of "nontraditional secondary education" that encompasses home schools. The reference in §21.728(20) (formerly §21.728(19)) to a home school program not being included in the definition of a "private high school" has been deleted as unnecessary. The Legislature, in §51.9241(b) of the Texas Education Code, declared, in pertinent part, that "the State of Texas considers successful completion of a nontraditional secondary education to be equivalent to graduation from a public high school" and then proceeded to instruct institutions of higher education to treat students successfully completing such a program "according to the same general standards as other applicants for undergraduate admission who have graduated from a public high school." A student who successfully completes a course of study at the secondary school level in a home-school program can thereby be considered as having received the equivalent of a high school diploma in Texas and is therefore eligible to establish residency based on the provisions set forth in §21.730(a)(1)(A). This change brings the Board's rules into accord with Texas Education Code §54.052(a)(3)(A), which indicates that a person can meet one of the residency determinants by graduating "from a public or private high school in this state" or by receiving "the equivalent of a high school diploma in this state." Section 21.728(17) - (26) have been renumbered as §21.728(18) - (27) due to the addition of new §21.728(17). The amendment to §21.730(a)(1)(A) simply adds the phrase "including the successful completion of a nontraditional secondary education" to make it clear that students following this route should also be considered to have met the aforementioned determinant of residency by virtue thereof. The amendments to §21.731(b) and (c) reflect the removal of the core questions (Chart II) from Coordinating Board rules and the subsequent renumbering of Charts III and IV. The core questions will now be housed on the Coordinating Board's web site. The amendment to §21.733(a) reflects the removal of the core questions (Chart II) from Coordinating Board rules and the subsequent renumbering of Chart IV. Chart II (Core Residency Questions) is deleted in order to move this document and its instructions to the Coordinating Board's web site, where improvements in the wording of questions and/or instructions will not require Board approval through a formal rulemaking process

every time a change is indicated. Chart III is renumbered as Chart II and Chart IV is renumbered as Chart III.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendments are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rules.

Ms. Hollis has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of administering the sections will be the increased uniformity among institutions in the determination of residence status, causing less confusion for students and parents. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@theccb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Education Code, §54.075, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §§54.0501 - 54.075.

The amendments affect Texas Education Code, §§54.0501 - 54.075.

§21.728. *Definitions.*

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

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

(3) Core Residency Questions--the questions promulgated by the Board to be completed by a person and used by an institution to determine if the person is a Texas resident. For enrollments prior to the 2008-2009 [2007-2008] academic year, institutions may use the core questions developed and distributed by the Board in 1999 or later, including the core questions included in the Texas Common Application, or the core questions set forth in current Board rules or posted on the Texas Higher Education Coordinating Board web site [in Revised Chart H, which is incorporated into this subchapter]. The core questions to be used for enrollments for and [on or] after the 2008-2009 [2007-2008] academic year shall be the core questions in the Texas Common Application or core questions posted on the Board web site [in Revised Chart H].

(4) - (8) (No change.)

(9) Financial need--an economic situation that exists for a student when the [The] cost of attendance at an [a] institution of higher education is greater than [less] the resources the family has available for paying for college. In determining a student's financial need an institution must compare the financial resources available to the student to the institution's cost of attendance.

(10) - (16) (No change.)

(17) Nontraditional secondary education--a course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(18) [(17)] Parent--a natural or adoptive parent, managing or possessory conservator, or legal guardian of a person. The term does not include a step-parent.

(19) [(18)] Possessory conservator--a natural or adoptive parent appointed by court order issued under the Texas Family Code, Title 5.

(20) [(19)] Private high school--a private or parochial school in Texas [accredited by an accrediting agency that is recognized and accepted by the Texas Private School Accreditation Commission. The term does not include a home school].

(21) [(20)] Public technical institute or college--the Lamar Institute of Technology or any campus of the Texas State Technical College System.

(22) [(21)] Regular semester--a fall or spring semester, typically consisting of 16 weeks.

(23) [(22)] Residence--a person's home or other dwelling place.

(24) [(23)] Residence Determination Official--the primary individual at each institution who is responsible for the accurate application of state statutes and rules to individual student cases.

(25) [(24)] Resident tuition--the amount of tuition paid by a person who qualifies as a Texas resident under this subchapter.

(26) [(25)] Temporary absence--absence from the State of Texas with the intention to return, generally for a period of less than five years.

(27) [(26)] United States Citizenship and Immigration Services (USCIS)--the bureau of the U.S. Department of Homeland Security that is responsible for the administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities.

§21.730. *Determination of Resident Status.*

(a) The following persons shall be classified as Texas residents and entitled to pay resident tuition at all institutions of higher education:

(1) a person who:

(A) graduated from a public or accredited private high school in this state or, as an alternative to high school graduation, received the equivalent of a high school diploma in this state, including the successful completion of a nontraditional secondary education; and

(B) (No change.)

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

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

§21.731. *Information Required to Initially Establish Resident Status.*

(a) To initially establish resident status under §21.730 of this title (relating to Determination of Resident Status),

(1) a person who qualifies for residency under §21.730(a)(1) shall provide the institution with:

(A) a completed set of Core Residency Questions; or

(B) a copy of supporting documentation along with a statement of the dates and length of time the person has resided in this state, as relevant to establish resident status under this subchapter and a statement by the person that the person's presence in this state for that period was for the purpose of establishing and maintaining a domicile in Texas.

[Figure: 19 TAC §21.731(a)(1)(B)]

(2) a person who qualifies for residency under §21.730(a)(2) or (3) shall provide the institution with a completed set of Core Residency Questions.

(b) An institution may request that a person provide documentation to support the answers to the Core Residency Questions. A list of appropriate documents is included [described] in Revised Chart III, [IV] of §21.733(a) of this title (relating to Reclassification Based on Additional or Changed Information), which is [and] incorporated into this subchapter for all purposes. In addition, the institution may request documents that support the information the student may provide in the core questions, Section H.

Figure: 19 TAC §21.731(b)

(c) If a person who establishes resident status under, §21.730(a)(1) of this title is not a Citizen of the United States or a Permanent Resident, the person shall, in addition to the other requirements of this section, provide the institution with a signed affidavit, stating that the person will apply to become a Permanent Resident as soon as the person becomes eligible to apply. The affidavit shall be required only when the person applies for resident status and shall be in the form provided [described] in Chart II [III] and incorporated into this subchapter for all purposes.

Figure: 19 TAC §21.731(c)

(d) (No change.)

§21.733. *Reclassification Based on Additional or Changed Information.*

(a) If a person is initially classified as a nonresident based on information provided through the set of Core Residency Questions, the person may request reclassification by providing the institution with supporting documentation as described in Revised Chart III [IV], which is incorporated into §21.731(b) of this title (relating to Information Required to Initially Establish Resident Status).

(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 November 20, 2006.

TRD-200606279

Bill Franz

General Counsel

Texas Higher Education Coordinating Board

Proposed date of adoption: January 25, 2007

For further information, please call: (512) 427-6114



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.59

The Texas Board of Professional Engineers proposes an amendment to §137.59, relating to Engineers' Actions Shall Be Competent. The proposed amendment adds clarification to the rule

by establishing what requirements must be met to show competence when asked by the Board.

The proposed rule change adds the requirement that any licensed professional engineer who practices engineering in an area of competence different than what is documented on Board records must provide evidence of competence and three methods are offered as methods of proving competence.

C.W. Clark, P.E., Director of Compliance and Enforcement for the board, has determined that for the first five-year period the proposed amendment is in effect there are no fiscal implications for the state or local government as a result of enforcing or administering the section as amended. Mr. Clark has determined that there is no additional cost to the agency or required of the licensees. There is no effect to individuals required to comply with the amendment as proposed. There is no effect to small or micro businesses.

Mr. Clark also has determined that for the first five years the proposed amendment is in effect, the public benefit anticipated is that a clarification of the rule is made.

Comments may be submitted no later than 30 days after the publication of this notice to C.W. Clark, P.E., Director of Compliance and Enforcement, Texas Board of Professional Engineers, 1917 IH-35 South, Austin, Texas 78741 or faxed to his attention at (512) 440-5715.

The amendment is proposed pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

§137.59. *Engineers' Actions Shall Be Competent.*

(a) Engineers shall practice only in their areas of competence. If a licensed professional engineer practices outside documented areas of competency, as shown on their Board record, the engineer shall, if requested by the Board, provide evidence of competence. Evidence of competence shall be demonstrated by submitting one or more of the following items, as referenced in §133.97 of this title (relating to Issuance of License); a transcript showing a degree in the branch of engineering, a supplementary experience record (SER) documenting an appropriate level of experience, with a minimum of one year, under the direct supervision of a licensed professional engineer whose documented area of competence is in the same branch of engineering, or verification of successful passage of the examination on the principles and practice of engineering in the branch of engineering.

(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.

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

TRD-200606287

Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 440-7723



PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.16

(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 Texas State Board of Examiners of Psychologists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Psychologists proposes the repeal of §461.16, Witness Fees. This rule is being repealed in order to re-position it in a more relevant chapter.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The repeal is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§461.16. *Witness Fees.*

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

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

TRD-200606315
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 305-7706



CHAPTER 470. ADMINISTRATIVE PROCEDURE

22 TAC §470.2

The Texas State Board of Examiners of Psychologists proposes amendments to §470.2, Definitions. These amendments are being proposed to clarify the rule and correct errors in punctuation.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.2. *Definitions.*

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

(1) - (19) (No change.)

(20) Person--~~An~~ Any individual, representative, corporation, [or other entity, including any public or non-profit corporation,] or an [any] agency or instrumentality of [federal, state, or local] government.

(21) Pleading--A written document submitted by a party or [;] a person seeking to participate in a case as a party, which requests procedural or substantive relief, makes claims, alleges facts, makes legal argument, or otherwise addresses matters involved in the case.

(22) - (23) (No change.)

(24) Rule--Any agency statement of general applicability that implements[;] or prescribes law or policy by defining general standards of conduct, rights, or obligations of persons, or describes the procedure or practice requirements that prescribe the manner in which public business before an agency may be initiated, scheduled, or conducted, or interprets or clarifies law or agency policy, whether with or in the absence of an explicit grant of power to the agency to make rules. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the agency and not affecting private rights or procedures. This definition includes regulations.

(25) (No change.)

(26) Texas Public Information [Open Records] Act--Texas Government Code, Chapter 552.

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 November 21, 2006.

TRD-200606316

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.4

The Texas State Board of Examiners of Psychologists proposes the amendments to §470.4, Records of Official Action. These amendments are being proposed to clarify the rule and for formatting corrections.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.4. *Records of Official Action.*

All official acts of the Board shall be evidenced by a recorded or written record. [The minutes of the Board shall constitute a written record. Such writings shall be open to the public in accordance with the Act and the Texas Open Records Act, Government Code Chapter 552. The Board may, in its discretion and in accordance with the open meetings law, Chapter 551, Government Code, conduct any portion of its meeting in executive session. The Board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to the licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session. Official action of the Board shall not be bound or prejudiced by any informal statement or opinion made by any member of the Board or the employees of the agency.]

(1) The minutes of the Board shall constitute a written record. Such writings shall be open to the public in accordance with the Act and the Texas Public Information Act, Government Code Chapter 552. The Board may, in its discretion and in accordance with the open meetings law, Chapter 551, Government Code, conduct any portion of its meeting in executive session.

(2) The Board may in its discretion conduct deliberations relative to licensee disciplinary actions in executive session. At the conclusion of its deliberations relative to licensee disciplinary action, the board shall vote and announce its decision relative to the licensee in open session.

(3) Official action of the Board shall not be bound or prejudiced by any informal statement, or opinion given, by any member of the Board or the agency staff.

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 November 21, 2006.

TRD-200606317

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.5

The Texas State Board of Examiners of Psychologists proposes amendments to §470.5, Conduct and Decorum. The amendments are being proposed to correct grammar.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.5. *Conduct and Decorum.*

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

(c) The presiding officer may, at his or her discretion, exclude a violator of this rule from the proceeding for such period as is deemed just [and may be subject to such other reasonable and lawful disciplinary action as the Board may prescribe].

(d) Violation of rule 470.5 of this chapter is grounds for imposition of Board disciplinary action.

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 November 21, 2006.

TRD-200606318

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.6

The Texas State Board of Examiners of Psychologists proposes amendments to §470.6, Agreement to be in Writing. The amendments are being proposed to clarify the rule and to be compatible with SOAH rules of procedure, 1 TAC §155.39(d).

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.6. *Agreement to be in Writing.*

Unless otherwise provided in these rules, no [No stipulation or] agreement between the parties or their authorized representatives regarding [with regard to] any contested case or other matter [involved in any proceeding] before the Board shall be enforced unless it is in writing, signed, and filed with the Board, [shall have been reduced to writing and signed by the parties or their authorized representatives,] or unless it is entered on [shall have been dictated into] the record at a hearing [by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law].

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

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

TRD-200606319

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.9

The Texas State Board of Examiners of Psychologists proposes new §470.9, Witness Fees. The new rule is being proposed to place it with relevant administrative procedure provisions.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The new section is proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.9. *Witness Fees.*

Persons appearing as witnesses before the board in an administrative hearing process (i.e., depositions, hearings, meetings, etc.) will receive reimbursement for expenses incurred. These expenses include travel, lodging, and up to \$40 per day for meals and other expenses. Airfare is reimbursed at the lowest available fare.

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 November 21, 2006.

TRD-200606320

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.15

The Texas State Board of Examiners of Psychologists proposes amendments to §470.15, Proposal for Decision. These amendments are being proposed to comport with SOAH rule, 1 TAC §155.59.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.15. *Proposal for Decision.*

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

(c) Upon issuance of a proposal for decision by an ALJ in a contested case, any party may file written exceptions to the proposal for decision within fifteen (15) ~~ten~~ days after its issuance. Within fifteen (15) ~~seven~~ days after a party files written exceptions under this section, any other party may file a written reply.

(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 November 21, 2006.

TRD-200606321

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.16

The Texas State Board of Examiners of Psychologists proposes amendments to §470.16, Final Decision. These amendments are being proposed to clarify the rule and to comport with Administrative Procedure Act §§2001.141, 2001.142, and 2001.144.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.16. *Final Decision.*

(a) Any final decision or order adverse to a party in a contested case shall be in writing. ~~[Such final decision shall include findings of fact and conclusions of law, separately stated. Parties shall be notified either personally or by mail of any decision or order. When the Board issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorney of record, then the agency shall send a copy of a final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this subsection shall be presumed to have been notified on the date such notice is mailed.]~~

(b) A final decision shall include findings of fact and conclusions of law, separately stated. ~~[A decision of the Board is final, in the absence of a timely motion for rehearing, or the expiration of the period for filing a motion for rehearing, and is final and appealable to a district court of Travis County on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable to a district court of Travis county on the date rendered.]~~

(c) A party in a contested case shall be notified either personally or by first class mail of any decision or order. ~~[As the Board has been created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain the primary means of licensing and regulating the practice of psychology consistent with federal and state law and to ensure that sound principles of psychology govern the decisions of the Board; the Board may, in accordance with §2001.058 of the APA, change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge, if the Board determines:]~~

~~{(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under §2001.058(c); or prior administrative decisions;}~~

~~{(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or}~~

~~{(3) that a technical error in a finding of fact should be changed.}~~

(d) When the Board issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorney of record and to the represented party. The agency shall keep an appropriate record of the mailing. ~~[If the Board modifies, amends or changes the administrative law judge's proposal for decision, an order shall be prepared reflecting the Board's changes as stated in the record.]~~

(e) A party or attorney of record notified by mail of a final decision or order as required by this subsection shall be presumed to have been notified on the date such notice is mailed.

(f) A decision in a contested case is final:

(1) if a motion for hearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is rendered; or

(B) the motion is overruled by operation of law;

(3) if the Board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or order, on the date the decision is rendered; or

(4) on the date specified in the order for a case in which all parties agree on the specified date in writing or on the record, if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered.

(g) If a decision or order is final under subsection (f)(3), the Board shall recite in the decision or order the finding made under subsection (f)(3) and the fact that the decision or order is final and effective on the date rendered.

(h) As the Board has been created by the legislature to protect the public interest as an independent agency of the executive branch of the government of the State of Texas so as to remain the primary means of licensing and regulating the practice of psychology consistent with federal and state law and to ensure that sound principles of psychology govern the decisions of the Board, the Board may, in accordance with §2001.058 of the APA, change a finding of fact or conclusion of law or to vacate or modify the proposed order of an administrative law judge, if the Board determines:

(1) that the administrative law judge did not properly apply or interpret applicable law, agency rules, written policies provided under §2001.058(c), or prior administrative decisions;

(2) that a prior administrative decision on which the administrative law judge relied is incorrect or should be changed; or

(3) that a technical error in a finding of fact should be changed.

(i) If the Board modifies, amends or changes the administrative law judge proposal for decision, an order shall be prepared reflecting the Board's changes as stated in the record.

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

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

TRD-200606322

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.18

The Texas State Board of Examiners of Psychologists proposes the amendment of §470.18, the Record. These amendments are being proposed to clarify the rule and to comport with Administrative Procedure Act §2001.060.

Sherry L. Lee, Executive Director, has determined that or the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.18. *The Record.*

The record in a contested case includes:

(1) each pleading, [all pleadings,] motion, and intermediate ruling [rulings];

(2) evidence received or considered by the Board;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them [these matters];

(5) proposed findings of fact and conclusions of law, as well as exceptions thereto;

(6) each [any] decision, opinion, or report made by the administrative law judge [Administrative Law Judge]; and

(7) all staff memoranda or data [briefs] submitted to or considered by the administrative law judge [Administrative Law Judge] or Board decision makers.

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 November 21, 2006.

TRD-200606323

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.21

The Texas State Board of Examiners of Psychologists proposes amendments to §470.21, Disciplinary Guidelines. These amendments are being proposed to clarify the rule and to reflect updates to the rules, particularly §469.7.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.21. *Disciplinary Guidelines.*

(a) (No change.)

(b) Limitations. The Board [board] shall render the final decision in a contested case and has the responsibility to assess sanctions against licensees who are found to have violated the Act. The Board [board] welcomes recommendations of administrative law judges as to the sanctions to be imposed, but the Board [board] is not bound by such recommendations. A sanction should be consistent with sanctions imposed in other similar cases and should reflect the Board's [board's] determination of the seriousness of the violation and the sanction required to deter future violations. A determination of the appropriate sanction is reserved to the Board. [board.] The appropriate sanction is not a proper finding of fact or conclusion of law. This chapter shall be construed and applied so as to preserve the Board's [board member] discretion in the imposition of sanctions and remedial measures pursuant to the Act's provisions related to methods of discipline and administrative penalties. This chapter shall be further construed and applied so as to be consistent with the Act, and shall be limited to the extent as otherwise prescribed by statute and Board [board] rule.

(c) Revocation. The Board shall revoke the license of any licensee if the Board determines that the continued practice of psychology by the licensee poses a harm to the public. Licensees who violate the following Board rules shall be subject to revocation without reference to subsections (e) through (g) of this section:

(1) §465.13(b)(3) and (b)(6) pertaining to certain forms of sexual impropriety with current patients;

(2) §465.33(d) as it pertains to sexual relations, defined in §465.33(c), with current patients; and

(3) §469.7(d)(1)(a) [(d)(5); (d)(8); and (d)(10)] pertaining to offenses against the person (for example, homicide, kidnapping, sexual offenses, and assaultive offenses). [certain felony convictions and judgments.]

(d) - (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.

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

TRD-200606324

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: January 7, 2007

For further information, please call: (512) 305-7706



22 TAC §470.22

The Texas State Board of Examiners of Psychologists proposes amendments to §470.22, Schedule of Sanctions. These amendments are being proposed to clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§470.22. *Schedule of Sanctions.*

(a) These disciplinary sanction guidelines are designed to provide guidance in assessing sanctions for violations of the Psychologists' Licensing Act and Board Rules of conduct. The ultimate purpose of disciplinary sanctions is to protect the public, deter future violations, offer opportunities for rehabilitation if appropriate, punish violators, and deter others from violations. These guidelines are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements.

(1) Single Violation. The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply.

(2) Multiple Violations. The board may impose more restrictive sanctions when there are multiple violations of the Act.

(3) Aggravating and Mitigating Factors. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §470.23 of this chapter (relating to Aggravating and Mitigating Circumstances) that are found to apply in a particular case.

(4) The standard and minimum sanctions outlined below are applicable to first time violators. The Board shall consider more severe sanctions if the person is a repeat offender.

(5) The maximum sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to \$1,000 per violation. In accordance with §501.452 of the Act, each day the violation continues is a separate violation.

(6) Each violation constitutes a separate offense, even if arising out of a single act.

(7) Failure to list a type of violation or Board Rule in this rule does not prevent the Board from taking disciplinary action for such a violation.

~~{(1) The standard sanctions outlined below shall apply to cases involving a single violation of the Act, and in which there are no aggravating or mitigating factors that apply. The board may impose more restrictive sanctions when there are multiple violations of the Act. The board may impose more or less severe or restrictive sanctions, based on any aggravating and/or mitigating factors listed in §470.23 of this chapter (relating to Aggravating and Mitigating Factors) that are found to apply in a particular case.}~~

~~{(2) The standard and minimum sanctions outlined below are applicable to first time violators. The board shall consider more severe sanctions if the person is a repeat offender.}~~

~~{(3) The maximum sanction in all cases is revocation of the license, which may be accompanied by an administrative penalty of up to \$1,000 per violation. In accordance with §501.452 of the Act, each day the violation continues is a separate violation.}~~

~~{(4) Each violation constitutes a separate offense, even if arising out of a single act.}~~

~~{(5) If the licensee acknowledges a violation and agrees to comply with terms and conditions of remedial action through an agreed order, the standard sanctions may be reduced. Furthermore, additional, case-specific conditions may be introduced in an agreed order.}~~

~~{(6) Failure to list a type of violation or Board Rule in this rule does not enjoin or prevent the Board from taking disciplinary action for such a violation.}~~

(b) (No change.)

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

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

TRD-200606325

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



22 TAC §470.23

The Texas State Board of Examiners of Psychologists proposes amendments to §470.23, concerning Aggravating and Mitigating Circumstances. These amendments are being proposed to clarify the rule and make internal provisions consistent.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§470.23. *Aggravating and Mitigating Circumstances.*

(a) Aggravating Circumstances. Aggravating circumstances are those which may increase the severity of a rule violation, justifying the imposition of a more severe penalty. Such circumstances include but are not limited to the following: [~~Aggravation. The following may be considered aggravating factors meriting more severe or restrictive sanctions or actions by the Board.~~]

(1) - (13) (No change.)

(14) Motive and intent; and

(15) Any relevant circumstances or facts increasing the level [seriousness] of violation [~~the misconduct~~].

(b) Mitigating Circumstances. Mitigating circumstances are those which may reduce the severity of a rule violation, justifying the imposition of a less severe penalty. Such circumstances include the absence of aggravating circumstances listed above as and the presence of one or more of the following: [~~Extenuation and Mitigation. The absence of the circumstances listed as subsection (a)(1) - (15) of this section, as well as the presence of the following factors, may be considered as extenuating and mitigating factors so as to merit less severe or less restrictive sanctions or actions by the Board:~~]

(1) Acceptance of responsibility;

(2) [~~(4)~~] Self-reported rule violations [~~and voluntary admissions of misconduct~~];

(3) [~~(2)~~] Implementation of remedial measures to correct or mitigate harm arising from the misconduct;

(4) [~~(3)~~] Motive;

(5) [~~(4)~~] Rehabilitative potential;

(6) [~~(5)~~] Prior community service;

(7) [~~(6)~~] Relevant facts and circumstances reducing the seriousness of the violation [~~misconduct~~]; and

(8) [~~(7)~~] Relevant facts and circumstances lessening responsibility for the violation [~~misconduct~~].

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 November 21, 2006.

TRD-200606326
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



22 TAC §470.24

The Texas State Board of Examiners of Psychologists proposes amendments to §470.24, concerning Enforcement of Orders, Decisions, and Rules. These amendments are being proposed to clarify the rule and to add text in accordance with §2001.202 of the Administrative Procedure Act.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§470.24. *Enforcement of Orders, Decisions, and Rules.*

(a) When it appears to the Board that a person is violating, about to violate, or failing or refusing to comply with a final order or decision or an agency rule, the agency may request that the attorney general bring an action in a district court in Travis County, Texas to exercise judicial review of the final order or decision or the rule, to [If it appears to the agency that a person is engaging in or is about to engage in a violation of a final order or decision or a rule of the agency or is failing or refusing to comply with a final order or decision or a rule of the Board, the attorney general, on the request of the agency and in addition to any other remedy provided by law, may bring an action in a district court in Travis County, Texas, to exercise judicial review of the final order or decision or the rule, to enjoin or restrain the continuation or commencement of the violation, or to compel compliance with the final order or decision or the rule.]

(1) enjoin or restrain the continuation or commencement of the violation, or

(2) compel compliance with the final order or decision or the rule.

(b) The action authorized by this rule is in addition to any other remedy provided by law.

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

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

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



CHAPTER 471. RENEWALS

22 TAC §471.1

The Texas State Board of Examiners of Psychologists proposes amendments to §471.1, Notification of Renewal. These amendments are being proposed to clarify the notice for renewal.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.1. *Notification of Renewal.*

All licenses issued by the Board shall be subject to annual renewal. Annual renewals are due on the last day of each person's birth month. Persons whose licensure is about to expire shall be notified once by regular mail at least 30 days before the last day of their birth month each year and shall be notified by certified mail if they fail to renew by the last day of their birth month. The second notice will not be mailed prior to the last day of their birth month. Failure of the licensee to receive the Board's renewal notice reminder card [forn] is not an acceptable excuse for failure to renew a license by the expiration date.

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 November 21, 2006.

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Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7706



22 TAC §471.5

The Texas State Board of Examiners of Psychologists proposes amendments to §471.5, Updated Information Requirements. These amendments are being proposed to clarify the information that is needed on the annual renewal form.

Sherry L. Lee, Executive Director, 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 proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.5. Updated Information Requirements.

Each licensee shall provide the following information when renewing his/her license each year:

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

(4) If there is a pending action or final action against a mental health professional license held by the licensee in any jurisdiction that the licensee has not previously reported to the Board;

(5) - (7) (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 November 21, 2006.

TRD-200606329
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 305-7706

22 TAC §471.6

The Texas State Board of Examiners of Psychologists proposes amendments to §471.6, Renewal Penalty Waiver for Licensees on Deployment. The amendments being proposed would simplify and clarify the rule.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed amendments.

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to help the Board protect the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, TX 78701, (512) 305-7700.

The amendments are proposed under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

No other code, articles or statutes are affected by this section.

§471.6. Renewal Penalty Waiver for Licensees on Military Deployment.

Licensees who fail to renew their licenses in a timely manner due to ~~[because of]~~ active deployment in the United States military [deployment] outside Texas at the time of renewal shall not be penalized if, within 180 days of return from active duty deployment, the licensee provides the Board: ~~[receive a late fee or other penalty imposed by the Board for late renewal if the following conditions are met. Within 90 days of return from active duty deployment, the licensee must provide to the Board evidence of meeting renewal requirements and verification to the Board from the licensee's commanding officer of the dates the licensee began and ended the deployment outside Texas which occasioned the late licensure renewal.]~~

(1) Evidence that all renewal requirements have been met;
and

(2) Official verification of deployment dates.

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 November 21, 2006.

TRD-200606341
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 61. CHRONIC DISEASES

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§61.31 - 61.33, 61.36, 61.41 and 61.42, the repeal of §§61.34, 61.35, and 61.37 - 61.40, and new §§61.34, 61.37, and 61.39, concerning the provision of breast and cervical cancer services in this state.

BACKGROUND AND PURPOSE

The amendments, repeals, and new sections are necessary to assist the department in the implementation of the federal Breast and Cervical Cancer Mortality Prevention Act of 1990, Public Law 101-354, and its re-authorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105-340, which establish a program of grants to states, territories, and tribal organizations for early detection and prevention of mortality from breast and cervical cancer. The department, through a cooperative agreement with the Centers for Disease Control and Prevention, provides statewide access to high-quality breast and cervical cancer screening and diagnostic services for financially eligible Texas women who are unable to access 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 the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 61.31 - 61.42 have been reviewed, and the department has determined that reasons for adopting §§61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, and 61.42 continue to exist because rules on this subject are needed. The department also has determined that §§61.35, 61.38, and 61.40 are no longer needed, and that the sections should be repealed. There are breaks in the proposed section numbers, as these sections will be reserved for new rules at a later date.

SECTION-BY-SECTION SUMMARY

Amendments to §§61.31 - 61.33, 61.36, 61.41, and 61.42 incorporate the current department and program names to be consistent with current terminology used by the department.

An amendment to §61.31 removes language specific to the establishment of requirements by certain entities to allow for more flexibility to receive and utilize funding from additional sources. Additionally, §61.31 has been amended to clarify that case management services are included in the breast and cervical cancer services the department provides.

An amendment to §61.32 clarifies that the department manages the delivery of breast and cervical cancer services in accordance with federal requirements utilizing the established statewide program.

Amendments to §61.33 reflect a change in terminology regarding the providers of breast and cervical cancer services.

The repeal and new §61.34 revise language to clarify client eligibility requirements.

Section 61.35 is proposed for repeal, because the process for selecting and contracting with providers need not be specified by rule.

Amendments to §61.36 allow providers more flexibility to receive and utilize funding from additional sources.

The repeal and new §61.37 remove redundant language and clarify screening requirements for providers.

Section 61.38 is proposed for repeal because quality assurance standards have been included in §61.37 to improve clarity.

The repeal and new §61.39 delete detailed requirements for provision of services that are more appropriate for inclusion in a policy manual.

Section 61.40 is proposed for repeal as redundant because the provisions in that section have been included in §61.31 and §61.36.

Amendments to §61.41 update terminology concerning the activities performed and the process by which providers receive payment from the department in order to align the rules with changes in programmatic and department policy related to fee-for-service programs.

Amendments to §61.42 allow providers to collect fees from clients for breast and cervical cancer services performed as authorized by department policy.

FISCAL NOTE

Cindy Jones, Ph.D., R.N., Manager, Preventive and Primary Care Unit, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local governments as a result of administering the sections as proposed. The proposed rules change current program structure and implementation only as they relate to the collection of fees from clients by participating providers. According to department policy, these payments must be reported to the department as program income and used by providers to perform program services during the fiscal year. Allowing providers to collect fees as program income should enable providers to increase services to the target population of low-income women. These amendments, repeals, and new sections are intended to clarify, update, and streamline the rules, and are not anticipated to be controversial or have significant fiscal impact to the department or local government.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Dr. Jones has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed, because neither small businesses nor micro-businesses that are providers of breast and cervical cancer services will be required to alter their business practices in order to comply with the sections. If any providers decide to charge fees, some of the clients whom they serve may experience increased economic costs, depending on their household incomes. However, the higher costs for individual clients cannot be estimated because of the different services each could receive, and the number of providers that will adopt a fee policy is unknown at this time. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Dr. Jones has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be continued access to breast and cervical cancer screening and diagnostic services for eligible, low-income Texas women.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Kim Roberts, Mail Code 1923, Community Health Services Section, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3189 or by e-mail to kim.roberts@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

SUBCHAPTER C. BREAST AND CERVICAL CANCER SERVICES

25 TAC §§61.31 - 61.34, 61.36, 61.37, 61.39, 61.41, 61.42

STATUTORY AUTHORITY

The proposed amendments and new rules are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments and new rules affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§61.31. Purpose.

These sections implement requirements and procedures [established by the federal government, the State of Texas, and the Texas Department of Health (department)] for the delivery of screening, diagnostic, [and] follow-up, and case management services for breast and cervical cancer through the Department of State Health Services [department's] Breast and Cervical Cancer Services [Control Program].

§61.32. Federal Authorization and Requirements.

The Breast and Cervical Cancer Mortality Prevention Act of 1990 (Act), Public Law 101-354, and its re-authorization, the Women's Health Research and Prevention Amendments of 1998, Public Law 105-340, establish a program of grants to states, territories, and tribal organizations for early detection of and prevention of mortality from

breast and cervical cancer. The Department of State Health Services [Texas Department of Health], through a cooperative agreement with the Centers for Disease Control and Prevention and in compliance with the Act and its reauthorization, manages the delivery of breast and cervical cancer services statewide through Breast and Cervical Cancer Services [Control Program (program)].

§61.33. Providers [Eligible Applicants].

Health care providers serving women with incomes at or below 200% of the federal poverty level are eligible to apply as [participants in the] Breast and Cervical Cancer Services providers [Control Program]. Eligible applicants include, but are not limited to, community health centers, migrant health centers, local and regional health departments, family planning clinics, community cancer centers, hospitals, primary care programs, and other providers of health services to the target and priority populations.

§61.34. Client Eligibility Requirements.

(a) In order for a woman to be financially eligible for Breast and Cervical Cancer Services, the woman must:

(1) have a family income that does not exceed 200% of the current federal poverty level; and

(2) not have access to third-party payment for screening and/or diagnostic services.

(b) A woman age 40 or older that meets financial eligibility criteria is eligible for breast cancer screening and diagnostic services. A woman under age 40 that meets financial eligibility criteria is eligible for breast cancer diagnostic services only.

(c) A woman age 18 or older that meets financial eligibility criteria is eligible for cervical cancer screening and/or diagnostic services.

§61.36. Provider Applicant [Program] Requirements.

To be funded to provide Breast and Cervical Cancer Services [Control Program (program) services], applicants shall demonstrate:

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

(6) evidence of intent to comply with Department of State Health Services (department) [program] screening policies and guidelines;

(7) (No change.)

(8) evidence of ability to comply with all other department [program] standards, policies, and requirements; and

(9) evidence that Breast and Cervical Cancer Services [program] funds will not be used to supplant existing funding for similar services; [; and]

[(10) evidence that the applicant has received funding for and budgeted the match sources and allowances of nonfederal contributions for the program.]

§61.37. Screening Requirements.

Participating providers shall provide or assure the provision of screening services in accordance with the following requirements:

(1) breast cancer screening shall include a clinical breast examination and a mammogram;

(2) cervical cancer screening shall include a clinical breast examination, pelvic examination, and a Pap test;

(3) mammography and cytological laboratory services shall be delivered in compliance with quality assurance standards

specified in the Breast and Cervical Cancer Services policy and procedures manual; and

(4) abnormal screening results shall be confirmed by diagnostic procedures according to the protocols specified in the Breast and Cervical Cancer Services policy and procedures manual.

§61.39. Follow-up and Case Management Requirements.

Participating providers shall:

(1) provide or assure provision of follow-up and case management services that comply with the Breast and Cervical Cancer Services policy and procedure manual; and

(2) ensure that women eligible for services who have abnormal breast or cervical cancer screening or diagnostic results receive follow-up services, including case management, until a diagnosis is reached and/or treatment for cancer is initiated.

§61.41. Payment [Reimbursement] for Services.

(a) Payment [Reimbursement] for clinical screening and diagnostic services shall be on a fee-for-service basis.

(b) Payment [Reimbursement] will be subject to audit by the Department of State Health Services (department). The department [Breast and Cervical Cancer Control Program (program)] shall approve all covered procedures and payment [reimbursement] rates, which shall not exceed the maximum state Medicare rates [rate] for that procedure. A list of procedures approved for payment [reimbursement] shall be included in all [program] requests for proposals and[.] contracts[.] and the program Manual of Operations[.]

(c) In accordance with department policy, providers may be allowed to bill [The program shall reimburse providers] for administrative and support services costs associated with the following activities:

- (1) (No change.)
- (2) public education and outreach;
- (3) professional [e]lient education;
- (4) program management;
- (5) coalition and partnership development;
- (6) [(4)] data collection and reporting; and
- (7) [(5)] other activities authorized in advance.

(d) In order to bill [be reimbursed] for administrative and support services costs, a provider must request such funding [reimbursement] in its annual proposed budget. Administrative and support services costs [e]ost reimbursement shall not exceed 10% of a [service] provider's actual expenditures [budget] for clinical services.

§61.42. Client Fees [Charges].

Participating providers may [may not] charge clients fees for services in accordance with the Breast and Cervical Cancer Services policy and procedures manual [reimbursed by the program].

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

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

TRD-200606357

Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER C. BREAST AND CERVICAL
CANCER CONTROL PROGRAM

25 TAC §§61.34, 61.35, 61.37 - 61.40

(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 State Health Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The proposed repeals are authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed repeals affect Government Code, Chapter 531, and Health and Safety Code, Chapter 1001. Review of the sections implements Government Code, §2001.039.

§61.34. Eligibility for Program Services.

§61.35. Selection Process.

§61.37. Program Eligibility Requirements.

§61.38. Quality Assurance Standards.

§61.39. Follow-up and Case Management.

§61.40. Maintenance of Current Services.

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

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

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Cathy Campbell
General Counsel
Department of State Health Services
Earliest possible date of adoption: January 7, 2007
For further information, please call: (512) 458-7111 x6972

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CHAPTER 157. EMERGENCY MEDICAL
CARE

SUBCHAPTER G. EMERGENCY MEDICAL
SERVICES TRAUMA SYSTEMS

25 TAC §157.131

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §157.131, concerning the designation of trauma facilities and the Emergency Medical Services (EMS) account.

BACKGROUND AND PURPOSE

The amendment to this section is necessary to provide clarification and narrow the definition of trauma care to meet the original intent outlined in Health and Safety Code, §773.112. The proposed new language more clearly defines the types of trauma patients to be reported by hospitals in the uncompensated trauma care funding application. The existing rule language currently allows a hospital to include patient charges that meet the existing definition of trauma care but do not meet the intent of the statute in its uncompensated trauma care application. The intent of the statute is to help reimburse a portion of the uncompensated trauma care for emergent trauma patients provided by trauma centers. The existing language allows for non-emergent and non-trauma related charges to be included. Additionally, the amendment was endorsed by the Governor's EMS and Trauma Advisory Council at its May 2006 meeting. The department anticipates the proposed amendment will clarify the definition of trauma care and ensure that appropriate trauma patient charges are reported in a hospital's uncompensated trauma care application.

SECTION-BY-SECTION SUMMARY

The amendment to §157.131 provides clarification to the definition of trauma care. The amendment concerns the types of patients that can be reported in a hospital's uncompensated trauma care funding application. The proposed amendment to the definition of trauma care requires a patient to meet a hospital's trauma team activation criteria and/or be entered into the hospital's trauma registry in addition to the existing criteria outlined in the rule language.

FISCAL NOTE

Kathryn C. Perkins, Section Director, Health Care Quality Section, has determined that there will be no fiscal implications to state or local governments as a result of enforcing or administering the section as proposed for each year of the first five years that the section is in effect.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Perkins has also determined that there will be no effect on small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with this section. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Perkins has also determined that the public will benefit from adoption of the section for each year of the first five years the section is in effect. The public benefit anticipated as a result of enforcing or administering the section is a strengthening of the state EMS/Trauma System.

REGULATORY ANALYSIS

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

sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Stephen C. Janda, Director, Office of EMS/Trauma Systems Coordination, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700 or by e-mail to steve.janda@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rule has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendment is authorized by the Health and Safety Code, Chapter 773, Emergency Medical Services, which provides the department with the authority to adopt rules to implement the Emergency Medical Services Act; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The amendment affects the Health and Safety Code, Chapters 773 and 780.

§157.131. Designated Trauma Facility and Emergency Medical Services Account.

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

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

(5) Trauma care--Care provided to patients who met the facility's trauma team activation criteria and/or were entered into the facility's Trauma Registry and underwent treatment specified in at least one of the following ICD-9 (International Classification of Diseases, 9th Revision, of the National Center of Health Statistics) codes: between 800 and 959.9, including 940-949 (burns), excluding 905-909 (late effects of injuries), 910-924 (blisters, contusions, abrasions, and insect bites), 930-939 (foreign bodies), and who underwent an operative intervention as defined in paragraph (9) of this subsection or was admitted as an inpatient for greater than 23-hours or who died after receiving any emergency department evaluation or treatment or was dead on arrival to the facility or who transferred into or out of the hospital.

(6) - (13) (No change.)

(b) - (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 November 20, 2006.

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Cathy Campbell
General Counsel

Department of State Health Services

Earliest possible date of adoption: January 7, 2007

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



CHAPTER 295. OCCUPATIONAL HEALTH SUBCHAPTER J. TEXAS MOLD ASSESSMENT AND REMEDIATION RULES

25 TAC §§295.301 - 295.338

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§295.301 - 295.338, concerning the regulation of mold-related activities that affect indoor air quality.

BACKGROUND AND PURPOSE

The amendments implement three House Bills (HB) passed during the 79th Legislature, Regular Session (2005). House Bill 74 added §1958.155(d) to the Occupations Code, which allows licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district. House Bill 1328 that amended §1958.154(b) of the Occupations Code requires the seller of a property to provide the Certificate of Mold Remediation only if issued within the preceding five years to the new owner. House Bill 2746 added §1958.105(b) to the Occupations Code, which requires lowering the passing grade for the state exam from 80% to 70%. For consistency with this legislative requirement, the passing grade requirement for exams given in accredited training courses is proposed to be lowered from 80% to 70%.

Other amendments delete language that has expired; revise the language to reflect changes in the name and function of the agency, programs, and staff; clarify the legislative intent; correct incorrect language; revise the fee information to reflect the two-year license as standard and the addition of the Texas Online subscription fee; change the number of questions for the refresher course test to a lower number; change the notification requirements to enable a more effective on-site investigation; and correct grammatical and punctuation errors in the rules. Expired language in the rules that refers to requirements applicable only prior to January 1, 2005, was deleted. An unnecessary requirement requiring about half the renewing licensees to take an additional refresher course caused by staggering the one-year and two-year license renewals was deleted. Agency contact information was added. Additions or rewording were done to provide better clarity or to remove unnecessary restrictions on the applicants.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Ad-

ministrative Procedure Act). Sections 295.301 - 295.338 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

In §295.301, a new subsection (e) was added to provide agency contact information and summarize information available on the website.

In §295.302, Definitions, a new definition, "Certificate of Mold Damage Remediation," was added to clarify that the certificate referred to in the rules is the one provided by the Texas Department of Insurance (TDI). The new definition "Managing agent" was added to clarify the intent of this term. In the definition "Facility," the word "structure" was deleted, as it was not in compliance with legislative intent. The definitions of "Project" and "Start date" were reworded to be more consistent with legislative intent. Language was added to the definition of "Start date" to clarify that preparation work is not considered part of mold remediation. The definition of "Stop date," was reworded for clarity. In the definition of "Supervise," the language "within ten minutes" was added after "accessible by telephone" to ensure adequate supervision is available when necessary in an emergency.

In §§295.302, 295.308(b), 295.309(b), 295.310(c), 295.318(b)(3), and 295.325(b), language affected by the agency's reorganization was revised to reflect the changes or deleted as appropriate. For example, in §295.302, the definitions of "Commissioner" and "Department" were reworded to be consistent with the new title and agency's name. The definition of "Program Administrator" was deleted, as the position is no longer applicable after the reorganization. In the other sections, all references to Program Administrator were reworded to the appropriate new contact; the "Texas Department of Health" was changed to "Department of State Health Services"; invalid telephone numbers were deleted; and obsolete division and program names were replaced with the appropriate new unit or group name.

In §§295.302(25), (26), (39), and (40), 295.308(a)(2), and (g), 295.309(c)(1), (d), and (d)(2), 295.315(f), (f)(5), and (f)(9), 295.322(d), 295.325(a) - (d), 295.330(c)(2), §295.334(b), 295.335(c), 295.336 and 295.337, punctuation, grammar, and minor language changes (rewording, additions, and deletions) were made to improve the clarity of the sections.

In §295.303(f), the second sentence was reworded to clarify that only unlicensed but supervised persons doing mold remediation are required to be registered.

In §295.304(b)(1), the word "license" was replaced by the broader word "credential."

In §295.305(e)(2), and (e)(3), the phrase "and no earlier than 12 months prior to the expiration date of the license," and in §295.305(g)(3), the phrase "before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and" was deleted because this requirement caused an extra and unnecessary refresher training for a significant number of licensees and registrants.

In §§295.305(e)(1), (e)(2), (e)(3), and (h), 295.308(a)(2), 295.310(a)(2), 295.311(a), (c), and (e), 295.312(a), (c), and (e), 295.314(a), 295.315(a), (c), and (e), and 295.316(a), the expired language in these paragraphs was deleted and reworded as necessary for clarity. Language that referred to activities that

were grandfathered (applicable only before January 1, 2005) was deleted in these paragraphs.

In §§295.305(f), 295.310(a)(1), and (e), 295.311(e)(1)(D), and 295.312(e)(1)(C), the passing grade for the state exam was changed from 80% to 70% as required by the legislation. In §295.315(e)(1)(D), the 70% requirement for passing the state exam was added for clarity. To be consistent with this state exam requirement, in §295.318(b)(10) and §295.320(g), the record keeping exam requirement and the passing score requirement for the training providers was changed from "80%" to "70%".

In §295.306(c), the language "and the property owner, if not the same" was added so that the property owner receives a copy of the Consumer Mold Information Sheet.

In §295.306(d), the language was changed to allow credentialed persons to give notification of violations by the next business day instead of within 24 hours.

In §295.307, a new subsection (c) was added to allow licensed school district employees to perform both mold assessment and mold remediation on the same project for their school district as required by the legislation.

In §295.308(a)(2), the wording was changed so only individuals that are applying for credentials are required to submit facial photographs. Also, the language "one-inch by one-inch" was replaced with "one-inch square" for consistency with other section of the rules.

In §§295.308(a)(2), 295.318(f)(6)(C), and (f)(7)(B), and 295.320(d)(5)(B), the language "passport-quality color" was added before the word photograph to indicate the quality of photograph required by the department.

In §295.308(c) and §295.319(c), language was added to let the credentialed persons know that they have 90 days to respond to a department deficiency notice or the application will be denied.

In §295.308(e), language was added to let the credentialed persons know that they are responsible "to renew their certificate whether or not they have received the notification from the department."

In §295.309(b), the notice of cancellation for insurance policies was changed from 30-day to 10-day period to make the insurance more readily available.

In §295.309(d)(2), the language "the policy shall promptly be renewed or replaced without any lapse in coverage" was deleted because it was an unnecessary requirement.

In §295.310(f), this section was reworded to allow the department to provide either written or verbal analysis of the state exam.

In §§295.311(d), 295.312(d), 295.313(d), 295.314(c), 295.315(d), 295.316(c), 295.317(d), and 295.318(d), the fee rates were revised to reflect the two-year license and the Texas Online subscription fee requirements.

In §§295.312(b)(9), and (f)(11), 295.313(f)(9), 295.315(f)(12), 295.326(c)(2)(C), title of 295.327, 295.327(b), 295.338(a), and (b), every use of "certificate of mold remediation" was changed to "certificate of mold damage remediation" to clarify that the certificate referred to in the rules is the one provided by the Texas Department of Insurance (TDI).

In §295.315(e)(1)(C), the application submittal time after completing the initial training course was increased from six months

to twelve months as six months was determined to be unnecessarily restrictive.

In §295.315(f), a new paragraph (1) was added to clarify that the "supervision of mold remediation workers" is a primary responsibility of the mold remediation contractor.

In §295.315(f)(5) and §295.316(e)(3), the language "preparation work" after "mold remediation" was added to clarify that providing the information is required before any work has begins.

In §295.315(f)(9), the phrase "who conduct activities specified under paragraph (4) of this subsection" was deleted as incorrect and unnecessary.

In §295.318(b)(1), the language "Training provider's courses for mold remediation workers may use only department-approved instructors" was added to clarify the rule's intent.

In §§295.318(f)(6)(C), (f)(7)(B), and (f)(7)(C), 295.320(d)(4)(B), and 295.320(d)(5)(B), the word "photo" was replaced with "photograph" for consistency and clarity.

In §295.318(f)(7)(C), the word "color" was added to indicate what type of photograph is required.

In §295.319(c), the notification time for the department to acknowledge receipt of the application was changed from 30 to 10 working days. The words "After review of the application, the department will" were added to indicate when the applicant would be notified of the deficiencies. The words "within 60 days" were added to indicate when an application would be approved or denied after receipt of a complete application.

In §295.319(c)(8)(A), the term "school's" was replaced with the more descriptive term "training facility's."

In §295.320(d), the words "work on a" and "project" were deleted to clarify that it is work on a "mold remediation" not a "project" that is regulated.

In §295.320(g), the words "initial" were added before the words "test" and "tests" and the sentence "The refresher tests shall consist of at least ten questions" was added to change the number of refresher test questions to a lower number.

In §295.321(e), language was added to clarify that the mold remediation protocol is specific to each project.

In §295.321(e)(4), language was added to clarify that the respirator is recommended during all mold-related activities when exposure to mold could or would be possible.

In §295.322(b), language was added to clarify that the work plan is specific to each project, fulfills the requirements of the mold remediation protocol, and contains the specific instructions or operating procedures.

In §295.322(e), language was added to clarify that signage is required for mold remediation projects at all accessible entrances.

In §295.323(c), language was added to clarify that registered workers shall follow all requirements regarding use of disinfectants.

In §295.324(a), language was changed to clarify that containment is used "during remediation."

In §295.325(a) - (d), language was added to clarify that notification is required only for mold remediation, and that the start time and stop time must be included on the notification form. The word "project" or "activity" was deleted after "mold remediation" to avoid confusion between the meaning of remediation and

project, for consistency, and clarification of intent, and "as defined in §295.302(27)" was added after "mold remediation" one time to clarify intent. Language was added to clarify that information from "the most recent notice" must be used. The language "with the department by phone" after "confirm" was added to specify who and how they need to confirm the information. The language "for each week (seven calendar day period)" was deleted, as it does not allow the department adequate notification to investigate remediation work.

In §295.326(a), the language "a period of three years..." was deleted as it was confusing, and was replaced with "the time specified in subsection (b)(2) of this section for remediators and subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers" that directs them to the correct information.

In §295.326(c)(1)(A), the word "certificate" was replaced with the correct word "credential" because it is a broader term.

In §295.327(d), the language was reworded to reflect that the seller of a property is required to provide the Certificate of Mold Damage Remediation to the new owner only if issued within the preceding five years.

In §295.328, the language "The complaint form is available on the department's website" was added to indicate where the form is readily available.

In §295.329(c), the wording "in pursuance of" was replaced with the word "conducting" and the words "in advance" were added after the word "notify" for clarity.

In §295.330(a) and (c), the language relating to suspending credentials on an "emergency basis" was deleted because it is not supported by legislation.

In §295.331(d)(1), (d)(2) and (d)(3), the words "safety" were deleted as potentially confusing because of language in Occupations Code, §1958.058.

In §295.332(a), the word "conclusive" was deleted as unnecessary because it was too strict a standard.

In §295.333(d), the language "exercise the opportunity for" was replaced with "request" to clarify and simplify. The language "the penalty imposed" was added for clarity.

In §295.334(a), the language "Chapter 2001" was deleted as being repetitive.

FISCAL NOTE

Susan E. Tennyson, Section Director, Environmental and Consumer Safety Section, has determined that for each year of the first five-year period that the sections will be in effect, there will be small fiscal implications to state government and no overall fiscal implications to local governments as a result of enforcing or administering the sections as proposed. The lowering of the passing grade of the state exam is expected to have a small reduction in collection of state exam fees, estimated at \$4,500 annually, because more people will pass on the first and second attempts. It is expected that the lower revenue will be offset by a small increase in revenue from more licenses issued due to more persons passing the exam, estimated at \$7,500 per year. The overall effect will be a revenue gain of \$3,000 per year for the five years.

SMALL AND MICRO-BUSINESS IMPACT

Ms. Tennyson has also determined that there will be an effect on small businesses or micro-businesses required to comply with the sections as proposed. House Bill 74 allows schools to be able to perform both mold assessments and mold remediations without the services of the private sector (typically small businesses or micro-businesses). It is estimated that about five to twenty jobs will not be performed by the private sector for schools at an estimated \$25,000 loss in revenue (\$1,000 to \$10,000 per job and five to twenty lost jobs per year; the more complicated and costly jobs are more likely to be done with the help of the private sector). The deleting of the requirement of the unnecessary refresher course that affects about 50% of the licensees and 10% of the registrants and the training providers. This will have a significant impact on both groups, but only in 2007. The training providers (typically small businesses or micro-businesses) will lose an estimated \$220,500 from licensees (45% of 1,300 students; \$300 per class) and registrants (10% of 4500 students; \$100 per class) not taking the course. However, the licensees and registrants (typically small businesses or micro-businesses) will save that amount plus an additional \$155,250 (1,035 students at \$150 for per diem and travel) or a total of \$375,750. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Tennyson 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 would be potential lower costs to some of the licensees, and a better understanding of the rules as a result of clearer and more concise language used in the rules.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Quade R. Stahl, Environmental Health Group, Policy/Standards/Quality Assurance Unit, Environmental and Consumer Safety Section, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6773, extension 2444, or by e-mail to quade.stahl@dshs.state.tx.us. Comments will be accepted if submitted within 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Cathy Campbell, certifies that the proposed rules have been

reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed amendments are authorized by Occupations Code, §1958.053, which allows the department to adopt rules; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The proposed amendments affect the Occupations Code, Chapter 1958. Review of the sections implements Government Code, §2001.039.

§295.301. General Provisions.

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

(e) Department information. For the most recent telephone and facsimile numbers for contacting or submitting information to mold notification and licensing personnel, visit the department's website: www.dshs.state.tx.us/mold. From this website you can also view and/or download the mold rules and applicable legislation; application, notification, and complaint forms; Consumer Information Sheet; Certificate of Mold Damage Remediation; listing of current licensees and accredited trainers; and Frequently Asked Questions. The telephone numbers for general questions are (800) 572-5548 (toll-free), or (512) 834-6770.

§295.302. Definitions.

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

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

(6) Certificate of Mold Damage Remediation--A certificate adopted by the Texas Department of Insurance as required by Article 21.21-11, Chapter 21 of the Insurance Code, commonly referred to as Certificate of Mold Remediation and Form MDR-1. The top section of this certificate is signed by a licensed Mold Assessment Consultant and a Mold Remediation Contractor for projects performed under the Texas Mold Assessment and Remediation Rules (TMARR). Alternatively, the bottom section of the certificate is signed by a licensed Mold Assessment Consultant on mold remediation projects that may be legally performed by unlicensed persons certifying the property does not contain evidence of mold damage.

(7) [(6)] Commissioner--The Commissioner of the Department of State Health Services [The Texas Commissioner of Health or his successor].

(8) [(7)] Consumer Mold Information Sheet--A document prepared and made available by the department that describes the persons who are required to be licensed under this subchapter and provides information on mold assessment and mold remediation, including how to contact the department for more information or to file a complaint. A licensee under this subchapter who is overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that each client is provided a copy of the Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(9) [(8)] Containment--A component or enclosure designed or intended to control the release of mold or mold-containing dust or materials into surrounding areas in the building. The broad

category of containment includes such sub-categories as walk-in containment, surface containment (such as plastic sheeting), and containment devices (such as wall-mounted glove boxes).

(10) [(9)] Containment area--An area that has been enclosed to control the release of mold or mold-containing dust or materials into surrounding areas.

(11) [(10)] Contiguous--In close proximity; neighboring.

(12) [(11)] Contiguous square feet--See "Total surface area of contiguous square feet".

(13) [(12)] Credential--A license, registration, or accreditation issued under this subchapter.

(14) [(13)] Department--The Department of State Health Services [Texas Department of Health or its successor].

(15) [(14)] Employee--An individual who is paid a salary, wage, or remuneration by another person or entity for services performed and over whom the person or entity exerts supervision or control as to the place, time, and manner of the individual's work.

(16) [(15)] Facility--Any institutional, commercial, public, governmental, industrial or residential [structure or] building.

(17) [(16)] Indoor air--Air within the envelope of a building, including air in spaces normally occupied by persons in the building but excluding air in attics and crawl spaces that are vented to the outside of the building.

(18) [(17)] Indoor mold--Mold contamination that was not purposely grown or brought into a building and that has the potential to affect the indoor air quality of the building.

(19) [(18)] License--Any license issued under this subchapter. The term "license" does not include a registration, accreditation, or approval issued under this subchapter.

(20) [(19)] Mold--Any living or dead fungi or related products or parts, including spores, hyphae, and mycotoxins.

(21) Managing agent--A company or individual that manages a residential or commercial building for an owner.

(22) [(20)] Mold analysis--The examination of a sample collected during a mold assessment for the purpose of:

(A) determining the amount or presence of or identifying the genus or species of any living or dead mold or related parts (including spores and hyphae) present in the sample;

(B) growing or attempting to grow fungi for the purposes of subparagraph (A) of this paragraph; or

(C) identifying or determining the amount or presence of any fungal products, including but not limited to mycotoxins and fungal volatile organic compounds, present in the sample.

(23) [(21)] Mold analysis laboratory--A person, other than an individual, that performs mold or mold-related analysis on a sample collected to determine the presence, identity, or amount of indoor mold in the sample.

(24) [(22)] Mold assessment--Activity that involves:

(A) an inspection, investigation, or survey of a dwelling or other structure to provide the owner or occupant with information regarding the presence, identification, or evaluation of mold;

(B) the development of a mold management plan or mold remediation protocol; or

(C) the collection or analysis of a mold sample.

(25) [(23)] Mold assessment report--A document[;] prepared by a licensed mold assessment consultant or licensed mold assessment technician for a client[;] that describes any observations made, measurements taken, and locations and analytical results of samples taken by an assessment consultant or by an assessment technician during a mold assessment. An assessment report can be either a stand-alone document or a part of a mold management plan or mold remediation protocol prepared by a mold assessment consultant.

(26) [(24)] Mold management plan--A document[;] prepared by a licensed mold assessment consultant for a client[;] that provides guidance on how to prevent and control indoor mold growth at a location.

(27) [(25)] Mold-related activities--The performance of mold assessment, mold remediation or any other related activities.

(28) [(26)] Mold remediation--The removal, cleaning, sanitizing, demolition, or other treatment, including preventive activities, of mold or mold-contaminated matter that was not purposely grown at a location. Preventive activities include those intended to prevent future mold contamination of a remediated area, including applying biocides or anti-microbial compounds.

(29) [(27)] Mold remediation protocol (mold remediation work analysis)--A document, prepared by a licensed mold assessment consultant for a client, that specifies the estimated quantities and locations of materials to be remediated and the proposed remediation methods and clearance criteria for each type of remediation in each type of area for a mold remediation project.

(30) [(28)] Mold remediation work plan--A document, prepared by a licensed mold remediation contractor that provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed.

(31) [(29)] Office--A stationary physical location assigned a street address by the United States Postal Service, where a licensee or an employee of a licensee may be contacted to conduct business related to mold assessment and/or mold remediation.

(32) [(30)] Person--An individual, corporation, company, contractor, subcontractor, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, governmental entity, or any other association of individuals.

[(31)] Program administrator--The administrator of the department's Mold Licensing Program.]

(33) [(32)] Project--All activities that involve mold-related activities in a building or designated area of a building for which a specific start-date and a specific stop-date is provided that covers the mold remediation [connected with a mold remediation work plan, including activities necessary for the preparation of the work plan and any associated mold remediation protocol(s), site preparation, and post-remediation assessment and clearance].

(34) [(33)] Remediator--A person who conducts mold remediation as defined in this section and who is credentialed under this subchapter as a mold remediation worker, mold remediation contractor, or mold remediation company.

(35) [(34)] Residential dwelling unit--A detached single-family dwelling; an attached single-family dwelling in a building that contains two or more separate single-family dwellings; or a bedroom in group housing. Examples of residential dwelling units include single homes, mobile homes (house trailers), duplexes, apartments, and condominiums. In group housing, such as dormitories, fraternity or

sorority houses, and boarding houses, each bedroom is a residential dwelling unit.

(36) [(35)] Residential property--A building containing one or more residential dwelling units intended to provide living quarters for more than a transitory period, including a residential property that is vacant or under construction. A residential property includes dormitories and employee housing in a non-residential setting (e.g., staff housing at an institutional or commercial facility). Residential properties do not include:

(A) lodgings (such as hotels and motels) that rent units on a transient basis;

(B) institutional facilities that provide care or oversight for residents or inmates (such as hospitals, nursing homes, homes for children with physical or mental disabilities, mental institutions, jails, prisons and detention centers); and

(C) former residential properties that do not currently provide living quarters (such as houses converted into shops or restaurants).

(37) [(36)] Responsible person--An employee or principal designated by a licensed mold assessment company, mold remediation company, or mold analysis laboratory or by an accredited mold training provider as responsible for its operations and compliance with rules concerning mold-related activities or mold-related training.

(38) [(37)] Routine cleaning--Cleaning that is ordinarily done on a regular basis and in a regular course of procedures.

(39) [(38)] Start-date [Start date]--The date on which the mold [actual] remediation [of mold] begins. Preparation work is not considered mold remediation.

(40) [(39)] Stop-date [Stop date] (completion date)--The date following the day [date] on which final clearance for the project is achieved [following a mold remediation project].

(41) [(40)] Supervise--To direct and exercise control over the activities of a person by being physically present at the job site or, if not physically present, accessible by telephone within ten minutes and able to be at the site within one hour of being contacted.

(42) [(41)] Survey--An activity undertaken in a building to determine the presence, location, or quantity of indoor mold or to determine the underlying condition(s) contributing to indoor mold contamination, whether by visual or physical examination or by collecting samples of potential mold for further analysis.

(43) [(42)] Total surface area of contiguous square feet--The contiguous area of surface material that needs to be cleaned or removed to remediate visible mold contamination.

(44) [(43)] Training hours--Hours spent in classroom instruction, hands-on activities, and field trips, including time used for course tests and brief breaks but not including scheduled lunch periods.

(45) [(44)] Visible--Exposed to view; capable of being seen.

(46) [(45)] Work analysis--A mold remediation protocol.

(47) [(46)] Work plan--A mold remediation work plan.

(48) [(47)] Working days--Monday through Friday, including holidays that fall on those days.

§295.303. *Exceptions and Exemptions.*

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

(f) Supervised employee exemption. An employee of a license holder is not required to be licensed under this subchapter to perform mold assessment or mold remediation while supervised by the license holder. ~~An [Such an] employee performing mold remediation must[; however,] be registered as provided under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements).~~

(g) - (i) (No change.)

§295.304. *Code of Ethics.*

(a) (No change.)

(b) All credentialed persons or approved instructors shall, as applicable to their area of credentialing or approval:

(1) undertake to perform only services for which they are qualified by credential [license], education, training or experience in the specific technical fields involved;

(2) - (14) (No change.)

(c) (No change.)

§295.305. *Credentials: General Conditions.*

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

(e) Training requirement.

(1) An applicant for an initial license under §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements), or §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) must successfully complete an initial training course offered by a department-accredited training provider in that area of licensure and receive a course-completion certificate before applying for the license. [This paragraph does not apply to applicants who submit complete applications to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork.]

(2) ~~An [Except as described under subsection (g)(3) of this section, an] applicant for renewal of a license listed under paragraph (1) of this subsection must successfully complete a refresher training course offered by a department-accredited training provider in the area of licensure for which renewal is sought and receive a course-completion certificate before applying for the renewal. The applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course [and no earlier than 12 months prior to the expiration date of the license].~~

(3) ~~An [Except as described under subsection (g)(3) of this section, an] applicant for an initial or renewal registration under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must successfully complete a training course as described under §295.320(d) and (f) of this title (relating to Training: Required Mold Training Courses) and receive a course-completion certificate before applying for the registration. If a refresher course is required, the applicant must successfully complete the refresher course no later than 24 months after successful completion of the previous course [and no earlier than 12 months prior to the expiration date of the registration].~~

(f) Examination requirement. In accordance with §295.310 of this title (relating to Licensing: State Licensing Examination), an applicant for an initial license under §§295.311, 295.312, or 295.315 of this title must pass the state licensing examination in that area of licensure with a score of at least 70% [80%] correct before applying for the license. All applicants must pass the state examination within six months of completing any training course required under subsection (e)(1) of this section in three or fewer attempts or must successfully

complete a new initial training course before re-taking the state examination.

(g) Applications. Each application for a credential or approval must provide all required information. An applicant shall indicate that a question does not apply by answering "not applicable" or "N/A". Applicants must submit complete applications, including all supporting documents, for each credential or approval sought.

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

(3) An applicant for a renewal of a license listed under paragraph (1) of this subsection must successfully complete a required refresher training course and receive a course-completion certificate before applying for renewal[; except that this paragraph does not apply to a holder of an initial license that is valid for one year, as described under subsection (h)(1) and (2)(A) of this section]. The applicant must complete the refresher course [before the expiration date of the license but no earlier than 12 months prior to the expiration date of the license and] no later than 24 months after completion of the previous course.

(h) Term and expiration.

~~[(1) All credentials issued before January 1, 2005 are valid for one year and expire on the anniversary of the effective date.]~~

~~[(2) A credential issued between January 1, 2005 and December 31, 2005 (including renewal of a credential issued before January 1, 2005, regardless of the issue date of the renewal) is valid for:]~~

~~[(A) one year and expires on the anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an odd number; or]~~

~~[(B) two years and expires on the second anniversary of the effective date, if the birth year of the applicant (or the birth year of the mold training manager or the first individual named as a responsible person, as described under subsection (j) of this section, if the applicant is not an individual) is an even number.]~~

~~[(1) [(3)] All credentials issued on or after January 1, 2006, [except as specified in paragraph (2) of this subsection,] are valid for two years and expire on the second anniversary of the effective date.~~

~~[(2) [(4)] Fees commensurate with a two-year credential must be included with any application for a credential that will expire on the second anniversary of its effective date.~~

~~[(3) [(5)] A credential holder is in violation of this subchapter if the holder practices with lapsed qualifications.~~

(i) - (j) (No change.)

§295.306. *Credentials: General Responsibilities.*

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

(c) The license holder overseeing mold-related activities, with the exception of activities performed by a mold analysis laboratory, must ensure that a client and the property owner, if not the same, are [is] provided a copy of the department Consumer Mold Information Sheet prior to the initiation of any mold-related activity.

(d) A credentialed person who becomes aware of violations of this subchapter must report these violations by the next business day [within 24 hours] to the department if, to that person's knowledge, the responsible party has not corrected the violations within that timeframe.

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

§295.307. *Conflict of Interest and Disclosure Requirement.*

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

(c) This section does not apply to a license holder employed by a school district working on a project for that school district.

§295.308. *Credentials: Applications and Renewals.*

(a) General requirements. Applications for a license, registration or accreditation must be made on forms provided by the department and signed by the applicant. The department shall consider only complete applications. The application form must be accompanied by:

(1) (No change.)

(2) for individuals applying for a credential, a current one-inch square passport-quality color photograph of the applicant's face with a white background. A [a current one-inch by one-inch photograph of the applicant's face (or, if the application is for a company license, of the face of the individual designated as the responsible person for the company) with a white background. The photograph of the face is not required with applications for approvals. If the application is for an individual license and successful completion of a department-approved training course is being used to satisfy the training requirement, a] copy of the wallet-size photo-identification card from the applicable training course as required under §295.318(f)(6)(B) of this title (relating to Mold Training Provider: Accreditation) must also be submitted; and

(3) (No change.)

(b) Inquiries. Applicants who wish to discuss or obtain information concerning qualification requirements may contact the Department of State Health Services, Environmental Sanitation Licensing Group [call the program administrator at (512) 834-4509 or (800) 293-0753 (toll-free)]. Applicants may visit the Mold Licensing Program's website at www.tdh.state.tx.us/beh/mold to obtain information and download forms.

(c) Denials. The department may deny a credential to a person who fails to meet the standards established by this subchapter. Failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied.

(d) (No change.)

(e) Renewal notices. At least 60 days before a person's license, registration, or accreditation is scheduled to expire, the department shall send a renewal notice by first-class mail to the person's last known address from the department's records. A person credentialed by the department retains full responsibility for supplying the department with a correct current address and phone number, and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

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

(f) (No change.)

(g) Renewals [and late fees]. A person shall not perform any mold-related activity with an expired license, registration, or accreditation. If a person makes a timely and complete application for the renewal of a valid credential, the credential does not expire until the department has finally granted or denied the application. The department shall renew a credential that has been expired for 180 days or less if the person meets the requirements of subsection (f) of this section. A person whose credential has been expired for more than 180 days must obtain a new credential and must comply with current requirements and procedures, including any state examination requirements.

(h) (No change.)

§295.309. *Licensing: Insurance Requirements.*

(a) (No change.)

(b) The certificate of insurance must be complete, including all applicable coverages and endorsements, and must name the Department of State Health Services, Environmental Sanitation Licensing Group [Texas Department of Health, Toxic Substances Control Division], as a certificate holder. Each required policy shall be endorsed to provide the department with at least a 10-day [30-day] notice of cancellation or material change for any reason.

(c) An applicant for an initial or renewal license must provide proof of insurance in one of the following forms:

(1) a copy of the required current certificate of insurance;

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

(d) The department may impose an administrative penalty or take other disciplinary action against any person who fails to have the current insurance required under this section.

(1) (No change.)

(2) If a policy expires or is canceled or materially changed, [the policy shall promptly be renewed or replaced without any lapse in coverage. If no insurance is in effect,] the licensee shall cease work. Prior to resuming work, the licensee must either:

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

(3) (No change.)

§295.310. *Licensing: State Licensing Examination.*

(a) Examination requirements.

[(+)] An applicant for an initial individual license who has successfully completed the required training course from a department-accredited training provider must pass the state examination with a score of at least 70% [80%] correct prior to applying for the license. The applicant must pass the examination within six months of completing the training course.

[(2)] An applicant is permitted to take the state examination before January 1, 2005, without completing a training course approved under §295.319 of this title (relating to Training: Approval of Training Courses and Instructors) if the applicant has successfully completed the applicable training allowed under §295.311(e)(2) of this title (relating to Mold Assessment Technician: Licensing Requirements), §295.312(e)(2) of this title (relating to Mold Assessment Consultant: Licensing Requirements); or §295.315(e)(2) of this title (relating to Mold Remediation Contractor: Licensing Requirements). The applicant must pass the examination with a score of at least 80% correct and submit a complete application to the department before January 1, 2005 (as evidenced by a postmark or shipping paperwork). An applicant who fails to pass the examination in three or fewer attempts or to submit a complete application before January 1, 2005, must successfully complete a training course approved under §295.319 of this title and then pass a state examination with a score of at least 80% correct before re-applying for a license.]

(b) (No change.)

(c) Scheduling and registration. Annually, the department shall publish a schedule of examination dates and locations. Training providers shall provide state examination schedules as a part of their instruction. Registrations must be submitted by mailing, faxing, or e-mailing a registration form to the Department of State Health Services, Environmental Sanitation Licensing Group [administrator] and must be received by the department no later than five working days before the examination date. Information on the examination schedule and assistance with registration is available by contacting [calling] the Department of State Health Services, Environmental Sanitation Licensing Group [Mold Licensing Program at (512) 834-4509 or (800)

293-0753 (toll-free in Texas)]. Entrance into the examination site will be allowed only upon presentation of a valid photo identification from an accredited training provider. Companies with 30 or more employees to be tested may call the department to arrange an additional examination date for a \$50 per person examination fee.

(d) (No change.)

(e) Grading and reporting of examination scores. A grade of at least 70% [80%] correct must be achieved in order to pass the examination. Scores will be reported only by mail no later than 30 working days after the date the examination is taken. Information regarding re-examination, if necessary, will be included.

(f) Request for information concerning examination. If requested in writing by an individual who fails a licensing examination, the department shall furnish the individual with an [a written] analysis of the individual's performance on the examination.

§295.311. Mold Assessment Technician: Licensing Requirements.

(a) Licensing requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), [as of January 1, 2005,] an individual must be licensed as a mold assessment technician to perform activities listed under subsection (b) of this section, except that an individual licensed under §295.312 of this title (relating to Mold Assessment Consultant: Licensing Requirements) is not required to be separately licensed under this section.

(b) (No change.)

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must be a high school graduate or have obtained a General Educational Development (GED) certificate. [If the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, the applicant may satisfy the training requirement under §295.305(e)(1) of this title by either:]

{(1) successfully completing an initial mold assessment technician course offered by a department-accredited training provider and receiving a course completion certificate; or}

{(2) successfully completing, within four years prior to the application date, a minimum of 24 hours of instruction in mold assessment. The applicant is not required to receive all 24 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must be offered by one of the following:}

{(A) a college or university accredited by an organization recognized by the Council for Higher Education Accreditation;}

{(B) a training provider accredited by the federal government to provide instruction on hazardous materials;}

{(C) a national professional organization that is administered by an active board of directors and whose criteria for full membership include minimum education and experience requirements and adherence to a published code of ethics;}

{(D) an organization that is administered by an active board of directors; that offers certification to individuals who fulfill minimum education and experience requirements at least equivalent to the education and experience requirements under this section, and that requires passing a certification examination with a score of at least 80% correct in order to receive the certification; or}

{(E) a training provider that is approved by an organization meeting the requirements under subparagraph (D) of this paragraph to offer training required by the organization.}

(d) Fees. The fees for a mold assessment technician license are:

(1) \$200 for the license [\$100 for a one-year license issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [\$200 for a two-year license issued on or after January 1, 2005].

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following:

{(1) if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:}

{(A) a copy of a high school diploma or GED certificate;}

{(B) proof of compliance with the insurance requirement specified in §295.309 of this title;}

{(C) proof of successfully fulfilling the training requirement under subsection (c)(1) and (2) of this section; and}

{(D) proof of successfully passing the state licensing examination with a score of at least 80% correct;}

[(2)] if the application is for an initial license [and a complete application is submitted to the department on or after January 1, 2005]:

(A) a copy of a high school diploma or GED certificate;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training as described in §295.320(b) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 70% [80%] correct; or

[(3)] if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) (No change.)

§295.312. Mold Assessment Consultant: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), [as of January 1, 2005,] an individual must be licensed as a mold assessment consultant to perform activities listed under subsection (b) of this section. A licensed mold assessment consultant who employs two or more individuals required to be licensed under this section or §295.311 of this title (relating to Mold Assessment Technician: Licensing Requirements) must be separately licensed as a mold assessment company under §295.313 of this title (relating to Mold Assessment Company: Licensing Requirements), except that an individual licensed as a mold assessment consultant and doing business as a sole proprietorship is not required to be separately licensed under §295.313 of this title.

(b) Scope. An individual licensed under this section is also licensed to perform all activities of a mold assessment technician listed in §295.311(b) and (f) of this title. In addition, a licensed mold assessment consultant is licensed to:

(1) - (8) (No change.)

(9) complete appropriate sections of a mold damage remediation certificate as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must:

(1) meet at least one of the following education and/or experience requirements:

(1) [(A)] a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences, and at least one year of experience in an allied field;

(2) [(B)] at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field;

(3) [(C)] a high school diploma or a General Educational Development (GED) certificate and at least five years of experience in an allied field; or

(4) [(D)] certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience in an allied field; and

(2) if a complete application for an initial license is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:

[(A)] successfully completing an initial mold assessment consultant course offered by a department-accredited training provider and receiving a course completion certificate; or

[(B)] successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold assessment. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(e)(2)(A) - (E) of this title.

(d) Fees. The fees for a mold assessment consultant license are:

(1) \$600 for the license [\$300 for a one-year license issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [\$600 for a two-year license issued on or after January 1, 2005].

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

(1) if the application is for an initial license [and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork]:

(A) verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) - (4) [(A) - (D)] of this section;

(B) (No change.)

[(C)] proof of successfully fulfilling the training requirement under subsection (e)(2) of this section; and

[(D)] proof of successfully passing the state licensing examination with a score of at least 70% [80%] correct; and

(2) if the application is for an initial license and a complete application is submitted to the department on or after January 1, 2005:

[(A)] all documentation required under paragraphs (1)(A); (1)(B); and (1)(D) of this subsection; and

[(B)] a copy of a certificate of training as described in §295.320(c) of this title (relating to Training: Required Mold Training Courses); or

(3) [(3)] if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment consultant shall:

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

(10) if he/she performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e)[(f)] of this title (relating to Post-Remediation Assessment and Clearance);

(11) provide a passed clearance report to the client as specified under §295.324(d)[(e)] of this title and complete applicable sections of a certificate of mold damage remediation as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner);

(12) - (15) (No change.)

§295.313. *Mold Assessment Company: Licensing Requirements.*

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

(d) Fees. The fees for a mold assessment company license are:

(1) \$1,000 for the license [\$500 for a one-year license issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [\$1,000 for a two-year license issued on or after January 1, 2005].

(e) (No change.)

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), a licensed mold assessment company shall:

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

(8) if the company performs post-remediation assessment on a project and ceases to be involved with the project before it achieves clearance, provide a final status report to the client and to the mold remediation contractor or company performing mold remediation work for the client as specified under §295.324(e)(f) of this title (relating to Post-Remediation Assessment and Clearance); and

(9) provide a passed clearance report to the client as specified under §295.324(d)(e) of this title and provide a certificate of mold damage remediation, with applicable sections completed by a mold assessment consultant, to a mold remediation company or contractor, as specified under §295.327(b) of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

§295.314. Mold Remediation Worker: Registration Requirements.

(a) Registration requirement. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), [as of January 1, 2005,] an individual must be registered as a mold remediation worker to perform mold remediation, except that an individual licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements) is not required to be separately registered under this section.

(b) (No change.)

(c) Fees. The fees for a mold remediation worker registration are:

(1) \$60 for the license [\$30 for a one-year license issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [\$60 for a two-year registration issued on or after January 1, 2005].

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

§295.315. Mold Remediation Contractor: Licensing Requirements.

(a) Licensing requirements. Unless exempted under §295.303 of this title (relating to Exceptions and Exemptions), [as of January 1, 2005,] an individual must be licensed as a mold remediation contractor to perform activities listed under subsection (b) of this section. A licensed mold remediation contractor who employs one or more individuals required to be licensed under this section or §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) must be separately licensed as a mold remediation company under §295.316 of this title (relating to Mold Remediation Company: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under §295.316 of this title.

(b) (No change.)

(c) Qualifications. In addition to the requirements for all applicants listed in §295.305 of this title (relating to Credentials: General Conditions) and §295.309 of this title (relating to Licensing: Insurance Requirements), an applicant must[:]

[(1)] meet at least one of the following education and/or experience requirements:

(1) [(A)] a bachelor's degree from an accredited college or university with a major in a natural or physical science, engineering, architecture, building construction, or building sciences and at least one year of experience either in an allied field or as a general contractor in building construction;

(2) [(B)] at least 60 college credit hours with a grade of C or better in the natural sciences, physical sciences, environmental sciences, building sciences, or a field related to any of those sciences, and at least three years of experience in an allied field or as a general contractor in building construction;

[(3)] [(C)] a high school diploma or General Educational Development (GED) certificate, plus at least five years of experience in an allied field or as a general contractor in building construction; or

(4) [(D)] certification as an industrial hygienist, a professional engineer, a professional registered sanitarian, a certified safety professional, or a registered architect, with at least one year of experience either in an allied field or as a general contractor in building construction. [; and]

[(2)] if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork, satisfy the training requirement under §295.305(e)(1) of this title by either:]

[(A)] successfully completing an initial mold remediation contractor course offered by a department-accredited training provider and receiving a course completion certificate; or]

[(B)] successfully completing, within four years prior to the application date, a minimum of 40 hours of instruction in mold remediation. The applicant is not required to receive all 40 hours of instruction from the same organization. Successful completion shall be shown by a certificate of course completion. Any instruction used to satisfy this requirement must include classroom and hands-on training and must be offered by an entity meeting one of the qualifications listed under §295.311(e)(2)(A) - (E) of this title (relating to Mold Assessment Technician: Licensing Requirements).]

(d) Fees. The fees for a mold remediation contractor license are:

(1) \$500 for the license [\$250 for a one-year license issued before January 1, 2006]; and

(2) a required Texas Online subscription and convenience fee [\$500 for a two-year license issued on or after January 1, 2005].

(e) Applications and renewals. Applications shall be submitted as required by §295.308(a) of this title (relating to Credentials: Applications and Renewals). An applicant shall include the following in the application package:

[(1)] if the application is for an initial license and a complete application is submitted to the department before January 1, 2005, as evidenced by a postmark or shipping paperwork:]

[(A)] verifiable evidence that the applicant meets at least one of the eligibility requirements under subsection (c)(1) of this section;]

[(B)] proof of compliance with the insurance requirement specified in §295.309 of this title;]

[(C)] proof of successfully fulfilling the training requirement under subsection (c)(2) of this section; and]

[(D)] proof of successfully passing the state licensing examination with a score of at least 80% correct;]

(1) [(2)] if the application is for an initial license [and a complete application is submitted to the department on or after January 1, 2005]:

(A) verifiable evidence that the applicant meets at least one of the qualifications under subsection (c)[(1)] of this section;

(B) proof of compliance with the insurance requirement specified in §295.309 of this title;

(C) a copy of a certificate of training indicating successful completion within the past twelve [six] months of an initial training course offered by a department-accredited training provider as de-

scribed in §295.320(e) of this title (relating to Training: Required Mold Training Courses); and

(D) proof of successfully passing the state licensing examination with a score of at least 70% correct; or

(2) [(3)] if the application is for renewal of a license:

(A) a copy of a certificate of training as described in §295.320(g) of this title, unless the applicant is exempt under §295.305(g)(3) of this title; and

(B) proof of compliance with the insurance requirement specified in §295.309 of this title.

(f) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation contractor shall be responsible for:

(1) supervising mold remediation workers as defined in §295.302(41) of this title (relating to Definitions);

(2) [(1)] accurately interpreting [accurate interpretation of] field notes, drawings, and reports relating to mold assessments;

(3) [(2)] advising clients about options for mold remediation;

(4) [(3)] complying with standards for preparing mold remediation work plans, as presented in training course materials or as required by the mold remediation company by whom the contractor is employed;

(5) [(4)] providing to a client a mold remediation work plan for the project before the mold remediation preparation work begins;

(6) [(5)] inquiring of the client whether any known or suspected hazardous materials, including lead-based paint and asbestos, are present in the project area;

(7) [(6)] signing and dating each mold remediation work plan that he/she prepares on the cover page. The cover page shall also include his/her license number and expiration date. He/she must also initial the work plan on every page that addresses the scope of work and on all drawings related to the remediation work;

(8) [(7)] submitting the required notification to the department, as described in §295.325 of this title (relating to Notifications), unless employed by a licensed mold remediation company;

(9) [(8)] ensuring that all individuals [who conduct activities specified under paragraph (4) of this subsection] are provided with, fit tested for, and trained in the correct use of personal protection equipment required under §295.322(c) of this title (relating to Minimum Work Practices and Procedures for Mold Remediation);

(10) [(9)] if the mold remediation contractor is doing business as a sole proprietorship and is not required to be separately licensed as a mold remediation company under §295.316 of this title (Mold Remediation Company: Licensing Requirements):

(A) ensuring that the training, as described in §295.320 of this title (relating to Training: Required Mold Training Courses), and license of each employee who is required to be licensed under this subchapter is current;

(B) ensuring that the training, as described in §295.320 of this title, and registration of each registered employee is current;

(C) ensuring that each unregistered employee who is required to be registered under this subchapter is provided the training required under §295.320(d) of this title before performing any mold remediation work;

(D) complying with all requirements under §295.320(d) of this title if the contractor provides the training; and

(E) ensuring that a previously unregistered employee who is provided training as specified in subparagraph (C) of this paragraph:

(i) has applied to the department for registration before allowing that employee to perform any mold remediation work, except as provided under §295.314(e) of this title; and

(ii) is registered before allowing that employee to perform any mold remediation work more than 30 days after the date of the training, in accordance with §295.314(e) of this title;

(11) [(10)] complying with recordkeeping responsibilities under §295.326 of this title (relating to Recordkeeping); and

(12) [(11)] providing to the property owner a completed mold remediation certificate as specified under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner).

§295.316. *Mold Remediation Company: Licensing Requirements.*

(a) Licensing requirements. A person performing mold remediation work ~~on or after January 1, 2005~~ must be licensed as a mold remediation company if the person employs one or more individuals required to be registered under §295.314 of this title (relating to Mold Remediation Worker: Registration Requirements) or licensed under §295.315 of this title (relating to Mold Remediation Contractor: Licensing Requirements), except that an individual licensed as a mold remediation contractor and doing business as a sole proprietorship is not required to be separately licensed under this section. A mold remediation company shall designate one or more individuals licensed as mold remediation contractors as its responsible person(s).

(b) (No change.)

(c) Fees. The fees for a mold remediation company license are:

(1) \$1,000 for the license [~~\$500 for a one-year license issued before January 1, 2006~~]; and

(2) a required Texas Online subscription and convenience fee [~~\$1,000 for a two-year license issued on or after January 1, 2005~~].

(d) (No change.)

(e) Responsibilities. In addition to the requirements as listed in §295.306 of this title (relating to Credentials: General Responsibilities), the mold remediation company shall be responsible for:

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

(3) providing to each client a mold remediation work plan for the project before the mold remediation preparation work begins;

(4) - (9) (No change.)

§295.317. *Mold Analysis Laboratory: Licensing Requirements.*

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

(d) Fees. The fees for a mold analysis laboratory license are:

(1) \$1,000 for the license [~~\$500 for a one-year license issued before January 1, 2006~~]; and

(2) a required Texas Online subscription and convenience fee [~~\$1,000 for a two-year license issued on or after January 1, 2005~~].

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

§295.318. *Mold Training Provider: Accreditation.*

(a) (No change.)

(b) Authorizations and Conditions. The following shall apply to issuance of accreditations under this section.

(1) No person shall advertise or offer as initial or refresher training courses, for fulfillment of requirements for licensing under this subchapter, any courses that the department has not approved under §295.319 of this title (relating to Training: Approval Of Training Courses and Instructors). Accredited training providers may offer, without department approval, mold remediation worker training courses and other courses relevant to mold-related activities, including, but not limited to, courses on respirator training and compliance. Accredited training providers shall use only department-approved instructors for mold remediation workers training courses.

(2) (No change.)

(3) Each accredited training provider shall submit schedules for approved training courses to the department at least 14 calendar days prior to the start of any course on the schedule. Requests for exceptions to the 14-day rule shall be submitted in writing to the Department of State Health Services, Environmental Sanitation Licensing Group [program administrator] along with a written justification describing why the notice could not be submitted earlier. Approval requests for shorter notice must be received by the department 72 hours prior to the start of the course and will be granted in writing if approved. A training provider that cancels a scheduled course must notify the department in writing at least 24 hours prior to the scheduled start time of the course. The department will accept facsimiles of cancellation notices. If the training provider cannot provide written notice of cancellation at least 24 hours in advance, the training provider shall notify the department by phone not later than two hours after the scheduled class start time and provide a written explanation of the short cancellation notice within 24 hours of the phone call.

(4) - (9) (No change.)

(10) An accredited training provider must verify and keep a written record of any student achieving a minimum score of 70% [80%] correct on each course test. The training provider shall have a written policy concerning the administration of tests, including allowing only one re-test per student for each course. The use of the same questions for both the original and re-test is not allowed. Oral tests are not allowed; however, a training provider may read the written test questions and possible answers to a student who must then mark his or her answer on an answer sheet. If a student fails the re-test, the student must repeat the course and pass a new test.

(11) - (12) (No change.)

(c) (No change.)

(d) Fees. The fees for mold training provider accreditation are:

(1) \$1,000 for the accreditation [~~\$500 for a one-year accreditation issued before January 1, 2006~~]; and

(2) a required Texas Online subscription and convenience fee [~~\$1,000 for a two-year accreditation issued on or after January 1, 2005~~].

(e) (No change.)

(f) Responsibilities. In addition to the requirements listed in §295.306 of this title (relating to Credentials: General Responsibilities), an accredited mold training provider shall be responsible for:

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

(6) at the conclusion of each training course, providing to each student who successfully completes the course and passes the required test:

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

(C) a current one-inch square passport-quality color photograph [~~photo~~] of the student's face on a white background taken during the course to be attached by the student to an application for licensing or registration; and

(D) (No change.)

(7) submitting to the department, within 10 working days of the completion date of each course:

(A) (No change.)

(B) individual one-inch square passport-quality color photographs [~~photos~~] of the face of each student on a white background taken during the course; and

(C) a color group photograph [~~photo~~] taken at the end of the course that identifies which students did and did not pass the course. Digital or scanned images will be accepted. The group color photograph must be no smaller than a standard 3 1/2-inch by 4 1/4-inch print;

(8) - (9) (No change.)

(g) (No change.)

§295.319. *Training: Approval of Training Courses and Instructors.*

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

(c) Application for course approval. An application must be submitted to the department in writing. Within 10 [~~30~~] working days after receiving an application, the department shall acknowledge receipt of the application. [and] After review of the application, the department will notify the applicant of any deficiency in the application. Failure of the applicant to submit the required information and/or documentation within 90 days of issuance of a written notice of deficiency from the department will result in the application being denied. The department will approve or deny the application within 60 days after [~~upon~~] receipt of the complete application. A complete application for training course approval shall include:

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

(8) a description and example of the photo identification cards and course certificates to be issued to students. Each certificate must have a unique certificate number and must include:

(A) the training facility's [~~school's~~] name, address, and telephone number;

(B) - (F) (No change.)

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

§295.320. *Training: Required Mold Training Courses.*

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

(d) Remediation worker training. Remediation worker training shall consist of at least four training hours that includes lectures, demonstrations, audio-visuals, and hands-on training. The training shall include all course information and material required under this subsection. An individual must successfully complete worker training and submit an application for registration as a mold remediation worker prior to performing any [~~work on a~~] mold remediation [~~project~~].

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

(4) The person providing the training shall submit to the department, within five working days of a training session:

(A) (No change.)

(B) a group color photograph [~~phəʊtə~~], taken at the end of the training, that identifies each individual who attended the training. Digital or scanned images will be accepted if persons are easily identifiable. The group color photograph must be no smaller than a standard $3\frac{1}{2}$ -inch by 4 $1\frac{1}{4}$ -inch print; and

(C) (No change.)

(5) The person providing the training shall provide the following to each individual who successfully completes the training:

(A) (No change.)

(B) a current one-inch square passport-quality color photograph [~~phəʊtə~~] of the individual's face on a white background, taken during the course, to be attached by the individual to an application for registration; and

(C) (No change.)

(6) (No change.)

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

(g) Course tests. Each training provider shall administer a closed-book written test to students who have completed an initial or refresher training course, except that no examination is required of students in remediation worker training. The initial test for assessment technician training shall consist of 50 multiple-choice questions, and the initial tests for assessment consultant training and remediation contractor training shall consist of 100 multiple-choice questions. Training providers may include demonstration testing as part of the initial test. The refresher tests shall consist of at least ten questions. A student must answer correctly at least 70% [~~80%~~] of the questions to receive a course-completion certificate. Training providers shall use tests provided or approved by the department.

§295.321. *Minimum Work Practices and Procedures for Mold Assessment.*

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

(e) Mold remediation protocol. An assessment consultant shall prepare a mold remediation protocol that is specific to [~~for~~] each remediation project and provide the protocol to the client before the remediation begins. The mold remediation protocol must specify:

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

(4) the PPE to be used by remediators. A minimum of an N-95 respirator is recommended during mold-related activities when mold growth could or would be disturbed [~~for all mold remediation projects~~]. Using professional judgment, a consultant may specify additional or more protective PPE if he or she determines that it is warranted;

(5) - (6) (No change.)

(f) (No change.)

(g) Containment requirements. Containment must be specified in a mold remediation protocol when the mold contamination affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if only persons [~~no person~~] who are [~~is not~~] licensed or registered under this subchapter occupy [~~occupies~~] the building in which the remediation takes place at any time between the start-date [~~start date~~] and stop-date [~~stop date~~] for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment specified in the remediation

protocol must prevent the spread of mold to areas of the building outside the containment under normal conditions of use. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(h) - (i) (No change.)

§295.322. *Minimum Work Practices and Procedures for Mold Remediation.*

(a) (No change.)

(b) Remediation work plan. A remediation contractor shall prepare a mold remediation work plan that is specific to each project, fulfills all the requirements of the mold remediation [~~based on a mold remediation~~] protocol and provides specific instructions and/or standard operating procedures for how a mold remediation project will be performed. The remediation contractor shall provide the mold remediation work plan to the client before site preparation work [~~the mold remediation~~] begins.

(c) (No change.)

(d) Containment requirements. The containment specified in the remediation protocol must be used on a mold remediation project when the mold affects a total surface area of 25 contiguous square feet or more for the project. Containment is not required if only persons [~~no person~~] who are [~~is not~~] licensed or registered under this subchapter occupy [~~occupies~~] the building in which the remediation takes place at any time between the start-date [~~start date~~] and stop-date [~~stop date~~] for the project as specified on the notification required under §295.325 of this title (relating to Notifications). The containment, when constructed as described in the remediation work plan and under normal conditions of use, must prevent the spread of mold to areas outside the containment. If walk-in containment is used, supply and return air vents must be blocked, and air pressure within the walk-in containment must be lower than the pressure in building areas adjacent to the containment.

(e) Notice signs. Signs advising that a mold remediation project is in progress shall be displayed at all accessible entrances to remediation areas [~~adjacent to occupied areas of a building~~]. The signs shall be at least eight (8) inches by ten (10) inches in size and shall bear the words "NOTICE: Mold remediation project in progress" in black on a yellow background. The text of the signs must be legible from a distance of ten (10) feet.

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

§295.323. *Mold Remediation of Heating, Ventilation and Air Conditioning (HVAC) Systems.*

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

(c) Disinfectants, biocides and antimicrobial coatings. A licensee or registered worker under this subchapter may apply a disinfectant, biocide or antimicrobial coating in an HVAC system only if its use is specified in a mold remediation protocol, if it is registered by the EPA for the intended use and if the use is consistent with the manufacturer's labeling instructions. The licensee or registered worker shall apply the product only after the building owner or manager has been provided a material safety data sheet for the product, has agreed to the application, and has notified building occupants in potentially affected areas prior to the application. The licensee or registered worker shall follow all manufacturer's label directions when using the product.

(d) (No change.)

§295.324. *Post-Remediation Assessment and Clearance.*

(a) Clearance criteria. For a remediation project to achieve clearance, a licensed mold assessment consultant shall conduct a post-

remediation assessment using visual, procedural, and analytical methods. If walk-in containment is used during remediation [at a ~~project site~~], the post-remediation assessment shall be conducted while the walk-in containment is in place. The post-remediation assessment shall determine whether:

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

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

§295.325. Notifications.

(a) General provision. A mold remediation contractor or company shall notify the department of a mold remediation, as defined in §295.302(27) of this title (relating to Definitions), [~~project~~] when mold contamination affects a total surface area of 25 contiguous square feet or more. Notification shall be received by the Department of State Health Services, Environmental Health Notifications Group [~~department~~] no less than five working days (not calendar days) prior to the anticipated start-date [start date] of the mold remediation [activity] and shall be submitted by United States Postal Service, commercial delivery service, hand-delivery, electronic mail (e-mail) [~~E-mail~~], or facsimile on a form specified by the department and available on its website. The form must be filled out completely and properly. Blanks that do not apply shall be marked "N/A". The "N/A" designation [~~of "N/A"~~] will not be accepted for identification of the work site, building description, building owner, individuals required to be identified on the notification form, [~~or~~] start- and stop-dates, or scheduled hours of mold remediation [start and stop dates]. A signature of the responsible person is required on each notification form. The contractor or company shall retain a confirmation that the department received the notification [was received by the department].

(b) Start-date change to later date. When mold remediation activity is rescheduled to start [begins] later than the date or hours contained in the most recent notice, the regional office of the department shall be notified by telephone as soon as possible but prior to the start-date on the most recent notice [original start date]. A written amended notification is required immediately following the telephone notification and shall be e-mailed, faxed or overnight mailed to the Environmental Health Notifications Group within the Inspection Unit, Environmental and Consumer Safety Section of the department.

(c) Start-date change to earlier date. When mold remediation activities begin on a date earlier than the date contained in the notice, the department shall be provided with written notice of the new start-date [start date] at least five working days before the start of work unless the provisions of subsection (e) of this section apply. The licensee shall confirm with the department by phone that the notice is received five working days before the start of work.

(d) Start-date/stop-date (completion date) requirement. In no event shall mold remediation begin or be completed on a date other than the date contained in the written notice except for operations covered under subsection (e) of this section. Amendments to start-date [start date] changes must be submitted as required in subsections (b) and (c) of this section. An amendment is required for any stop-dates [stop dates] that change by more than one workday [~~for each week (seven calendar day period)~~]. The contractor or company shall provide schedule changes to the department no less than 24 hours prior to the most recent stop-date or the new stop-date, whichever comes first [stop date]. Changes less than five days in advance shall be confirmed with the appropriate department regional office by telephone, facsimile, or e-mail and followed up in writing to the department's central office at 1100 West 49th Street, Austin, Texas, 78756.

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

§295.326. Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for the time specified in subsection (b)(2) of this section for remediators and subsection (c)(2) of this section for assessors, subsection (d) of this section for mold analysis laboratories, and subsection (e)(1) of this section for training providers [~~a period of three years from the date of project completion unless otherwise stated~~]. Such records and documents shall be made available for inspection by the department or any law enforcement agency immediately upon request. Licensees and accredited training providers who cease to do business shall notify the department in writing 30 days prior to such event to advise how they will maintain all records during the minimum three-year retention period. The department, upon receipt of such notification and at its option, may provide instructions for how the records shall be maintained during the required retention period. A licensee or accredited person shall notify the department that it has complied with the department's instructions within 30 days of their receipt or make other arrangements approved by the department. Failure to comply may result in disciplinary action.

(b) Mold remediation companies and contractors. A licensed mold remediation company shall maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the company and the records listed in paragraph (4) [~~(3)~~] of this subsection for each remediation worker training session provided by the company. A licensed mold remediation contractor not employed by a company shall personally maintain the records listed in paragraphs (1) and (2) of this subsection for each mold remediation project performed by the contractor and the records listed in paragraph (4) [~~(3)~~] of this subsection for each remediation worker training session provided by the mold remediation contractor.

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

(c) Mold assessment companies and consultants.

(1) A licensed mold assessment company shall maintain the following records and documents at a central location at its Texas office for the time period required under paragraph (2) of this subsection for each project that the company performs. A licensed mold assessment consultant not employed by a company shall maintain the following records and documents at a central location at his or her Texas office for the time period required under paragraph (2) of this subsection for each project that the contractor performs:

(A) the name and mold credential [certificate] number of each of its employees who worked on the project and a description of each employee's involvement with the project;

(B) - (G) (No change.)

(2) For each project, a licensed mold assessment company or consultant shall maintain all the records listed in paragraph (1) of this subsection until:

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

(C) the company or consultant provides the signed certificate of mold damage remediation to a mold remediation contractor or company, if a certificate of mold damage remediation is provided.

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

§295.327. Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner.

(a) (No change.)

(b) Not later than the 10th day after the project stop-date [stop date], the licensed mold remediation contractor or company shall provide a certificate of mold damage remediation to the property owner on

a form adopted by the Texas Commissioner of Insurance. The certificate must include the following:

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

(c) (No change.)

(d) If a property owner sells the property, the property owner shall provide to the buyer a copy of each remediation certificate ~~[that has been]~~ issued for the property under this section during the five years preceding the date the property owner sells the property.

§295.328. *Complaints.*

A person who believes that any provision of the Act or this subchapter has been violated may file a written complaint with the department. The complaint form is available on the department's website. The department shall conduct an investigation, including for an anonymous complaint if the complainant provides sufficient information.

§295.329. *Compliance: Inspections and Investigations.*

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

(c) A department representative conducting [in pursuance of] official duties is not required to notify in advance or seek permission to conduct inspections or investigations. It is a violation for any person to interfere with, deny, or delay an inspection or investigation conducted by a department representative. A department representative shall not be impeded or refused entry in the course of official duties by reason of any regulatory or contractual specification.

§295.330. *Compliance: Reprimand, Suspension, Revocation, Probation.*

(a) After notice of the opportunity for a hearing in accordance with subsection (d) of this section, the department may take any of the disciplinary actions outlined in subsection (c) of this section. ~~[If the department suspends a credential on an emergency basis, the department shall provide an opportunity for a hearing in accordance with subsection (d) of this section within 20 days.]~~

(b) (No change.)

(c) The department may issue an administrative penalty as described in §295.331 of this title (relating to Compliance: Administrative Penalty), deny an application, suspend, ~~[suspend on an emergency basis,]~~ suspend with probationary terms, or revoke a credential of a person who:

(1) (No change.)

(2) has fraudulently or deceptively obtained or attempted to obtain a ~~[the]~~ credential, ID card or approval, including engaging in misconduct or dishonesty during the state licensing examination, such as cheating or having another person take or attempt to take the examination for that person;

(3) - (6) (No change.)

(d) (No change.)

§295.331. *Compliance: Administrative Penalty.*

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

(d) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level I violations have or may have a direct negative impact on public health~~;~~ safety or welfare. This category includes fraud and misrepresentation. The penalty for a Level I violation may be up to \$5,000 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to \$5,000 per violation per day. Examples include but are not limited to:

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

(2) Serious violation. Severity Level II violations could compromise public health~~;~~ safety or welfare. The maximum penalty for Level II violations is \$2,500 per violation. Violations listed in subparagraphs (A) and (B) of this paragraph may be assessed at up to \$2,500 per violation per day. Examples include but are not limited to:

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

(3) Significant violation. Severity Level III violations, while not having a direct negative impact on health~~;~~ safety or welfare, could lead to more serious circumstances. The maximum penalty for Level III violations is \$1,000 per violation. Examples include but are not limited to:

(A) - (G) (No change.)

§295.332. *Compliance: Exception to the Administrative Penalty.*

(a) The commissioner may choose not to impose an administrative penalty under §295.331 of this title (relating to Compliance: Administrative Penalty) if, not later than the 10th day after the date on a written notice of a violation as provided under §295.333 of this title (relating to Compliance: Notice; Opportunity for Hearing; Order), the person charged with the violation provides ~~[exclusive]~~ evidence satisfactory to the department that the circumstances giving rise to the violation have been corrected and all actual damages are paid.

(b) (No change.)

§295.333. *Compliance: Notice; Opportunity for Hearing; Order.*

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

(d) If a person fails to request [exercise the opportunity for] a hearing, the commissioner, after determining that a violation occurred and the amount of penalty warranted, is authorized to impose a penalty and issue an order requiring the person to pay the penalty imposed.

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

§295.334. *Compliance: Options Following Administrative Order.*

(a) Not later than the 30th day after the date the commissioner's decision or order concerning an administrative penalty assessed under §295.331 of this title (relating to Compliance: Administrative Penalty) becomes final as provided by the Texas Government Code, ~~[Chapter 2001,]~~ §2001.144, (relating to Decisions; When Final) to the person against whom the penalty is assessed either shall pay the administrative penalty or shall file a petition for judicial review.

(b) A person who files a petition for judicial review can stay enforcement of the penalty either by paying the penalty to the commissioner for placement in an escrow account or by giving the commissioner a bond, in a form approved by the commissioner, ~~[that is]~~ for the amount of the penalty ~~[and]~~ that is effective until judicial review of the commissioner's decision or order is final.

§295.335. *Compliance: Collection of Administrative Penalty; Judicial Review.*

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

(c) After [If, after] judicial review, if the administrative penalty is reduced or is not upheld by the court, not later than the 30th day after the date of the determination, the commissioner shall:

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

§295.336. *Compliance: Civil Penalty.*

A person who violates the Act or this subchapter is liable for a civil penalty in an amount not to exceed \$2,000 for the first violation or \$10,000 for a second or subsequent [later] violation. The commissioner may request the Texas Attorney General or the district, county, or city

attorney having jurisdiction to bring an action to collect a civil penalty under this section.

§295.337. *Compliance: Injunctive Relief.*

The commissioner may request the Texas Attorney General or the district, county, or city attorney having jurisdiction to bring an action for a restraining order, injunction, or other relief the court determines [is] appropriate if it appears to the department that a person is violating or has violated the Act or this subchapter.

§295.338. *Civil Liability Exemption for Certain Property Owners or Governmental Entities.*

(a) A property owner is not liable for damages related to mold remediation on a property if a certificate of mold damage remediation has been issued under §295.327 of this title (relating to Photographs; Certificate of Mold Damage Remediation; Duty of Property Owner) for that property and the damages accrued on or before the date of the issuance of the certificate.

(b) A person is not liable in a civil lawsuit for damages related to a decision to allow occupancy of a property after mold remediation has been performed on the property if a certificate of mold damage remediation has been issued under §295.327 of this title for the property,

the property is owned or occupied by a governmental entity, including a school, and the decision was made by the owner, the occupier, or any person authorized by the owner or occupier to make the decision.

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 November 27, 2006.

TRD-200606369

Cathy Campbell

General Counsel

Department of State Health Services

Earliest possible date of adoption: January 7, 2007

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



WITHDRAWN RULES

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF 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

The Department of Assistive and Rehabilitative Services withdraws the proposed repeal of §§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 which appeared in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8225).

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

TRD-200606365

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: November 27, 2006

For further information, please call: (512) 424-4050

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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 Department of Assistive and Rehabilitative Services withdraws the proposed 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 which appeared in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8225).

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TRD-200606364

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: November 27, 2006

For further information, please call: (512) 424-4050

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the 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 10. COMMUNITY DEVELOPMENT PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 1. ADMINISTRATION SUBCHAPTER A. GENERAL POLICIES AND PROCEDURES

10 TAC §1.7

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §1.7, concerning the Staff Appeals Process. The amendments are adopted without changes to the proposed text, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7777), and will not be republished. The purpose of these amendments are to expand the grounds for appeal and define the necessary terms related to the expanded grounds. Clarifies timelines for filing of appeals and notice requirements beginning filing deadlines.

No comments were received by the Department concerning the proposed amendments.

The amendments are adopted pursuant to the authority of the Texas Government Code, Chapter 2306. The adopted amendments affect no other code, article or statute.

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 November 20, 2006.

TRD-200606298
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 10, 2006
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595



10 TAC §1.17

The Texas Department of Housing and Community Affairs (the Department) adopts amendments to §1.17, concerning Alternative Dispute Resolution and Negotiated Rulemaking. The amendments are adopted without changes to the proposed text, as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7781), and will not be republished. The purpose of this section is, in accordance with §2306.082,

to implement a policy to encourage the use of appropriate alternative dispute resolution procedures under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in the resolution of disputes under the Department's jurisdiction and the use of negotiated rulemaking procedures under Chapter 2008, Texas Government Code.

No comments were received by the Department concerning the proposed amendments.

The amendments are adopted pursuant to the authority of the Texas Government Code, Chapter 2306. The adopted amendments affect no other code, article or statute.

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 November 20, 2006.

TRD-200606297
Michael G. Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: December 10, 2006
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595



CHAPTER 5. COMMUNITY SERVICES PROGRAM SUBCHAPTER C. EMERGENCY SHELTER GRANTS PROGRAM

10 TAC §§5.200 - 5.211

The Texas Department of Housing and Community Affairs (the Department) adopts new §§5.200 - 5.211, concerning Emergency Shelter Grants Program (ESGP), as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7808). Technical changes were made to §§5.205, 5.209, and 5.211. Sections 5.200 - 5.204, 5.206 - 5.208, and 5.210 did not have changes, and therefore, will not be republished.

These sections are adopted to implement technical changes and in order to codify the regulations and requirements for administering the ESGP.

No public comment was received concerning the ESGP.

The new sections are adopted pursuant to the authority of the Texas Government Code, Chapter 2306.

No other code, articles or statutes are affected by the new sections.

§5.205. *Application Limitations.*

(a) **Eligible Applicants:** Units of general local government and private nonprofit organizations. The Department will accept collaborative applications. To be considered as a collaborative, the application must include two or more organizations that will use ESGP funds to provide services to the target population as part of a local continuum of care. If a unit of general local government applies for only one organization, this will not be considered a collaborative application. The Department intends for collaborative applications to be an effort among organizations who serve the homeless population to coordinate services and prevent duplication of services.

(b) **Award Amounts:**

(1) The Department has established a minimum of \$30,000 and a maximum of \$100,000 for ESG program awards per organization not applying as part of a collaborative application.

(2) An organization can submit only one application either as a single entity or as part of a collaborative effort.

(3) A collaborative application is limited to a maximum request of \$300,000, with a limit of \$100,000 per organization.

(4) The Department will not set limitations on the number of organizations that can be part of a collaborative application, but the Department recommends that collaborative applications be limited to no more than 5 organizations.

(5) Award limitations are based on the amount of ESGP funds estimated to be available to each region and the ESGP funding pattern utilized by the Department. The limitations are not to be interpreted as a commitment by the Department to award these amounts.

(6) All projects should be planned for a maximum of 12 months.

(7) Per HUD requirements, the Department will share a portion of the State's administrative funds with units of general local government (cities or counties) selected for ESGP funding. The amount shared will not exceed 4% of the subrecipient's ESGP award.

(8) The Department reserves the right to negotiate the final grant amounts and local match with successful applicants to ensure judicious use of ESGP funds. The Department may consider the amount of HUD funds awarded to entitlement entities when making funding decisions to applicants that are a unit of general local government. This consideration does not apply to private nonprofit organizations located in ESGP entitlement cities or counties.

(c) **Eligible Activities:** ESGP funds are designed to address the immediate needs of homeless persons to assist their movement to permanent housing. ESGP funds may be utilized to assist individuals and families who would actually become or remain homeless without ESGP homelessness prevention assistance. ESGP funds cannot be utilized to care for or assist children in State custody. The Department encourages applications that include an innovative approach to providing emergency shelter and/or transitional housing to homeless individuals and families. Transitional housing projects should be designed to provide housing and appropriate essential services to homeless persons in order to facilitate the movement of individuals or families to permanent housing within no more than 24 months. ESGP grant amounts may be used for one or more of the following activities:

(1) **Rehabilitation.** Rehabilitation is defined as the labor, materials, tools, and other costs of improving buildings. Examples of allowable rehabilitation projects include, but are not limited to,

accumulated deferred maintenance (replacing flooring), replacement of principle fixtures and components, improvements to increase energy efficiency (replacing a furnace or air conditioning unit), and structural changes necessary to make the facility accessible for persons with physical disabilities. Rehabilitation projects include deferred repairs for items that are inoperable or broken and in need of replacement prior to the submission of the ESGP application. Rehabilitation does not include non-deferred repairs. All rehabilitation activity funded through ESGP must occur within the existing structure, must not increase the square footage of the structure involved, and must comply with local government safety and sanitation requirements. (Refer to §504 of the Rehabilitation Act of 1973, as amended, as provided in 24 CFR 8.23(a) or (b)). Types of rehabilitation projects include:

(A) **Conversion:** a change in the use of a building to an emergency shelter or transitional housing where rehabilitation costs exceed 75% of the value of the building after conversion. If selected for funding, the organization must use the facility as a shelter for the homeless for at least 10 years.

(B) **Major rehabilitation:** rehabilitation or conversion involving costs in excess of 75% of the value of the building prior to the proposed rehabilitation or conversion. If selected for funding, the organization must use the facility as a shelter for the homeless for at least 10 years.

(C) **Renovation:** rehabilitation that involves costs of 75% or less of the value of the building prior to the proposed rehabilitation. If selected for funding, the organization must use the facility as a shelter for the homeless for at least 3 years.

(2) **Essential Services.** ESGP legislation limits essential services to 30% of the total State allocation. Therefore, the Department requires ESGP applications to limit requests for Essential Services activities to 30% of the proposed budget. Essential services activities address the immediate needs of homeless individuals and enable homeless persons to become more independent and/or to secure permanent housing.

(A) Essential services may include direct client services concerned with employment, health, drug abuse prevention, and education, including but not limited to: assistance in obtaining permanent housing; medical and psychological counseling and supervision; employment counseling, job placement, and job training (including tuition and books); nutritional counseling and the salary of food preparers (cooks); substance abuse treatment and counseling; assistance in obtaining other federal, state, and local assistance including mental health benefits, medical assistance, Veteran's benefits, and income support assistance such as Supplemental Security Income, Temporary Assistance for Needy Families, and Food Stamps; other services such as childcare, food vouchers, client clothing, or medical assistance (doctor visits, prescriptions, eye glasses or other prostheses, etc.); transportation costs directly associated with ESGP service delivery, such as bus tokens, bus fare, cab fare, airfare, salary of van driver, etc; and, salary for staff whose sole duty is to work directly with clients to provide the above services. Staff salaries may include wages and fringe benefits as described in the applicant organization's personnel policies. No administrative salaries may be paid with Essential Services funds.

(B) The application must include a job description for any position to be paid in full or in part with ESGP funds under this category.

(C) If the agency received local funds (locally generated tax revenue) from a unit of local government in the past 12 months, and if the ESGP application includes a request for funds to provide essential services, the Project Narrative must describe how the service(s) will be a new service or will result in a quantifiable increase in the

level of service that was provided with local funds during the previous 12 months.

(3) Maintenance, operation, and furnishings. ESGP funds may be used for maintenance, operation, furnishings, and equipment costs. The Department will accept applications that include Maintenance, Operation, and Furnishings as a part of the project or as the sole activity of a project.

(A) Maintenance costs include contract services for copier or security system maintenance, pest control, lawn care, contracted janitorial service, etc.

(B) Operation costs include administration, equipment, facility rent, utilities, internet service, and telephone; building maintenance and non-deferred repairs; food for shelter residents; vehicle maintenance, registration, repairs, and fuel; building or equipment insurance; fidelity bond coverage; office and maintenance supplies; contracted security services; single audit expenses (if required), staff mileage reimbursement (for travel relating to ESGP service delivery), and pre-award travel expenses (for successful applicants to attend an orientation workshop). Non-deferred repairs are items that break during the contract period, such as: repairing a window that is broken; repairs due to water damage; or repairing a broken furnace or air conditioning unit. Deferred repairs, classified as rehabilitation activities, are items which are inoperable or broken and in need of replacement prior to the application period. Operation administration may not exceed more than 10% of an applicant's ESGP budget may be requested for administrative salaries (including fringe benefits). Appropriate staff which may be charged as administrative staff are the executive director, program director, supervisors, administrative support staff, etc. Job descriptions for these positions are not required to be included in the ESGP application. Equipment may include computers, printers, software, refrigerator, stove, tools, vehicles, etc. All equipment with a useful life of more than one year and an acquisition cost of \$500 or more must be included in a cumulative inventory report submitted to the Department each contract year. Subrecipients who participate in a local Continuum of Care may use ESGP funds to facilitate the required Homeless Management Information System (HMIS) which may include the purchase of software and/or annual access fees to facilitate data collection and reporting of client-level information.

(C) Furnishings may include beds, mattresses, linens, desks, tables, chairs, etc.

(4) Homelessness Prevention. ESGP legislation limits homelessness prevention to 30% of the total State allocation. Homelessness Prevention funds may be used to assist individuals who are homeless or at risk of becoming homeless. The Department will accept applications that include Homelessness Prevention as a part of the project or as the sole activity of a project.

(A) Homelessness Prevention funds may be used to provide direct monetary assistance on behalf of individuals whose annual income is at or below the federal poverty guideline when all of the following conditions are met:

(i) The individual or family is unable to make the required payments due to a sudden reduction in income or a sudden increase in expenses;

(ii) The assistance is necessary to avoid the foreclosure, eviction, or termination of utility services (excluding telephone service);

(iii) There is reasonable prospect that the individual or family will be able to resume the payments within a reasonable period of time (determined by the applicant organization and used consistently among all clients); and

(iv) The assistance does not replace funding for pre-existing homelessness prevention activities from any other sources.

(B) Homelessness Prevention funds must be used to assist those individuals and families that would actually become or remain homeless without ESGP homelessness prevention assistance. Homelessness prevention funds may not be used to provide direct payments to individuals. Homelessness prevention assistance may include:

(i) Short-term subsidies to help defray rent and utility arrearages for families that have received a notice of eviction, termination of utility services, or payments to prevent the transfers;

(ii) Security deposits or first month's rent to enable a homeless family (or individuals in emergency/transitional housing) to acquire permanent housing;

(iii) Programs to provide mediation for landlord/tenant disputes;

(iv) Programs to provide legal services for the representation of indigent tenants in eviction proceedings;

(v) Payments to prevent foreclosure on a home; and,

(vi) Other innovative programs and activities designed to prevent the incidence of homelessness.

(vii) The Department may reserve funds from the 95% funds utilized for funding applicants for a special statewide homelessness prevention initiative designed to provide training and technical assistance necessary to prevent the incidence of homelessness. ESGP funds for the Special Initiative for Homelessness Prevention will be limited to two (2) eligible activities: maintenance, operation, furnishings; and homelessness prevention.

§5.209. Application Scoring.

(a) Standard Applications--The application content, tables, and narrative will be scored for each eligible application. The Department will also take into consideration information in §5.208 of this title and the score resulting from the scoring instrument will be adjusted based on the review of information in §5.208 of this title.

(b) Sections of Scoring Instrument for Standard Applications:

(1) APPLICATION CONTENT (15 POINTS) 1 Point will be awarded for the submission of each required item contained in the application packet:

(A) ESGP Application Form completed;

(B) Table of Contents includes page numbers;

(C) Project Narrative formatted with one-inch margins and with minimum 11 pt. type font;

(D) Project Narrative does not exceed 10 pages (2 additional pages per collaborator not to exceed 20 pages);

(E) Photographs, including at least two different views of the facility (one from the interior and one from the exterior) where assistance is to be provided. Collaborative applications must include two views of each collaborator's facility;

(F) Attachment A--(Standard Form 424) must include signature;

(G) Attachment C--(Board of Directors Roster) was completed thoroughly and homeless or formerly homeless representative was identified under the occupation column. Collaborative applications must include one form for each partner;

(H) Attachment D--(Attendance Roster) was completed and homeless or formerly homeless individual was identified. Collaborative applications must include one form for each partner;

(I) Copy of Bylaws and Articles of Incorporation--Copy of bylaws must include how the organization authorizes the governing board or policymaking entity to make policies and decisions. This document is required for each partner in a collaborative and Articles must describe mission and goals for which the organization was formed;

(J) Attachment I--Homeless Management Information System (HMIS) Reporting form is completed and signed;

(K) Attachment J--Previous ESGP Funding Form is completed correctly or indicates NA if not applicable;

(L) Attachment K--ESGP Applicant Certification form is signed;

(M) Attachment L--Certification Regarding Lobbying is signed;

(N) Attachment M--Audit Certification Form;

(O) Fidelity Bond or a letter of commitment to obtain one prior to the execution of an ESGP contract is included;

(P) For Applicants Requesting Rehabilitation Funds: (1 point deducted from sub-total for each of the following omissions)

(i) Attachment N (Preliminary Environmental Review Checklist);

(ii) Property Appraisal or reasonable method for determining property value;

(iii) Flood Plain Map, identifying the project;

(iv) Letter from the Texas Historical Commission regarding the historical significance of the facility (or a letter requesting a response);

(v) Photographs of area(s) to be renovated;

(vi) Request for city or county assistance with environmental review requirements (nonprofit applicants only).

(2) COMPLETION OF TABLES (30 POINTS)

(A) Budget Table--Attachment F (12 pts)

(i) Are budget items categorized in the appropriate budget category? Total points: Max. (2 pts)

(ii) Does the budget contain a brief description of each item? Total points: Max. (2 pts)

(iii) Does the budget contain the method of calculation for each category? Total points: Max. (2 pts)

(iv) Does the budget contain the basis of cost for each category? Total points: Max. (2 pts)

(v) Is the "Line Item Totals" column added correctly? Total points: Max. (2 pts)

(vi) Is the "Total Funds by Category" column added correctly? Total points: Max. (2 pts)

(vii) Possible deductions only:

(I) If requesting funds under Operations Administration did they exceed 10% of total funds requested? Yes (-2 pts)

(II) Is applicant requesting funds under Essential Services Category? If yes, does the amount requested exceed 30%? (-2 pts)

(III) Are job descriptions included for all positions under Essential Services? No (-2 pts)

(viii) For collaborative applications:

(I) Did the application include one budget table for each organization in the collaborative? No (-2 pts)

(II) Did the application include a comprehensive budget which includes all activities proposed by the collaborative effort? No (-2 pts)

(B) Match Table--Attachment G (8 pts)

(i) Does the total dollar value for match funds equal the total funds requested in budget table? Total points: Max. (2 pts)

(ii) Is the "Dollar Value" column added correctly? Total points: Max. (2 pts)

(iii) Does the match table include a brief description of the source of match for all resources included? Total points: Max. (2 pts)

(iv) Does the match table contain the method of calculation for all resources included? Total points: Max. (2 pts)

(v) Possible deductions only: Does the proposal include documentation of match resources related to the value of a building, rent, or lease on the building? (i.e. letter from a realtor or appraiser as to the fair market value of the property) No (-2 pts)

(C) Resource Documentation Table--Attachment H (10 pts)

(i) Submission of a Resource Documentation Table for each county served? Total points: Max. (3 pts)

(ii) Brief, concise, and complete description of the unmet needs or gaps in services for the homeless population in the service area? Total points: Max. (4 pts)

(iii) Completeness of Resource Documentation Table and inclusion of appropriate data sources? Total points: Max. (3 pts)

(3) NARRATIVE (50 POINTS)

(A) Description of Applicant Organization

(i) Organization and Services Provided (20 pts)

(I) How well the applicant describe the organization(s) history, mission, staff size, educational background and experiences of key staff. Total points: Max. (3 pts)

(II) Information regarding Board of Directors: Total points: Max. (4 pts)

(-a-) Describe information on regularity of board meetings;

(-b-) List all subcommittees;

(-c-) How Board utilized recommendation from homeless representative to change policies, practices, and services.

(III) Indicate the following: Total points: Max. (3 pts)

(-a-) Type of service provided;

(-b-) Total number of persons served annually and target group(s) served;

(-c-) Cities and/or counties to be served and shelter capacity (bed space).

(IV) Does it describe services which have a long-term impact/outcome on the homeless individuals served? Total points: Max. (5 pts)

(V) Does it describe case management services provided to homeless individuals? Total points: Max. (5 pts)

(VI) Does it include inappropriate or discriminatory service restrictions? If yes, please describe.

(ii) Coordination Efforts (10 pts)

(I) Describe how and for what types of services the organization coordinates with other service providers to meet the various needs of the homeless clients or clients who may become homeless. Total points: Max. (5 pts)

(II) For Collaborative Applications (possible deduction only): Did the application provide information on how and which services will be coordinated among the organizations included in the application? No (-5 pts)

(III) Describe the organization's participation in any local homeless coalition, social services coordination council development of the HUD required Consolidated Plan or similar document, and/or development of a "Continuum of Care" plan for the community in which the proposed services will be delivered? Total points: Max. (5 pts)

(iii) Previous ESGP Funding--If applicable (possible deduction only).

(I) How well does the narrative describe how ESGP funds improved or increased services? Max. (-2 pts)

(II) Does the narrative describe new sources of funds acquired during previous ESGP grants, including recent efforts made to develop other funding sources during the past 5 years and new funding received? Max. (-2 pts)

(B) Unmet Need: Identifying Unmet Need (10 pts)

(i) Does the narrative describe the unmet needs or gaps in services for the homeless population in the service area based on the data provided in the Resource Documentation Table? Total points: Max. (5 pts)

(ii) Does the narrative provide a description of the specific unmet need and/or gaps in services that the organization will meet based on the data provided in the Resource Documentation Table? Total points: Max. (5 pts)

(C) Proposed Use of ESGP funds: Detailed Description of the Project (10 pts)

(i) Does the narrative describe the customers? Total points: Max. (2 pts)

(I) Demographics

(II) Provides no demographics

(ii) Does the narrative state how many customers the organization plans to assist with ESGP services? Total points: Max. (1 pts)

(I) Numbers provided

(II) No numbers given or numbers not clear

(iii) For Essential Services Requests (possible deduction only):

(I) Does the narrative describe the essential services to be provided? No (-2 pts)

(II) Provide the name and title of the Essential Services staff whose salary will be paid in whole or in part with ESGP funds? No (-2 pts)

(III) Does the narrative state that the organization receives local funding? (funds generated by taxes levied by city or county)

(IV) If yes, does the narrative describe how the service(s) will be a new service and/or increase in the level of services to be provided? No (-2 pts)

(iv) For Maintenance, Operations, and Furnishings Requests (possible deduction only): Describe how the items funded with ESGP funds will benefit the organization's ability to deliver services? No (-2 pts)

(v) For Homelessness Prevention Requests (possible deduction only):

(I) A description of the Homeless Prevention to be provided with ESGP funds? No (-2 pts)

(II) Does the narrative include the staff member responsible for providing the homelessness prevention activities? No (-2 pts)

(III) Did the narrative include the criteria used to determine eligibility to receive assistance? No (-2 pts)

(IV) Did the narrative include the method for determining if the applicants meet conditions outlined under Eligible Activities? No (-2 pts)

(vi) For Rehabilitation Requests (possible deduction only):

(I) Include a description of the Rehabilitation activities to be funded with ESGP. No (-2 pts)

(II) Has the applicant included documentation of the facility's original construction date and is that date referenced in the narrative? Max. (-2 pts)

(III) If facility construction date is prior to 1978, has the applicant included a discussion of lead and/or asbestos abatement? No (-1 pts)

(IV) For non-profit applications, is documentation included which states that the city or county agrees to assist with environmental requirements? No (-2 pts)

(vii) Subcontractors (possible deductions only):

(I) Did the application include the names of subcontractors they will use to deliver services? No (-2 pts)

(II) Did the application provide a description of the services subcontractors will deliver? No (-2 pts)

(viii) Does the narrative describe how it plans to measure the effectiveness of the services provided to clients? Total points: Max. (5 pts)

(ix) Does the narrative provide a description of how the applicant will involve homeless individuals in rehabilitating, maintaining, operating, and/or providing services? Total points: Max. (2 pts)

(4) CONCLUSION (5 POINTS): Conclusion (5 pts) (Refer to page 19 of Application Packet)

(A) How well does the conclusion state the significant and beneficial impact(s) of the proposed project on the homeless population in the service area and describe the results or benefits to be achieved by carrying out the proposed activities? Total points: Max. (2 pts)

(B) Level of provision and description of outcome related services which have a long-term impact on the persons lives or if not currently providing such, description of plans to do so? Total points: Max. (3 pts)

(C) Special Initiative for Homelessness Prevention: The application content, tables, and narrative will be scored for each eligible application for Special Initiative for Homelessness Prevention. The Department will also take into consideration information in §5.208 of this title and the score resulting from the scoring instrument will be adjusted based on the review of information in §5.208 of this title.

(c) Sections of Scoring Instrument for Special Initiative for Homelessness Prevention Applications:

(1) APPLICATION CONTENT (15 POINTS) Check each item contained in the application packet (1 pt each). 1 Point for the submission of each item contained in the application packet.

(A) ESGP Application Form completed;

(B) Table of Contents includes page numbers;

(C) Project Narrative formatted with one-inch margins and with minimum 11 pt. type font;

(D) Project Narrative does not exceed 10 pages (2 additional pages per collaborator not to exceed 20 pages);

(E) Photographs, including at least two different views of the facility (one from the interior and one from the exterior) where assistance is to be provided. Collaborative applications must include two views of each collaborator's facility;

(F) Attachment A--(Standard Form 424) must include signature;

(G) Attachment C--(Board of Directors Roster) was completed thoroughly and homeless or formerly homeless representative was identified under the occupation column. Collaborative applications must include one form for each partner;

(H) Attachment D--(Attendance Roster) was completed and homeless or formerly homeless individual was identified. Collaborative applications must include one form for each partner;

(I) Copy of Bylaws and Articles of Incorporation--Copy of bylaws must include how the organization authorizes the governing board or policymaking entity to make policies and decisions. This document is required for each partner in a collaborative and Articles must describe mission and goals for which the organization was formed;

(J) Attachment I--Homeless Management Information System (HMIS) Reporting form is completed and signed;

(K) Attachment J--Previous ESGP Funding Form is completed correctly or indicates NA if not applicable;

(L) Attachment K--ESGP Applicant Certification form is signed;

(M) Attachment L--Certification Regarding Lobbying is signed;

(N) Attachment M--Audit Certification Form;

(O) Fidelity Bond or a letter of commitment to obtain one prior to the execution of an ESGP contract is included.

(2) COMPLETION OF TABLES (30 POINTS)

(A) Budget Table--Attachment F (12 pts)

(i) Are budget items categorized in the appropriate budget category? Total points: Max. (2 pts)

(ii) Does the budget contain a brief description of each item? Total points: Max. (2 pts)

(iii) Does the budget contain the method of calculation for each category? Total points: Max. (2 pts)

(iv) Does the budget contain the basis of cost for each category? Total points: Max. (2 pts)

(v) Is the "Line Item Totals" column added correctly? Total points: Max. (2 pts)

(vi) Is the "Total Funds by Category" column added correctly? Total points: Max. (2 pts)

(vii) Possible deductions only:

(I) If requesting funds under Operations Administration did they exceed 10% of total funds requested. Max. (-2 pts)

(II) Is applicant requesting funds under Essential Services Category? If yes, does the amount requested exceed 30%. Max. (-2 pts)

(III) Are job descriptions included for all positions under Essential Services? Max. (-2 pts)

(IV) For collaborative applications:

(-a-) Did the application include one budget table for each organization in the collaborative? Max. (-2 pts)

(-b-) Did the application include a comprehensive budget which includes all activities proposed by the collaborative effort? Max. (-2 pts)

(B) Match Table--Attachment G (8 pts)

(i) Does the total dollar value for match funds equal the total funds requested in budget table? Total points: Max. (2 pts)

(ii) Is the "Dollar Value" column added correctly? Total points: Max. (2 pts)

(iii) Does the match table include a brief description of the source of match for all resources included? Total points: Max. (2 pts)

(iv) Does the match table contain the method of calculation for all resources included? Total points: Max. (2 pts)

(v) Possible deductions only: Does the proposal include documentation of match resources related to the value of a building, rent, or lease on the building? (i.e. letter from a realtor or appraiser as to the fair market value of the property) Max. (2 pts)

(C) Resource Documentation Table--Attachment H (10 pts)

(i) Is there a table for each county served? Total points: Max. (3 pts)

(ii) Is the data provided presented briefly and concisely and is a summary of the homeless and poverty population in the counties? Total points: Max. (4 pts)

(iii) Are the tables complete and do they include appropriate data sources? Total points: Max. (3 pts)

(3) NARRATIVE (60 POINTS): Special Initiative Narrative (60 pts)

(A) Describe the organization's history and mission: Total points: Max. (6 pts)

(B) Involvement with homeless issues statewide: Total points: Max. (6 pts)

(C) Information regarding Board of Directors: Total points: Max. (4 pts)

(i) yes, (4 pts) does reflect a statewide presence and includes a homeless or formerly homeless representative.

(ii) no, (-4 pts) does not reflect a statewide presence and/or does not include a homeless or formerly homeless representative.

(D) Describe the organization's experience in providing statewide training and technical assistance (t/ta) to Continuum of Care (CoC). Total points: Max. (6 pts)

(E) Describe the organization's efforts at providing training and technical assistance to CoC applicants which resulted in awarding of grant funds: Total points: Max. (6 pts)

(F) Describe the organization's statewide experience with local coalition building: Total points: Max. (8 pts)

(G) Describe the organization's experience working with HUD programs: Total points: Max. (6 pts)

(H) Describes the proposed use of ESGP funds by category and subcategory: Total points: Max. (4 pts)

(I) Describe the proposed services/technical assistance or training to be delivered with ESGP funds: Total points: Max. (4 pts)

(J) Provides estimates on the number of t/ta sessions to be provided and information on whether subcontractors will be utilized: Total points: Max. (4 pts)

(K) Describes how the organization plans to measure the effectiveness of the services provided: Total points: Max. (6 pts)

§5.211. Program Administration.

Upon approval by the Board, Applicants receiving ESGP funds shall enter into and execute an agreement for the receipt of ESGP funds.

(1) Amendments. The Department, acting by and through its Executive Director or his/her designee, may authorize, execute, and deliver modifications and/or amendments to the ESGP contract.

(2) The Department reserves the right to deobligate funds.

(3) Faith-based subrecipients, as with all subrecipients funded under HUD-funded programs, must serve all eligible beneficiaries without regard to religion.

(4) Accounting Requirements. Within 90 days following the conclusion of a contract issued by the Department, the recipient shall provide a full accounting of funds expended under the terms of the contract. Failure of a recipient to provide a full accounting of funds expended under the terms of the contract shall be sufficient reason to terminate the contract and for the Department to deny any future contract to the recipient.

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 November 27, 2006.

TRD-200606360

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 17, 2006

Proposal publication date: September 15, 2006

For further information, please call: (512) 475-4595



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING THE JOB CORPS DIPLOMA PROGRAM

19 TAC §97.2001

The Texas Education Agency (TEA) adopts new §97.2001, concerning the Job Corps diploma program. The new section is adopted with a change to the proposed text as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8326). The new section implements the requirements of the Texas Education Code (TEC), §18.006, added by Senate Bill 1395, 79th Texas Legislature, 2005, that requires the commissioner to develop and implement a system of accountability to rate the annual performance of the Job Corps diploma program.

The TEC, §18.006, requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, 39.072. The statute provides for a Job Corps training program to establish a high school diploma program to operate public secondary schools at Job Corps facilities throughout the state.

The goals of a Job Corps diploma program are to: (1) serve at-risk students who have not been successful in a traditional school setting; (2) increase student success rates in obtaining and maintaining employment; and (3) decrease future societal costs by offering a high school diploma program to students who would benefit from Job Corps academic and vocational programs.

Adopted new 19 TAC §97.2001 implements the requirements of the TEC, §18.006, establishing accountability procedures for the Job Corps diploma program. The new rule delineates the intent and purpose of the program and specifies provisions relating to student eligibility and program requirements. The Job Corps diploma program will be required to offer, at a minimum, the necessary courses required for an eligible student to graduate by completing at least the requirements of the minimum high school program. Along with completing the requirements of the minimum high school program, eligible students will be required to satisfy the secondary exit-level assessments required for graduation before receiving a high school diploma.

Additionally, adopted new 19 TAC §97.2001 establishes in rule the Job Corps Diploma Program Accountability Procedures Manual, dated September 2006, which is included as a figure. The adopted new rule prescribes the specific procedures, standards, and performance indicators by which Job Corps diploma program evaluation and ratings will be based when issued in 2007. Adopted new 19 TAC §97.2001 also addresses the annual review of the program, program indicators, accountability ratings and criteria, and reporting of data.

In accordance with statute, the adopted new rule establishes that the annual evaluation of the Job Corps diploma program be based upon, at a minimum: (1) student performance on assessment instruments required under the TEC, §39.023; (2) dropout rate for the grade levels served; and (3) diploma program completion rate.

No changes were made to the text of the rule since published as proposed. However, one technical change was made on page 7 of the procedures manual to correct the submission date shown under Job Corps Diploma Program Data Collection and Reporting to December 20. This date is consistent with other references to the data submission deadline established in this manual.

Each Job Corps diploma program must submit all information as requested by the TEA through the approved format as determined by the commissioner of education, including certain data related to performance indicators selected from the Academic Excellence Indicator System (AEIS). The data will be used to determine the annual performance rating of each Job Corps diploma program and whether the Job Corps diploma program requires improvement, investigation, or sanction under the TEC, Chapter 39.

The public comment period on the proposal began October 6, 2006, and ended November 5, 2006. No public comments were received on the proposal.

The new section is adopted under the Texas Education Code (TEC), §18.006, which requires the commissioner to develop and implement a system of accountability consistent with the TEC, Chapter 39, where appropriate, to be used in assigning an annual performance rating to Job Corps diploma programs consistent with the ratings assigned to school districts under the TEC, §39.072.

The new section implements the Texas Education Code, §18.006.

§97.2001. *Job Corps Diploma Program Accountability Procedures.*

(a) Intent and purpose. The Job Corps diploma program develops and implements educational programs specifically designed for persons eligible for enrollment in a Job Corps training program established by the U.S. Department of Labor. The Job Corps training program was established in order for eligible students to satisfy the requirements necessary to receive a high school diploma.

(b) Student eligibility. A person is eligible to participate in the Job Corps diploma program if the person is enrolled in an established Job Corps training program and has not satisfied the state requirements to receive a high school diploma. Any person enrolled in good standing in the Job Corps diploma program is eligible for programs or services under the Texas Education Code (TEC), Chapter 18. A person's eligibility for programs and services under the TEC, Chapter 18, does not make a person ineligible for an education program or service under any other chapter of the TEC.

(c) Program requirements. The TEC, §1.001, applies to a Job Corps diploma program operated by or under contract with the U.S. Department of Labor.

(1) The Job Corps diploma program shall provide a course of instruction that includes the required curriculum under the TEC, §28.002, §74.1 of this title (relating to Essential Knowledge and Skills), and §74.3 of this title (relating to Description of a Required Secondary Curriculum).

(2) The Job Corps diploma program shall offer, annually, at least all the courses required for an eligible student to graduate under the applicable minimum high school program described in Chapter 74 of this title (relating to Curriculum Requirements).

(3) A student enrolled in the Job Corps diploma program must satisfy the secondary exit-level assessments required for graduation under the TEC, §39.025, before receiving a high school diploma.

(d) Accountability procedures. Job corps diploma program evaluations and ratings issued in 2007 are based upon specific procedures, standards, and performance indicators, which are described in the *Job Corps Diploma Program Accountability Procedures Manual*, dated September 2006, provided in this subsection. Figure: 19 TAC §97.2001(d)

(e) Annual review. The Texas Education Agency (TEA) shall conduct an annual review to evaluate Job Corps diploma program performance based on indicators provided in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section. The diploma program shall comply with all applicable requirements of state laws and rules.

(f) Performance indicators. Annually, the commissioner of education shall review and determine the student performance indicators appropriate to the characteristics of the students served by the Job Corps diploma program. The performance of the Job Corps diploma program shall be evaluated on the basis of the specific indicators as determined by the commissioner of education.

(1) The annual evaluation shall be based on, at a minimum, the following performance indicators:

(A) student performance on assessment instruments required under the TEC, §39.023;

(B) dropout rate for the grade levels served; and

(C) diploma program completion rate.

(2) To the extent appropriate, the annual performance review shall incorporate other indicators from the Academic Excellence Indicator System (AEIS) under the TEC, Chapter 39.

(g) Accountability ratings and criteria. The procedures for determining the Job Corps diploma program accountability ratings are established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(1) The Job Corps diploma program performance on selected AEIS indicators shall be used by the TEA in determining the annual performance rating of the Job Corps diploma program.

(2) A performance rating assigned to the Job Corps diploma program may be appealed to the commissioner of education in accordance with the procedures established in the *Job Corps Diploma Program Accountability Procedures Manual* described in subsection (d) of this section.

(3) The commissioner of education may lower the Job Corps diploma program accountability rating based on the findings of an on-site investigation conducted under the TEC, §39.074.

(4) If a Job Corps diploma program is below any standard under the TEC, §39.073(b), the program is considered a low-performing program. If the Job Corps diploma program is low performing for a period of two consecutive years or more, the commissioner of education may close the program.

(h) Reporting of data. The Job Corps diploma program shall report to the TEA accountability data on a submission schedule determined by the TEA. Performance data shall be disaggregated with respect to student attributes as determined by the commissioner of education.

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

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

TRD-200606309
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Effective date: December 10, 2006
Proposal publication date: October 6, 2006
For further information, please call: (512) 475-1497



TITLE 22. EXAMINING BOARDS

PART 6. TEXAS BOARD OF PROFESSIONAL ENGINEERS

CHAPTER 131. ORGANIZATION AND ADMINISTRATION

SUBCHAPTER A. ORGANIZATION OF THE BOARD

22 TAC §131.9

The Texas Board of Professional Engineers adopts an amendment to §131.9, relating to Officers of the Board, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7914) and will not be republished.

The adopted rule change provides for the appointment of a Board Treasurer and outlines the duties for the Treasurer.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-200606288
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 10, 2006
Proposal publication date: September 15, 2006
For further information, please call: (512) 440-7723



22 TAC §131.15

The Texas Board of Professional Engineers adopts an amendment to §131.15, relating to Committees, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7915) and will not be republished.

The adopted rule change provides for the appointment of a Board Treasurer.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



SUBCHAPTER F. ADMINISTRATION

22 TAC §131.81

The Texas Board of Professional Engineers adopts an amendment to §131.81, relating to Definitions, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7916) and will not be republished.

The adopted rule change adds a definition of "sole practitioner."

The Board received one comment from Mr. John Powell, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 133. LICENSING

SUBCHAPTER A. ENGINEER-IN-TRAINING

22 TAC §133.3

The Texas Board of Professional Engineers adopts an amendment to §133.3, relating to Engineer-in-Training Application and Certification, with a non-substantive change to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7916). The text of the rule will be republished.

The adopted rule change clarifies that an Engineer-in-Training (EIT) application must be completed within one year of the original application date or the application will expire. An EIT applicant must reapply after the application has expired.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

§133.3. Engineer-in-Training Application and Certification.

(a) To become enrolled as an Engineer-in-Training (EIT), an individual must:

(1) submit an EIT application,

(2) submit an official transcript in accordance with §133.33 or §133.35 of this chapter (relating to Proof of Educational Qualifications), and

(3) pay the fee as established by the board.

(b) A certificate as an engineer-in-training expires eight years from the date of issuance. Although the certificate has an expiration date, the records of the board will indicate that an individual has passed the Fundamentals of Engineering examination and these records will be maintained in the file indefinitely and will be made available as requested by the individual or another licensing jurisdiction.

(c) The certificate may be renewed upon payment of the EIT certification fee established by the board.

(d) Effective January 1, 2002, official transcripts will be kept on file and an EIT may request its use when filing the professional engineer application.

(e) If the applicant for EIT certification does not submit all documents required within one year of the original application date, the application shall expire and the applicant must reapply and pay a new application fee.

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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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER B. PROFESSIONAL ENGINEER LICENSES

22 TAC §133.13

The Texas Board of Professional Engineers adopts an amendment to §133.13, relating to Branches of Engineering, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7917) and will not be republished.

The adopted rule change removes language that is redundant in other sections of the rules.

The Board received one comment from Mr. John Powell, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-200606292

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



SUBCHAPTER G. EXAMINATIONS

22 TAC §133.75

The Texas Board of Professional Engineers adopts an amendment to §133.75, relating to Examination Irregularities, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7918) and will not be republished.

The adopted amendment provides for penalties related to violations of examination policies and procedures.

The Board received comments from two individuals, in favor of the rule change.

The Board received comments from one individual who expressed concerns that the rule change did not go far enough to prevent examination cheating and that the rule change included dismissal from an exam at the discretion of an exam proctor.

The licensure examinations are administered and proctored by Engineering and Land Surveying Examination Services (ELSES, LLC), and the Board works closely through that arrangement on examination security issues. At this time, the Board feels that examination security and proctoring are satisfactory and will continue to address exam procedures and any potential irregularities through its contractual arrangement with ELSES.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-200606293
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Effective date: December 10, 2006
Proposal publication date: September 15, 2006
For further information, please call: (512) 440-7723



SUBCHAPTER H. REVIEW PROCESS OF APPLICATIONS AND LICENSE ISSUANCE

22 TAC §133.81

The Texas Board of Professional Engineers adopts an amendment to §133.81, relating to the Receipt and Process of applications, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7919) and will not be republished.

The adopted rule differentiates the process for an application for licensure from an application to sit for the PE exam prior to meeting experience requirements for licensure. The adopted rule also removes a reference to reciprocal licensure.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

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Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
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For further information, please call: (512) 440-7723



22 TAC §133.97

The Texas Board of Professional Engineers adopts an amendment to §133.97, relating to the Issuance of a License, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7919) and will not be republished.

The adopted rule change clarifies the process to list a primary area of competency and to add or change additional areas of competency.

The Board received a comment from one individual, in favor of the rule change.

The Board received a comment from the Chair of the Texas Board of Architectural Examiners (TBAE), on behalf of TBAE and in opposition to the adoption of the rule. In summary, the commenter stated that if the proposed language was adopted, it could put certain engineers who demonstrate competency in the field of architectural engineering in violation of Texas Occupations Code, Chapter 1051. TBAE holds that a licensed professional engineer may not use the title "architectural engineer" unless they hold a degree in architectural engineering.

The adopted rule is not related to the issuance or use of any particular title by an engineer; rather, it provides for a mechanism to demonstrate and list areas of competency with the Board. A professional engineer licensed by the Board is not issued a title directly related to their area(s) of competency; rather, they are permitted to use the title "engineer" and certain variations of the title. The Engineering Practice Act, Occupations Code, §1001.004 and §1001.301, states that only a person licensed under that chapter may use the title "engineer" or engage in the practice of engineering. Sections 1001.302 and 1001.3003 outline the requirements to become licensed and thus demonstrate competency. In light of these statutory provisions, the Board disagrees with the comments submitted by the Chair and TBAE.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of

its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-200606295

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: December 10, 2006

Proposal publication date: September 15, 2006

For further information, please call: (512) 732-0011



CHAPTER 135. FIRM REGISTRATION

22 TAC §135.3

The Texas Board of Professional Engineers adopts an amendment to §135.3, relating to an Application for a Certificate of Registration, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7920) and will not be republished.

The adopted rule change adds the requirement that a business entity report their Federal Employer Identification Number (EIN) on their application. The adopted rule change also requires that a business entity list all license holders employed by the firm, not just regular, full-time employees.

The Board received a comment from an individual, generally in favor of the rule, but requesting a clarification and possible expansion of the rule language to include sole practitioners operating under a DBA. The Board considers the current language to provide for that contingency and made no change to the proposed rule language.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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

TRD-200606296

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: December 10, 2006

Proposal publication date: September 15, 2006

For further information, please call: (512) 440-7723



22 TAC §135.5

The Texas Board of Professional Engineers adopts an amendment to §135.5, relating to Renewal and Good Standing for business entities, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7921) and will not be republished.

The adopted rule change modifies a subchapter title in a rule citation.

The Board received a comment from an individual, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 137. COMPLIANCE AND PROFESSIONALISM

SUBCHAPTER A. INDIVIDUAL AND ENGINEER COMPLIANCE

22 TAC §137.14

The Texas Board of Professional Engineers adopts an amendment to §137.14, relating to Voluntary Surrender of License, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7921) and will not be republished.

The adopted rule change removes the requirement that a license holder return the license certificate to the Board.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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SUBCHAPTER C. PROFESSIONAL CONDUCT AND ETHICS

22 TAC §137.51

The Texas Board of Professional Engineers adopts an amendment to §137.51, relating to General Practice for business entities, with a non-substantive change to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8059) and will be republished.

The adopted rule change allows a sole practitioner to practice on a part-time basis and modifies a chapter title in a rule citation.

The Board received a comment from an individual, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

§137.51. General Practice.

(a) In order to safeguard, life, health and property, to promote the public welfare, and to establish and maintain a high standard of integrity and practice, the rules relating to professional conduct in this title shall be binding on every person holding a license and on all firms authorized to offer or perform engineering services in Texas.

(b) License holders having knowledge of any alleged violation of the Act and/or board rules shall cooperate with the board in furnishing such information or assistance as may be required.

(c) A license holder shall promptly answer all inquiries concerning matters under the jurisdiction of the board, and shall fully comply with final decisions and orders of the board. Failure to comply with these matters will constitute a separate offense of misconduct subject to any of the penalties provided under §1001.502 of the Act.

(d) Any license holder who directly or indirectly enters into any contract, arrangement, plan, or scheme with any person, firm, partnership, association, or corporation or other business entity which in any manner results in a violation of §137.77 of this title (relating to Firm Registration Compliance) shall be subject to legal and disciplinary actions available to the board. Professional engineers shall perform or directly supervise the engineering work of any subordinates as characterized in §131.81(10) of this title (relating to Definitions). Under no circumstances shall engineers work in a part-time arrangement with a firm not otherwise in full compliance with §137.77 of this chapter (relating to Firm Registration Compliance) in a manner that could enable such firm to offer or perform professional engineering services.

(e) A licensed professional engineer may offer or perform engineering services on a full or part-time basis as a firm (including a sole practitioner) or other business entity if registered pursuant to the requirements of Chapter 135 of this title (Relating to Firm Registration).

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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Dale Beebe Farrow, P.E.

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Texas Board of Professional Engineers

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SUBCHAPTER D. FIRM AND GOVERNMENTAL ENTITY COMPLIANCE

22 TAC §137.77

The Texas Board of Professional Engineers adopts an amendment to §137.77, relating to Firm Registration Compliance, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7922) and will not be republished.

The adopted rule change removes references to individual business entity types and refers to all business entities collectively as firms. The rule change also modifies a chapter title in a rule citation.

The Board received a comment from an individual, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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For further information, please call: (512) 440-7723



CHAPTER 139. ENFORCEMENT

SUBCHAPTER C. ENFORCEMENT PROCEEDINGS

22 TAC §139.31

The Texas Board of Professional Engineers adopts an amendment to §139.31, relating to Enforcement Actions, without changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7922) and will not be republished.

The adopted amendment clarifies language by removing an unnecessary citation.

No comments were received regarding the Board's adoption of the amended section.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

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22 TAC §139.35

The Texas Board of Professional Engineers adopts an amendment to §139.35, relating to Sanctions and Penalties, without changes to the proposed text as published in the September 22, 2006, issue of the *Texas Register* (31 TexReg 8060) and will not be republished.

The adopted rule change removes a reference to individual business entity types and refers to all business entities collectively as firms.

The Board received a comment from an individual, in favor of the rule change.

The amendment is adopted pursuant to the Texas Engineering Practice Act, Occupations Code §1001.202, which authorizes the board to make and enforce all rules and regulations and by-laws consistent with the Act as necessary for the performance of its duties, the governance of its own proceedings, and the regulation of the practice of engineering in this state.

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

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Dale Beebe Farrow, P.E.

Executive Director

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.7

The Texas State Board of Examiners of Psychologists adopts new §463.7, Criminal History Record Reports, without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6615).

The new section is being adopted to clarify to applicants and licensees the Board's intention to solicit criminal record checks.

The adopted new section will help to ensure protection of the public.

No comments were received regarding the adoption of the new section.

The new section is adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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TRD-200606330

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Effective date: December 11, 2006

Proposal publication date: August 25, 2006

For further information, please call: (512) 305-7706



CHAPTER 469. COMPLAINTS AND ENFORCEMENT

22 TAC §469.11

The Texas State Board of Examiners of Psychologists adopts amendments to §469.11, Legal Actions Reported, without changes to the proposed text as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6615).

The amendments are being adopted to standardize the time limit for reporting all types of legal actions to the Board to thirty days.

The adopted amendments will help to ensure protection of the public.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Occupations Code, Title 3, Subtitle I, Chapter 501, which provides the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

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TRD-200606331

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7706



TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 97. COMMUNICABLE DISEASES

SUBCHAPTER B. IMMUNIZATION

REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

25 TAC §97.63

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts an amendment to §97.63, concerning the statewide immunization requirements in Texas elementary and secondary schools and institutions of higher education. The amendment to §97.63 is adopted with changes to the proposed text as published in the July 28, 2006, issue of the *Texas Register* (31 TexReg 5895).

BACKGROUND AND PURPOSE

In accordance with the requirements of House Bill (HB) 1316 of the 79th Regular Session of the Texas Legislature (2005), which amended the Human Resources Code, §42.043, the amendment to 25 TAC §97.63, provides that children enrolled in child-care facilities, pre-kindergarten, or early childhood programs are required to be vaccinated against hepatitis A and invasive pneumococcal. In addition, the five-dose diphtheria-tetanus-pertussis containing vaccine requirement is clarified by providing that upon entry into kindergarten, students are required to have five

doses of a diphtheria-tetanus-pertussis containing vaccine, one of which must have been received on or after the fourth birthday or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

SECTION-BY-SECTION SUMMARY

Health and Safety Code, §81.023 requires the department to develop immunization requirements for children. These rule changes are being made concurrent with changes to 25 TAC §97.221, which contain the actual Immunization Schedule.

Section 97.63(2)(A)(i) provides that hepatitis A and invasive pneumococcal disease be included in the list of age-appropriate vaccinations provided to children enrolled in child-care facilities, pre-kindergarten, or early childhood programs, as required by HB 1316.

Section 97.63(2)(A)(ii), which states that hepatitis A be provided to children in only high incidence geographic areas as mandated, is deleted. Deletion is necessary to give full effect to HB 1316.

Section 97.63(2)(B)(ii)(I) has new language which provides that, upon entry into kindergarten, students are required to have five doses of a diphtheria-tetanus-pertussis containing vaccine one of which must have been received on or after the fourth birthday or, if the fourth dose was administered on or after the fourth birthday, only four doses are required. This is a clarification of the existing requirement.

Section 97.63(2)(B)(ii)(II) states that students seven years of age or older are required to have at least three doses of tetanus-diphtheria containing vaccine; the phrase, "who started their vaccinations after age" is deleted from the section. This is part of the clarification for §97.63(2)(B)(ii)(I).

Additionally, the amendment to §97.63 provides updates to the rule to reflect the current department organizational structure.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed amendment during the comment period, which the commission has reviewed and accepts. The commenters were the following entities: Pasadena Independent School District (ISD), Pharr-San Juan-Alamo ISD, Allen ISD, El Paso ISD, Irving ISD, Beaumont ISD, Pierce Early Childhood School, and Professional Software for Nurses, Inc. (PSNI). The commenters were not against the rule in its entirety; however, the commenters suggested recommendations for change.

Comment: Concerning rule language in §97.63(2)(B)(i)(I), two comments (Pharr-San Juan-Alamo ISD and Allen ISD) were received that suggested that clarity is needed as it pertains to the combination of four doses of OPV and IPV, which states, "If any combination of four doses of OPV and IPV was received before four years of age no additional dose is required."

Response: The commission disagrees and declines to make changes to the rule since the rule language is in accordance with the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices, and the commission believes that the language is clear as written. No change was made as a result of the comments.

Comment: Concerning the DTaP vaccine, one commenter (El Paso ISD) suggested that there be a statement included that addresses the grandfathering of older students regarding com-

pliance with the requirements when they received the booster doses of DTaP and/or polio vaccines in the calendar month of their fourth birthday or prior to their fourth birthday.

Response: The commission agrees that adding a statement regarding the scenario of students who received booster doses of DTaP and polio vaccines more than four days prior to their fourth birthday would clarify the rules and eliminate confusion. The following statement was added to §97.63(2)(B)(ii)(IV): "Children who were enrolled in school, in grades K-12, prior to August 1, 2004, and who received a booster dose of DTaP or polio vaccine in the calendar month of or prior to their fourth birthday, shall be considered in compliance with clause (i)(I) (polio) and clause (ii)(I) (DTaP) of this subparagraph."

Comment: Concerning the ages that the DTaP vaccine is recommended, four comments (Pharr-San Juan-Alamo ISD, Irving ISD, Pierce Early Childhood School, and PSNI) were received which stated that it is not clear whether or not students over the age of seven still need to have one of the three DTaP doses given after the age of four.

Response: The commission agrees that clarification is needed. A statement, "provided at least one dose was administered on or after the fourth birthday," is added to §97.63(2)(B)(ii)(II) to clarify this requirement, which is in accordance with the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices.

Comment: Concerning §97.63(2)(B)(viii), one commenter (Beaumont ISD) stated that all children in kindergarten through third grade should receive the Hepatitis A vaccine and not just those children in kindergarten through third grade who are located in a high incidence geographic area.

Response: The commission disagrees and declines to make changes to the rule language since the rule as written is consistent with the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. No change was made as a result of the comment.

Comment: Concerning the ages that the Hepatitis A vaccines are recommended, one commenter (El Paso ISD) asked that a statement be added to the rules regarding the allowance of administering the first dose of Hepatitis A as early as 12 months.

Response: The commission disagrees and declines to make the change to the rule since there is already a footnote located in 2006 Immunization Schedule in 25 TAC §97.221, which addresses the administering of the first dose of Hepatitis A as early as 12 months. No change was made as a result of the comment.

Comment: Concerning the ages that vaccines are recommended, one commenter (Allen ISD) stated that the "additions to §97.63 would be better served if MCV4 and Tdap be required for entry into 6th grade at the beginning of the school year and not as an age requirement."

Response: The commission disagrees and declines to make changes to the rule since the MCV4 and Tdap vaccines are not required, as the commenter seems to believe, but are simply recommended, which is in accordance with the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. No change was made as a result of the comment.

The following minor changes were made due to department staff comments.

In §97.63(2)(A), the word "disease" was deleted after the words "invasive pneumococcal" since the deletion of the word "disease" would provide a distinction between the vaccine and the disease. The word "diseases" was added after the word "varicella" to further clarify this distinction.

A typographical change was made to §97.63(2)(B)(i)(I), and §97.63(2)(B)(ii)(II) and (III) was revised for consistency.

LEGAL CERTIFICATION

The Department of State Health Services General Council, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is adopted under House Bill 1316 of the 79th Regular Session of the Texas Legislature (2005), and Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; 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.

§97.63. Immunization Requirements in Texas Elementary and Secondary Schools and Institutions of Higher Education.

Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the following immunization schedule.

(1) In accordance with the Department of State Health Services Immunization Schedule as informed by the Advisory Committee on Immunization Practices' (ACIP) recommendations and adopted by the Executive Commissioner of the Health and Human Services Commission and published in the *Texas Register* annually, for all vaccines herein, vaccine doses administered less than or equal to four days before the minimum interval or age shall be counted as valid.

(2) A child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school, or institution of higher education.

(A) Children enrolled in child-care facilities, pre-kindergarten, or early childhood programs shall have the following immunizations: Age-appropriate vaccination against diphtheria, pertussis, tetanus, poliomyelitis, *Haemophilus influenzae* type b, measles, mumps, rubella, hepatitis B, hepatitis A, invasive pneumococcal, and varicella diseases in accordance with the Department of State Health Services Immunization Schedule as informed by the Advisory Committee on Immunization Practices' (ACIP) recommendations and adopted by the Executive Commissioner of the Health and Human Services Commission and published in the *Texas Register* annually. A copy of the current schedule is available at www.ImmunizeTexas.com or by mail to the Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

(B) Students in kindergarten through twelfth grade shall have the following vaccines.

(i) Poliomyelitis.

(I) Upon entry into kindergarten, students are required to have four doses of polio vaccine one of which must have been received on or after the fourth birthday. Or, if the third dose was ad-

ministered on or after the fourth birthday only three doses are required. If any combination of four doses of OPV and IPV was received before four years of age no additional dose is required.

(II) Polio vaccine is not required for persons eighteen years of age or older.

(ii) Diphtheria/Tetanus/Pertussis.

(I) Upon entry into kindergarten, students are required to have five doses of a diphtheria-tetanus-pertussis containing vaccine one of which must have been received on or after the fourth birthday. Or, if the fourth dose was administered on or after the fourth birthday, only four doses are required.

(II) Students seven years of age or older are required to have at least three doses of a tetanus-diphtheria containing vaccine, provided at least one dose was administered on or after the fourth birthday. Any combination of three doses of a tetanus-diphtheria containing vaccine will meet this requirement.

(III) One dose of a tetanus-diphtheria containing vaccine is required within the last ten years.

(IV) Children who were enrolled in school, grades K-12, prior to August 1, 2004, and who received a booster dose of DTaP or polio vaccine in the calendar month of or prior to their fourth birthday, shall be considered in compliance with clause (i)(I) (polio) and clause (ii)(I) (DTaP) of this subparagraph.

(iii) Measles. Two doses of measles-containing vaccine are required. The first dose shall be administered on or after the first birthday.

(iv) Rubella. One dose of rubella vaccine received on or after the first birthday is required.

(v) Mumps. One dose of mumps vaccine received on or after the first birthday is required.

(vi) Hepatitis B.

(I) Three doses of hepatitis B vaccine are required for the following grades for the following school years:

(-a-) 2004-2005 for kindergarten through fifth grade and seventh through tenth grade;

(-b-) 2005-2006 for kindergarten through eleventh grade; and

(-c-) thereafter, beginning in school year 2006-2007, for all students in grades kindergarten through twelfth grade.

(II) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative regimens may be used to meet this requirement only when alternative regimens are fully documented. Such documentation must include vaccine manufacturer and dosage received for each dose of that vaccine.

(vii) Varicella. One dose of varicella vaccine received on or after the first birthday is required for the following grades for the following school years:

(I) 2004-2005 for kindergarten through fourth grade and seventh through tenth grade;

(II) 2005-2006 for kindergarten through fifth grade and seventh through eleventh grade; and

(III) thereafter, beginning in school year 2006-2007, for all students in grades kindergarten through twelfth grade.

Two doses are required if the child was thirteen years old or older at the time the first dose of varicella vaccine was received.

(viii) Hepatitis A. Upon entry into kindergarten through third grade, two doses of hepatitis A vaccine are required for students attending a school located in a high incidence geographic area as designated by the department. The first dose shall be administered on or after the second birthday. A list of geographic areas for which hepatitis A is mandated shall be published in the *Texas Register* on an annual basis and is available at www.ImmunizeTexas.com, or by mail request at Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756.

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

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TRD-200606274

Cathy Campbell

General Counsel

Department of State Health Services

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



SUBCHAPTER J. DEPARTMENT OF STATE HEALTH SERVICES IMMUNIZATION SCHEDULE

25 TAC §97.221

The Executive Commissioner of the Health and Human Services Commission (commission) on behalf of the Department of State Health Services (department) adopts an amendment to §97.221, concerning the Department of State Health Services Immunization Schedule, in accordance with the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. The amendment to §97.221 is adopted without changes to the proposed text as published in the July 21, 2006, issue of the *Texas Register* (31 TexReg 5752), and the section will not be republished.

BACKGROUND AND PURPOSE

The amendment to §97.221 is adopted under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; and, in accordance with the most recent recommendations of the Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices (the department must adopt the ACIP recommendations as a condition for receiving federal grant money). The amendment to §97.221, Department of State Health Services Immunization Schedule, serves as an updated immunization guide to directors and school nurses at child-care facilities, public or private primary and secondary schools, and institutions of higher education for administering recommended and mandatory age-appropriate vaccinations. Physicians and hospitals benefit from the updated version of the Department of State Health Services Immunization Schedule as a guide for determining age-appropriate vaccination of their patients. The 2006 Advisory Committee on Immunization Practices, the American Academy of Pediatrics (AAP), and

the American Academy of Family Physicians (AAFP) approved the recommendations and format of the childhood and adolescent immunization schedule and catch-up schedule for January - December 2006. The schedule is also available on the Immunization Branch's web site at www.ImmunizeTexas.com.

SECTION-BY-SECTION SUMMARY

The department rule in 25 TAC §97.63(2)(A), references certain parts of the immunization schedule, and makes those vaccines mandatory according to the stated schedule. Other references to the schedule in department rule do not make the schedule mandatory, but are merely recommendations.

The substantive changes to the 2006 Department of State Health Services Immunization Schedule are for the following additional vaccines:

Meningococcal conjugate vaccine (MCV4) for all children ages 11-12 years, as well as to unvaccinated adolescents at high school entry (age 15 years), is now included in the 2006 Immunization Schedule; the previous 2005 Immunization Schedule did not include this vaccine.

A new tetanus toxoid, reduced diphtheria toxoid, and acellular pertussis vaccine for adolescents (Tdap adolescent preparation) has been added to the 2006 Schedule. Tdap is recommended for adolescents aged 11-12 years who have completed the recommended childhood diphtheria and tetanus toxoids and pertussis/diphtheria and tetanus toxoids and acellular pertussis (DTP/DTaP) vaccination series and have not received a tetanus and diphtheria toxoids (Td) booster dose.

In addition, substantive changes to the following existing vaccine recommendations were also made:

Hepatitis B vaccine birth dose is recommended for all newborns. In the previous Immunization Schedule, the Hepatitis B vaccine was recommended at 1-2 months, but could be administered at birth.

Influenza vaccine is now recommended for children aged ≥6 months with certain risk factors, which now specifically includes conditions that can compromise respiratory function or handling of respiratory secretions or that can increase the risk for aspiration. This was not previously included in the 2005 recommendations.

Hepatitis A vaccine is now universally recommended for all children at age 1 year (12-23 months). The previous recommendation was for children located only in certain high-risk areas.

The catch-up schedule for persons aged 7-18 years has been changed for Td. Now, Tdap may be substituted for any dose in a primary catch-up series or as a booster if age appropriate for Tdap. A 5-year interval from the last Td dose is encouraged when Tdap is used as a booster dose.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed amendment during the comment period, which the commission has reviewed and accepts. The commenters were the following entities: Pasadena Independent School District (ISD), Allen ISD, and Brentwood Christian School. The commenters were not against the rule in its entirety; however, the commenters suggested recommendations for change.

Comment: Concerning the recent vaccine recommendations, all three commenters addressed the rationale for adding the "re-

quired" vaccines to the Department of State Health Services Immunization Schedule.

Response: The commission disagrees and declines to make changes to the rule. Physicians and hospitals benefit from the updated version of the Department of State Health Services Immunization Schedule as a guide for determining age-appropriate vaccination of their patients. The changes that were made to the proposed rule were related to recommended vaccines. 25 TAC §97.63(2)(A), references certain parts of the immunization schedule, and makes those vaccines mandatory according to the stated schedule. Other parts of the schedule in §97.221 are merely recommendations, and those recommendations come from the most recent recommendations of the federal Centers for Disease Control and Prevention's Advisory Committee on Immunization Practices. No changes were made as a result of comments.

LEGAL CERTIFICATION

The Department of State Health Services General Council, Cathy Campbell, certifies that the rule, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendment is adopted under Health and Safety Code, §81.023, which requires the department to develop immunization requirements for children; 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.

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Cathy Campbell

General Counsel

Department of State Health Services

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



CHAPTER 129. OPTICIANS' REGISTRY

25 TAC §§129.1, 129.2, 129.4, 129.5, 129.7 - 129.13

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), adopts amendments to §§129.1, 129.2, 129.4, 129.5 and 129.7 - 129.13, concerning the voluntary registration and regulation of opticians without changes to the proposed text as published in the August 18, 2006, issue of the *Texas Register* (31 TexReg 6455) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments implement requirements adopted by the 79th Texas Legislature, Regular Session (2005), House Bill (HB) 2680, located in Occupations Code, Chapter 112, relating to reduced fees and continuing education requirements for retired health professionals, including voluntarily registered opticians engaged in the provision of voluntary charity care. The amendments also implement Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 129.1, 129.2, 129.4, 129.5 and 129.7 - 129.13 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

An amendment to §129.1 reflects a clarification to add the word "registered". Amendments to §129.2 reflect changes to the department's name, the abolishment of the "Board of Health"; and the addition of "Executive Commissioner". The section has also been renumbered to reflect deletions and insertions. Amendments to §129.4 reflect the new reduced fee for renewal for a retired optician providing voluntary charity care required by HB 2680 of \$50 (for a retired optician holding one registration) and \$80 (for a retired optician holding a dual registration) for each two-year renewal. Amendments to §§129.4, 129.5, 129.7, and 129.10 - 129.12 reflect changes to the department's name. Amendments to §129.8 reflect the renewal requirements for a retired optician providing voluntary charity care required by HB 2680. Amendments to §129.9 reflect the reduced continuing education requirements for a retired optician providing voluntary charity care required by HB 2680. Amendments to §129.13 reflect changes to the department's name and wording changes related to prescription verification.

PUBLIC COMMENT

The department, on behalf of the commission, received one comment from the Registered Opticians Association of Texas on the proposed rules during the comment period.

Comment: The commenter requested that the department amend §129.9 (Requirements for Continuing Education) to restrict the types of continuing education classes registered opticians may take to satisfy renewal requirements. The restriction would limit registrants to only Intermediate and Advanced continuing education classes approved by the American Board of Opticianry and National Contact Lens Examiners.

Response: The commission disagrees because the comment proposes imposing more stringent requirements for continuing education than presently exist in the rules. Making a substantial change to a rule after public comment has been received and without posting the new rule for public comment is not permitted by the Administrative Procedure Act, Government Code, Chapter 2001. 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.

STATUTORY AUTHORITY

The amendments are adopted under by Occupations Code, Chapter 352; and Health and Safety Code, §12.0111, which requires the department to charge fees for issuing or renewing a license; 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. Review of the rules implements Government Code, §2001.039.

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 November 27, 2006.

TRD-200606359

Cathy Campbell

General Counsel

Department of State Health Services

Effective date: December 17, 2006

Proposal publication date: August 18, 2006

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



TITLE 28. INSURANCE

PART 3. TEXAS CERTIFIED SELF-INSURER GUARANTY ASSOCIATION

CHAPTER 181. BYLAWS

28 TAC §181.1

The Texas Certified Self-Insurer Guaranty Association (Association) adopts amendments to §181.1, concerning the Bylaws of the Association, as proposed in the June 2, 2006, issue of the *Texas Register* (31 TexReg 4561). The amendments are adopted without changes and the rule will not be republished.

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

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

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

The Association received no comments on the proposal.

The amendments are adopted under the Texas Labor Code, Chapter 407, Subchapter G, §407.123, which authorizes the

Board of Directors of the Association, subject to approval of the DWC Commissioner, to adopt rules necessary to operate the Association.

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 November 21, 2006.

TRD-200606347

Judy Roach

Executive Director

Texas Certified Self-Insurer Guaranty Association

Effective date: December 11, 2006

Proposal publication date: June 2, 2006

For further information, please call: (512) 322-0514



TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 115. CONTROL OF AIR POLLUTION FROM VOLATILE ORGANIC COMPOUNDS

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§115.10, 115.119, 115.129, 115.139, 115.149, 115.219, 115.239, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539. Sections 115.149 and 115.239 are adopted *with changes* to the proposed text as published in the July 14, 2006, issue of the *Texas Register* (31 TexReg 5558). Sections 115.10, 115.119, 115.129, 115.139, 115.219, 115.319, 115.359, 115.419, 115.439, 115.449, 115.519, and 115.539 are adopted *without changes* to the proposed text and will not be republished.

These amended sections will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The Federal Clean Air Act (FCAA) Amendments of 1990 as codified in 42 United States Code (USC), §§7401 *et seq.* require EPA to set national ambient air quality standards (NAAQS) to ensure public health, and to designate areas as either in attainment or nonattainment with the NAAQS, or as unclassifiable. States are primarily responsible for ensuring attainment and maintenance of the NAAQS once the EPA has established them. Each state is required to submit a SIP to the EPA that provides for attainment and maintenance of the NAAQS.

The Dallas-Fort Worth area, consisting of four counties (Collin, Dallas, Denton, and Tarrant), was designated nonattainment and classified as moderate for the one-hour ozone NAAQS in accordance with the 1990 FCAA Amendments, and was required to attain the one-hour ozone NAAQS by November 15, 1996. A SIP was submitted based on a volatile organic compound (VOC) reduction strategy, but the Dallas-Fort Worth area did not attain the NAAQS by the mandated deadline. Consequently, in 1998

the EPA reclassified the Dallas-Fort Worth area from "moderate" to "serious," resulting in a requirement to submit an additional SIP revision demonstrating attainment by the new deadline of November 15, 1999.

The Dallas-Fort Worth area also failed to reach attainment by the November 15, 1999, deadline. In the attainment demonstration SIP revision adopted by the commission in April 2000, the importance of local nitrogen oxides (NO_x) reductions as well as the transport of ozone and its precursors from the Houston-Galveston-Brazoria ozone nonattainment area (HGB area) were considered. Based on photochemical modeling demonstrating transport from the HGB area, the agency requested an extension of the Dallas-Fort Worth area attainment date to November 15, 2007, the same attainment date as for the HGB area, in accordance with an EPA policy allowing extension of attainment dates due to transport of pollutants from other areas.

The EPA transport policy was later overturned by three federal courts, including the Court of Appeals for the 5th Circuit, which ruled in *Sierra Club et. al v. EPA*, 314 F. 3d 735 (2002), that EPA did not have authority to extend an area's attainment date based on transport. Although the Dallas-Fort Worth area was not the specific subject of any of these suits, the Dallas-Fort Worth area one-hour ozone attainment demonstration SIP, including an extended attainment date, was not approvable by EPA.

On July 18, 1997, EPA promulgated a revised ozone standard (the eight-hour ozone NAAQS) (62 FR 38856). The eight-hour ozone NAAQS was challenged by numerous litigants and ultimately upheld by the United States Supreme Court in February 2001. On April 30, 2004, EPA promulgated the first phase of the implementation rules for the eight-hour ozone NAAQS (Phase I Implementation Rule) (69 FR 23951). Also on April 30, 2004, the Dallas-Fort Worth area was designated as nonattainment and classified as moderate for the eight-hour ozone NAAQS. Five additional counties (Ellis, Johnson, Kaufman, Parker, and Rockwall) were added to the Dallas-Fort Worth eight-hour ozone nonattainment area (DFW area). Effective June 15, 2004, the DFW area consists of nine counties (Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant) that are nonattainment for the eight-hour ozone NAAQS. The DFW area must attain the eight-hour ozone NAAQS by June 15, 2010.

EPA's Phase I Implementation Rule provided three options for eight-hour ozone nonattainment areas that do not have an approved one-hour ozone attainment SIP: (1) submit a one-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation (June 15, 2005); (2) submit an eight-hour ozone attainment demonstration no later than one year after the effective date of the eight-hour ozone designation, which is June 15, 2005, that provides for a 5% increment of progress (IOP) emission reduction from the area's 2002 emissions baseline that is in addition to federal and state measures already approved by EPA, and to achieve these reductions by June 15, 2007; or (3) submit an eight-hour ozone attainment demonstration by June 15, 2005. Options one and three required successful photochemical grid modeling performance. Based on poor model performance, the commission, in consultation with EPA, determined that option two was the most expeditious approach to achieve the emission reductions ultimately needed to meet the June 15, 2005, transportation conformity deadline and attain the eight-hour ozone NAAQS by June 15, 2010. Therefore, the commission adopted a 5% IOP Plan in April 2005 and submitted it to EPA.

On November 29, 2005, EPA subsequently finalized its Phase II Implementation Rule for the eight-hour ozone NAAQS (Phase II Implementation Rule) (70 FR 71612). The Phase II Implementation Rule provides guidance and requirements for the remaining elements of the program to implement the eight-hour ozone NAAQS.

FCCA, §182(b)(2)(C), requires that reasonably available control technology (RACT) be implemented in nonattainment areas designated as moderate and above for the ozone NAAQS. The purpose of this rulemaking is to implement RACT controls for VOC emission sources in the five newly designated nonattainment counties. RACT for NO_x emission sources will be addressed, if necessary, in other rulemaking actions.

The adopted rulemaking subjects owners or operators of certain VOC-emitting facilities located in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW nonattainment area are subject. The definition of "Dallas/Fort Worth area" in §115.10 has been amended to include the five additional counties. The definition of "Covered attainment counties" was also amended to remove these five counties. Compliance dates have been added to specify when the owners or operators of newly affected facilities must achieve compliance with the requirements. The EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701) requires the implementation of RACT as expeditiously as practicable, but no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard. Since the five additional counties were designated on June 15, 2004, the required compliance date for RACT is March 1, 2009.

Rules in Subchapter C, Volatile Organic Compound Transfer Operations, Division 2, Filling of Gasoline Storage Vessels (Stage I) for Motor Vehicle Fuel Dispensing Facilities and Subchapter E, Solvent-Using Processes, Division 2, Surface Coating Processes, were made applicable to the additional counties as part of the 5% IOP SIP adopted on April 27, 2005, and are not part of this adopted rulemaking. Rules in Subchapter B, Division 5, Municipal Solid Waste Landfills, are not part of this rulemaking because information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Rules in Subchapter C, Division 4, Control of Vehicle Refueling Emissions (Stage II) at Motor Vehicle Fuel Dispensing Facilities, are not part of this adopted rulemaking because of the decreased cost-effectiveness of these controls with the increased market penetration of motor vehicles equipped with on-board refueling vapor recovery. The Stage II rules continue to apply to the four-county one-hour ozone nonattainment area.

SECTION BY SECTION DISCUSSION

Grammatical, style, and other non-substantive corrections are made throughout the rulemaking to be consistent with Texas Register requirements, to improve readability, and to conform to the drafting standards in the *Texas Legislative Drafting Manual*, November 2004.

Subchapter A, Definitions

The adopted amendment to §115.10 revises the definitions of "Covered attainment counties" and "Dallas/Fort Worth area" by moving Ellis, Johnson, Kaufman, Parker, and Rockwall Counties from the "Covered attainment counties" definition to the "Dal-

las/Fort Worth area" definition. The current definitions include these counties as part of the "Dallas/Fort Worth area" definition only for the purposes of Subchapter C, Division 2, and Subchapter E, Division 2. The adopted amendment includes the five counties as part of the "Dallas/Fort Worth area" definition for all sections of Chapter 115, except Subchapter B, Division 5. Information in permit and emissions inventory files indicates that no existing municipal solid waste landfills in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties would be subject to the control requirements in this division. Any new landfills would be subject to federal control requirements. For these reasons, no emission reductions would be expected from extension of the landfill control requirements to the five counties. Therefore, applying the requirements to the five counties is not required for RACT.

Subchapter B, General Volatile Organic Compound Sources

Division 1, Storage of Volatile Organic Compounds

The adopted amendment to §115.119, Counties and Compliance Schedules, deletes language in subsections (a) and (b) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held shall continue to comply with the division as required by §115.930. Subsection (b) has been changed to specify that the owner or operator of each stationary tank, reservoir, or other container in which any VOC is placed, stored, or held in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Vent Gas Control

The adopted amendment to §115.129, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each vent gas stream in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Water Separation

The adopted amendment to §115.139, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each VOC water separator in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Industrial Wastewater

The adopted amendment to §115.149, Counties and Compliance Schedules, deletes language in subsections (a) - (g) that is no longer needed due to the passing of the specified compliance dates. Subsection (a) has been changed to specify that the owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with the division as required by §115.930. In response to a comment, the order of the counties has been changed in the adopted rule so that they are in proper alphabetical order. Subsection (b) has been changed to specify that the owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter C, Volatile Organic Compound Transfer Operations

Division 1, Loading and Unloading of Volatile Organic Compounds

The adopted amendment to §115.219, Counties and Compliance Schedules, adds subsection (d) to specify that the owner or operator of each VOC transfer operation in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline terminals and gasoline bulk plants in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline terminals and gasoline bulk plants shall continue to comply with those requirements until the facility achieves compliance with the newly applicable requirements.

Division 3, Control of Volatile Organic Compound Leaks from Transport Vessels

The adopted amendment to §115.239, Counties and Compliance Schedules, adds subsection (c) to specify that the owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701). Because gasoline tank-truck tanks in Ellis, Johnson, Kaufman, Parker, or Rockwall Counties are already subject to control requirements specified for covered attainment counties, the adopted rule also specifies that owners or operators of gasoline tank-truck tanks shall continue to comply with those requirements until the facility achieves compliance

with the newly applicable requirements. The adopted rule corrects a capitalization error in §115.269(c) of the proposal.

Subchapter D, Petroleum Refining, Natural Gas Processing, and Petrochemical Processes

Division 1, Process Unit Turnaround and Vacuum-Producing Systems in Petroleum Refineries

The adopted amendment to §115.319, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Fugitive Emission Control in Petroleum Refining, Natural Gas/Gasoline Processing, and Petrochemical Processes in Ozone Nonattainment Areas

The adopted amendment to §115.359, Counties and Compliance Schedules, deletes language in paragraphs (2) and (3) that is no longer needed due to the passing of the specified compliance dates. The remaining existing language and the language in paragraph (1) have been designated as subsection (a). Subsection (b) has been added to specify that the owner or operator of each affected source in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter E, Solvent-Using Processes

Division 1, Degreasing Processes

The adopted amendment to §115.419, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 3, Flexographic and Rotogravure Printing

The adopted amendment to §115.439, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the

eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 4, Offset Lithographic Printing

The adopted amendment to §115.449, Counties and Compliance Schedules, adds subsection (f) to specify that the owner or operator of all offset lithographic printing presses on a property that, when uncontrolled, emit a combined weight of VOC equal to or greater than 50 tons per calendar year in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Subchapter F, Miscellaneous Industrial Sources

Division 1, Cutback Asphalt

The adopted amendment to §115.519, Counties and Compliance Schedules, adds subsection (c) to specify that all affected persons in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

Division 2, Pharmaceutical Manufacturing Facilities

The adopted amendment to §115.539, Counties and Compliance Schedules, designates the existing language as subsection (a) and adds subsection (b) to specify that the owner or operator of each affected pharmaceutical manufacturing facility in Ellis, Johnson, Kaufman, Parker, or Rockwall County shall comply with the applicable requirements as soon as practicable, but no later than March 1, 2009. This change is necessary to ensure that RACT requirements for control of VOC emissions in these five counties are implemented no later than the first ozone season (or portion of) that occurs 57 months after designation for the eight-hour ozone standard, as specified in the EPA eight-hour ozone Phase II Implementation Rule (70 FR 71701).

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined the adopted rulemaking does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure, and may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to protect the environment and to reduce risks to human health from environmental exposure. However, as discussed in the fiscal note, the commission finds the adopted rulemaking will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety in the DFW area.

Therefore, the adopted rulemaking does not meet the definition of a "major environmental rule."

Even if the adopted rulemaking is determined to meet the definition of a major environmental rule, the adopted rulemaking does not meet any of the four applicability criteria for requiring a regulatory impact analysis for a major environmental rule, which are listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225, applies only to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The rulemaking is adopted to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Specifically, the adopted rulemaking subjects owners or operators of certain VOC-emitting facilities in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties to the same control, monitoring, testing, recordkeeping, and reporting requirements to which owners or operators of facilities in the other four counties in the DFW eight-hour ozone nonattainment area are subject.

The adopted rulemaking is intended to protect the environment and to reduce risks to human health and safety from environmental exposure by reducing VOC emissions from sources subject to control requirements in Chapter 115, Subchapter B, Divisions 1 - 4; Subchapter C, Divisions 1 and 3; Subchapter D, Divisions 1 and 3; Subchapter E, Divisions 1, 3, and 4; and Subchapter F, Divisions 1 and 2.

The adopted rulemaking implements requirements of the FCAA. Under 42 USC, §7410, each state is required to adopt and implement a SIP containing adequate provisions to implement, maintain, and enforce the NAAQS within the state. While 42 USC, §7410 generally does not require specific programs, methods, or reductions in order to meet the standard, state SIPs shall include "enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this chapter" (meaning Chapter 85, Air Pollution Prevention and Control, otherwise known as the FCAA). The provisions of the FCAA recognize states are in the best position to determine what programs and controls are necessary or appropriate in order to meet the NAAQS. This flexibility allows states, affected industry, and the public to collaborate on the best methods for attaining the NAAQS for the specific regions in the state. Even though the FCAA allows states to develop their own programs, this flexibility does not relieve a state from developing a program that meets the requirements of 42 USC, §7410. States are not free to ignore the requirements of 42 USC, §7410, and shall develop programs to assure their SIPs provide for implementation, maintenance, and enforcement of the NAAQS within the state.

The requirement to provide a fiscal analysis of adopted regulations in the Texas Government Code was amended by Senate Bill (SB) 633 during the 75th Legislature, 1997. The intent of SB 633 was to require agencies to conduct a regulatory impact analysis of extraordinary rules. These are identified in the statutory

language as major environmental rules that will have a material adverse impact and will exceed a requirement of state law, federal law, or a delegated federal program, or are adopted solely under the general powers of the agency. With the understanding that this requirement would seldom apply, the commission provided a cost estimate for SB 633 that concluded "based on an assessment of rules adopted by the agency in the past, it is not anticipated the bill will have significant fiscal implications for the agency due to its limited application." The commission also noted the number of rules that would require assessment under the provisions of the bill was not large. This conclusion was based, in part, on the criteria set forth in the bill that exempted rules from the full analysis unless the rule was a major environmental rule that exceeds a federal law.

As discussed earlier in this preamble, the FCAA does not always require specific programs, methods, or reductions in order to meet the NAAQS; thus, states shall develop programs for each area contributing to nonattainment to help ensure those areas will meet the attainment deadlines. Because of the ongoing need to address nonattainment issues, and to meet the requirements of 42 USC, §7410, the commission routinely proposes and adopts SIP rules. The legislature is presumed to understand this federal scheme. If each rule adopted for inclusion in the SIP was considered to be a major environmental rule that exceeds federal law, then every SIP rule would require the full regulatory impact analysis contemplated by SB 633. This conclusion is inconsistent with the conclusions reached by the commission in its cost estimate and by the Legislative Budget Board (LBB) in its fiscal notes. Since the legislature is presumed to understand the fiscal impacts of the bills it passes, and that presumption is based on information provided by state agencies and the LBB, the commission believes the intent of SB 633 was only to require the full regulatory impact analysis for rules that are extraordinary in nature. While the SIP rules will have a broad impact, that impact is no greater than is necessary or appropriate to meet the requirements of the FCAA. For these reasons, rules adopted for inclusion in the SIP fall under the exception in Texas Government Code, §2001.0225(a), because they are required by federal law.

The commission has consistently applied this construction to its rules since this statute was enacted in 1997. Since that time, the legislature has revised the Texas Government Code, but left this provision substantially unamended. It is presumed "when an agency interpretation is in effect at the time the legislature amends the laws without making substantial change in the statute, the legislature is deemed to have accepted the agency's interpretation." (*Central Power & Light Co. v. Sharp*, 919 S.W.2d 485, 489 (Tex. App. Austin 1995), writ denied with per curiam opinion respecting another issue, 960 S.W.2d 617 (Tex. 1997); *Bullock v. Marathon Oil Co.*, 798 S.W.2d 353, 357 (Tex. App. Austin 1990, no writ). Cf. *Humble Oil & Refining Co. v. Calvert*, 414 S.W.2d 172 (Tex. 1967); *Dudney v. State Farm Mut. Auto Ins. Co.*, 9 S.W.3d 884, 893 (Tex. App. Austin 2000); *Southwestern Life Ins. Co. v. Montemayor*, 24 S.W.3d 581 (Tex. App. Austin 2000, pet. denied); and *Coastal Indust. Water Auth. v. Trinity Portland Cement Div.*, 563 S.W.2d 916 (Tex. 1978)).

The commission's interpretation of the regulatory impact analysis requirements is also supported by a change made to the Texas Administrative Procedure Act (APA) by the legislature in 1999. In an attempt to limit the number of rule challenges based upon APA requirements, the legislature clarified that state agencies are required to meet these sections of the APA against the standard of "substantial compliance" (Texas Government Code,

§2001.035). The legislature specifically identified Texas Government Code, §2001.0225 as falling under this standard. The commission has substantially complied with the requirements of Texas Government Code, §2001.0225.

The specific intent of the adopted rulemaking is to protect the environment and to reduce risks to human health by adoption of rules to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. The adopted rulemaking does not exceed a standard set by federal law or exceed an express requirement of state law. No contract or delegation agreement covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is required by the Texas Clean Air Act, as codified in Texas Health and Safety Code, §382.0173. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b); because, even if the adopted rulemaking meets the definition of a "major environmental rule," it does not meet any of the four applicability criteria for a major environmental rule.

The commission invited public comment on the draft regulatory impact analysis determination during the public comment period that ended August 14, 2006. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the adopted rulemaking and performed an assessment of whether Texas Government Code, Chapter 2007, is applicable. The specific purpose of the adopted rulemaking is to implement RACT controls for VOC emissions sources in the five newly designated nonattainment counties. Texas Government Code, §2007.003(b)(4), provides that Chapter 2007 does not apply to this adopted rulemaking because it is an action reasonably taken to fulfill an obligation mandated by federal law and by state law.

In addition, the commission's assessment indicates Texas Government Code, Chapter 2007 does not apply to these adopted rules because this is an action that is taken in response to a real and substantial threat to public health and safety; that is designed to significantly advance the health and safety purpose; and that does not impose a greater burden than is necessary to achieve the health and safety purpose. Thus, this action is exempt under Texas Government Code, §2007.003(b)(13). As addressed elsewhere in this preamble, 42 USC, §7410 specifically requires states to adopt and implement SIPs that provide for implementation, maintenance, and enforcement of the NAAQS within the state. This adopted rulemaking is a required component of the Texas SIP. The action will specifically advance the health and safety purpose by reducing VOC emissions in the DFW area. The rulemaking specifically targets sources with VOC emissions. Consequently, the adopted rulemaking meets the exemption criteria in Texas Government Code, §2007.003(b)(4) and (13). For these reasons, Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chap-

ter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized, and the adopted amendments will maintain at least the same level of or increase the level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR), to protect and enhance air quality in the coastal areas (31 TAC §501.32). This rulemaking action complies with 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms this rulemaking action is consistent with CMP goals and policies.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The requirements of Chapter 115 are applicable requirements of 30 TAC Chapter 122. Owners or operators of sites that are subject to the Federal Operating Permit Program will be required to obtain, revise, reopen, and renew their Federal Operating Permits as appropriate in order to include the requirements of this adopted rulemaking.

PUBLIC COMMENT

Public hearings were held on the proposed rules in Waxahachie, Texas, on August 8, 2006. One individual presented testimony, as discussed in the RESPONSE TO COMMENTS section. The public comment period closed at 5:00 p.m. on August 14, 2006. The commission received written comments from EPA Region 6 and from one individual. EPA generally supported the proposed rulemaking but had suggestions for changes or clarifications as discussed in the RESPONSE TO COMMENTS section. One individual urged more stringent controls on VOC emissions from cement kilns. Another individual urged the commission to delay permitting coal-fired power plants upwind from DFW.

RESPONSE TO COMMENTS

EPA expressed support of the commission's efforts to expand controls for additional VOC emissions within the DFW area.

The commission appreciates the support.

EPA commented that the proposed rulemaking partially fulfills RACT requirements for the State of Texas, and that a future proposed rulemaking will provide additional RACT requirements as defined by EPA's November 29, 2005, regulations.

The purpose of the rulemaking is to satisfy RACT requirements for VOC emission sources in the five new counties. Rules specifically implementing RACT requirements for NO_x emission sources in the five new counties are not expected to be needed, because controls that will be required to support the attainment demonstration are expected to be at least as stringent as, and possibly more stringent, than controls needed to satisfy RACT. The upcoming attainment demonstration SIP will also have

a more complete discussion of VOC and NO_x RACT for the four core counties in the DFW area. The NO_x rules and the attainment demonstration SIP are expected to be proposed in December and adopted by June 15, 2007.

EPA requested that the commission confirm that the proposal accounts for all major VOC sources of affected sectors within the five new counties.

All major VOC sources within the five new counties in sectors covered by control techniques guidelines documents will be subjected to RACT requirements by these rule changes or by rule changes that were adopted with the 5% IOP Plan in April 2005. The attainment demonstration SIP that will be submitted to EPA by June 15, 2007, will include additional documentation that all major sources of VOC in the five counties are complying with appropriate RACT requirements.

EPA requested that the commission confirm that the required degree of VOC control for major sources of each affected sector within the five new counties still represents RACT, or make sure this documentation can be confirmed in a future proposal.

The degree of VOC control required for major sources in the five new counties will be the same as that required for sources in the four counties that made up the one-hour ozone nonattainment area. Documentation that this level of control still represents RACT will be provided with the attainment demonstration SIP that will be submitted to EPA by June 15, 2007. The commission received only one comment questioning whether a more stringent level of control was appropriate. That comment related specifically to the use of thermal oxidizers for control of VOC emissions at cement kilns. As discussed elsewhere in this preamble in response to that comment, the commission maintains that the use of thermal oxidizers at cement kilns does not represent RACT.

EPA suggested that the commission consider a compliance date earlier than March 1, 2009. Since facilities in Collin, Dallas, Denton, and Tarrant Counties have already implemented the requirements, EPA expressed the opinion that facilities in the new counties may be able to implement the requirements more quickly, perhaps by the beginning of the ozone season in 2008.

The commission does not agree that an earlier compliance date is reasonable or possible. Requiring compliance by the beginning of the ozone season in 2008 would give regulated entities only 15 months after the rules become effective to obtain the necessary control equipment and make changes to operating or business practices to comply with the new rules. The fact that sources in the surrounding counties already employ the required measures does not mean that newly affected sources can comply more quickly. The preamble to the adopted Phase II Implementation Rule notes that "EPA encourages States to adopt rules expeditiously . . . so that sources have more than sufficient time to install the controls" (70 FR 71658). The preamble also cites the 1990 Clean Air Act Amendments, which specify a 30-month period for installation of RACT controls. The commission does not believe that shortening the proposed time period to achieve compliance by one year is reasonable.

EPA commented that "Hardin" should follow "Galveston" in §115.149 for alphabetic order.

The commission agrees and has made the suggested change.

An individual commented that TXI's Kiln Number 5 has set a new standard for VOC controls at cement plants by installing and operating a thermal oxidizer that has reduced VOC emissions

significantly at Kiln Number 5. The commenter further stated that the public and DFW expect TCEQ to apply this new standard to all the other cement kilns in Midlothian as well.

The commission does not agree that the use of thermal oxidizers should be required at other cement kilns. The thermal oxidizer at TXI is believed to be one of only two installed on cement kilns in the country. Neither was installed for the purpose of lowering ozone concentrations in a nonattainment area. The thermal oxidizer requires the use of supplemental natural gas fuel in order to reduce VOC emissions from the kiln exhaust. With the increasing costs of natural gas in addition to other operational costs and the capital cost of installing an oxidizer, the use of this technology is not economically reasonable. Furthermore, VOC emissions from the cement kilns represent less than 10% of the total VOC emissions in the DFW nine-county nonattainment area that come from point sources and less than 1% of total VOC emissions. Current modeling indicates that reductions in VOC emissions are less effective in reducing ambient ozone levels than reductions in NO_x emissions.

An individual urged the commission to delay permitting coal-fired power plants upwind from DFW until more studies showing the full, total impact of all the proposed plants can be completed. The commenter also suggested alternatives to new coal-fired power plants.

The commission appreciates the commenter's interest in air quality. The comment does not relate to the proposed VOC RACT update rulemaking, and no changes to the rule have been made in response to it. The commission encourages public input on the proposed power plants and, as part of the permitting process, has conducted a series of public meetings to inform the public of the permit applications and to seek public input on them.

SUBCHAPTER A. DEFINITIONS

30 TAC §115.10

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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SUBCHAPTER B. GENERAL VOLATILE ORGANIC COMPOUND SOURCES

DIVISION 1. STORAGE OF VOLATILE ORGANIC COMPOUNDS

30 TAC §115.119

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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DIVISION 2. VENT GAS CONTROL

30 TAC §115.129

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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DIVISION 3. WATER SEPARATION

30 TAC §115.139

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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DIVISION 4. INDUSTRIAL WASTEWATER

30 TAC §115.149

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and

Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.149. *Counties and Compliance Schedules.*

(a) The owner or operator of each affected source category within a plant in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Industrial Wastewater) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each affected source category within a plant in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009.

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

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**SUBCHAPTER C. VOLATILE ORGANIC
COMPOUND TRANSFER OPERATIONS
DIVISION 1. LOADING AND UNLOADING
OF VOLATILE ORGANIC COMPOUNDS**

30 TAC §115.219

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code;

and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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**DIVISION 3. CONTROL OF VOLATILE
ORGANIC COMPOUND LEAKS FROM
TRANSPORT VESSELS**

30 TAC §115.239

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning

State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

§115.239. Counties and Compliance Schedules.

(a) The owner or operator of each tank-truck tank in Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller Counties shall continue to comply with this division (relating to Control of Volatile Organic Compound Leaks from Transport Vessels) as required by §115.930 of this title (relating to Compliance Dates).

(b) The owner or operator of each gasoline tank-truck tank in the covered attainment counties, as defined in §115.10 of this title (relating to Definitions), shall continue to comply with this division as required by §115.930 of this title.

(c) The owner or operator of each tank-truck tank in Ellis, Johnson, Kaufman, Parker, and Rockwall Counties shall comply with this division as soon as practicable, but no later than March 1, 2009. The owner or operator of each gasoline tank-truck tank in these counties shall continue to comply with the applicable requirements in §115.234(b) and §115.235(b) of this title (relating to Inspection Requirements and Approved Test Methods) until the facility achieves compliance with the newly applicable requirements in §115.234(a) and §115.235(a) of this title.

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

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**SUBCHAPTER D. PETROLEUM REFINING,
NATURAL GAS PROCESSING, AND
PETROCHEMICAL PROCESSES**

**DIVISION 1. PROCESS UNIT TURNAROUND
AND VACUUM-PRODUCING SYSTEMS IN
PETROLEUM REFINERIES**

30 TAC §115.319

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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**DIVISION 3. FUGITIVE EMISSION CONTROL
IN PETROLEUM REFINING, NATURAL
GAS/GASOLINE PROCESSING, AND
PETROCHEMICAL PROCESSES IN OZONE
NONATTAINMENT AREAS**

30 TAC §115.359

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concern-

ing Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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SUBCHAPTER E. SOLVENT-USING PROCESSES

DIVISION 1. DEGREASING PROCESSES

30 TAC §115.419

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to pre-

pare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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Proposal publication date: July 14, 2006
For further information, please call: (512) 239-6087



DIVISION 3. FLEXOGRAPHIC AND ROTOGRAVURE PRINTING

30 TAC §115.439

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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Robert Martinez
Director, Environmental Law Division
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DIVISION 4. OFFSET LITHOGRAPHIC PRINTING

30 TAC §115.449

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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SUBCHAPTER F. MISCELLANEOUS INDUSTRIAL SOURCES

DIVISION 1. CUTBACK ASPHALT

30 TAC §115.519

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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

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DIVISION 2. PHARMACEUTICAL MANUFACTURING FACILITIES

30 TAC §115.539

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendment is also adopted under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state's air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning Monitoring Requirements; Examination of Records, which authorizes the commission to prescribe requirements for owners or operators of sources to make and maintain records of emissions measurements; and §382.051(d), concerning Permitting Authority of Commission; Rules, which authorizes the commission to adopt rules as necessary to comply with changes in federal law or regulations applicable to permits under Texas Health and Safety Code, Chapter 382; and FCAA, 42 USC, §§7401 *et seq.*

The adopted amendment implements Texas Water Code, §5.103 and §5.105; Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.016, 382.017, and 382.051(d); and FCAA, 42 USC, §§7401 *et seq.*

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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Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

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For further information, please call: (512) 239-6087



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 109. DEAF AND HARD OF HEARING SERVICES

SUBCHAPTER B. BOARD FOR EVALUATION OF INTERPRETERS AND INTERPRETER CERTIFICATION

The Texas Health and Human Services Commission adopts 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 - 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 - 6 of Chapter 109, Subchapter B, will not be replaced. The repeals and new sections are adopted without changes to the proposal as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8220) and will not be republished.

The repeals and new sections are being adopted 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.

No comments were received regarding adoption of the repeals and new sections.

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

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 November 21, 2006.

TRD-200606334
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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For further information, please call: (512) 424-4050



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 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
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

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.

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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 3. STANDARDS OF ETHICAL BEHAVIOR FOR INTERPRETERS

40 TAC §109.501, §109.505

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.

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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 4. DENIAL, SUSPENSION, OR REVOCATION OF A CERTIFICATE

40 TAC §§109.701, 109.705, 109.707, 109.711

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.

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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 5. FEES

40 TAC §§109.771, 109.773, 109.775, 109.777

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.

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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 6. PUBLICATIONS

40 TAC §§109.801, 109.803, 109.805

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.

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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



REVIEW OF AGENCY RULES

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan

Texas State Board of Examiners of Psychologists

Title 22, Part 21

TRD-200606333

Filed: November 21, 2006



Proposed Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 150, Commissioner's Rules Concerning Educator Appraisal, pursuant to the Texas Government Code, §2001.039. The rules being reviewed in 19 TAC Chapter 150 are organized under the following subchapters: Subchapter AA, Teacher Appraisal, and Subchapter BB, Administrator Appraisal.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 150 continue to exist.

The public comment period on the review of 19 TAC Chapter 150 begins December 8, 2006, and ends January 7, 2007. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200606366

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 27, 2006



The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 153, School District Personnel, pursuant to the Texas Government Code, §2001.039. The rules being reviewed in 19 TAC Chapter 153 are organized under the following subchapters: Subchapter AA, Commissioner's Rules Concerning School District Personnel Duties

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2)

notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

and Benefits, and Subchapter CC, Commissioner's Rules on Creditable Years of Service.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 153 continue to exist.

The public comment period on the review of 19 TAC Chapter 153 begins December 8, 2006, and ends January 7, 2007. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028.

TRD-200606367

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 27, 2006



Texas State Board of Examiners of Psychologists

Title 22, Part 21

In accordance with the Texas Government Code, §2001.039, the Texas State Board of Examiners of Psychologists proposes to review Board rules in Chapter 470, concerning Administrative Procedure (All), and in Chapter 471, concerning Renewals (All).

The proposed amendments may be found in the "Proposed Rules" section of the *Texas Register*.

Comments on the proposals may be submitted to Brenda Skiff, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Tower II, Suite 2-450, Austin, Texas 78701.

TRD-200606332

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Filed: November 21, 2006



TABLES &

GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

**Revised Chart III [IV]
Documentation to Support Domicile and Residency**

The following documentation may be requested by the institution in order to resolve issues raised by responses to the Core Residency Questions. The listed documents may be used to establish that the person is domiciled in Texas and has maintained a residence in Texas continuously for 12 months prior to the census date.

| Part A Documentation that can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months |
|---|
| <p>1. An employer's statement of dates of employment (beginning and current or ending dates) that encompass at least 12 months. Other documents that show the person has been engaged in activities intended to provide an income to a person or allow a person to avoid the expense of paying another person to perform the tasks (as in child care or the maintenance of a home) may also be used, as well as documents that show the person is self-employed, employed as a homemaker, or is living off his/her earnings, or through public assistance. Student employment, such as work-study, the receipt of stipends, fellowships or research or teaching assistanceships do not qualify as a basis for establishing a domicile.</p> <p>2. For a homeless person, written statements from the office of one or more social service agencies located in Texas that attests to the provision of services to the homeless person for the 12 months prior to the census date of the term in which the person enrolls.</p> |

| Part B Documentation, which (if accomplished and maintained for the 12 months prior to the census date of the term in which the person enrolls and if accompanied by at least ONE type of document listed in Part C), can Support the Establishment of a Domicile and Demonstrate the Maintenance of a Residence in Texas for 12 Months |
|---|
| <p>1. Title to real property in Texas</p> <p>2. Marriage Certificate with documentation to support that spouse is a domiciliary of Texas</p> <p>3. Ownership of business in Texas with documents that evidence the organization or the business as a partnership or corporation and reflect the ownership interest of the person or dependent's parent.</p> <p>4. State or local licenses to conduct a business or practice a profession in this state.</p> |

Part C

Documents that May be Used to Demonstrate Maintenance of a Residence for 12 Months

These documents do not show the establishment of a domicile. They only support a person's claim to have resided in the state for at least 12 months. Activities in Part A and B of this Chart may be used to establish a domicile.

1. Utility bills for the 12 months preceding the census date;
2. A Texas high school transcript for full senior year preceding the census date;
3. A transcript from a Texas institution showing presence in the state for the 12 months preceding the census date;
4. A Texas driver's license or Texas ID card with an expiration date of not more than four years;
5. Cancelled checks that reflect a Texas residence for the 12 months preceding the census date;
6. A current credit report that documents the length and place of residence of the person or the dependent's parent.
7. Texas voter registration card that has not expired.
8. Pay stubs for the 12 months preceding the census date;
9. Bank statements reflecting a Texas address for the 12 months preceding the census date;
10. Ownership of real property with copies of utility bills for the 12 months preceding the census date.
11. Registration or verification from licensor, showing Texas address for licensee;
12. Written statements from the office of one or more social service agencies, attesting to the provision of services for at least the 12 months preceding the census date.
13. Lease or rental of real property, other than campus housing, in the name of the person or the dependent's parent for the 12 months preceding the census date.

Figure: 19 TAC §21.731(c)

**Chart II [H]
AFFIDAVIT**

STATE OF TEXAS

§
§
§

COUNTY OF _____

Before me, the undersigned Notary Public, on this day personally appeared _____,
known to me, who being by me duly sworn upon his/her oath, deposed and said:

1. My name is _____. I am ___ years of age and have personal knowledge of the facts stated herein and they are all true and correct.
2. I graduated or will graduate from a Texas high school or received my GED certificate in Texas.
3. I resided in Texas for three years leading up to graduation from high school or receiving my GED certificate.
4. I have resided or will have resided in Texas for the 12 months prior the census date of the semester in which I will enroll in _____ (college/university).
5. I have filed or will file an application to become a permanent resident at the earliest opportunity that I am eligible to do so.

In witness whereof, this _____ day of _____, _____.

(Signature)

(Printed Name)

(Student I.D.#)

SUBSCRIBED TO AND SWORN TO BEFORE ME, on the _____ day of _____, _____, to certify which witness my hand and official seal.

Notary Public in and for the State of Texas

**Job Corps Diploma Program Accountability Procedures Manual
September 2006**

Background

In 2005, the 79th Legislature enacted statute that allows Job Corps to establish a diploma program to offer a secondary school curriculum, a diploma program, and a General Educational Development (GED) program. The requirements of the Job Corps diploma program are found under Chapter 18 of the Texas Education Code (TEC). Under Chapter 18 of the TEC, the Texas Education Agency (TEA) is required to implement appropriate accountability procedures consistent with Chapter 39 of the TEC, to be used in assigning an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts.

The goals of a Job Corps diploma program are to:

1. serve at-risk students who have not been successful in a traditional school setting;
2. increase student success rates in obtaining and maintaining employment; and
3. decrease future societal costs by offering a diploma program to students who would benefit from Job Corps academic and vocational programs.

Job Corps Diploma Program Student Eligibility Criteria

1. Any person enrolled in the Job Corps Training Program and who does not have a diploma is eligible to enroll in the Job Corps diploma program. Any person enrolled in the diploma program is eligible for programs or services under Chapter 18 of the TEC.
2. A person's eligibility for programs and services under Chapter 18 of the TEC does not exclude the person from being eligible for an education program or service under any other chapter of the TEC.

Requirements of a Job Corps Diploma Program

The diploma program shall:

1. provide a course of instruction that includes the required curriculum under Subchapter A, Chapter 28, of the TEC;
2. require that students enrolled in the diploma program satisfy the requirements of Section 39.025 of the TEC before receiving a diploma; and
3. comply with requirements established in rule to determine compliance with Chapter 18 of the TEC, as determined by the commissioner of education.

Student Records

The Job Corps diploma program must ensure that education records include information used to document the data it submits to TEA, including leaver, dropout, and completion data, that are used in the diploma program accountability procedures and reports. The education records of the diploma program must be made available to the TEA in the conduct of authorized monitoring, investigation, or audit activities.

Purpose of Job Corps Diploma Accountability Procedures

The purpose of the Job Corps accountability procedures is to ensure the implementation of accountability procedures consistent with Chapter 39 of the TEC, where appropriate, to assign an annual performance rating to Job Corps diploma programs that are consistent with the ratings assigned to school districts under Section 39.072 of the TEC.

In addition to other factors determined by the commissioner of education under Section 39.051 of the TEC, the diploma program accountability procedures consider:

1. student performance on the subject matters assessed by the secondary exit-level assessment instruments, the Texas Assessment of Knowledge and Skills (TAKS) required by Section 39.023(c) of the TEC;
2. dropout rate aggregated for the grade levels served by the diploma program; and
3. completion rate (students who leave the diploma program and receive GED certificates are not counted as completers in the Job Corps diploma program completion rate).

Description of the Job Corps Diploma Program

The state's accountability system is required to rate all districts and campuses serving students in Grades 1-12. Where appropriate, the accountability procedures for the Job Corps diploma programs are consistent with the state's accountability system. However, the accountability procedures for the Job Corps diploma programs necessitate separate accountability procedures that meet the characteristics of the students served in the diploma program and to appropriately evaluate the performance of the diploma program.

The diploma program is designed to expedite the progress of enrolled students toward performing at grade level and completing credits and passing the assessments necessary to attain a diploma. The diploma program accomplishes this goal by providing a variety of instructional services, including accelerated instruction, to meet the needs of students.

Job Corps Diploma Program School Year

The Job Corps diploma program operates on a year round school calendar: **September 1 - August 31**.

An eligible student may enroll and withdraw at any time during the diploma program school year.

Job Corps Diploma Program Grade and Age Levels Served

The Job Corps diploma program serves Grades 9-12. Students who are eligible to enroll in the Job Corps training program are also eligible to enroll in the Job Corps diploma program. The eligibility age of enrollment in the Job Corps training program is age 16 through 24.

Job Corps Diploma Program Accountability Requirements

1. The diploma program shall comply with applicable state and federal laws and regulations, including Section 504 of Rehabilitative Act of 1973 (§504) and the Individuals with Disabilities Education Act (IDEA).
2. The diploma program must have appropriately certified instructional staff for each subject matter taught in the diploma program.
3. The diploma program must demonstrate required improvement when accountability standards are not met.

Evaluation of Job Corps Diploma Programs

The Job Corps diploma program accountability procedures are used to rate performance of the diploma program. Ratings are based on aggregate performance of the diploma program. Performance results of all students in the diploma program are included in the diploma program's annual performance rating and used in determining the diploma program's rating. Diploma programs receiving ratings under these accountability procedures are evaluated on the following indicators:

1. performance on the exit-level TAKS only
2. diploma program completion rate (Grades 9-12)
3. diploma program dropout rate (aggregate of all grade levels served in the diploma program)

Each of these performance indicators is described in the following section.

Job Corps Diploma Program Accountability Performance Indicators and Procedures

I. TAKS Indicator

Indicator Definition.

1. Total number of exit-level TAKS tests administered to diploma program students any time during the school year (September 1, 2005 - August 31, 2006).
2. Total number of exit-level TAKS tests on which the students met the passing standard.

$$\frac{\text{Tests passed}}{\text{Tests administered}} = \% \text{ Met Standard}$$

Subjects. The exit-level TAKS tests include the following subjects:

English Language Arts
Mathematics
Social Studies
Science

Test Administrations. The exit-level TAKS must be administered to Job Corps diploma program students on the same date and in accordance with the same testing calendar established for the statewide student assessment program. The indicator includes results for first-time testers and retesters from all TAKS administrations for the year (September 1 - August 31). The indicator is based on tests rather than students. If a student has results from multiple administrations for the same subject, all are included in the indicator.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the Public Education Information Management System (PEIMS) Data Standards.

Minimum Size Criteria. Performance is always evaluated at the All Students level. Student groups are evaluated if there are *at least 10 tests for the subject area tested.*

Data Source. Test results are provided to the Job Corps diploma program by the test contractor. TEA will calculate the rates.

II. Job Corps Diploma Program Completion Rate Indicator

Indicator Definition. Completion of the Job Corps diploma program is defined as meeting all of the requirements of the diploma program, including passing all portions of the exit-level TAKS. Students participating in an approved adult education GED program and receiving a GED certificate are **not included** in the Job Corps diploma program Completion Rate.

Data used to calculate the Completion Rate:

1. Total number of students who completed the Job Corps diploma program at any time between September 1, 2005 - August 31, 2006 (2005-2006 school year).
2. Total number of students who did not complete the Job Corps diploma program, between September 1, 2005 - August 31, 2006, but who are enrolled in the diploma program on the first school day in September 2006 (the first day of school for the 2006-2007 school year), are counted as "still enrolled" in the diploma program.
3. Total number of students who left the diploma program without completing the program between September 1, 2005 - August 31, 2006 (2005-2006 school year). These students will be reported with the appropriate "leaver" code listed in the Job Corps Diploma Program Leaver Code table.

Job Corps Diploma Program Completion Rate Calculation

$$\frac{\text{diploma recipients + still enrolled}}{\text{students enrolled in diploma program}} = \text{diploma program completion rate (\%)} \\ \text{(diploma recipients + still enrolled + leavers + dropouts)}$$

Important: Students who enroll in the Job Corps diploma program for the first time on the first school day in September 2006 are not included in the completion rate for 2005-2006. New enrollees on the first school day in September 2006 will be included in the completion rate for the 2006-2007 school year when the rate is calculated in 2008.

Leavers. The Job Corps diploma program must document the withdrawal of students and maintain on file the appropriate paperwork associated with student withdrawals. The Job Corps diploma program is required to maintain all documentation related to all leaver reason codes at the diploma program site. Merits of leaver documentation are assessed at the time the documentation is requested by the TEA for program monitoring purposes, including verifying data integrity. Determination of the acceptability of documentation is made by the TEA staff reviewing the documentation.

Leaver Documentation. In determining the merits of reported leaver codes, the TEA may review written documentation. When the Job Corps diploma program obtains oral withdrawal information, the information must be verified by telephone and noted in writing by an authorized representative of the Job Corps diploma program.

Withdrawal information should include:

- the date, signature(s) of the adult student or the person responsible for the student, such as the parent or legal guardian
- the leaver code and statement of reason for withdrawal
- the student's destination
- documentation of the telephone call to verify the withdrawal information that was obtained orally
- documentation of enrollment in another public or private school (i.e., request for records)

The Job Corps Diploma Program Leaver Codes are provided below and in the Appendix of this document.

| Leaver Code | Explanation of Reason |
|---|--|
| 01 – Student completed Job Corps diploma requirements | Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2005 - August 31, 2006). |
| 02 – Student withdrew from Job Corps to enter an institution of higher education or technical institution | Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate that the student is enrolled under a planned degree or certificate program for at least 3 semester hours or one class. |
| 03 – Student received GED by August 31, 2006 | Student received a GED certificate by August 31, 2006. |
| 04 – Student withdrew from Job Corps to enroll in a public school in Texas | Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a <u>public</u> school in Texas. |
| 05 – Student withdrew from Job Corps to enroll in another Job Corps diploma program in Texas | Student withdrew from this Job Corps diploma program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas. |
| 06 – Student withdrew from Job Corps to enroll in a private school in Texas | Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a <u>private</u> school in Texas. |
| 07 – Student died while enrolled in the diploma program | This code requires documentation of the student's death. |
| 08 – Other | This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days. |

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Completion Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the Job Corps diploma program at any time during the school year (September 1 – August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the Job Corps diploma program is not evaluated on Completion Rate.

Data Source. Completion data are reported for the prior school year. For example, completion data submitted in December 2006 will be for the September 1, 2005 - August 31, 2006 school year. The Job Corps diploma program must submit data to the TEA by December 15, 2006. TEA will calculate the rates.

III. Job Corps Diploma Program Dropout Rate Indicator

The Job Corps Diploma Program Dropout Rate indicator is based on the total number of students participating (enrolled) in the diploma program during the Job Corps diploma program school year: September 1 - August 31. The dropout rate is an aggregate of Grades 9-12 dropouts as a percent of all students enrolled in the diploma program in Grades 9-12 from September 1 - August 31.

Indicator Definition. A student is counted as a dropout if the student was enrolled in the Job Corps diploma program at any time during the school year (September 1, 2005 - August 31, 2006) and is not enrolled in the diploma program on the first school day in September 2006.

Exceptions: A student is **not** counted as a dropout if the student:

- received diploma by August 31 of the same school year;
- died;
- received a GED certificate by August 31 of the same school year;
- withdrew to enroll in college or a technical institution;
- withdrew to enroll in a Texas public or private school providing secondary education or another Job Corps Diploma Program in Texas.

Diploma Program Dropout Rate Calculation:

$$\frac{\text{dropouts (leaver code 08)}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{diploma program dropout rate (\%)}$$

Examples of Dropout and Non-Dropout Definitions:

1. A student who withdraws from the diploma program on November 15, 2005, and re-enrolls in the diploma program on May 15, 2006, does not receive a diploma from the diploma program by August 31, 2006, and is enrolled on first school day in September 2006 is not a dropout for 2005-2006.
2. A student who withdraws from the diploma program on June 15, 2006, and enrolls in the GED program on July 15, 2006, and receives a GED certificate on August 1, 2006, then re-enrolls in the diploma program on August 15, 2006, and is enrolled on the first school day in September 2006 is not a dropout for 2005-2006.
3. A student who withdraws from the diploma program on May 15, 2006, and re-enrolls in the diploma program on June 15, 2006, and does not complete the diploma program by August 31, 2006, and is not enrolled on the first school day in September 2006 is reported as a dropout for 2005-2006.

Student Groups. The indicator is calculated for All Students and the following student groups.

- African American – A non-Hispanic person having origins in any of the Black racial groups of Africa.
- Hispanic – A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
- White – A non-Hispanic person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Economically Disadvantaged is not included as a student group because the definition used for public school accountability is based on National School Lunch Program enrollment, which would not be applicable to the Job Corps diploma program. A definition based on family income could be developed but it is likely that all Job Corps students would be counted as economically disadvantaged under such a definition. The ethnicity definitions are from the PEIMS Data Standards.

Minimum Size Criteria. The Dropout Rate is evaluated at the All Students level, if there are *at least 10 students enrolled* in the diploma program at any time during the school year (September 1 - August 31). Student groups are evaluated if there are *at least 10 students in the student group*. If the minimum size requirement for All Students is not met, the diploma program is not evaluated on Dropout Rate.

Data Source. Dropouts are reported for the prior school year. For example, dropout data submitted in December 2006 will be for the September 1, 2005 - August 31, 2006 school year. The Job Corps diploma program must submit data to the TEA by **December 20, 2006**. TEA will calculate the rates.

How Students Are Counted for the Job Corps Diploma Program Accountability Performance Indicators

Student Enrollment Status and the "One-day" Snapshot Date

For accountability purposes, the Job Corps diploma program has a "one-day" snapshot date. The "one-day" snapshot date is the **first school day in September**. On the first school day in September 2006, the diploma program must assign an enrollment status to each student who was enrolled in the diploma program at any time during the 2005-2006 school year.

The enrollment statuses (and leaver codes) are:

1. diploma recipient: the student was awarded a diploma by August 31 of the 2005-2006 school year (leaver code 01);
2. still enrolled: the student was still enrolled in the diploma program on the first school day in September of the 2006-2007 school year (no leaver code);
3. leaver: the student
 - a. received a GED by August 31 of the 2005-2006 school year (leaver code 03)
 - b. withdrew from the diploma program to enroll in another educational setting (leaver code 02, 04, 05, or 06)
 - c. died (leaver code 07);
4. dropout: the student left the diploma program for any reason not categorized above (leaver code 08).

Each student enrolled in the diploma program in the 2005-2006 school year should fit into one of the above four categories.

Counting Leavers and Students Who Re-enroll. Any student enrolled in the diploma program in the 2005-2006 school year is assigned only one leaver code, regardless of the number of times or reasons for withdrawing and re-enrolling in the diploma program. The student's leaver code must reflect the student's last leaver status as of the first school day in September.

Counting Diploma Recipients. August 31st is the date by which students must receive their diplomas to be counted as diploma recipients of the Job Corps diploma program.

Job Corps Diploma Program Data Collection and Reporting

By **December 20** of each school year, the diploma program is required to submit to TEA certain data for use in determining the annual performance rating of the diploma program.

| |
|--|
| The "one-day" snapshot date used to determine the data is the first school day in September . |
|--|

Data Collection Form

The Job Corps diploma program is required to submit and correct data in the format determined by TEA. The data collection form is included in the Appendix of this document. The collection of data is reviewed annually and revised, as necessary, to assign an annual performance rating to the diploma program. The Job Corps diploma program must retain auditable individual student data and documentation for monitoring, etc.

Requests for Extensions to Submission Deadline

Extenuating circumstances may occur that preclude the diploma program from submitting its data to TEA on time. These extenuating circumstances are limited to circumstances that are not within the control of the diploma program including natural disasters or catastrophes and for which there are no practical options to providing the data to TEA. Extensions for these circumstances are considered and granted on a case-by-case basis. If the diploma program anticipates that it will not be able to meet the due date, a written statement signed by the director of the Job Corps diploma program (or designee) must be sent to the TEA no later than 30 calendar days from the due date and include the following information.

- the reasons for the delay or anticipated delay in submitting the data;
- the plan of action for resolving the existing problems;
- a request for an extension; and
- a commitment to a specific date for submitting the data to TEA. Extensions greater than 30 days after the TEA due date will not be approved unless it is substantiated that the circumstances are extreme and for which no alternative is available.

Requests for extension are to be mailed or faxed to:

Associate Commissioner
School District Services
Texas Education Agency
1701 N. Congress Ave.
Austin, TX 78701-1494
FAX (512) 475-3665

The TEA division responsible for school district services will notify the Job Corps diploma program director (or designee) whether the extension was or was not granted. If the data submission is delayed and communication is not received from the diploma program, the diploma program campus name will be forwarded to TEA General Counsel for further action.

Correcting Data Submission

The diploma program may find it necessary to correct data submitted. All diploma program resubmissions must be submitted to the TEA no later than the **last school day in January**. If extenuating circumstances arise and the diploma program is not able to correct its data within this timeline, the same procedures used to request an extension to data submission (above) must be followed.

Release of Diploma Program Accountability Preview Data Tables and Ratings

By August 1 of each year, the Job Corps diploma program accountability rating will be released.

The Job Corps diploma program will not have access to their data tables or ratings electronically, such as through a TEA Secure Environment (TEASE). TEA will provide accountability data and rating reports to the diploma program by certified U.S. Mail. TEA will not fax or email accountability data reports and ratings.

Job Corps Diploma Program Performance Standards

This section prescribes the standards and criteria for each performance indicator used to evaluate the diploma program. TEA staff will annually recommend to the commissioner of education the appropriate standards for each performance indicator listed below to meet the characteristic of students served in the diploma program.

1. Exit-level TAKS Passing Standard
2. Diploma Program Completion Rate Standard
3. Diploma Program Dropout Rate Standard

For students receiving special education services, the standard for meeting Admission, Review, and Dismissal (ARD) expectations will continue to be set locally, consistent with state law. Students receiving services under an individualized education plan (IEP) and taking TAKS will be included in the TAKS indicator.

The diploma program must demonstrate required improvement when accountability standards are not met.

The standards for each performance indicator will be established for 2006-2007, based on data collected for 2005-2006.

Job Corps Diploma Program Accountability Standards for 2007 and Beyond

| Indicator | Rating | |
|--|--------------------------|---------------------------------|
| | 2005-2006 Report data | 2006-2007 -TBD (For example) |
| Exit-level TAKS | Not Evaluated | Acceptable -TBD (i.e., 40%) |
| Diploma Program Completion Rate $\frac{\text{Diploma recipients + still enrolled}}{\text{Students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{completion rate (\%)}$ | Not Evaluated | Acceptable -TBD (i.e., 75%) |
| Diploma Program Dropout Rate dropouts (leaver code 08) $\frac{\text{dropouts (leaver code 08)}}{\text{students enrolled in diploma program (diploma recipients + still enrolled + leavers + dropouts)}} = \text{dropout rate (\%)}$ Students dropping out in 2004-2005 are reported in 2005-2006 Students dropping out in 2005-2006 are reported in 2006-2007 <i>"Dropout" is defined in the Job Corps Diploma Program Accountability Procedures.</i> | Not Evaluated | Acceptable -TBD (i.e., 10%) |

Job Corps Diploma Program Accountability Ratings

The diploma program rated under the Job Corps diploma program accountability procedures is assigned one of the three ratings listed below:

1. *Acceptable*
2. *Unacceptable*
3. *Not Evaluated*

| | |
|----------------------------------|---|
| Acceptable or Unacceptable | If there are no exit-level TAKS results, the diploma program will not be rated. If there are exit-level TAKS results, the program will be rated if the program meets the minimum size criteria. |
| Not Evaluated | Assigned to diploma programs with no exit-level TAKS results or to programs that do not meet the minimum size criteria. |

Special Analysis for Small Numbers

The TEA conducts special analysis when very small amounts of data are used in determining the performance rating of the Job Corps diploma program. For special analysis, the Job Corps Diploma Program accountability procedures use comparative data from the prior year.

First-Year of Operation and Initial On-site Review

For the first year of operation, the Job Corps diploma program will not have prior-year data to compare with current-year performance in order to conduct special analysis. Therefore, for the first year of operation, the diploma programs will not be evaluated and will be assigned the "Not Evaluated" rating. Additionally, during the first year of operation, the TEA will conduct an on-site review of the diploma programs to validate data reporting and integrity.

Job Corps Diploma Program Appeal Process

Preview Data Tables

The diploma program will receive a preview of its data table as determined by the TEA and described in the Job Corps Diploma Program Accountability Procedures Manual. After receipt of the data table, the diploma program may appeal the rating to the commissioner of education or the commissioner's designee. For the Job Corps diploma program, the Associate Commissioner of School District Services is designated to review the appeal and recommend the final rating to the commissioner of education.

Appeal Ratings

1. The diploma program may appeal the data or calculation error attributable to the TEA or the test contractor for the student assessment program.
2. Problems due to the diploma program's errors in data submission or on TAKS answer sheets are considered on a case-by-case basis.
3. The statutes permit consideration of data reporting quality in evaluating the merits of an appeal. Poor data quality is not a valid reason to appeal the accountability rating. Only appeals that would result in a changed rating will be considered.

How to Appeal a Rating

The diploma program appealing an accountability rating must submit to the commissioner of education a letter that includes the following:

1. A statement that the letter is an appeal of the [YEAR] Job Corps diploma program accountability rating;
2. The name and ID number of the diploma program for which the appeal is being submitted.
3. The specific indicator(s) appealed.
4. The problem, including details of the data affected and what caused the problem.
5. If applicable, the reason(s) why the cause of the problem is attributable to the TEA or the test contractor for the student assessment program.
6. The reason(s) why the change would result in a different rating, including calculations that support the different outcome.
7. A statement that all information included in the appeal is true and correct to the diploma program's best knowledge and belief.
8. The signature of the official representative of the diploma program.

Additional Appeal Procedures

- The Job Corps diploma program is provided one opportunity to appeal each indicator.
- When student-level information is in question, supporting information must be provided for review, including the student's name and identification number.
- The diploma program must ensure all relevant information is included in the appeal. The TEA will not contact the diploma program for additional materials.

- The appeal letter must be postmarked by the date determined by the TEA. Appeals postmarked after this date will not be considered.
- The appeal letter must be addressed to Dr. Shirley Neeley, Commissioner of Education and mailed to Job Corps Diploma Program Accountability Procedures; Division of School District Services; Texas Education Agency; 1701 N. Congress Ave.; Austin, TX; 78701-1494.

How an Appeal Is Processed and Decision Issued

1. The details of the appeal are entered into a database for tracking purposes.
2. TEA staff evaluates the request using TEA data sources to validate the information to the extent possible and all relevant data.
3. The Division of School District Services prepares and forwards a recommendation to the commissioner of education.
4. The commissioner of education makes the final decision.
5. The diploma program is notified in writing of the commissioner's decision and the reason for the decision.
6. The decision of the commissioner is final and is not subject to further review or appeal.
7. If an appeal is granted, the data upon which the appeal was based will not be modified. TEA reports that reflect accountability data, must report the data as they are submitted to the TEA. Accountability data are subject to review by the Office of the State Auditor.
8. The commissioner of education will respond in writing to each appeal. The letter from the commissioner serves as notification of the official rating for the diploma program.

Final Ratings

After the resolution of all appeals, the TEA will assign a final rating to the diploma program.

On-site Investigations

Under Section 39.074 of the TEC, the commissioner may (1) direct the TEA to conduct on-site investigations at any time to answer any questions concerning a program, including special education, required by federal law or for which the program receives federal funds; and (2) raise or lower the performance rating as a result of the investigation. The manner in which the TEA will conduct the on-site investigation is described under Section 39.076 of the TEC and 19 TAC §97.1033. In conducting the on-site investigation, data other than the data reported through the data collection form may be reviewed by the TEA to determine compliance with applicable federal and state laws and rules. The diploma program is required to maintain at its program facility, the education records and data required in meeting TEA reporting requirements. The Job Corps diploma program must retain auditable individual student data and documentation for monitoring, etc.

Required Improvement

Required Improvement compares prior-year performance to current-year performance. In order to conduct this comparison, All Students or any student group must meet the minimum size requirement for the prior year.

Improvement Standards for the diploma program will be determined for 2007-2008 based on data submitted for 2005-2006 and 2006-2007.

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must demonstrate required improvement within two school years.

| Performance Indicator | Standard of Improvement Required |
|---------------------------------|--|
| TAKS Measure | a standard of <u>_(TBD)_</u> % within two years |
| Diploma Program Completion Rate | a standard of <u>_(TBD)_</u> % within two years |
| Diploma Program Dropout Rate | a decline in the rate to be at <u>_(TBD)_</u> % within two years |

In order to move a Job Corps diploma program from an *Unacceptable* rating to an *Acceptable* rating, the diploma program must meet the standards of improvement on all deficient performance indicators. If the improvement standard is met for every deficient measure, then the diploma program is assigned an *Acceptable* rating.

Sanctions

Based on the nature of and severity of the problem(s) identified, the commissioner of education has the authority to take action under Chapter 39 of the TEC, including closure of the diploma program.

Sanctions may be applied as a result of:

- problems identified through the application of system safeguards;
- unacceptable performance for two consecutive years; or
- the findings of an on-site investigation authorized under Section 39.074 of the TEC.

Appendix

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TEXAS EDUCATION AGENCY
Job Corps Diploma Program
2006-2007 Data Collection Form for 2005-2006 Data Year

Please PRINT or TYPE:

| | |
|--|----------------------------------|
| Job Corps Diploma Program Name | Job Corps Diploma Program Number |
| Job Corps Diploma Program Director's Name | Telephone Number |
| The following signature affirms that the undersigned has submitted all required data and has taken measures to verify the accuracy and the authenticity of the data being submitted for the Job Corps Diploma Program. | |
| Job Corps Diploma Program Director's Signature | Date |

Authority for Data Collection: Texas Education Code, §18.006 - Job Corps Diploma Program.

Planned Use of the Data: For **2006-2007 Diploma Program Accountability Ratings** for the Job Corps Diploma Program issued by the Commissioner in compliance with Chapter 18 of the Texas Education Code.

Instructions: Complete **ONE** report for the Job Corps diploma program using **2005-2006 school year data**. Complete this form regardless of the diploma program enrollment size. Do not leave any boxes blank and do not write "not applicable." If there is no number to report in a box, enter "0" (zero) in that box. Do not attach any additional documents to this report. **See additional instructions below for each item.**

Submission Timeline: This completed and signed form must be **postmarked by December 20, 2006**. Mail form to:

**Texas Education Agency
Associate Commissioner
School District Services
1701 N. Congress Avenue
Austin, Texas 78701-1494**

Fax and email submissions are not accepted. Maintain a copy of this report and any supporting documentation for your records. Texas Education Agency (TEA) will send the Job Corps Diploma Program Director a written confirmation of receipt.

Questions: If there are any questions regarding the data submission, please call School District Services at (512) 463-8998. For submission corrections, please refer to the Correcting Data Submission section of the **Job Corps Diploma Program Accountability Procedures Manual**.

Please note that information submitted to TEA is subject to release in accordance with Chapter 552 of the Texas Government Code (Texas Public Information Act), and includes the Family Educational Rights and Privacy Act (FERPA).

| GROUP | All Students | African American | Hispanic | White |
|---|--------------|------------------|----------|-------|
| IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities. | | | | |
| 1. Total Students who were enrolled in the Job Corps diploma program at any time between September 1, 2005, and August 31, 2006. If a student withdrew from the diploma program and later re-entered it, count the student only once. | | | | |
| 2. Diploma Recipients: Students in #1 who were awarded a Job Corps diploma at any time between September 1, 2005, and August 31, 2006 (Leaver Code 01). See Leaver Code Table on page 2. Completing the diploma program means meeting all diploma program requirements and passing all portions of the exit-level TAKS. | | | | |

continues

| GROUP | All Students | African American | Hispanic | White |
|---|--------------|------------------|----------|-------|
| IMPORTANT: In each column, the total of #2, #3, #4 and #5 should equal the total in #1. The number of African American, Hispanic, and White students on each row may not equal ALL STUDENTS on that row because ALL STUDENTS may include other ethnicities. | | | | |
| 3. Still Enrolled: Students in #1 who did not complete the diploma program (including did not pass the exit-level TAKS) and who are still enrolled in the diploma program on the first school day in September 2006 (no Leaver Code). "Still enrolled" is defined as a student who was enrolled during the 2005-2006 school year (regardless of whether the student withdrew and re-enrolled) <u>and</u> is enrolled on the first school day in September 2006. | | | | |
| 4. Leavers: Students in #1 who did not complete the diploma program, were not enrolled in the diploma program on the first school day in September 2006, <u>and</u> were withdrawn under any of the following <i>Leaver Codes: 02, 03, 04, 05, 06, or 07</i> . A student with one of these six (6) leaver codes is not counted as a dropout for the diploma program accountability system. Any student enrolled in the diploma program in the 2005-2006 school year is assigned only <u>one</u> leaver code on the "one-day" snapshot date: first school day in September 2006. Regardless of the number of times or reasons the student withdrew and re-enrolled in the diploma program, assign the student one leaver code and count the student only once. | | | | |
| 5. Dropouts: Students in #1 who did not complete the diploma program, were not enrolled on the first school day in September 2006, <u>and</u> were withdrawn under Leaver Code 08. | | | | |
| 6. Total Students who <u>participated in Job Corps Training Program</u> at any time between September 1, 2005, and August 31, 2006, <u>and</u> who entered the training program without a high school diploma, <u>and</u> who did not participate in the diploma program. If a student withdrew from the training program and later re-entered it, count the student only once. | | | | |

| Leaver Code | Explanation of Reason |
|---|--|
| 01 – Student completed Job Corps diploma requirements | Use for students who meet all diploma requirements (which includes passing the exit-level TAKS) at any time during the school year (September 1, 2005 - August 31, 2006). |
| 02 – Student withdrew from Job Corps to enter an institution of higher education or technical institution | Student withdrew from the Job Corps diploma program and training program to enroll in an institution of higher education or a technical institution. Documentation of enrollment must indicate that the student is enrolled under a <u>planned degree or certificate program</u> for at least 3 semester hours or one class. |
| 03 – Student received GED by August 31, 2006 | Student received a GED certificate by August 31, 2006. |
| 04 – Student withdrew from Job Corps to enroll in a public school in Texas | Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a public school in Texas. Documentation must indicate that the student enrolled in a <u>public</u> school in Texas. |
| 05 – Student withdrew from Job Corps to enroll in another Job Corps diploma program in Texas | Student withdrew from the Job Corps diploma program in order to enroll in another Job Corps diploma program. Documentation must indicate that the student enrolled in another Job Corps diploma program in Texas. |
| 06 – Student withdrew from Job Corps to enroll in a private school in Texas | Student withdrew from the Job Corps diploma program and training program with the intent to enroll in a private school in Texas. Documentation must indicate that the student enrolled in a <u>private</u> school in Texas. |
| 07 – Student died while enrolled in the diploma program | This code requires documentation of the student's death. |
| 08 – Other | This code is used when the reason for student withdrawal is unknown or not listed in this chart, or when a student is withdrawn by the diploma program after a period of time because the student has quit participating in the diploma program and the reason is unknown. The diploma program must determine the number of days that will be implemented for these types of withdrawals, and provide written notice to each student upon enrollment in the diploma program that he/she will be withdrawn if he/she quits participating in the program for the specified number of days. |

IN

ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Settlement of a Texas Clean Air Act Enforcement Action

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code and the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Acts.

Case Title and Court: Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality v. D/Kon Construction, et al.; Cause No. 2005-47685, in the 165th Judicial District Court of Harris County, Texas.

Nature of Defendant's Operations: Harris County filed this suit alleging violations of the Texas Clean Air Act. Defendants operated a trench burner in their land clearing business. Between October 2003 and January 2006, Defendants committed 29 violations of the Texas Clean Air Act due to improper operation of a trench burner and unauthorized discharge of smoke/ash into the air.

Proposed Agreed Judgment: The proposed settlement requires the defendants to pay \$22,500 in civil penalties and \$2,800 in attorney's fees to the State. The defendants must also pay \$22,500 in civil penalties and \$8,100 in attorney's fees to Harris County.

For a complete description of the proposed settlement, the Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Ryan Fite, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-200606372
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: November 27, 2006

Brazos Valley Council of Governments

Request for Quotes

Policy Studies, Inc., seeks to procure eligible vendors for the purchase of prepaid gift cards to be used as participant rewards in its various offices in the Brazos Valley. Potential vendors will be required to submit a vendor application and agree to a vendor agreement as delineated in the Request for Quotes from PSI.

PSI Staff will evaluate vendor responses to this solicitation based on vendor responses on the application. HUB businesses are encouraged to apply. PSI reserves the right to not award any contracts under this RFQ. PSI reserves the right to contract with multiple vendors and makes no guarantees of quantities to be purchased.

Vendors interested in receiving a copy of the RFQ may contact Philip Beard at 3991 East 29th Street, Bryan, Texas; (979) 595-2800 x2243; Fax (979) 595-2812; www.bvjobs.org; pbeard@bvcog.org. Completed application must be received by 4:30 P.M. on December 15, 2006 to receive consideration.

TRD-200606342
Patricia Buck
Manager, Worforce Solutions Brazos Valley
Brazos Valley Council of Governments
Filed: November 21, 2006

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 11/27/06 - 12/03/06 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 11/27/06 - 12/03/06 is 18% for Commercial over \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/06 - 12/31/06 is 8.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/06 - 12/31/06 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-200606308
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 20, 2006

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 12/04/06 - 12/10/06 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 12/04/06 - 12/10/06 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 12/01/06 - 12/31/06 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 12/01/06 - 12/31/06 is 18% for Commercial over \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/07 - 03/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of 01/01/07 - 03/31/07 is 18% for Commercial over \$250,000.

The retail credit card quarterly rate as prescribed by §303.009⁴ for the period of 01/01/07 - 03/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The lender credit card quarterly rate as prescribed by §346.101, Texas Finance Code¹ for the period of 01/01/07 - 03/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009⁴ for the period of 01/01/07 - 03/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of 01/01/07 - 03/31/07 is 18% for Commercial over \$250,000.

The retail credit card annual rate as prescribed by §303.009⁴ for the period of 01/01/07 - 03/31/07 is 18% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed by §304.003 for the period of 12/01/06 - 12/31/06 is 8.25% for Consumer/Agricultural/Commercial credit through \$250,000.

The judgment ceiling as prescribed §304.003 for the period of 12/01/06 - 12/31/06 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.

³ For variable rate commercial transactions only.

⁴ Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200606378

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: November 28, 2006

Texas Education Agency

Notice of Correction: Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8 or K-8 Developed by Entities Other Than Texas School Districts

The Texas Education Agency (TEA) published Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8

or K-8 Developed by Entities Other Than Texas School Districts in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9490).

The TEA is amending the Deadline for Receipt of Materials paragraph in the *Texas Register* notice to read, "Materials must be submitted to the Texas Education Agency, Division of Curriculum, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), December 20, 2006, to be considered. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency." This correction amends the originally-published deadline date of December 1, 2006.

Further Information. For clarifying information contact Marissa L. Rathbone, Director of Health and Physical Education, Division of Curriculum, Texas Education Agency, by phone at (512) 463-9581 or by email at Marissa.Rathbone@tea.state.tx.us.

TRD-200606353

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 22, 2006

◆ ◆ ◆
Notice of Correction: Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8 or K-8 Developed by Texas School Districts

The Texas Education Agency (TEA) published Request for Coordinated School Health Program Materials for Grades K-5, K-6, 6-8, 7-8 or K-8 Developed by Texas School Districts in the November 17, 2006, issue of the *Texas Register* (31 TexReg 9491).

The TEA is amending the Deadline for Receipt of Materials paragraph in the *Texas Register* notice to read, "Materials must be submitted to the Texas Education Agency, Division of Curriculum, 1701 North Congress Avenue, Austin, Texas 78701 by 5:00 p.m. (Central Time), December 20, 2006, to be considered. No materials will be returned to submitting entities. Materials will be kept as a reference for staff at the Texas Education Agency." This correction amends the originally-published deadline date of December 1, 2006.

Further Information. For clarifying information contact Marissa L. Rathbone, Director of Health and Physical Education, Division of Curriculum, Texas Education Agency, by phone at (512) 463-9581 or by email at Marissa.Rathbone@tea.state.tx.us.

TRD-200606352

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 22, 2006

◆ ◆ ◆
Request for Proficiency Tests for the Assessment of Limited English Proficient Students

Description. The Texas Education Agency (TEA) is notifying assessment publishers that proficiency assessments and/or achievement tests may be submitted for review for the 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Texas Education Code (TEC), §29.056(a)(2), authorizes TEA to compile a list of approved assessments for the purposes of identifying students as limited English proficient for entry into or exit from bilingual education and/or special language programs; annually assessing oral language proficiency in English and Spanish when required; and measuring reading and writing proficiency in English and Spanish for program

placement. The state-approved tests placed on the list must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from Prekindergarten (PK) to Grade 12. Assessments must also measure reading and writing in English and Spanish from PK to Grade 12. Reading and writing assessments indicate placement in the bilingual/English as a Second Language (ESL) program and are not for entry purposes.

Norm-referenced standardized achievement tests in English will be used for identification, entry into and exit from programs and may be used for formative assessments. Norm-referenced standardized achievement tests in Spanish may be used for placement purposes only.

All tests to be included on the *List of State Approved Tests for the Assessment of Limited English Proficient Students* must be re-normed every six years to meet the criteria specified in TEC, §39.032, which requires that standardization norms not be more than six years old at the time the test is administered. The 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students* will be in effect only for the 2007-2008 school year. Assessments currently on the 2006-2007 list must be resubmitted to be considered for inclusion on the 2007-2008 list.

Assessment Committee. An Assessment Committee, comprised of educators from throughout the state and TEA staff, will review and approve the 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. The Assessment Committee may choose to change the criteria and/or effective dates at a future time.

Selection Criteria. Assessment publishers will be responsible for submitting tests that they wish to have reviewed for consideration for inclusion on the 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. All tests submitted for review must be based on scientific research and must measure oral language proficiency in listening and speaking in English and Spanish from PK to Grade 12. Assessments must measure reading and writing in English and Spanish from PK to Grade 12 and must meet the state criteria for reliability and validity. Therefore, technical manuals must also be submitted and must be available for the review of assessments to be held on January 19, 2007. Assessments must also measure specific proficiency levels in oral language, reading, and writing in both English and Spanish. Assessment instruments (English and Spanish) submitted for review will be grouped in the following categories: (1) Oral Language Proficiency Tests in English in Listening and Speaking domains; (2) Oral Language Proficiency Tests in Spanish in Listening and Speaking domains; (3) Reading and Writing Proficiency in English; (4) Reading and Writing Proficiency in Spanish; and (5) Ability Tests/Gifted and Talented. Publishers are not required to submit proposals for all categories.

Review of Assessments. Proposals must be submitted on January 19, 2007, to be considered for inclusion on the 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students*. Assessment publishers will be required to attend the review of the assessments on January 19, 2007, which will be held at the William B. Travis Building, Room 1-104, 1701 North Congress Avenue, Austin, Texas. A presentation to the Assessment Committee must be made for all new assessments and assessments containing the stipulation that they may be phased out in 2007. Complete official sample copies in English and Spanish with comprehensive explanations which include scoring information; norming data information including ethnicity, gender, grade level, and geographic region; and technical manuals with validity and reliability information must be presented at that time. Only materials presented on January 19, 2007, will be considered for approval. Publishers must be available all day at the request of the committee, and must make arrangements to pick up all materials at

the end of the day. Any materials and/or revisions submitted after the deadline will not be reviewed for inclusion on the 2007-2008 *List of State Approved Tests for the Assessment of Limited English Proficient Students*.

Further Information. For clarifying information, contact Georgina Gonzalez, Director of Bilingual/ESL, or Susie Coultriss, Assistant Director of Bilingual/ESL, Texas Education Agency, (512) 463-9581.

TRD-200606390

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

Filed: November 29, 2006

◆ ◆ ◆ **Employees Retirement System of Texas**

Request for Application

In accordance with Chapters 1551.213 and 1551.214 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Application ("RFA") from qualified Health Maintenance Organizations ("HMOs") to provide services within their approved service areas in Texas under the Texas Employees Group Benefits Program ("GBP"), during Fiscal Year 2008, beginning September 1, 2007 through August 31, 2008. The locations in Texas for which proposals may be made are included in the RFA. HMOs must provide the level of benefits required in the RFA and meet other requirements.

An HMO wishing to submit an application to this request must: 1) have a current Certificate of Authority from the Texas Department of Insurance; 2) have been providing managed care services in the service area for which the proposal is made at least since March 1, 2006; and 3) demonstrate that it has a provider network in the proposed service area, as of the due date of the application, adequate to provide health care to GBP participants.

The RFA will be available on or after December 23, 2006 from the ERS' website (www.ers.state.tx.us), and all applications must be received at ERS by 4:00 p.m. (CST) on February 1, 2007. To access the RFA from ERS' website, interested HMOs must email their request to the attention of Lisa Caffarate at: lisa.caffarate@ers.state.tx.us. The request must include the HMO's full legal name, street address, as well as phone and fax numbers of an immediate HMO contact. Upon receipt by ERS of your emailed request, a user ID and password will be issued to the requesting vendor that will permit access to the secured RFA. General questions concerning the RFA may be emailed to the [ivendorquestions mailbox](mailto:ivendorquestions@mailbox) at: <http://www1.ers.state.tx.us/vendorbid/>. Inquiries and responses are frequently updated. The RFA will be discussed at a web-based HMO bidders conference on January 10, 2007, beginning at 3:00 p.m. (CST). The registration deadline for conference participation is 4:00 p.m. (CST) on January 5, 2007. Vendors may access ERS' website for details regarding the web-based conference by selecting the Vendor link.

ERS will base its evaluation and selection of HMOs on factors including, but not limited to the following, which are not necessarily listed in order of priority: (a) compliance with the RFA; (b) operating requirements; (c) provider network; (d) service area; (e) network quality; (f) administrative quality; (g) premium rates; (h) experience serving large group programs; (i) execution of a contract satisfactory to ERS; and (j) other factors, as determined during the evaluation process. Each application will be evaluated both individually and relative to the application of other HMOs providing service in the same or a similar area. Complete application instructions will be included with the RFA.

ERS reserves the right to select none, one, or more than one HMO per service area when it is determined by ERS that such action would be in the best interest of the GBP and its participants. ERS reserves the right to reject any or all applications and call for new applications if deemed by ERS to be in the best interest of the GBP and its participants. ERS also reserves the right to reject any application submitted that does not fully comply with the RFA's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFA and will not pay any costs incurred by any entity in responding to this notice or the RFA or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFA at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200606387
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 29, 2006



Request for Proposal

TEXAS EMPLOYEES GROUP BENEFITS PROGRAM

In accordance with §1551.055 of the Texas Insurance Code, the Employees Retirement System of Texas ("ERS") is issuing a Request for Proposal ("RFP") to qualified carriers to underwrite and administer Group Term Life Insurance, Accidental Death and Dismemberment Insurance, and/or to administer Disability Income Benefits under the Texas Employees Group Benefits Program ("GBP"). Following selection by ERS' Board of Trustees ("Board") of qualified carrier(s) for Group Term Life Insurance, Accidental Death and Dismemberment Insurance, and/or Disability Income Benefits and subject to the Board's approval and compliance with the contract(s), contractual responsibilities will begin September 1, 2007 and continue annually through August 31, 2010. At ERS' sole discretion, a contractual option to renew may be offered for a second three-year period beginning September 1, 2010 through August 31, 2013.

ERS is the administrator for the GBP as provided in Chapter 1551 of the Texas Insurance Code. The GBP covers over 500,000 public officers, state agency and certain higher education employees, retirees, and dependents. When ERS determines to purchase coverage plans, ERS is responsible for contracting with health, dental, life, and disability carriers, and third party administrators to provide coverage for GBP participants or administer such coverage throughout the state of Texas.

The RFP will be available for access by qualified carriers on or after January 5, 2007 from the ERS' website, (www.ers.state.tx.us). To access the secured portion of the RFP website, qualified carriers must e-mail their request to the attention of Lisa Caffarate at: lisa.caffarate@ers.state.tx.us. The request must include the carrier's legal name, legal street address, phone and fax numbers, and e-mail address. Upon receipt by ERS of your e-mailed request, a user ID and password will be issued to the requesting organization that will permit access to the secured RFP. General questions concerning the RFP should be sent to the [ivendorquestions](mailto:ivendorquestions@mailbox) mailbox at: <https://www1.ers.state.tx.us/vendorbid/>. Inquiries and ERS responses are updated frequently. The RFP will be discussed at a web-based bidders conference on January 11, 2007, beginning at 3:00 p.m. (CST). The registration deadline for conference participation is 4:00 p.m. (CST) on January 8, 2007.

To be eligible for consideration, the carrier is required to submit a sealed proposal as more fully specified in the RFP.

ERS will base its evaluation and selection of an award on the basis of demonstrated competence and qualifications to provide the prescribed benefits and/or services for a fair and reasonable price, as determined by ERS in consultation with its consulting actuary. Further, each carrier will be evaluated on factors including, but not limited to the following, which are not necessarily listed in order of priority: (a) compliance with and adherence to the RFP; (b) meeting minimum and preferred requirements as specified in the RFP; (c) fee and premium proposals; (d) references; (e) execution of a contract satisfactory to ERS; and (f) other factors, as determined during the evaluation process.

ERS reserves the right to reject any or all proposals and call for new proposals if deemed by ERS to be in the best interest of the GBP and its participants. ERS also reserves the right to reject any proposal submitted that does not fully comply with the RFP's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFP and will not pay any costs incurred by any entity in responding to this notice or the RFP or in connection with the preparation thereof. ERS specifically reserves the right to vary all provisions set forth in the RFP at any time prior to execution of a contract where ERS deems it to be in the best interest of the GBP and its participants.

TRD-200606388
Paula A. Jones
General Counsel
Employees Retirement System of Texas
Filed: November 29, 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 **January 2, 2007**. 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 January 2, 2007**. 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: 6914 M.L.K. Center, Inc. dba Pilgrim Laundry & Dry Cleaners; DOCKET NUMBER: 2006-1607-DCL-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN103993648; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 Texas Administrative Code (TAC) §337.11(e) and Texas Health & Safety Code (THSC), §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$1,067; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Robert P. Checkeye dba Adrian's Cleaners 2 and Adrian's Cleaners 3; DOCKET NUMBER: 2006-1453-DCL-E; IDENTIFIER: RN104066030 and RN104066014; LOCATION: Willow Park and Aledo, Parker 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' registration by completing and submitting the required registration forms; PENALTY: \$1,778; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Al-Ameen, Inc. dba Plus Cleaners; DOCKET NUMBER: 2006-1134-DCL-E; IDENTIFIER: RN101996262; LOCATION: Houston, Fort Bend County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and THSC, §5.702, by failing to pay dry cleaner registration late fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Wan Tae Lim dba City Cleaners; DOCKET NUMBER: 2006-1282-DCL-E; IDENTIFIER: RN104061718; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaning and/or dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Kim A. Johnson dba Dry Clean Super Center; DOCKET NUMBER: 2006-1055-DCL-E; IDENTIFIER: RN104962204; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: George's Cleaners, Inc. dba Community Cleaners; DOCKET NUMBER: 2006-1404-DCL-E; IDENTIFIER: RN104989983; LOCATION: Alvin, Brazoria County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: PJ's Cleaners, Inc. dba US Cleaners; DOCKET NUMBER: 2006-1239-DCL-E; IDENTIFIER: RN104067350 and RN104067376; LOCATION: Laredo, Webb County, Texas; TYPE

OF FACILITY: dry cleaning and dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102(a), by failing to renew the facility's registration by completing and submitting the required registration forms; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner fees; PENALTY: \$2,370; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (210) 490-3096; REGIONAL OFFICE: 1403 Seymour, Suite 2, Laredo, Texas 78040-8752, (956) 791-6611.

(8) COMPANY: Suk K. Yi dba Polo Cleaners; DOCKET NUMBER: 2006-1138-DCL-E; IDENTIFIER: RN104393905 and RN104393897; LOCATION: Bartonville and Flower Mound, 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 facility's registration by completing and submitting the required registration forms; and 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$2,074; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(9) COMPANY: Q.R.N. Enterprises, Inc. dba Your Valet Cleaners and dba Liberty Cleaners; DOCKET NUMBER: 2006-1119-DCL-E; IDENTIFIER: RN103960928, RN103960860, and RN102178969; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaning and/or dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration forms for the facilities; and 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration forms; PENALTY: \$1,036; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Royal Family Corporation dba A-1 Cleaners; DOCKET NUMBER: 2006-1377-DCL-E; IDENTIFIER: RN103962429; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the registration by completing and submitting the required registration form; PENALTY: \$912; ENFORCEMENT COORDINATOR: Tom Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: Tom Pham dba T&C Specialty Cleaners; DOCKET NUMBER: 2006-1373-DCL-E; IDENTIFIER: RN100707595; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(12) COMPANY: Trishla, Inc. dba A-1 Dry Cleaners; DOCKET NUMBER: 2006-1672-DCL-E; IDENTIFIER: RN104967138; LOCATION: Bellaire, 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: \$1,185; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: Bang Tieu dba Unik Cleaners and Alterations; DOCKET NUMBER: 2006-1323-DCL-E; IDENTIFIER: RN104992177; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit

the required registration form; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Colin Barth, (512) 239-0086; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Chung K Yi dba Uptown Cleaners; DOCKET NUMBER: 2006-1275-DCL-E; IDENTIFIER: RN103960886; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay outstanding dry cleaner registration fees; PENALTY: \$1,185; ENFORCEMENT COORDINATOR: Marlin Bullard, (254) 751-0335; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: Shenaz A. Hirani dba Whitex Cleaners; DOCKET NUMBER: 2006-1135-DCL-E; IDENTIFIER: RN103962205; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: \$889; ENFORCEMENT COORDINATOR: Suzanne Walrath, (512) 239-2134; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-200606310

Mary R. Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 21, 2006



Enforcement Orders

An agreed order was entered regarding City of Port Lavaca, Docket No. 2004-1458-PWS-E on November 7, 2006 assessing \$3,725 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Fillibusters, LLC dba Southwest Café and Market, Docket No. 2004-1652-PST-E on November 7, 2006 assessing \$4,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Xavier Guerra, Staff Attorney at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding New Horizons Ranch and Center, Inc., Docket No. 2004-1750-PWS-E on November 7, 2006 assessing \$626 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CWB Tire Repair & Automotive, Inc. dba CWB Tire Repair & Automotive, Docket No. 2004-2010-PST-E on November 7, 2006 assessing \$2,850 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 Tulon Murphy, Jr. dba L & J Grocery Store and Leticia Maria Murphy dba L & J Grocery Store, Docket No. 2005-0209-PST-E on November 7, 2006 assessing \$2,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari Gilbreth, Staff Attorney at (512) 239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Winona, Docket No. 2005-0604-MWD-E on November 7, 2006 assessing \$11,680 in administrative penalties with \$2,336 deferred.

Information concerning any aspect of this order may be obtained by contacting Amy Martin, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Milton Doss, Docket No. 2005-1584-MLM-E on November 7, 2006 assessing \$6,000 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 Jay Leslie, Inc. dba Marks Crane & Rigging Co., Docket No. 2005-1794-UIC-E on November 7, 2006 assessing \$2,250 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 Gulf West Landfill TX, LP, Docket No. 2005-1829-IHW-E on November 7, 2006 assessing \$3,660 in administrative penalties with \$732 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.

A default order was entered regarding Larry Don Howard, R.S., Docket No. 2006-0024-OSI-E on November 7, 2006 assessing \$875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rachael Gaines, Staff Attorney at (512) 239-0078, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Mission, Docket No. 2006-0127-MWD-E on November 7, 2006 assessing \$34,650 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 Rosa Maria Ramon, Docket No. 2006-0281-MSW-E on November 7, 2006 assessing \$4,750 in administrative penalties with \$950 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Johannes Hermon Degoede dba Johannes Degoede Dairy, Docket No. 2006-0353-AGR-E on November 7, 2006 assessing \$12,150 in administrative penalties with \$2,430 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 Orange County, Docket No. 2006-0387-PST-E on November 7, 2006 assessing \$3,075 in administrative penalties with \$615 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 YFZ Land, LLC, Docket No. 2006-0394-MLM-E on November 7, 2006 assessing \$4,503 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 BP Amoco Chemical Company, Docket No. 2006-0401-AIR-E on November 7, 2006 assessing \$5,375 in administrative penalties with \$1,075 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ozark Bottled Water, Inc. dba Hill County Springs, Docket No. 2006-0420-MLM-E on November 7, 2006 assessing \$4,703 in administrative penalties with \$941 deferred.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tyler Dirty Dozen, Inc., Docket No. 2006-0424-IHW-E on November 7, 2006 assessing \$8,500 in administrative penalties with \$1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at (361) 825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KB HOME LONE STAR LP, Docket No. 2006-0434-EAQ-E on November 7, 2006 assessing \$35,000 in administrative penalties with \$7,000 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 Freer Water Conservation and Improvement District, Docket No. 2006-0481-PWS-E on November 7, 2006 assessing \$1,418 in administrative penalties with \$284 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 Equistar Chemicals, LP, Docket No. 2006-0495-AIR-E on November 7, 2006 assessing \$24,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jessica Rhodes, Enforcement Coordinator at (512) 239-2879, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S.S.P. C-Store, Inc. dba Speedy Food Mart, Docket No. 2006-0519-PST-E on November 7, 2006 assessing \$8,000 in administrative penalties with \$1,600 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 Craton Taylor dba Taylor Trucking Sand & Gravel, Docket No. 2006-0521-WQ-E on November 7, 2006 assessing \$3,150 in administrative penalties with \$630 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rhome, Docket No. 2006-0551-MWD-E on November 7, 2006 assessing \$31,900 in administrative penalties with \$6,380 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 BP Products North America Inc., Docket No. 2006-0557-AIR-E on November 7, 2006 assessing \$30,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North Texas District Council Assemblies of God, Docket No. 2006-0572-MWD-E on November 7, 2006 assessing \$8,910 in administrative penalties with \$1,782 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Owens Corning, Docket No. 2006-0591-AIR-E on November 7, 2006 assessing \$11,550 in administrative penalties with \$2,310 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 Monarch Utilities, I L.P., Docket No. 2006-0610-PWS-E on November 7, 2006 assessing \$745 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arkema Inc., Docket No. 2006-0614-AIR-E on November 7, 2006 assessing \$4,500 in administrative penalties with \$900 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Gerdau Ameristeel US Inc., Docket No. 2006-0625-AIR-E on November 7, 2006 assessing \$4,600 in administrative penalties with \$920 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 San Antonio Water System, Docket No. 2006-0636-MWD-E on November 7, 2006 assessing \$10,900 in administrative penalties with \$2,180 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 ConocoPhillips Company, Docket No. 2006-0646-AIR-E on November 7, 2006 assessing \$16,175 in administrative penalties with \$3,235 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (210) 403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Center, Docket No. 2006-0678-MWD-E on November 7, 2006 assessing \$3,180 in administrative penalties with \$636 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at (409) 899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Knippa Water Supply Corporation, Docket No. 2006-0684-PWS-E on November 7, 2006 assessing \$525 in administrative penalties with \$105 deferred.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (210) 403-4056, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mansehra, Inc. dba Super Stop 10, Docket No. 2006-0690-PST-E on November 7, 2006 assessing \$3,745 in administrative penalties with \$749 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BP Amoco Chemical Company, Docket No. 2006-0692-AIR-E on November 7, 2006 assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jason Kemp, Enforcement Coordinator at (512) 239-5610, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding XTO Energy Inc., Docket No. 2006-0697-WR-E on November 7, 2006 assessing \$2,375 in administrative penalties with \$475 deferred.

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 Tekni-Plex, Inc. dba Dolco Packaging, Docket No. 2006-0705-AIR-E on November 7, 2006 assessing \$2,730 in administrative penalties with \$546 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Namma Corporation dba Park Cleaners dba Reino Cleaners dba Rochelle Cleaners and dba Kim Cooper Cleaners, Docket No. 2006-0715-DCL-E on November 7, 2006 assessing \$4,445 in administrative penalties with \$890 deferred.

Information concerning any aspect of this order may be obtained by contacting Cari-Michel La Caille, Enforcement Coordinator at (512) 239-1387, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aleem Enterprises, Inc., Docket No. 2006-0717-DCL-E on November 7, 2006 assessing \$2,370 in administrative penalties with \$474 deferred.

Information concerning any aspect of this order may be obtained by contacting Harvey Wilson, Enforcement Coordinator at (512) 239-0321, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Summit Fabric Care, Inc. dba Cuff and Collar Cleaners and dba Empire Cleaners, Docket No. 2006-0718-DCL-E on November 7, 2006 assessing \$2,370 in administrative penalties with \$474 deferred.

Information concerning any aspect of this order may be obtained by contacting Samuel Short, Enforcement Coordinator at (512) 239-5363, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chasco Constructors, Ltd. LLP, Docket No. 2006-0723-WQ-E on November 7, 2006 assessing \$750 in administrative penalties with \$150 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Bontag Koo dba Glenbrook Cleaners, Docket No. 2006-0740-DCL-E on November 7, 2006 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Occidental Permian LTD., Docket No. 2006-0812-AIR-E on November 7, 2006 assessing \$3,240 in administrative penalties with \$648 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 Willie D. Lawson, Sr. dba Evans Ave Cleaners, Docket No. 2006-0845-DCL-E on November 7, 2006 assessing \$1,185 in administrative penalties with \$237 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hyunsuk Park dba Sunshine Cleaners, Docket No. 2006-0848-DCL-E on November 7, 2006 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Betty Porter dba Overton Mustang Cleaners Copies and More, Docket No. 2006-0849-DCL-E on November 7, 2006 assessing \$889 in administrative penalties with \$178 deferred.

Information concerning any aspect of this order may be obtained by contacting Shontay Wilcher, Enforcement Coordinator at (512) 239-2136, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Coffman Tank Trucks, Inc., Docket No. 2006-0857-MSW-E on November 7, 2006 assessing \$1,000 in administrative penalties with \$200 deferred.

Information concerning any aspect of this order may be obtained by contacting Dana Shuler, Enforcement Coordinator at (512) 239-2505, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Center, Docket No. 2006-0859-PWS-E on November 7, 2006 assessing \$4,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, Enforcement Coordinator at (210) 403-4033, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Crude Energy, Inc., Docket No. 2006-0888-AIR-E on November 7, 2006 assessing \$5,000 in administrative penalties with \$1,000 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 Momin, Inc. dba Hardys Laundromat & Discount Cleaners, Docket No. 2006-0990-DCL-E on November 7, 2006 assessing \$889 in administrative penalties with \$178 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 Giddings, Docket No. 2006-1012-MWD-E on November 7, 2006 assessing \$900 in administrative penalties with \$180 deferred.

Information concerning any aspect of this order may be obtained by contacting Brent Hurta, Enforcement Coordinator at (512) 239-6589, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200606356

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2006



Notice of District Petition

Notice issued November 29, 2006

TCEQ Internal Control No. 07132006-D09; MAW Magnolia, LP (Petitioner) filed a petition for creation of Montgomery County Municipal Utility District No. 116 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; Title 30, Texas Administrative Code, Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) the proposed District will contain approximately 589.7 acres located within Montgomery County, Texas; and (3) the proposed District is not within the corporate limits or extraterritorial jurisdiction of any city, town, or village in Texas. There is one lien holder, Bank of the Ozarks, on the property to be included in the proposed District; and the Petitioner has provided the TCEQ with the certificate evidencing their consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project; and from the information available at the time, the cost of the project is estimated to be approximately \$37,550,000.

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 (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-200606383

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 29, 2006



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 2, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO 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 DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 787113087 and must be **received by 5:00 p.m. on January 2, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Benavides Custom Homes, LLC; DOCKET NUMBER: 2006-0427-WQ-E; TCEQ ID NUMBER: RN104014964; LOCATION: near Del Rio Highway 277 and Veterans Boulevard, Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: con-

struction site for custom homes; RULES VIOLATED: 30 TAC §281.25(a)(4); 40 Code of Federal Regulations (CFR) §122.26(a); and Texas Pollutant Discharge Elimination System (TPDES) General Permit No. TXR150000 Part II, Section D3(d), by failing to post a copy of the Notice of Intent at the site in a location where it is readily available for viewing; 30 TAC §281.25(a)(4); 40 CFR §122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D2(c), by failing to post a signed copy of the construction site notice at the site in a location where it is readily available for viewing; 30 TAC §281.25(a)(4); 40 CFR §122.26(a); and TPDES General Permit No. TXR150000 Part II, Section D1, by failing to have the Storm Water Pollution Prevention Plan readily available at the time of an on-site inspection; and 30 TAC §281.25(a)(4), and Texas Water Code (TWC), §5.702, by failing to pay General Permit Stormwater fees for Fiscal Years 2005 and 2006, for TCEQ Financial Administration Account No. 20006737; PENALTY: \$3,150; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(2) COMPANY: Carolyn Hilgen dba Carolyns Country Café; DOCKET NUMBER: 2006-0505-PWS-E; TCEQ ID NUMBER: RN103105557; LOCATION: 37470 Farm-to-Market Road 529, Brookshire, Waller County, Texas; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and Texas Health and Safety Code (THSC), §341.033(d), by failing to conduct routine bacteriological monitoring of the public water supply during the months of July - December 2005, and January and February 2006; and 30 TAC §290.51(a)(3), and TWC, §5.702, by failing to pay past due public health service fees for Account Number 92370083; PENALTY: \$2,840; STAFF ATTORNEY: Deanna Sigman, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: David Priess and Randy Priess; DOCKET NUMBER: 2005-0700-MLM-E; TCEQ ID NUMBER: RN104474374; LOCATION: 5876 Rural Route 386, Fredonia, Mason County, Texas; TYPE OF FACILITY: unauthorized hazardous and industrial waste storage site; RULES VIOLATED: 30 TAC §111.201 and §111.219(7), by causing, suffering, or allowing outdoor burning in the State of Texas without authorization from the commission; 30 TAC §335.2(a) and §335.43(a), by failing to dispose of municipal hazardous waste at an authorized facility; 30 TAC §335.62 and §335.431(c), and 40 CFR §262.11 and §268.40, by failing to conduct a hazardous waste determination on the burned wire insulation hazardous waste stream, and by failing to meet treatment standards for lead prior to land disposal; 30 TAC §§335.2(a), 335.4, and 335.43(a), by failing to dispose of municipal hazardous waste at an authorized facility; and 30 TAC §335.9(a)(1), by failing to keep records of all hazardous waste activities regarding the quantities generated, stored, processed, and disposed; PENALTY: \$25,000; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Janice L. Wilson; DOCKET NUMBER: 2006-0271-LII-E; TCEQ ID NUMBER: RN104664826; LOCATION: 18320 Deerview Lane, New Ulm, Austin County, Texas; TYPE OF FACILITY: lawn maintenance and landscaping business; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), TWC, §37.003, and Texas Occupation Code, §1903.251, by failing to obtain an Irrigator's license prior to selling an irrigation system to be installed at the site; PENALTY: \$250; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Hous-

ton Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Oldmoc, Inc. dba Super Mart 1; DOCKET NUMBER: 2003-1068-PST-E; TCEQ ID NUMBER: RN101434496; LOCATION: 10800 Highway 190, Point Blank, San Jacinto County, Texas; TYPE OF FACILITY: lawn maintenance and landscaping business; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); 30 TAC §334.22, by failing to pay all outstanding UST fees for Fiscal Years 2001 - 2003 for Financial Administration Account Number 0012459U; and 30 TAC §334.128, by failing to pay all outstanding above ground storage tank fees for Fiscal Years 1999 - 2003 for Financial Administration Account Numbers 0012459A and 0051889A; PENALTY: \$3,450; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Paula A. Hicks; DOCKET NUMBER: 2004-1677-PST-E; TCEQ ID NUMBER: RN104154315; LOCATION: 103 East Goliad Avenue, Crockett, Houston County, Texas; TYPE OF FACILITY: real property; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; 30 TAC §334.54(d)(2), by failing to ensure that any residue from stored regulated substances which remained in the temporarily out of service UST system did not exceed a depth of 2.5 centimeters at the deepest point and did not exceed 0.3% by weight of the system at full capacity; 30 TAC §334.7(a)(1), and TWC, §26.346, by failing to register with the commission on authorized commission forms, all USTs in existence on or after September 1, 1987; 30 TAC §334.50(a)(1)(A), TWC, §26.3475(c)(1), by failing to provide a proper release detection method capable of detecting a release from any portion of the UST system; 30 TAC §334.49(a), and TWC, §26.3475(d), by failing to install corrosion protection for the UST system; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$14,700; STAFF ATTORNEY: Justin Lannen, Litigation Division, MC R-4, (817) 588-5927; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Sadrudhin & Sons, Inc. dba Churchill Grocery; DOCKET NUMBER: 2005-1291-PWS-E; TCEQ ID NUMBER: RN101906204; LOCATION: 4128 Farm-to-Market Road 2611, Brazoria, Brazoria County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i), and THSC, §341.033(d), by failing to collect routine water samples for bacteriological analysis for the months of April, September and December 2003; February, May - August, and December 2004; and January 2005; and 30 TAC §290.122(c)(2)(B), by failing to post a public notification for the months of August and December 2004; and January 2005; PENALTY: \$3,850; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Sandra Cooper; DOCKET NUMBER: 2006-0170-PST-E; TCEQ ID NUMBER: RN104190855; LOCATION: 6101 Jade Avenue, Port Arthur, Jefferson County, Texas; TYPE OF FA-

CILITY: private property with one UST; RULES VIOLATED: 30 TAC §334.47(a)(2), by failing to permanently remove from service, no later than 60 days after the prescribed upgrade implementation date, an existing UST system for which any applicable component of the system was not brought into timely compliance with the upgrade requirements; 30 TAC §334.7(a)(1), and TWC, §26.346, by failing to register a UST system with the TCEQ; and 30 TAC §334.49(a)(1), and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; PENALTY: \$6,600; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: Will Harper; DOCKET NUMBER: 2004-0982-PST-E; TCEQ ID NUMBER: RN104066121; LOCATION: 2995 West Crockett Street, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: property that was used as a petroleum storage tank, bulk storage facility; RULES VIOLATED: 30 TAC §327.5(a), by failing to cooperate fully to initiate immediate and reasonable steps to abate and contain the spill or discharge, and minimize its impact; PENALTY: \$3,150; STAFF ATTORNEY: James Sallans, Litigation Division, MC 175, (512) 239-2053; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200606313

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 21, 2006



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 2, 2007**. 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 A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 787113087 and must be **received by 5:00 p.m. on January 2, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; how-

ever, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Madat Hirani dba Circle J Food Store; DOCKET NUMBER: 2004-0041-PST-E; TCEQ ID NUMBER: RN102405768; LOCATION: 12310 Cullen Boulevard, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail fuel sales; RULES VIOLATED: 30 TAC §334.49(a)(2) and (c)(4)(C), and Texas Water Code (TWC), §26.3475(d), by failing to properly maintain and test the cathodic protection system for adequacy of protection once every three years; and 30 TAC §334.50(b)(1)(A) and (b)(2)(A)(i), and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once per month, not to exceed 35 days between each monitoring, and by failing to equip the regular unleaded product line with an automatic line leak detector; PENALTY: \$4,500; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Metroplex Lucky Star, LLC dba Coastal 1; DOCKET NUMBER: 2005-1189-PST-E; TCEQ ID NUMBERS: 8280 and RN101560977; LOCATION: 1400 South Armstrong, Denison, Grayson County, Texas; TYPE OF FACILITY: convenience store with retail fuel sales; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,150; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: DallasFort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 761186951, (817) 588-5800.

(3) COMPANY: Price Construction, Ltd.; DOCKET NUMBER: 2006-0537-AIR-E; TCEQ ID NUMBER: RN102743747; LOCATION: six tenths of a mile northwest of Highway 277 on Brodbent Avenue, Del Rio, Val Verde County, Texas; TYPE OF FACILITY: hot mix asphalt plant; RULES VIOLATED: 30 TAC §116.110(a), and Texas Health and Safety Code (THSC), §382.085(b), and §382.0518(a), by failing to obtain authorization to construct and operate a hot mix asphalt plant before operation began; PENALTY: \$6,000; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Laredo Regional Office, 707 East Calton Road, Suite 304, Laredo, Texas 78041-3638, (956) 791-6611.

(4) COMPANY: Southwest Shipyard, L.P.; DOCKET NUMBER: 2005-0097-MLM-E; TCEQ ID NUMBER: RN100248749; LOCATION: 18310 Market Street, Channelview, Harris County, Texas; TYPE OF FACILITY: barge cleaning and repair facility; RULES VIOLATED: 30 TAC §305.125(1), TWC, §26.121(a), and Texas Pollutant Discharge Elimination System (TPDES) Permit No. 02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent limits at Outfall 001 for the months of March, July, and October - December 2003, and January and February 2004; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No. 02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent limits at Outfall 003; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No. 02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent limits at Outfall 004 for the months of March, May, November, and December 2003, and February 2004; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No. 02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent limits at Outfall 005; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No.

02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent limits at Outfall 006; 30 TAC §305.125(1), TWC, §26.121(a), and TPDES Permit No. 02605, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the ammonia nitrogen effluent limit of six milligrams per liter at Outfall 001; 30 TAC §122.143(4) and §122.145(2)(B), Federal Operating Permit No. O-1260, General Terms and Conditions, and THSC, §382.085(b), by failing to submit deviation reports for 2004 and for the first semiannual reporting period of 2005; 30 TAC §122.143(4) and §116.115(c), Federal Operating Permit No. O-1260, Special Condition No. 10, New Source Review (NSR) Permit No. 9442, Special Condition No. 11D, and THSC, §382.085(b), by failing to install a continuous run time flow monitor to record average hourly values of flow and composition for Flares FL-1 and 3; 30 TAC §122.143(4) and §116.115(c), Federal Operating Permit No. O-1260, Special Condition No. 10, NSR Permit No. 36241, Special Condition No. 10C, and THSC, §382.085(b), by failing to record and develop an accurate monthly report for volatile organic compound (VOC) emissions in pounds per hour on a daily basis for the Barge Rail Painting Facility; and 30 TAC §122.143(4) and §116.115(c), Federal Operating Permit No. O-1260, Special Condition No. 10, NSR Permit No. 43774, Special Condition No. 16E, and THSC, §382.085(b), by failing to record and develop an accurate monthly report for VOC emissions in lbs/hr on a daily basis for Dry Docks DD1 and 2, and DD3STK; PENALTY: \$49,123; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: The City of Pharr; DOCKET NUMBER: 2003-0357-PST-E; TCEQ ID NUMBER: RN101429413; LOCATION: 1000 South Bluebonnet Street, Pharr, Hidalgo County, Texas; TYPE OF FACILITY: petroleum storage tank facility; RULES VIOLATED: 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST system; 30 TAC §334.8(c)(4)(B), and TWC, §26.346(a), by failing to ensure that the UST registration and self-certification form was fully and accurately completed and submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with the identification number listed on the UST registration and self-certification form; 30 TAC §334.49(c)(4), and TWC, §26.3475(d), by failing to test the cathodic protection system within six months of installation, and by failing to have the cathodic protection system inspected once every three years thereafter by a corrosion specialist or corrosion technician; 30 TAC §334.49(c)(2)(C), and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least every 60 days to ensure that the rectifier and other system components were operating properly; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all required records pertaining to the UST system; 30 TAC §334.50(d)(9)(A)(v), by failing to report to the agency a UST system analysis report result of inconclusive, which was not investigated and quantified as a pass within 72 hours of the time of receipt of the inconclusive analysis report result; 30 TAC §334.50(d)(1)(B)(i), and TWC, §26.3475(c)(1), by failing to conduct inventory control procedures in accordance with a code or standard of practice developed by a nationally recognized association or independent testing laboratory; 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile the inventory control records on a monthly basis in a manner sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; and 30 TAC §334.50(d)(1)(B)(iii)(III), and TWC, §26.3475(c)(1), by failing to meter and record substance dispensing within the local standards for meter calibration or within an accuracy of six cubic inches

for every five gallons of product withdrawn; PENALTY: \$22,500; Supplemental Environmental Project (SEP) offset amount of \$22,500 to the The Rensselaerville Institute SEP Program to provide for the repair or replacement of failing on-site sewage systems for low income homeowners at no cost to the homeowners; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-200606312

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 21, 2006



Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Orders (S/DOs). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overflow prevention, and/or, after December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 2, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO 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 S/DO is not required to be published if those changes are made in response to written comments.

Copies of each of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 2393400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 2, 2007**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission attorneys are available to discuss the S/DOs and/or the comment procedure at the listed phone numbers; however, comments on the S/DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Sohail Afridi dba Lumberton Food Mart; DOCKET NUMBER: 2005-1449-PST-E; TCEQ ID NUMBER: RN102353554; LOCATION: 2346 Highway 69 South, Lumberton, Hardin County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.10(b), by failing to maintain all underground storage tank (UST) records at the station and make them available for inspection to commission personnel upon request; 30 TAC §115.245(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every twelve months; 30 TAC §334.50(b)(1)(A), and Texas Water Code (TWC), §26.3475(c)(1), by failing to monitor USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.48(c), by failing to conduct effective manual or automatic inventory control procedures for all USTs involved in the retail sale of petroleum substances as a motor fuel; and 30 TAC §334.22(a), and TWC, §5.702, by failing to pay UST fees for TCEQ Financial Assurance Account No. 0060267U, and by failing to pay associated late fees for Fiscal Year 2005; PENALTY: \$8,925; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: SSMA Corporation, Inc. dba Stop N Drive 30; DOCKET NUMBER: 2004-1281-PST-E; TCEQ ID NUMBER: RN101818201; LOCATION: 716 Magnolia Avenue, Port Neches, Jefferson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.72(2), by failing to report to the Agency within 24 hours unusual operating conditions observed such as unexplained presence of water in the diesel tank; 30 TAC §334.74, by failing to investigate a suspected release; 30 TAC §334.50(d)(1)(B)(iii)(I), and TWC, §26.3475(c)(1), by failing to conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tank each operating day; 30 TAC §334.50(d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to reconcile inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flowthrough for the month plus 130 gallons; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure a valid delivery certificate was posted at the station and was visible at all times; 30 TAC §115.242(3)(J), and THSC, §382.085(b), by failing to repair or replace damaged or inoperative Stage I dry break; 30 TAC §115.244(3) and §115.246(7), and THSC, §382.085(b), by failing to maintain on site a record of the Stage II monthly inspections; 30 TAC §115.245(2), and THSC, §382.085(b), by failing to conduct an annual Stage II test within the previous 12 months; 30 TAC §115.245(2), and THSC, §382.085(b), by failing to conduct a triennial Stage II test within the previous 36 months; 30 TAC §115.246(1), and THSC, §382.085(b), by failing to maintain a copy of the applicable California Air Resources Board Executive Order; 30 TAC §115.246(4) and (7), and THSC, §382.085(b), by failing to maintain documentation of attendance and completion of Stage II training of Station employees; 30 TAC §115.246(6) and (7), and THSC, §382.085(b), by failing to maintain a record of the Stage II daily inspections; 30 TAC §334.8(c)(4)(B), by failing to ensure that the UST registration and self-certification form was fully and accurately completed, and was submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i), and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before delivery of a regulated substance into the USTs was accepted; 30 TAC §334.50(b)(1)(A), and TWC, §26.3475(c)(1), by failing to provide proper release detection for the UST systems; 30 TAC §334.50(b)(2), and TWC, §26.3475(a), by failing to provide proper release detection for the product piping associated with the diesel UST; 30 TAC §334.51(b)(2)(C), and TWC, §26.3475(c)(2),

by failing to install overflow prevention equipment; and 30 TAC §37.815(a) and (b), by failing to provide a properly worded insurance policy for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases from the operation of petroleum USTs; PENALTY: \$34,650; STAFF ATTORNEY: Kathleen Decker, Litigation Division, MC 175, (512) 239-6500; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200606314

Mary Risner

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: November 21, 2006



Notice of Water Quality Applications

The following notices were issued during the period of November 16, 2006 through November 21, 2006.

The following require the applicants to publish notice in a 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.

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 13433-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 2.2 miles east of the intersection of Farm-to-Market Road 1960 and Windfern Road and approximately 1.8 miles south of the intersection of Farm-to-Market Road 1960 and Farm-to-Market Road 249 in Harris County, Texas

AQUA DEVELOPMENT, INC. has applied for a renewal of TPDES Permit No. 14106-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 1.3 miles southeast of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960, and at the northeast corner of the intersection of Imperial Valley Drive and North Vista in Harris County, Texas.

AQUA TEXAS, INC. has applied for a renewal of TPDES Permit No. 11314-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. The facility is located north of Cypress Creek, approximately two miles northwest of the intersection of Interstate Highway 45 and Farm-to-Market Road 1960 in Harris County, Texas.

AQUA TEXAS, INC. has applied for a renewal of TPDES Permit No. 12454-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located on the east side of the Kickapoo Creek Arm of Lake Livingston, approximately 2000 feet south of United States Highway 190 within the Cedar Point subdivision in Polk County, Texas.

CITY OF CLEBURNE has applied for a renewal of TPDES Permit No. 10006-001, which authorizes the discharge of treated domestic wastewater at a combined annual average flow not to exceed 7,500,000 gallons per day for Outfall 001 and 002; and the discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 300,000 gallons per day via Outfall 002. The application also includes a request for a temporary variance to the existing water quality standards for total dissolved solids, chlorides and sulfates. The variance would authorize a three-year period in which to conduct a water quality

study of the Nolan River into which the treated domestic wastewater is discharged. The study would show whether a site-specific amendment to water quality standards is justified. Prior to the expiration of the three-year variance period, the Commission will consider the site-specific standards and determine whether to adopt the standards or require the existing water quality standards to remain in effect. The facility is located on the north side of Buffalo Creek, approximately 1 mile southwest of the intersection of State Highway 174 and State Highway 171 in Johnson County, Texas.

EL PASO WATER UTILITIES PUBLIC SERVICE BOARD has applied to the TCEQ for a major amendment to Permit No. WQ0010408007, to authorize an increase in the daily average flow from 10,000,000 gallons per day to 12,000,000 gallons per day and to authorize the disposal of drinking water quality treated effluent via five sets of paired infiltration basins for recharge of the Hueco Bolson Aquifer. In addition, the applicant requests to authorize the disposal of primary quality treated effluent in the oxidation pond areas to maintain the willow-cattail wetland and for migratory birds. The current permit authorizes the disposal of drinking water quality treated effluent at a daily average flow not to exceed 10,000,000 gallons per day via disposal by injection wells for the recharge of the Hueco Bolson Aquifer. The treatment of the wastewater for recharge shall be sufficient that the effluent will be of drinking water quality in accordance with the parameters listed in the permit. In addition, the permittee is authorized to dispose of treated effluent by reuse for various purposes according to the requirements of 30 TAC Chapter 210, Use of Reclaimed Water. This permit will not authorize a discharge of pollutants into waters in the State. The plant is located approximately 3.2 miles east of the intersection of U.S. Highway 54 and State Highway 2529 (McCombs Street) and 3 miles south of the intersection of U.S. Highway 54 and Stan Roberts Sr. Avenue, northeast of the City of El Paso in El Paso County, Texas. The oxidation ponds are located northeast of and adjacent to the wastewater treatment facilities. The Hueco Bolson recharge injection well field begins about 2 miles west of the plant site and extends about 2.8 miles west, north of the City of El Paso. The infiltration recharge basins are located in an area west of Farm-to-Market Road 2529 (McCombs Street), east of Martin Luther King Boulevard and north of the City of El Paso. The facility and disposal site are located in the drainage basin of the Rio Grande Below Riverside Diversion Dam in Segment No. 2307 of the Rio Grande Basin.

CITY OF GAINESVILLE has applied for a major amendment to TPDES Permit No. 10726001 to authorize the removal of the effluent limitation and monitoring requirements for Nickel. The current permit authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 4,140,000 gallons per day. The facility is located on the east bank of the Elm Fork of the Trinity River and approximately 1.5 miles south of the intersection of Interstate Highway 35 and Farm-to-Market Road 51 in Cooke County, Texas.

CITY OF GALENA PARK has applied to the TCEQ for a major amendment to TPDES Permit No. WQ0010831001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 950,000 gallons per day to an annual average flow not to exceed 1,250,000 gallons per day. The facility is located at 1107 Fifth Street in the City of Galena Park in Harris County, Texas. The treated effluent is discharged to Panther Creek; thence to the Houston Ship Channel/Bufalo Bayou Tidal in Segment No. 1007 of the San Jacinto River Basin. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the Coastal Coordination Council, and has determined that the action is consistent with the applicable CMP goals and policies.

SUNBELT FRESH WATER SUPPLY DISTRICT has applied for a renewal of TPDES Permit No. 11791-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,225,000 gallons per day. The facility is located 1.2 miles west of U.S. Highway 59, on the south side of Greens Bayou in Harris County, Texas.

CITY OF WOODVILLE has applied to the TCEQ for a renewal of TPDES Permit No. WQ0010322001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 1000 feet east of U.S. Highway 69 and 3000 feet south of U.S. Highway 190 in Tyler 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-200606354

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2006



Notice of Water Rights Application

Notices issued November 17, 2006, and November 21, 2006.

APPLICATION NO. 19-2182C; Fred J. Lyssy, 3233 County Road 204, Falls City, Texas 78113, Applicant, has applied to amend Certificate of Adjudication No. 19-2182 to add a downstream diversion point on the San Antonio River, San Antonio River Basin, Wilson County. The application was received on April 26, 2006. Additional information and fees were received on July 18, August 7, and October 12, 2006. The application was accepted for filing and declared administratively complete on October 19, 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 by December 7, 2006.

APPLICATION NO. 12023; Kim R. Smith Logging, Inc., 1155 East Johnson Street, Tatum, Texas, 75691, applicant, has applied for a Water Use Permit to construct and maintain a dam and reservoir on two (2) unnamed tributaries of Sulphur Creek, Brazos River Basin, for domestic, livestock, and in-place recreational purposes in Grimes County. More information on the application and how to participate in the permitting process is given below. The application was received on February 13, 2006. Additional information and fees were received on May 2, May 5, June 6, August 25, September 20, and October 30, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 20, 2006. Written public comments and requests for a public meeting should be received in 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-200606355

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 22, 2006



Notice of Water Rights Application

Notice issued November 28, 2006

APPLICATION NO. 12050; Bighorn Ventures II, Ltd., 12221 Merit Drive, Suite 910, Dallas, TX 75251, Applicant, has applied for a water use permit to maintain an existing dam and reservoir on an unnamed tributary of Wilson Creek, Trinity River Basin for in-place recreational purposes in Collin County. The application was received on May 11, 2006. Additional information and fees were received on September 8, 2006. The application was accepted for filing and declared administratively complete on September 26, 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-200606382

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 29, 2006



Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on November 27, 2006, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Far Hills Utility District; SOAH Docket No. 582-06-0568; TCEQ Docket No. 2005-1899-MWD. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Far Hills Utility District on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Paul Munguía, Office of the Chief Clerk, (512) 239-3300.

TRD-200606384

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: November 29, 2006



Texas Health and Human Services Commission

Request for Public Comment - Methodology for Determining Caseload Reduction for the Temporary Assistance for Needy Families (TANF) Program for Federal Fiscal Year 2007

The Texas Health and Human Services Commission (HHSC) is seeking comments from the public on its methodology for determining the TANF caseload reduction from federal fiscal year (FFY) 2005 to FFY 2006. This methodology and the resulting estimated caseload reduction will be submitted to the U.S. Department of Health and Human Services, Administration for Children and Families, for use in calculating the actual caseload reduction credit for FFY 2007.

Under Section 407(b)(3) of the Social Security Act and 45 Code of Federal Regulations Section 261 Subpart D, any State wishing to receive a TANF caseload reduction credit must complete and submit a report on behalf of the State agency administering the TANF program. The caseload reduction credit gives a State credit for reducing its TANF caseload between a base year and a comparison year. The State must develop a methodology for determining the TANF caseload reduction, which will be used to complete the report, and must provide the public with an opportunity to comment on the methodology. As the State agency that administers the TANF program, HHSC has developed the methodology and is providing the public with an opportunity for comment.

The methodology and the estimated caseload reduction will be posted on the HHSC Internet website at <http://www.hhsc.state.tx.us/research> by December 8, 2006. Written or electronic copies of the methodology and estimates can also be obtained by contacting Ross McDonald by telephone at (512) 424-6843.

The public comment period begins December 8, 2006, and ends December 22, 2006. Comments must be submitted in writing to Texas Health and Human Services Commission, Center for Strategic Decision Support, Attention: Ross McDonald, MC 1950, P.O. Box 13247, Austin, Texas 78711-3247. Comments also may be submitted electronically to Ross McDonald at ross.mcdonald@hhsc.state.tx.us.

TRD-200606386

Steve Aragón

Chief Counsel

Texas Health and Human Services Commission

Filed: November 29, 2006



Texas Department of Insurance

Company Licensing

Application to change the name of CORE INSURANCE COMPANY to ENDURANCE AMERICAN INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in New York, New York.

Application for incorporation to the State of Texas by NOBLE GUARANTEE INSURANCE, INC. a domestic fire and/or casualty company. The home office is in Austin, Texas.

Application to change the name of SIRIUS AMERICA INSURANCE COMPANY to DELOS INSURANCE COMPANY a foreign fire and/or casualty company. The home office is in New York, New York.

Application for admission to the State of Texas by SFM MUTUAL INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Bloomington, Minnesota.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register*.

ter publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200606361
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 27, 2006



Company Licensing

Application for incorporation to the State of Texas by DOCTORS HOSPITAL AT RENAISSANCE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Edinburg, Texas.

Application for admission to the State of Texas by FOX INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Scottsdale, Arizona.

Application for incorporation to the State of Texas by HEALTH-SPRING LIFE & HEALTH INSURANCE COMPANY, INC., a domestic life, accident and/or health company. The home office is in Houston, Texas.

Application for admission to the State of Texas by NMHC GROUP SOLUTIONS INSURANCE INC., a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200606393
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 29, 2006



Proposed Fiscal Year 2007 Research Agenda for the Texas Department of Insurance Workers' Compensation Research and Evaluation Group

Labor Code §405.0026 requires the Commissioner of Insurance to adopt an annual research agenda for the Workers' Compensation Research and Evaluation Group (REG) at the Texas Department of Insurance (Department). Labor Code §405.0026 also requires the Department to publish a proposed research agenda in the *Texas Register* for public review and comment and the Commissioner of Insurance to hold a public hearing on the proposed research agenda if requested by a member of the public.

In September 2006, the REG posted a public request to stakeholders and the general public for research agenda suggestions on the Department website. The REG also made inquiries and requests of legislative offices for input to develop the Fiscal Year (FY) 2007 Research Agenda. After reviewing responses from the general public, stakeholders, and legislative offices, the REG developed a proposed FY 2007 Research Agenda using the following criteria:

1. Is the proposed research project required by statute or likely to be part of an upcoming legislative review?

2. Will the results of the proposed research project address the information needs of multiple stakeholder groups and/or legislative committees?

3. Are there available data to complete the project or can data be obtained easily and economically to complete the project?

4. Does the REG have sufficient resources to complete the project within FY 2007?

Based upon the responses received and the criteria outlined above, the REG proposes the following set of projects for the FY 2007 Research Agenda for public review and comment.

1. Development of the Workers' Compensation Health Care Network Report Card required under Insurance Code §1305.502 and Labor Code §405.0025;

2. An update of the FY 2006 REG analysis of access to medical care provided under the Approved Doctors List (ADL), including an initial analysis of access to medical care under Department-certified workers' compensation health care networks;

3. A survey of health care providers regarding their knowledge of the 2005 legislative reforms and their perceptions of the Texas workers' compensation system and workers' compensation health care networks;

4. An update of the FY 2006 REG analysis of return-to-work outcomes for injured workers using data from the Texas Workforce Commission;

5. Continuation of the development of a Designated Doctor and peer review doctor monitoring plan in conjunction with the Department's Division of Workers' Compensation;

6. An analysis of the frequency, type, and outcome of peer reviews performed on behalf of insurance carriers using the results of the Department's Division of Workers' Compensation's peer review data call;

7. An update of the FY 2005 REG analysis on medical costs and utilization of care;

8. An update of the FY 2006 REG analysis of medical bill and compensability claim denial trends in the Texas workers' compensation system, including an initial comparison of medical billing denial rates both in- and out-of networks;

9. An initial examination of the frequency of both employers and workers' compensation claims participating in networks; and

10. An analysis of the adequacy of income benefits paid to injured workers as a result of their work-related injuries.

REQUEST FOR PUBLIC COMMENT OR PUBLIC HEARING. To be considered, written comments on the proposed FY 2007 Research Agenda must be submitted no later than 5:00 p.m. on January 2, 2007, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments must be simultaneously submitted to Amy Lee, Director, Workers' Compensation Research and Evaluation Group, Mail Code 105-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any request for a public hearing should be submitted separately to the Office of the Chief Clerk before the close of the public comment period. If a hearing is held, written and oral comments presented at the hearing will be considered. For questions regarding the proposed agenda, please contact Amy Lee at wcresearch@tdi.state.tx.us.

TRD-200606307

Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 20, 2006



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of ESOLVERE, INC., a foreign third party administrator. The home office is ST. PETERSBURG, FLORIDA.

Application of PHARMACARE MANAGEMENT SERVICES, INC., a foreign third party administrator. The home office is DOVER, DELAWARE.

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-200606392
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: November 29, 2006



Texas Lottery Commission

Instant Game Number 783 "Texas Trails"

1.0 Name and Style of Game.

A. The name of Instant Game No. 783 is "TEXAS TRAILS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 783 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 783.

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, COVERED WAGON SYMBOL, \$1.00, \$2.00, \$4.00, \$6.00, \$10.00, \$20.00, \$50.00, \$200, \$1,000, \$2,000 and \$25,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 783 - 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 |
| COVERED WAGON SYMBOL | WIN\$ |
| \$1.00 | ONE\$ |
| \$2.00 | TWO\$ |
| \$4.00 | FOUR\$ |
| \$6.00 | SIX\$ |
| \$10.00 | TEN\$ |
| \$20.00 | TWENTY |
| \$50.00 | FIFTY |
| \$200 | TWO HUND |
| \$1,000 | ONE THOU |
| \$2,000 | TWO THOU |
| \$25,000 | 25 THOU |

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 783 - 1.2E

| CODE | PRIZE |
|------|---------|
| TWO | \$2.00 |
| FOR | \$4.00 |
| SIX | \$6.00 |
| EGT | \$8.00 |
| TEN | \$10.00 |
| TWL | \$12.00 |
| TWN | \$20.00 |

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00 or \$200.

I. High-Tier Prize - A prize of \$1,000, \$2,000 or \$25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (783), 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: 783-0000001-001.

L. Pack - A pack of "TEXAS TRAILS" 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 "TEXAS TRAILS" Instant Game No. 783 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "TEXAS TRAILS" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) Play Symbols. If any of a player's YOUR NUMBERS play symbols match any of the three (3) TRAIL NUMBERS play symbols, the player wins the prize shown for that number. If a player reveals a "wagon" play symbol, the player wins that prize 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 19 (nineteen) 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 19 (nineteen) 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 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) 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 un-

played 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. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate TRAIL NUMBERS play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The auto win symbol will be used an approximately even number of times in each of the 8 play spots.

F. The auto win symbol will never appear more than once on a ticket.

G. No duplicate non-winning play symbols on a ticket.

H. The \$25,000 prize symbol will appear on all non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS TRAILS" Instant Game prize of \$2.00, \$4.00, \$6.00, \$8.00, \$10.00, \$12.00, \$20.00, \$50.00 or \$200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a \$50.00 or \$200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS TRAILS" Instant Game prize of \$1,000, \$2,000 or \$25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of \$600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS TRAILS" 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 "TEXAS TRAILS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than \$600 from the "TEXAS TRAILS" 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 7,200,000 tickets in the Instant Game No. 783. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 783 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$2 | 662,400 | 10.87 |
| \$4 | 424,800 | 16.95 |
| \$6 | 122,400 | 58.82 |
| \$8 | 28,800 | 250.00 |
| \$10 | 64,800 | 111.11 |
| \$12 | 72,000 | 100.00 |
| \$20 | 50,400 | 142.86 |
| \$50 | 26,700 | 269.66 |
| \$200 | 5,940 | 1,212.12 |
| \$1,000 | 150 | 48,000.00 |
| \$2,000 | 14 | 514,285.71 |
| \$25,000 | 6 | 1,200,000.00 |

*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 4.94. 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. 783 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. 783, 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-200606349
 Kimberly Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: November 22, 2006



Instant Game Number 787 "Magic Numbers"

1.0 Name and Style of Game.

A. The name of Instant Game No. 787 is "MAGIC NUMBERS". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 787 shall be \$2.00 per ticket.

1.2 Definitions in Instant Game No. 787.

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, RABBIT SYMBOL, \$1.00, \$2.00, \$4.00, \$5.00, \$10.00, \$15.00, \$20.00, \$25.00, \$50.00, \$150, \$1,500 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. 787 - 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 |
| RABBIT SYMBOL | WINALL |
| \$1.00 | ONE\$ |
| \$2.00 | TWO\$ |
| \$4.00 | FOUR\$ |
| \$5.00 | FIVE\$ |
| \$10.00 | TEN\$ |
| \$15.00 | FIFTN |
| \$20.00 | TWENTY |
| \$25.00 | TWY FIV |
| \$50.00 | FIFTY |
| \$150 | HUND FTY |
| \$1,500 | 15 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. 787 - 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. 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 \$2.00, \$4.00, \$5.00, \$10.00 or \$20.00.

H. Mid-Tier Prize - A prize of \$50.00, \$100 or \$150.

I. High-Tier Prize- A prize of \$1,500 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 (787), 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: 787-0000001-001.

L. Pack - A pack of "MAGIC NUMBERS" 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 "MAGIC NUMBERS" Instant Game No. 787 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 "MAGIC NUMBERS" 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 of the MAGIC NUMBERS play symbols, the player wins the PRIZE shown for that number. If a player reveals a "rabbit" play symbol, the player wins ALL 10 PRIZES shown. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 22 (twenty-two) Play Symbols must appear under the latex overprint on the front portion of the ticket;
2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;
3. Each of the Play Symbols must be present in its entirety and be fully legible;
4. Each of the Play Symbols must be printed in black ink except for dual image games;
5. The ticket shall be intact;
6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;
7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;
8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;
9. The ticket must not be counterfeit in whole or in part;
10. The ticket must have been issued by the Texas Lottery in an authorized manner;
11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;
12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;
13. The ticket must be complete and not miscut, and have exactly 22 (twenty-two) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;
14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;
15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 22 (twenty-two) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 22 (twenty-two) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate MAGIC NUMBERS play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The "rabbit symbol" (win all) will be used an approximately even number of times in each of the 10 play spots.

F. The "rabbit symbol" (win all) will only appear as dictated by the prize structure.

G. The "rabbit symbol" (win all) will never appear more than once on a ticket.

H. No duplicate non-winning play symbols on a ticket.

I. No duplicate non-winning prize symbols on a ticket.

J. When the "rabbit symbol" (win all) is used, no YOUR NUMBERS play symbol will match a MAGIC NUMBERS play symbol.

K. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e. 5 and \$5).

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGIC NUMBERS" Instant Game prize of \$2.00, \$4.00, \$5.00, \$10.00, \$20.00, \$50.00, \$100 or \$150, 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 Lot-

tery Retailer may, but is not, in some cases, required to pay a \$50.00, \$100 or \$150 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 "MAGIC NUMBERS" Instant Game prize of \$1,500 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 "MAGIC NUMBERS" 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 "MAGIC NUMBERS" 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 "MAGIC NUMBERS" 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 7,080,000 tickets in the Instant Game No. 787. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 787 - 4.0

| Prize Amount | Approximate Number of Winners* | Approximate Odds are 1 in** |
|--------------|--------------------------------|-----------------------------|
| \$2 | 481,440 | 14.71 |
| \$4 | 509,760 | 13.89 |
| \$5 | 84,960 | 83.33 |
| \$10 | 92,040 | 76.92 |
| \$20 | 127,440 | 55.56 |
| \$50 | 28,556 | 247.93 |
| \$100 | 3,068 | 2,307.69 |
| \$150 | 1,900 | 3,726.32 |
| \$1,500 | 41 | 172,682.93 |
| \$25,000 | 9 | 786,666.67 |

*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 5.33. 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. 787 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. 787, 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-200606350
 Kimberly Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: November 22, 2006

◆ ◆ ◆
State Preservation Board

Request for Information

The Bob Bullock Texas State History Museum (TSHM), a division of the State Preservation Board, requests information from experienced museum exhibit evaluators to determine their qualification to design and implement evaluation and data-gathering strategies for the purpose of assisting TSHM staff in assessing the effectiveness of exhibit methodology planned for a major exhibition opening at the Museum in 2009.

The purpose of this request is to provide interested potential consultants with sufficient information to enable them to prepare and submit information to be considered by the TSHM as one of a limited number of pre-qualified consultants. Submittal of an Request for Information (RFI) response is mandatory in order to be considered for the project. Only pre-qualified firms will be able to submit proposals in response to a Request for Proposal which will be issued by TSHM in the Spring of 2007.

The deadline for questions is December 12, 2006 and the deadline for submissions is December 20, 2006 at 3:30 PM.

A copy of the RFI may be downloaded from the Electronic State Business Daily at <http://esbd.tbpc.state.tx.us/> or from the State Preservation Board website at <http://www.tspb.state.tx.us/spb/spb/Bids/BidOpps.htm>.

TRD-200606385

Gaye Polan

Executive Director

State Preservation Board

Filed: November 29, 2006



Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 17, 2006, to amend a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 33512 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33512.

TRD-200606343

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 21, 2006



Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on November 22, 2006, to amend a state-issued certificate of

franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Time Warner Cable to Amend its State-Issued Certificate of Franchise Authority, Project Number 33529 before the Public Utility Commission of Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 33529.

TRD-200606374

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: November 28, 2006



Notice of a CCN Holder's Application to Revise its Usage Sensitive Intrastate Switched Rates

Notice is given to the public of the filing of an application filed on November 28, 2006, of a CCN holder's application with the Public Utility Commission of Texas to revise its usage sensitive intrastate switched access rates.

Tariff Control Number and Style: McLeodUSA Telecommunications Services, Inc.'s Application for Approval of Intrastate Switched Access Rates, Tariff Control No. 33545.

The Application: On November 28, 2006, McLeodUSA Telecommunications Services, Inc. (McLeodUSA) filed a tariff application seeking approval of proposed intrastate switched access rates that in some instances are higher than the rates charged by incumbent local exchange companies (ILECs) and/or higher than the blended rates approved in Project No. 32679. This application is being submitted under P.U.C. Substantive Rule §26.223 which expressly permits certificated competitive local exchange carriers (CLECs) to seek approval of intrastate access rates that in the aggregate are higher than the aggregate of the originating and/or terminating usage sensitive switched access rate elements charged by the ILECs when such higher rates are cost justified. McLeodUSA asserted that in adopting P.U.C. Substantive Rule §26.223, the commission recognized not only that ILECs have different cost structures and different access rates, but that CLECs' costs can and do differ from the ILECs' costs. The rule does not require that CLECs provide access services to interexchange carriers at rates that are below costs.

McLeodUSA submitted with its application the results of a cost study performed by QSI Consulting, Inc. The rates proposed by McLeodUSA with this filing equal the results of its cost study. QSI Consulting, Inc. developed a cost model that uses McLeodUSA-specific and Texas-specific inputs to develop average per minute costs for the transport and termination, switching and signaling functions and activities associated with the origination and termination of long distance calls. The McLeodUSA cost study is a Total Service Long Run Incremental Cost (TSLRIC) study which captures costs related to facilities owned and/or controlled by McLeodUSA in Texas required to originate and terminate Texas-based calls pursuant to McLeodUSA's switched access services. As is evident from the cost study, McLeodUSA is proposing intrastate switched access rates that just recover its incremental costs, without any mark-up for recovery of joint and common costs.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. 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 Tariff Control No. 33545.

TRD-200606391
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 29, 2006



Notice of Application for a Certificate to Provide Retail Electric Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 16, 2006, for retail electric provider (REP) certification, pursuant to §§39.101 - 39.109 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Liberty Power Delaware LLC for Retail Electric Provider (REP) certification, Docket Number 33509 before the Public Utility Commission of Texas.

Applicant's requested service area is the service area of specific transmission and distribution utilities and/or municipal utilities or electric cooperatives in which competition is offered, as follows: CenterPoint, TXU, AEP, AEP North, Texas-New Mexico Power.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 15, 2006. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33509.

TRD-200606344
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 21, 2006



Notice of Application for Designation as an Eligible Telecommunications Carrier and Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 20, 2006, for designation as an eligible telecommunications carrier (ETC) and eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.418 and §26.417, respectively.

Docket Title and Number: Application of Connect Paging, Incorporated, doing business as Get A Phone, for Eligible Telecommunications Carrier Designation and Eligible Telecommunications Provider Designation. Docket Number 33524.

The Application: Connect Paging, Incorporated, doing business as Get A Phone, is requesting ETC/ETP designation in order to receive support from both the Federal Universal Service Support Mechanisms and the Texas Universal Service Fund. Pursuant to 47 U.S.C. §214(e), the commission, either upon its own motion or upon request, shall design-

ate qualifying common carriers as ETC's and ETP's for service areas set forth by the commission. Connect Paging, Incorporated, doing business as Get A Phone, seeks ETC/ETP designation in the study areas of AT&T Texas and Verizon.

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 December 28, 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 33524.

TRD-200606373
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2006



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line in El Paso County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on November 16, 2006, to amend a certificate of convenience and necessity for a proposed transmission line in El Paso County, Texas.

Docket Title and Number: Application of El Paso Electric Company (EPE) to Amend a Certificate of Convenience and Necessity for a 115-kV Transmission Line in El Paso County, Texas. Docket Number 33397.

The Application: The project is designated the Santa Fe Pacific Pipeline (SFPP) Breakout Facility 115-kV Service Upgrade. EPE stated that the original purpose for this transmission project stemmed from a request by Kinder Morgan Energy Partners (KM) that EPE provide 115-kV service to their facility being expanded in northeast El Paso. Further load growth anticipated in the area supports the necessity to make major modification or additions to EPE's transmission infrastructure. The estimated date to energize facilities is September 1, 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 January 2, 2007. 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 33397.

TRD-200606375
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 28, 2006



Notice of Application to Amend Certificated Service Area Boundaries in Cameron County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 20, 2006, for an amendment to certificated service area boundaries within Cameron County, Texas.

Docket Style and Number: Application of the Brownsville Public Utilities Board (BPUB) to Amend a Certificate of Convenience and Necessity for Service Area Boundaries within Cameron County (Heritage Place Subdivision, Section VI). Docket Number 33522.

The Application: The application encompasses an area of land which is singly certificated to American Electric Power Company (AEP), formerly known as Central Power & Light (CP&L), and is within the corporate limits of the City of Brownsville. BPUB received a letter request from Raymond Corkill requesting BPUB to provide electric utility service to a proposed 16.72-acre subdivision. The estimated cost to BPUB to provide service to this proposed area is \$75,966.00. The area is presently undeveloped. If the application is granted the area would be dually certificated for electric service.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than December 15, 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 33522.

TRD-200606346
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 21, 2006



Notice of Application to Amend Certificated Service Area Boundaries in Dallam and Sherman Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on November 17, 2006, for an amendment to certificated service area boundaries within Dallam and Sherman Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company (SPS) for an Amendment to its Certificate of Convenience and Necessity for Service Area Boundaries within Dallam and Sherman Counties. Docket Number 33513.

The Application: Southwestern Public Service Company requests a service area boundary exception to supply power to Mr. Will Allen for six irrigation wells totaling 900 horsepower located within the service territory of Rita Blanca Electric Cooperative, Inc. (RBEC). RBEC is in full agreement with the territory amendment.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than December 15, 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 33513.

TRD-200606345
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 21, 2006



Texas State University-San Marcos

Contract Renewal

The Texas State University agrees to renew the contract agreement with The Advocacy Group paying the consultant \$5,670.00 per month, due on or before the 1st day of each month commencing January 1, 2007.

In addition, Texas State University will pay Consultant's actual out-of-pocket expenses, provided that all such expenses shall be approved by Dr. Bill Covington on behalf of Texas State University and shall be substantiated by appropriate written receipts.

TRD-200606389
William A. Nance
Vice President for Finance and Support Services
Texas State University-San Marcos
Filed: November 29, 2006



Texas Department of Transportation

Public Notice - Advertising in TxDOT Travel Literature and *Texas Highways Magazine*

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1), the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2008 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2008, and the four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2007 calendar. The Summer 2007 calendar lists events scheduled for June, July, and August 2007. The Fall 2007 calendar lists September, October, and November 2007 events. The Winter 2007-2008 calendar lists December 2007, January 2008, and February 2008 events; and the Spring 2008 calendar lists events scheduled for March 2008, April 2008, and May 2008. The department is now accepting advertising for all monthly 2007 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 8, 2007, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 8, 2007, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first-served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 8, 2007, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 8, 2007. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide*. If more than one insertion order for any premium position is received on the same day, the department will

determine selection by a drawing held on February 23, 2007. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 16, 2007, for the Summer 2007 issue; May 18, 2007, for the Fall 2007 issue; August 17, 2007, for the Winter 2007-2008 issue; and November 16, 2007, for the Spring 2008 issue. The deadline for accepting materials for the *Texas Events Calendar* is March 2, 2007, for the Summer 2007 issue; June 1, 2007, for the Fall 2007 issue; August 31, 2007, for the Winter 2007-2008 issue; and November 30, 2007, for the Spring 2008 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas lakes, state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas

throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, indoor and outdoor music and theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

The *Texas Highways* magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects; shopping opportunities in Texas and for Texas related products; various outdoor events, sites, facilities, and services in the state; transportation modes and facilities in the state; and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or recreational interest to *Texas Highways* readers.

The *Texas Accommodations Guide* is the state's official lodging guide and includes information on hotels/motels, condominiums, bed & breakfasts, cabin/guest homes, and guest ranches. This publication is distributed in the standard package sent to requestors seeking information about Texas and also is distributed through the 12 Travel Information Centers operated by the Texas Department of Transportation.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, the *Texas Highways* magazine, and the *Texas Accommodations Guide* are included in this notice.

Texas State Travel Guide

Year 2008 Rate Base: 800,000
Space Closing: October 3, 2007
Materials Due: October 10, 2007
First Distribution: January 2008

Advertising Rates

| ROP: | Gross | Net* |
|--|--------------|-------------|
| Full Page | \$22,540 | \$19,159 |
| Half (2) Page | \$13,540 | \$11,509 |
| One Fourth (1/4) Page | \$ 8,120 | \$ 6,902 |
| One Sixth (1/6) Page | \$ 5,120 | \$ 4,352 |
| Premium Positions: | | |
| | Gross | Net* |
| Cover 2 (Inside Front) | \$32,500 | \$27,625 |
| Cover 3 (Inside Back) | \$30,260 | \$25,721 |
| Cover 4 (Back) | \$40,595 | \$34,506 |
| Spread (Inside Front Cover Inside Back Cover) | \$59,273 | \$50,382 |

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Umbrella Plan A: 5% discount for 1x Texas State Travel Guide, 3x Texas Highways Magazine, 2x Texas Events Calendar

Umbrella Plan B: 10% discount for 1x Texas State Travel Guide, 6x Texas Highways Magazine, 4x Texas Events Calendar

Umbrella Plan C: 10% discount for 1x Texas State Travel Guide, 12x Texas Highways Magazine, 2x Texas Events Calendar

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 10, 2007.

Texas Events Calendar

Advertising Rates/Due Dates

Year 2007/2008 Rate Base: 90,000 Circulation: Spring, Summer,
 Fall
 75,000 Circulation: Winter

| Black/White | 1X | | 2X | | 4X | |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| FULL PAGE | \$ 1,600.00 | \$ 1,360.00 | \$ 1,550.00 | \$ 1,317.50 | \$ 1,500.00 | \$ 1,275.00 |
| HALF PAGE | \$ 1,100.00 | \$ 935.00 | \$ 1,075.00 | \$ 913.75 | \$ 1,025.00 | \$ 871.25 |
| THIRD PAGE | \$ 800.00 | \$ 680.00 | \$ 775.00 | \$ 658.75 | \$ 725.00 | \$ 616.25 |

| 4-Color | 1X | | 2X | | 4X | |
|------------|-------------|-------------|-------------|-------------|-------------|-------------|
| FULL PAGE | \$ 2,240.00 | \$ 1,904.00 | \$ 2,170.00 | \$ 1,844.50 | \$ 2,100.00 | \$ 1,785.00 |
| HALF PAGE | \$ 1,540.00 | \$ 1,309.00 | \$ 1,505.00 | \$ 1,279.25 | \$ 1,435.00 | \$ 1,219.75 |
| THIRD PAGE | \$ 1,120.00 | \$ 952.00 | \$ 1,085.00 | \$ 922.25 | \$ 1,015.00 | \$ 862.75 |

| COVERS (4-COLOR) | 1X | | 2X | | 4X | |
|------------------|-------------|-------------|-------------|-------------|-------------|-------------|
| COVER 2 | \$ 3,500.00 | \$ 2,975.00 | \$ 3,250.00 | \$ 2,762.50 | \$ 3,000.00 | \$ 2,550.00 |
| COVER 3 | \$ 3,000.00 | \$ 2,550.00 | \$ 2,750.00 | \$ 2,337.50 | \$ 2,500.00 | \$ 2,125.00 |
| COVER 4 | \$ 4,200.00 | \$ 3,570.00 | \$ 4,000.00 | \$ 3,400.00 | \$ 3,800.00 | \$ 3,230.00 |

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

| <u>Issue Date</u> | <u>Space Closing</u> | <u>Materials Due</u> |
|--|----------------------|----------------------|
| Summer 2007 (Jun, Jul, Aug-2007) | Feb. 16, 2007 | Mar. 2, 2007 |
| Fall 2007 (Sep, Oct, Nov-2007) | May 18, 2007 | June 1, 2007 |
| Winter 2007-8 (Dec-2007, Jan, Feb-2008) | Aug. 17, 2007 | Aug. 31, 2007 |
| Spring 2008 (Mar, Apr, May-2008) | Nov. 16, 2007 | Nov. 30, 2007 |

Texas Highways Magazine

Advertising Rates

| Four-Color | 1x | 3x | 6x | 12x | 18x | 24x |
|-------------------|-----------|-----------|-----------|------------|------------|------------|
| Full Page | \$7120 | \$6764 | \$6550 | \$6337 | \$6123 | \$5910 |
| 2/3 Page | \$5880 | \$5586 | \$5410 | \$5233 | \$5057 | \$4880 |
| 1/2 Page | \$4626 | \$4395 | \$4256 | \$4117 | \$3978 | \$3840 |
| 1/3 Page | \$3326 | \$3160 | \$3060 | \$2960 | \$2860 | \$2761 |
| 1/6 Page | \$1830 | \$1739 | \$1684 | \$1629 | \$1574 | \$1519 |
| Cover 2 | \$9100 | \$8645 | \$8372 | \$8099 | \$7826 | \$7553 |
| Cover 3 | \$8700 | \$8265 | \$8004 | \$7743 | \$7482 | \$7221 |
| | | | | | | |

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Commission: 15% to recognized agencies providing camera-ready materials.
Payment: Cash with order or net 30 from invoice date.
Space
Deadline: 27th of the third month preceding issue date.
Materials
Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Texas Accommodations Guide

Listing Fees

Individual Listing Fee: \$225

Individual Listing Fee for TH&LA Members: \$125

Corporate Listing Fee: \$215

Terms: Payee must pay on a single invoice with a minimum of 75 listings

Corporate Listing Fee for TH&LA Members: \$115:

Terms: Payee must pay on a single invoice with a minimum of 75 listings

TACVB Listing Fee: \$135

Terms: Payee must pay directly for 5 or more properties

TACVB Listing Fee for TH&LA Members: \$125

Terms: Payee must pay directly for 5 or more properties

Upgrades: Bold/All Cap \$25.00 2nd Color \$25.00

Corporate participants will receive a 10% discount on all insertion orders placed in the Texas State Travel Guide and/or Texas Highways Magazine regardless of frequency

TRD-200606362
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 27, 2006



Request for Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 223, (enabling legislation), the Texas Department of Transportation (department) may enter into comprehensive development agreements (CDA) for the design, development, construction, financing, maintenance, or operation of a toll project on the state highway system. The enabling legislation authorizes private involvement in toll projects and provides a process for the department to solicit proposals for such projects. Transportation Code, §223.203 prescribes requirements for a solicited proposal and requires the department to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which the proposals must be received. The Texas Transportation Commission (commission) has promulgated rules located at Title 43, Texas Administrative Code, Subchapter A (the rules), governing the submission and processing of solicited proposals and providing for publication of notice that the department is requesting qualifications submittals for development of a toll project with private involvement.

On March 30, 2006 by Minute Order 110468, the commission authorized the issuance of a request for qualifications to develop, design, construct, finance, operate, and maintain, as necessary to achieve the optimal traffic solution, tolled managed lanes and associated facilities along I-820 and SH 183 from I-35W to SH 161, along I-820 to Randol Mill Road, and along I-35W from I-30 to SH 170 in Tarrant and Dallas counties, as well as other facilities to the extent necessary for connectivity, mobility, safety, and financing (project) through a CDA.

Through this notice, the department is seeking qualifications submittals (QS) in response to a request for qualifications (RFQ) for the project. The department intends to evaluate any QS received and may request submission of a proposal, potentially leading to negotiation, award, and execution of a CDA. The department will accept for consideration any QS received in accordance with the rules by the due date for responses. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a CDA for the project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications, and legal qualifications, and relative strength, feasibility, and desirability of the proposed conceptual project development plan. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on December 8, 2006. Copies of the RFQ will be available at the Texas Department of Transportation office located at 125 East 11th Street, 5th Floor, Austin, Texas 78701, or on the following website: http://www.dot.state.tx.us/services/texas_turnpike_authority/default.htm. Qs will be due on March 1, 2007 at the time and address specified in the RFQ.

TRD-200606377
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: November 28, 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).